

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEALTHCARE ADVOCATES,INC.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	No. 05-03524
	:	
HARDING, EARLEY, FOLLMER &	:	
FRAILEY; et al,	:	
	:	
Defendants.	:	
	:	

**ANSWER BY DEFENDANT HARDING, EARLEY, FOLLMER & FRAILEY TO
PLAINTIFF’S AMENDED COMPLAINT**

Defendant, Harding, Earley, Follmer & Frailey, by their undersigned counsel, hereby answer the Amended Complaint filed by Healthcare Advocates, Inc. (hereinafter, “plaintiff”), and sets forth the following Answer and Affirmative Defenses, and in support thereof avers as follows:

Responses to Specific Allegations

1. Denied. It is denied that partners, associates, legal assistants and other employees of Harding, Earley law firm made unauthorized electronic access to archived and copyright-protected Internet web site content of plaintiff through the Wayback Machine at www.archive.org during the course of discovery in an underlying lawsuit. It is further denied that partners, associates, legal assistants and other employees of Harding, Earley law firm engaged in conduct constituting violations of the Digital Millennium Copyright Act, copyright infringement, violations of the Computer Fraud and Abuse Act, and civil conspiracy, action in trespass for trespass to chattels, action in trespass for conversion, intrusion upon seclusion, breach of contract, promissory estoppel, breach of fiduciary duty, negligent dispossession, and

negligent misrepresentation under the common law of the Commonwealth of Pennsylvania.

Further to the extent the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

2. Admitted upon information and belief.

3. Denied that Harding, Earley law firm is a partnership. The remaining facts alleged herein are admitted.

4. Denied as conclusion of law. Further, as a matter of law an entity cannot enter into a conspiracy with its own principals and/or employees.

5. Denied as conclusion of law. Further, as a matter of law an entity cannot enter into a conspiracy with its own principals and/or employees.

6. Denied as conclusion of law. Further, as a matter of law an entity cannot enter into a conspiracy with its own principals and/or employees.

7. Admitted upon information and belief.

8. Denied as a conclusion of law. By way of further response, it is affirmatively averred that plaintiff has failed in Counts I, II, and III to state a claim upon which relief may be granted. Such a finding would result in this Court lacking jurisdiction over this matter. 28 U.S.C. § 1367(c)(3). Alternatively, the alleged claims under 18 Pa.C.S. §§ 7613(a) and 7614(a) and the common law of the Commonwealth of Pennsylvania substantially predominate over Counts I, II, and III, resulting in this Court lacking jurisdiction. 28 U.S.C. §1367(c)(2).

9. Denied. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

10. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

11. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

12. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

13. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted based upon information and belief.

18. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

19. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

20. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

21. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

22. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

23. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

24. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

25. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

26. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

27. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

28. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

29. Denied. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

30. Denied. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

31. Denied. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

32. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in

this paragraph are legal conclusions no response is required and they are therefore denied.

33. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

34. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

35. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

36. Denied. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

37. Denied to the extent that an individual from defendant firm is classified as “hacker.” It is admitted that an access denial screen was confronted but it is denied that the amended complaint accurately states the message. To the contrary, the message also stated, “Try another request...”

38. Denied to the extent that an individual from defendant firm is classified as “hacker.” To the extent that the allegations contained in this paragraph are legal conclusions no response is required they are denied. With respect to individual times and/or numbers of times a representative of answering defendant sought access to plaintiff’s archived web site on defendant Internet Archive’s computer servers, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted and they are therefore denied.

39. Denied to the extent that an individual from defendant firm is classified as “hacker.” Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied. It is admitted that on July 9, 2003, a representative of answering defendant sought access to plaintiff’s archived web site on defendant Internet Archive’s computer servers. It is denied that access involved the circumvention of any security.

40. Denied to the extent that an individual from defendant firm is classified as “hacker.” To the extent that the allegations contained in this paragraph are legal conclusions no response is required they are denied. It is admitted that an access denial screen was confronted but it is denied that the amended complaint accurately states the entire message. To the contrary, the message also stated, “Try another request...”

41. Denied to the extent that an individual from defendant firm is classified as “hacker.” Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied. It is admitted that on July 9, 2003, a representative of answering defendant sought access to plaintiff’s archived web site on defendant Internet Archive’s computer servers.

42. Denied to the extent that an individual from defendant firm is classified as “hacker.” Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied. It is admitted that on July 9, 2003, a representative of answering defendant sought access to plaintiff’s archived web site on defendant Internet Archive’s computer servers. It is denied that this access involved the circumvention of any security.

43. Denied to the extent that an individual from defendant firm is classified as “hacker.” To the extent that the allegations contained in this paragraph are legal conclusions no response is required they are denied. With respect to individual times and/or numbers of times a representative of answering defendant sought access to plaintiff’s archived web site on defendant Internet Archive’s computer servers, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted and they are therefore denied. It is admitted that on July 9, 2003, a representative of answering defendant sought access to plaintiff’s archived web site on defendant Internet Archive’s computer servers. It is denied that this access involved the circumvention of any security and/or was made without authorization. To the extent that the averments in this paragraph are not specifically admitted, they are denied.

44. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

45. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

46. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit.

47. Denied on the basis that after reasonable investigation, answering defendant is without knowledge sufficient to admit. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

48. Denied to the extent that an individual from defendant firm is classified as “hacker.” Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied. It is admitted that on July 14, 2003, a representative of answering defendant sought access to plaintiff’s archived web site on defendant Internet Archive’s computer servers.

49. Denied. To the extent that the allegations contained in this paragraph are legal conclusions no response is required they are denied. With respect to any advice from a representative of defendant Internet Archive, after reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief to the truth of the matter asserted and it is therefore denied. It is admitted that on July 14, 2003, a representative of answering defendant sought access to plaintiff’s archived web site on defendant Internet Archive’s computer servers. It is denied that this access involved the circumvention of any security and/or was made without authorization. To the extent that the averments in this paragraph are not specifically admitted, they are denied.

50. Admitted.

51. Denied as stated. It is admitted that various members of answering defendant law firm directed others to gain access to archived historical content of the www.healthcareadvocates.com web site through the Wayback Machine at www.archive.org. It is denied that this access involved the circumvention of any security and/or was made without authorization. To the extent that the averments in this paragraph are not specifically admitted, they are denied.

52. Denied. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

53 Denied. Further, to the extent that the allegations contained in this paragraph are legal conclusions no response is required and they are therefore denied.

54. Denied as stated. Answering defendant denies that any content of www.healthcareadvocates.com was improperly accessed or obtained. Plaintiffs prosecuted unsuccessfully a motion to force answering defendant to produce copies of the downloaded materials which were submitted to the court *in camera*.

55. After reasonable investigation, answering defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted and they are therefore denied.

COUNT I

**Violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201, et seq.
(By Harding, Earley Law Firm and John Does 1-+10, 11-20 and 21-30)**

56. Answering defendant incorporates by reference herein its responses to the above.

57. Denied as a conclusion of law.

58. Denied as a conclusion of law.

59. Denied as a conclusion of law.

60. Denied as a conclusion of law.

61. Denied as a conclusion of law.

COUNT II

**Copyright Infringement
(By Harding, Earley Law Firm and John Does 1-10, 11-20 and 21-30)**

62. Answering defendant incorporates by reference herein its responses to the above.

63. Denied as a conclusion of law.

64. Denied as a conclusion of law.

65. Denied as a conclusion of law.

- 66. Denied as a conclusion of law.
- 67. Denied as a conclusion of law.
- 68. Denied as a conclusion of law.

COUNT III

**Violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2)(C)
(By Harding, Earley Law Firm and John Does 1-10, 11-20 and 21-30)**

- 69. Answering defendant incorporates by reference herein its responses to the above.
- 70. Denied as a conclusion of law.
- 71. Denied on the basis that after a reasonable investigation, answering defendant is without information or knowledge sufficient to admit.
- 72. Denied as a conclusion of law.
- 73. Denied on the basis that after a reasonable investigation, answering defendant is without information or knowledge sufficient to admit.

COUNT IV

**Civil Conspiracy to Violate 18 Pa.C.S. §§ 7613(a) & 7614(a)
(By Harding, Earley Law Firm and John Does 1-10, 11-20 and 21-30)**

- 74. Answering defendant incorporates by reference herein its responses to the above.
- 75. Denied as a conclusion of law.
- 76. Denied as a conclusion of law.
- 77. Denied as a conclusion of law.
- 78. Denied.
- 79. Denied as a conclusion of law.

COUNT V

Action in Trespass for Trespass to Chattels

(By Harding, Earley Law Firm and John Does 1-10, 11-20 and 21-30)

- 80. Answering defendant incorporates by reference herein its responses to the above.
- 81. Denied as a conclusion of law.
- 82. Admitted.
- 83. Denied as a conclusion of law.
- 84. Denied as a conclusion of law.

COUNT VI

Action in Trespass for Conversion

(By Harding, Earley Law Firm and John Does 1-10, 11-20 and 21-30)

- 85. Answering defendant incorporates by reference herein its responses to the above.
- 86. Denied as a conclusion of law.
- 87. Denied on the basis that after a reasonable investigation, answering defendant is without information or knowledge sufficient to admit.
- 88. Denied as a conclusion of law.
- 89. Denied as a conclusion of law.
- 90. Denied as a conclusion of law.

COUNT VII

Intrusion upon Seclusion

(By Harding, Earley Law Firm and John Does 1-10, 11-20 and 21-30)

- 91. Answering defendant incorporates by reference herein its responses to the above.
- 92. Denied as a conclusion of law.
- 93. Denied as a conclusion of law.
- 94. Denied as a conclusion of law.
- 95. Denied as a conclusion of law.

COUNT VIII
Breach of Contract
(By Internet Archive)

96 – 103. No response is required because this count is address to another defendant.

COUNT IX
Promissory Estoppel
(By Internet Archive)

104 – 110. Answering defendant incorporates by reference herein its responses to the above.

COUNT X
Breach of Fiduciary Duty
(By Internet Archive)

111 – 117. No response is required because this count is address to another defendant.

COUNT XI
Negligent Dispossession
(By Internet Archive)

118 – 123. No response is required because this count is address to another defendant.

COUNT XII
Negligent Misrepresentation
(By Internet Archive)

124 – 129. No response is required because this count is address to another defendant.

Separate and Affirmative Defenses

FIRST AFFIRMATIVE DEFENSE

The amended complaint, and each and every purported cause of action contained therein, fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by laches and/or the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's count for copyright infringement is barred because answering defendant's use of the purported work was and is licensed.

FOURTH AFFIRMATIVE DEFENSE

If plaintiff suffered the damages alleged, which fact this defendant expressly denies, and such damages resulted from other and further reason for which this defendant would not be responsible.

FIFTH AFFIRMATIVE DEFENSE

The amended complaint, and each and every purported cause of action contained therein, is barred by reason of plaintiff's own unclean hands in or about the matters complained of because the plaintiff was at fault in bringing about any loss or harm it may have suffered, or will suffer, which loss or harm answering defendant denies.

SIXTH AFFIRMATIVE DEFENSE

Answering defendant has not infringed the copyrights which are the subject of the amended complaint.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because the plaintiff has granted an implied license to the works at issue.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because the plaintiff engaged in copyright misuse.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to damages because answering defendant had innocent intent.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the defense of fair use.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because plaintiff has not been damaged.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by plaintiff's failure to mitigate.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by plaintiff's knowledge, consent, and/or acquiescence.

SIXTEENTH AFFIRMATIVE DEFENSE

Robot.txt is not a "technological measure" pursuant to 17 U.S.C. § 1201(a)(1)(A) as defined under 17 U.S.C. § 1201(a)(3)(B).

SEVENTEENTH AFFIRMATIVE DEFENSE

Robot.txt does not effectively control access to work protected under 17 U.S.C.

EIGHTEENTH AFFIRMATIVE DEFENSE

Answering defendants had authorized access to the purported protected work because the exemption under 17 U.S.C. § 1201(d) ("non-profit libraries, archives and educational institutions") applies.

NINETEENTH AFFIRMATIVE DEFENSE

Answering defendants' access to the internet archive computer was authorized and/or did not exceed authorization and was for a permissible purpose under 18 U.S.C. §1030.

TWENTIETH AFFIRMATIVE DEFENSE

Answering defendants' conduct did not cause any damage to plaintiff's or Internet Archive's computer as contemplated under 18 U.S.C. § 1030(a)(2)(C) nor did it exceed threshold requirements under 18 U.S.C. § 1030 (a)(5)(B).

TWENTY-FIRST AFFIRMATIVE DEFENSE

Answering defendants did not act with malice.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert any cause of action.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Answering defendants did not supply the plaintiff with any information.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's purported state causes of action are pre-empted by applicable federal law.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Answering defendants have not infringed the copyrights which are the subject of the amended complaint.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

The copyright registration that is the subject of the amended complaint is invalid.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HEALTHCARE ADVOCATES, INC.,	:	
	:	
	:	
	:	
v.	:	No. 05-03524
	:	
HARDING, EARLEY, FOLLMER &	:	
FRAILEY; et al,	:	
	:	
Defendants.	:	
	:	

CERTIFICATE OF SERVICE

JEFFREY P. LEWIS, ESQUIRE, attorney for defendant, Harding, Earley, Follmer & Frailey, certifies that a true and correct copy of the foregoing Answer by Defendant Harding, Earley, Follmer & Frailey To Plaintiff's Amended Complaint has been forwarded to all parties listed below, as indicated, on December 6, 2005, as follows:

Via First Class Mail and Electronic Mail

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