

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

HEALTHCARE ADVOCATES, INC.,

Plaintiff,

v.

HARDING, EARLEY, FULLER & FRAILEY;
JOHN DOES 1-10, JOHN DOES 11-20, JOHN
DOES 21-30, and INTERNET ARCHIVE,

Defendants.

Civil Action No. 05-3524

The Hon. Robert F. Kelly

**DEFENDANT INTERNET ARCHIVE'S ANSWER TO
PLAINTIFF'S AMENDED COMPLAINT**

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Attorneys for Internet Archive

Defendant Internet Archive (“Defendant” or “Internet Archive”) hereby answers Plaintiff Healthcare Advocates, Inc.’s (“Healthcare Advocates” or “Plaintiff”) Amended Complaint for Violations of the Digital Millennium Copyright Act, Copyright Infringement, Violations of the Computer Fraud and Abuse Act, and Related Violations of Common Law (“Amended Complaint”), on personal knowledge as to its own acts and on information and belief as to the actions of others, as follows:

NATURE OF THE CASE

1. Answering the allegations of Paragraph 1, Internet Archive admits that Healthcare Advocates has filed a Complaint alleging Copyright Infringement, violations of the Digital Millennium Copyright Act, the Computer Fraud and Abuse Act and Related Violations of Common Law. Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 1.

THE PARTIES

2. Internet Archive admits the allegations of Paragraph 2.
3. Internet Archive admits the allegations of Paragraph 3.
4. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 4, and on that basis denies those allegations.
5. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 5, and on that basis denies those allegations.
6. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 6, and on that basis denies those allegations.
7. Internet Archive admits the allegations of Paragraph 7.

JURISDICTION AND VENUE

8. Answering the allegations of Paragraph 8, Internet Archive admits that this Court has subject matter jurisdiction over this action, as Healthcare Advocates purports to bring this action under the Digital Millennium Copyright Act, 17 U.S.C. § 1201, et seq.; the Copyright Act, 17 U.S.C. § 101, et seq.; the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; and under the

common law of the Commonwealth of Pennsylvania. Internet Archive further admits that this Court has supplemental jurisdiction over the purported causes of action under Pennsylvania law. Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 8.

9. Internet Archive admits that venue is proper in this judicial district. Except as expressly admitted, Internet Archive denies the allegations of Paragraph 9.

10. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 10, and on that basis denies those allegations.

11. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 11, and on that basis denies those allegations.

12. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 12, and on that basis denies those allegations.

13. Answering the allegations of Paragraph 13, Internet Archive admits that Healthcare Advocates attached what appear to be copies of the Certificates of Registration for the contents of the www.healthcareadvocates.com web site to its Amended Complaint as Exhibit A. Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 13.

14. Internet Archive admits the allegations of Paragraph 14.

15. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 15, and on that basis denies those allegations.

16. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 16, and on that basis denies those allegations.

17. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 17, and on that basis denies those allegations.

18. Internet Archive admits the allegations of Paragraph 18.

19. Internet Archive admits the allegations of Paragraph 19.

20. Internet Archive admits the allegations of Paragraph 20.

21. Internet Archive admits the allegations of Paragraph 21.

22. Internet Archive denies the allegations of Paragraph 22.

23. Answering the allegations of Paragraph 23, Internet Archive admits that it provides information on its web site informing web site owners who do not want their web site archived that to prevent the public from accessing their site via the Wayback Machine, they may install a small text string in a file called "robots.txt." Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 23.

24. Internet Archive denies the allegations of Paragraph 24.

25. Internet Archive denies the allegations of Paragraph 25.

26. Internet Archive denies the allegations of Paragraph 26.

27. Answering the allegations of Paragraph 27, Internet Archive admits between 2001 and 2003 Internet Archive provided public access to the archived historical content of the www.healthcareadvocates.com Web site via the Wayback Machine. Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 27.

28. Internet Archive denies the allegations of Paragraph 28.

29. Internet Archive denies the allegations of Paragraph 29.

30. Internet Archive denies the allegations of Paragraph 30

31. Internet Archive denies the allegations of Paragraph 31.

32. Internet Archive denies the allegations of Paragraph 32.

33. Internet Archive denies the allegations of Paragraph 33.

34. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 34, and on that basis denies those allegations.

35. Internet Archive denies the allegations of Paragraph 35.

36. Internet Archive denies the allegations of Paragraph 36.

37. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 37, and on that basis denies those allegations.

38. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 38, and on that basis denies those allegations.

39. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 39, and on that basis denies those allegations.

40. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 40, and on that basis denies those allegations.

41. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 41, and on that basis denies those allegations.

42. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 42, and on that basis denies those allegations.

43. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 43, and on that basis denies those allegations.

44. Answering the allegations of Paragraph 44, Internet Archive admits that a conversation between Mr. Flynn and the Internet Archive occurred on July 9, 2003, in which Mr. Flynn complained of excessive hits against the www.healthcareadvocates.com web site. Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 44.

45. Answering the allegations of Paragraph 45, Internet Archive admits that it informed Mr. Flynn that Internet Archive “had resolved the issue,” and that it had been “triggered by two exceptional situations: (1) someone was aggressively crawling our [W]ayback [M]achine, and (2) [t]he normal [W]ayback [M]achine mechanism for only rechecking a site’s robots rules once per day was broken.” Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 45.

46. Internet Archive admits the allegations of Paragraph 46.

47. Answering the allegations of Paragraph 47, Internet Archive admits it informed Mr. Flynn that a “robots.txt rule can’t really protect against this sort of glitch on our end, because we can’t respect the robots.txt rules until after we fetch them.” Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 47.

48. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 48, and on that basis denies those allegations.

49. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 49, and on that basis denies those allegations.

50. Internet Archive admits the allegations of Paragraph 50.

51. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 51, and on that basis denies those allegations.

52. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 52, and on that basis denies those allegations.

53. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 53, and on that basis denies those allegations.

54. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 54, and on that basis denies those allegations.

55. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 55, and on that basis denies those allegations.

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. Internet Archive incorporates its responses to Paragraphs 1 through 55 above as if fully set forth in response to Paragraph 56 of the Amended Complaint.

57. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 57, and on that basis denies those allegations.

58. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 58, and on that basis denies those allegations.

59. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 59, and on that basis denies those allegations.

60. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 60, and on that basis denies those allegations.

61. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 61, and on that basis denies those allegations.

COUNT II

Copyright Infringement

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

62. Internet Archive incorporates its responses to Paragraphs 1 through 61 above as if fully set forth in response to Paragraph 62 of the Amended Complaint.

63. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 63, and on that basis denies those allegations.

64. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 64, and on that basis denies those allegations.

65. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 65, and on that basis denies those allegations.

66. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 66, and on that basis denies those allegations.

67. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 67, and on that basis denies those allegations.

68. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 68, and on that basis denies those allegations.

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. Internet Archive incorporates its responses to Paragraphs 1 through 68 above as if fully set forth in response to Paragraph 69 of the Amended Complaint.

70. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 70, and on that basis denies those allegations.

71. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 71, and on that basis denies those allegations.

72. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 72, and on that basis denies those allegations.

73. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 73, and on that basis denies those allegations.

COUNT IV

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

74. Internet Archive incorporates its responses to Paragraphs 1 through 73 above as if fully set forth in response to Paragraph 74 of the Amended Complaint.

75. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 75, and on that basis denies those allegations.

76. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 76, and on that basis denies those allegations.

77. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 77, and on that basis denies those allegations.

78. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 78, and on that basis denies those allegations.

79. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 79, and on that basis denies those allegations.

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. Internet Archive incorporates its responses to Paragraphs 1 through 79 above as if fully set forth in response to Paragraph 80 of the Amended Complaint.

81. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 81, and on that basis denies those allegations.

82. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 82, and on that basis denies those allegations.

83. Internet Archive denies the allegations of Paragraph 83.

84. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 84, and on that basis denies those allegations.

COUNT VI

Action in Trespass for Conversion

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

85. Internet Archive incorporates its responses to Paragraphs 1 through 84 above as if fully set forth in response to Paragraph 85 of the Amended Complaint.

86. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 86, and on that basis denies those allegations.

87. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 87, and on that basis denies those allegations.

88. Internet Archive denies the allegations of Paragraph 88.

89. Internet Archive denies the allegations of Paragraph 89, and on that basis denies those allegations.

90. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 90, and on that basis denies those allegations.

COUNT VII

Intrusion upon Seclusion

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

91. Internet Archive incorporates its responses to Paragraphs 1 through 90 above as if fully set forth in response to Paragraph 91 of the Amended Complaint.

92. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 92, and on that basis denies those allegations.

93. Internet Archive denies the allegations of Paragraph 93.

94. Internet Archive denies the allegations of Paragraph 94.

95. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 95, and on that basis denies those allegations.

COUNT VIII
Breach of Contract
(By Internet Archive)

96. Internet Archive incorporates its responses to Paragraphs 1 through 95 above as if fully set forth in response to Paragraph 96 of the Amended Complaint.

97. Internet Archive denies the allegations of Paragraph 97.

98. Internet Archive denies the allegations of Paragraph 98.

99. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 99, and on that basis denies those allegations.

100. Internet Archive denies the allegations of Paragraph 100.

101. Internet Archive denies the allegations of Paragraph 101.

102. Internet Archive denies the allegations of Paragraph 102.

103. Internet Archive denies the allegations of Paragraph 103.

COUNT IX
Promissory Estoppel
(By Internet Archive)

104. Internet Archive incorporates its responses to Paragraphs 1 through 103 above as if fully set forth in response to Paragraph 104 of the Amended Complaint.

105. Internet Archive denies the allegations of Paragraph 105.

106. Internet Archive denies the allegations of Paragraph 106.

107. Internet Archive denies the allegations of Paragraph 107.

108. Internet Archive denies the allegations of Paragraph 108.

109. Internet Archive denies the allegations of Paragraph 109.

110. Internet Archive denies the allegations of Paragraph 110.

COUNT X
Breach of Fiduciary Duty
(By Internet Archive)

111. Internet Archive incorporates its responses to Paragraphs 1 through 110 above as if fully set forth in response to Paragraph 111 of the Amended Complaint.

- 112. Internet Archive denies the allegations of Paragraph 112.
- 113. Internet Archive denies the allegations of Paragraph 113.
- 114. Internet Archive denies the allegations of Paragraph 114.
- 115. Internet Archive denies the allegations of Paragraph 115.
- 116. Internet Archive denies the allegations of Paragraph 116.
- 117. Internet Archive denies the allegations of Paragraph 117.

COUNT XI
Negligent Dispossession
(By Internet Archive)

118. Internet Archive incorporates its responses to Paragraphs 1 through 117 above as if fully set forth in response to Paragraph 118 of the Amended Complaint.

119. Internet Archive denies the allegations of Paragraph 119.

120. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 120, and on that basis denies those allegations.

121. Internet Archive denies the allegations of Paragraph 121.

122. Internet Archive denies the allegations of Paragraph 122.

123. Internet Archive denies the allegations of Paragraph 123.

COUNT XII
Negligent Misrepresentation
(By Internet Archive)

124. Internet Archive incorporates its responses to Paragraphs 1 through 123 above as if fully set forth in response to Paragraph 124 of the Amended Complaint.

125. Internet Archive denies the allegations of Paragraph 125.

126. Internet Archive denies the allegations of Paragraph 126.

127. Internet Archive denies the allegations of Paragraph 127.

128. Internet Archive denies the allegations of Paragraph 128.

129. Internet Archive denies the allegations of Paragraph 129.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

130. The Amended Complaint fails to state any claim against Internet Archive upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

131. To the extent that plaintiff has suffered any damages as alleged in its Amended Complaint, such damages were not caused by Internet Archive but by the acts or omissions of other persons or entities, and/or by an intervening or supervening cause, and Internet Archive therefore is not liable to plaintiff.

THIRD AFFIRMATIVE DEFENSE

132. Plaintiff's claims against Internet Archive are barred by failure of consideration and/or waiver of a defect in performance.

FOURTH AFFIRMATIVE DEFENSE

133. Plaintiff's claims against Internet Archive are barred by the Statute of Frauds.

FIFTH AFFIRMATIVE DEFENSE

134. Plaintiff's claims against Internet Archive are barred by the doctrines of acquiescence, consent, waiver, excuse, license, and/or lawfully obtained possession.

SIXTH AFFIRMATIVE DEFENSE

135. Plaintiff's claims against Internet Archive are barred by its unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

136. Plaintiff's claims against Internet Archive are barred by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

137. Plaintiff's claims against Internet Archive are barred by the doctrine of laches and/or the applicable Statute of Limitations.

NINTH AFFIRMATIVE DEFENSE

138. Plaintiff's claims against Internet Archive are barred because plaintiff granted Internet Archive an implied license to the work(s) at issue.

TENTH AFFIRMATIVE DEFENSE

139. Plaintiff is not entitled to damages because Internet Archive has innocent intent.

ELEVENTH AFFIRMATIVE DEFENSE

140. Plaintiff is not entitled to damages because it has not been damaged.

TWELFTH AFFIRMATIVE DEFENSE

141. Plaintiff's claims against Internet Archive are barred because of its failure to mitigate damages, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

142. Plaintiff's claims against Internet Archive are barred because it expressly and/or impliedly assumed the risk.

FOURTEENTH AFFIRMATIVE DEFENSE

143. Plaintiff's claims against Internet Archive are barred because it was contributorily and/or comparatively negligent.

FIFTEENTH AFFIRMATIVE DEFENSE

144. Internet Archive reserves the right, upon completion of discovery, to assert such additional affirmative defenses as may be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Internet Archive requests that the Court enter judgment in its favor and against Healthcare Advocates on its Amended Complaint by:

A. Dismissing Healthcare Advocates' claims and declaring that Healthcare Advocates shall take nothing by way of its Amended Complaint;

B. Awarding Internet Archive its reasonable costs incurred in this action, disbursements and attorneys' fees to the extent permitted by law; and

C. Granting such other and further relief as the Court deems just and proper.

Date: March 15, 2006

/s/ Kenneth B. Wilson

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Attorneys for Internet Archive

CERTIFICATE OF SERVICE

I hereby certify that today I served copies of the foregoing Defendant Internet Archive's Answer Plaintiff's Amended Complaint and the memorandum of law in support thereof upon the following counsel by ECF, and such documents are available for viewing and downloading from the ECF system:

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Date: March 15, 2006

/s/ Steven D. Dennison
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