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Healthcare Advocates, Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

HEALTHCARE ADVOCATES, INC.,

Plaintiff,

v.

HARDING, EARLEY, FOLLMER &
FRAILEY; JOHN F.A. EARLEY, III,
CHARLES L. RIDDLE, FRANK J. BONINI,
JR., KIMBERLY TITUS, JOHN DOES 1-5,
and INTERNET ARCHIVE,

Defendants.

Civil Action No. 05-3524

Hon. Robert F. Kelly

**SECOND 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**

Plaintiff Healthcare Advocates, Inc. (“Healthcare Advocates” or “Plaintiff”), by and through its attorneys, McCarter & English, LLP, as and for its complaint against Defendants Harding, Earley, Follmer & Frailey (the “Harding, Earley law firm” or “Defendant Law Firm”), John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus, John Does 1-5, and Internet Archive (collectively, “Defendants”) alleges as follows:

NATURE OF THE CASE

1. This is a civil action to remedy at least 92 separate acts of unauthorized electronic access to archived and copyright-protected Internet web site content of Healthcare Advocates through the Wayback Machine at **www.archive.org** by partners, associates, and a legal assistant of Harding, Earley law firm during the course of discovery in an underlying lawsuit, which content Internet Archive failed to adequately secure, and to remedy at least 12 separate acts of unauthorized access to the Internet web site **www.healthcareadvocates.com** by Internet Archive, 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.

THE PARTIES

2. Plaintiff Healthcare Advocates is a Delaware corporation having a principal place of business at 1420 Walnut Street, Suite 908, Philadelphia, Pennsylvania 19102.

3. Defendant Harding, Earley law firm is a partnership having its principal place of business at 86 The Commons at Valley Forge East, 1288 Valley Forge Road, Valley Forge, Pennsylvania 19482-0750.

4. Upon information and belief, Defendant John F.A. Earley, III is an associate of Defendant Harding, Earley law firm.

5. Upon information and belief, Defendant Charles L. Riddle is an associate of Defendant Harding, Earley law firm.

6. Upon information and belief, Defendant Frank J. Bonini, Jr. is an associate of Defendant Harding, Earley law firm.

7. Upon information and belief, Defendant Kimberly Titus is a former legal assistant employed by Defendant Harding, Earley law firm.

8. Defendants John Does 1-5 are past or present partners of Defendant Harding, Earley law firm who aided, abetted, counseled, commanded, induced, procured, supervised, directed or were members of a conspiracy that pursued a goal of obtaining unauthorized access to the copyright-protected historical content of the Internet web site **www.healthcareadvocates.com** through the Internet Archive Wayback Machine via the Internet web site **www.archive.org**. The identity of John Does 1-5 is presently unknown, but will be ascertained through discovery.

9. Defendant Internet Archive is a non-profit organization with a principal place of business of The Presidio of San Francisco, 116 Sheridan Avenue, San Francisco, California 94129.

JURISDICTION AND VENUE

10. This action arises 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. Original federal question subject matter jurisdiction over this action is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338. Supplemental jurisdiction over the causes of action under Pennsylvania law are proper pursuant to 28 U.S.C. § 1367(a) insofar as these causes of action are so related to claims within such original jurisdiction that they form part of the same case or controversy.

11. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to the claims alleged herein occurred in this District.

Plaintiff Healthcare Advocates

12. Plaintiff Healthcare Advocates, a pioneer in the patient advocacy field, assists the public in securing, paying for, and receiving reimbursement for necessary health care. The company provides its members with medical research, health care counseling, a physician referral service; access to discount prescription, dental and vision plans; access to private health care financing, counseling on medical bill insurance reimbursement, an insurance fee negotiation service, and an insurance dispute resolution service.

13. Since 1998, Plaintiff Healthcare Advocates has owned and operated the Internet web site **www.healthcareadvocates.com** which, among other things, lists answers to frequently asked questions about the company, describes the services it offers and the fees that it charges, and provides articles on health care issues and letters from satisfied clients. This web site is hosted and administered by an Internet service provider (“ISP”) on a computer server located in Florida that is accessible to the general public via the Internet.

14. The contents of the **www.healthcareadvocates.com** web site are original works of authorship and constitute copyrightable subject matter under the copyright laws of the United States. Kevin Flynn, the president of Plaintiff Healthcare Advocates, authored the contents of the **www.healthcareadvocates.com** web site in his capacity as an employee of Plaintiff Healthcare Advocates, and Plaintiff Healthcare Advocates owns all rights of copyright in the contents of the **www.healthcareadvocates.com** web site. As such, Plaintiff Healthcare Advocates possesses the exclusive rights set forth in 17 U.S.C. § 106 with respect to the contents of the **www.healthcareadvocates.com** web site.

15. Plaintiff Healthcare Advocates has applied for and received from the Register of Copyrights the appropriate Certificates of Copyright Registration for the contents of the **www.healthcareadvocates.com** web site. True and accurate copies of the Certificates of Copyright Registration for the contents of the **www.healthcareadvocates.com** web site are attached as Exhibit A. All acts of copyright infringement by Defendant Harding, Earley law firm, Defendant John F.A. Earley, III, Defendant Charles L. Riddle, Defendant Frank J. Bonini, Jr., Defendant Kimberly Titus, and Defendant John Does 1-5 as alleged herein were commenced on or after the issuance date of the relevant Certificates of Copyright Registration.

The Underlying Lawsuit

16. On June 26, 2003, Plaintiff Healthcare Advocates and Mr. Flynn filed Civil Action No. 03-3764 in the United States District Court for the Eastern District of Pennsylvania against Health Advocate, Inc. (“Health Advocate”), a competitor, and several associated individuals alleging misappropriation of trade secrets, unfair competition, tortious interference with existing and prospective business relations, fraud, breach of contract, unjust enrichment, conspiracy, violation of the Lanham Act, trademark and service mark infringement, and copyright infringement arising from misuse of proprietary information and trade secrets Healthcare Advocates provided to Health Advocate pursuant to a non-disclosure agreement (the “Underlying Lawsuit”).

Defendant Harding, Earley Law Firm

17. Defendant Harding, Earley law firm is an intellectual property boutique claiming legal expertise in the areas of patent, trademark, copyright, unfair competition, Internet, e-commerce, computers and licensing. Defendant John F.A. Earley, III currently serves as Vice President of the Philadelphia Intellectual Property Law Association.

18. Defendant Harding, Earley law firm initially represented all of the defendants in the Underlying Lawsuit. As the litigation progressed, Defendant Harding, Earley law firm elected to represent only one of the individual defendants.

19. Upon information and belief, Defendant John F.A. Earley, III, Defendant Charles L. Riddle, Defendant Frank J. Bonini, Jr., and Defendant Kimberly Titus each participated in the representation of the defendants in the Underlying Lawsuit by Defendant Harding, Earley law firm. Upon information and belief, all of the conduct of Defendant John F.A. Earley, III, Defendant Charles L. Riddle, Defendant Frank J. Bonini, Jr., and Defendant Kimberly Titus alleged herein occurred in the course of such representation.

20. Upon information and belief, at all times relevant to the causes of action alleged herein, Defendant Harding, Earley law firm obtained Internet access for the firm through ISP XO Communications and Defendant Law Firm's computers were assigned and used a static DSL connection with the domain name system ("DNS") address **w202.z064000220.phl-pa.dsl.cnc.net** for accessing the Internet from its offices in Valley Forge.

Defendant Internet Archive and the Wayback Machine

21. Defendant Internet Archive is a non-profit organization founded to build an "Internet library" with the purpose of offering researchers, historians, and scholars permanent access to historical collections that exist in digital format. Its collection includes not only text and books, but also open source movies, public domain feature films, vintage cartoons, historic newsreels, archived news video and other moving images; audio music recordings of a variety of bands and artists; and legally downloadable software titles and background information on these titles.

22. In collaboration with the Library of Congress, the Smithsonian Institution and other public organizations, Defendant Internet Archive also archives the content of publicly accessible Internet web sites that otherwise would disappear as it is updated, removed by its owners, or otherwise cease to exist in an effort to preserve the cultural and historical value of this material.

23. Alexa Internet, a partner of Defendant Internet Archive, uses automated processes to regularly and routinely “crawl” the Internet and take snapshots of web site content, thereby capturing the content of any given web site on a wide variety of dates. Through this process, Alexa Internet creates a chronological record of these constantly evolving web sites. Alexa Internet provides a copy of all the web site content it captures to Defendant Internet Archive for the purpose of populating its archive of this material.

24. Defendant Internet Archive’s repository of archived web site content contains approximately one perabyte of data and is currently growing at a rate of 20 terabytes per month. Defendant Internet Archive’s computer servers storing archived historical web site content are located in California.

25. The Internet Archive Wayback Machine (the “Wayback Machine”) is a service provided by Defendant Internet Archive at www.archive.org since on or about October 24, 2001 to allow the public access to its repository of archived versions of web site content. By typing in the Uniform Resource Locator (“URL”) or Internet web address of a web site of interest into the Wayback Machine, an individual can view and “surf” that web site as it existed on any or all of the capture dates as far back as 1996.

26. Much of the web site content captured by Alexa Internet and archived by Defendant Internet Archive is protected by copyright. Nevertheless, Alexa Internet and

Defendant Internet Archive generally fail to secure permission or approval from web site owners before gathering, storing, making publicly available, and facilitating the public dissemination of this copyright-protected material.

Internet Archive's Policy for Blocking Public Access to Web Site Content

27. At all times relevant to the causes of action alleged herein, Defendant Internet Archive had an exclusion policy whereby, at the request of a web site owner, it blocked public access to any existing archived historical content of a web site via the Wayback Machine and refrained from future "crawling" of that web site to capture and archive any additional content. Such restricted access was accomplished by having the web site owner install a small text string (the "denial text string") in the file named "robots.txt" (the "robots.txt file") on the computer server hosting the web site. Alexa Internet likewise adhered to the same exclusion policy.

28. At all times relevant to the causes of action alleged herein, when an individual attempted to access archived historical content for a web site via the Wayback Machine, **www.archive.org** generated a request to the computer server hosting the web site to search for a denial text string in the robots.txt file.

29. At all times relevant to the causes of action alleged herein, if the denial text string existed in the robots.txt file, the individual requesting the archived web site content was confronted with a web page entitled "Robots.txt Query Exclusion" advising that the owner of the web site had blocked access to the archived historical content via robots.txt (the "access denial screen"). Consequently, the individual requesting the archived web site content should have been denied access to this archived content by Defendant Internet Archive.

30. At all times relevant to the causes of action alleged herein, if the denial text string did not exist in the robots.txt file, Defendant Internet Archive provided the individual requesting

the archived web site content a list of capture dates for the content of the web site of interest that was stored on Internet Archive's computer servers and accessible to the public.

31. At all times relevant to the causes of action alleged herein, the individual requesting the archived web site content was then able to choose the capture date of the web site content to be accessed by clicking on the hyperlink corresponding to the capture date of interest. In response, Defendant Internet Archive provided the individual requesting the archived web site content access to that content for the appropriate capture date, allowing this individual to view and "surf" that web site as it existed on that capture date.

32. However, at all times relevant to the causes of action alleged herein, the archived web site content stored by Defendant Internet Archive was not complete for each capture date of each web site.

33. At all times relevant to the causes of action alleged herein, when an individual viewed and "surf" a web site for a particular capture date that was incomplete, Defendant Internet Archive searched for and provided access to the unavailable link or missing data for the incomplete web page from the closest available capture date for the web site within Defendant Internet Archive's repository of archived web site content.

34. At all times relevant to the causes of action alleged herein, if Defendant Internet Archive was unable to locate any existing archived version of the unavailable link or missing data from the incomplete web page, Defendant Internet Archive accessed the server of the then current version of the web site seeking the unavailable link or missing data.

35. At all times relevant to the causes of action alleged herein, if Defendant Internet Archive located this unavailable link or missing data on the server hosting the then current

version of the web site, it captured this material and provided the individual “surfing” the incomplete archived version of this web site access to this material.

36. At all times relevant to the causes of action alleged herein, Defendant Internet Archive represented to web site owners that as long as the denial text string was properly installed in the robots.txt file of the computer server hosting their web sites, Defendant Internet Archive would prevent individuals from gaining access to the existing archived historical content of their web sites via the Wayback Machine at www.archive.org and refrain from “crawling” that web site to capture and archive any additional content.

Internet Archive’s Infringement of Healthcare Advocates’ Rights of Copyright

37. Alexa Internet and Defendant Internet Archive failed to obtain the prior authorization of Plaintiff Healthcare Advocates before electronically gathering and storing copyright-protected content of the www.healthcareadvocates.com web site on each of the following 50 dates:

| | Dates of Unauthorized Capture and Storage of Web Site Content |
|----|--|
| 1. | January 16, 1999 |
| 2. | January 17, 1999 |
| 3. | January 25, 1999 |
| 4. | February 8, 1999 |
| 5. | February 9, 1999 |
| 6. | October 14, 1999 |
| 7. | November 5, 1999 |

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| 8. | March 2, 2000 |
| 9. | March 10, 2000 |
| 10. | May 10, 2000 |
| 11. | May 20, 2000 |
| 12. | June 8, 2000 |
| 13. | August 15, 2000 |
| 14. | October 21, 2000 |
| 15. | December 4, 2000 |
| 16. | February 7, 2001 |
| 17. | February 8, 2001 |
| 18. | April 1, 2001 |
| 19. | April 5, 2001 |
| 20. | April 9, 2001 |
| 21. | April 20, 2001 |
| 22. | May 16, 2001 |
| 23. | May 25, 2001 |
| 24. | July 20, 2001 |
| 25. | August 22, 2001 |
| 26. | October 27, 2001 |
| 27. | December 14, 2001 |
| 28. | May 23, 2002 |
| 29. | May 28, 2002 |
| 30. | June 2, 2002 |

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|-----|--------------------|
| 31. | July 26, 2002 |
| 32. | August 2, 2002 |
| 33. | August 10, 2002 |
| 34. | September 27, 2002 |
| 35. | September 29, 2002 |
| 36. | October 17, 2002 |
| 37. | November 22, 2002 |
| 38. | November 24, 2002 |
| 39. | November 27, 2002 |
| 40. | November 28, 2002 |
| 41. | December 4, 2002 |
| 42. | January 30, 2003 |
| 43. | February 12, 2003 |
| 44. | March 27, 2003 |
| 45. | April 11, 2003 |
| 46. | April 13, 2003 |
| 47. | April 25, 2003 |
| 48. | June 10, 2003 |
| 49. | June 11, 2003 |
| 50. | June 25, 2003 |

38. From on or about October 24, 2001 through on or about July 8, 2003, Defendant Internet Archive provided public access to this archived historical content of the

www.healthcareadvocates.com web site via the Wayback Machine at **www.archive.org** without the authorization of Plaintiff Healthcare Advocates.

39. During this same period, Defendant Internet Archive permitted members of the public to publicly display and make and obtain copies of this archived historical content of the **www.healthcareadvocates.com** web site via the Wayback Machine at **www.archive.org** without the authorization of Plaintiff Healthcare Advocates.

The Fiduciary Relationship Between Healthcare Advocates and Internet Archive

40. By virtue of Defendant Internet Archive's unauthorized gathering, storage, public display, and facilitation of public dissemination of the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org**, Defendant Internet Archive exercised dominion and control over this web site content.

41. Such dominion and control afforded Defendant Internet Archive the power to take advantage of all of Plaintiff Healthcare Advocates' rights of copyright in this web site content. Indeed, Defendant Internet Archive engaged in and facilitated the unauthorized reproduction, public display and distribution of the copyright-protected historical content of the **www.healthcareadvocates.com** web site.

42. By not taking affirmative action to halt Defendant Internet Archive's pattern and practice of engaging in copyright infringement until on or about July 8, 2003, Plaintiff Healthcare Advocates effectively surrendered to Defendant Internet Archive substantial control over rights to its copyright-protected historical web site content. Defendant Internet Archive was and still is in a position to destroy any beneficial interest possessed by Plaintiff Healthcare Advocates in the copyright-protected historical content of the **www.healthcareadvocates.com** web site.

Healthcare Advocates' Contract With Internet Archive

43. On or about July 8, 2003, Plaintiff Healthcare Advocates and Defendant Internet Archive entered into a contract whereby Defendant Internet Archive agreed to block public access to individuals seeking the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and refrain from "crawling" the **www.healthcareadvocates.com** web site to capture and archive any additional content if Plaintiff Healthcare Advocates properly installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

44. The consideration for this contract was that Plaintiff Healthcare Advocates would forebear from pursuing claims of copyright infringement and contributory copyright infringement against Defendant Internet Archive for engaging in and facilitating the unauthorized reproduction, public display and distribution of its copyright-protected web pages and content that Defendant Internet Archive had gathered, stored on its servers, made available to the public, and facilitated public dissemination without the authorization of Plaintiff Healthcare Advocates.

Healthcare Advocates Blocks Public Access to Its Archived Web Site Content

45. On or about July 8, 2003, in response to concern that an unusually large volume of web traffic emanating from **www.archive.org** and directed toward the **www.healthcareadvocates.com** web site might be an attempt to compromise the integrity of the site, Mr. Flynn properly installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site as directed by Defendant Internet Archive. In doing so, Mr. Flynn intended to preclude public access to the archived historical

content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and prevent Defendant Internet Archive from “crawling” the **www.healthcareadvocates.com** web site to capture and archive any additional content. This denial text string remained properly installed on July 9, 2003 and July 14, 2003.

46. In reliance upon Defendant Internet Archive’s representation that installation of the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site would block public access to the archived historical content of that web site and prevent Defendant Internet Archive from “crawling” the **www.healthcareadvocates.com** web site to capture and archive any additional content, Plaintiff Healthcare Advocates took no further action to block public access to the archived historical content of the **www.healthcareadvocates.com** web site or block Defendant Internet Archive’s access to the then current content of the **www.healthcareadvocates.com** web site.

47. Defendant Internet Archive owed a duty to Plaintiff Healthcare Advocates to block public access to individuals seeking the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and refrain from “crawling” the **www.healthcareadvocates.com** web site to capture and archive any additional content for as long as the denial text string was properly installed in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

Hacker #1 from Harding, Earley Law Firm on Notice that Archived Content Blocked

48. On July 9, 2003, at approximately 09:08:03 EDT, one of Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., or Kimberly Titus using DNS address **w202.z064000220.phl-pa.dsl.cnc.net** attempted to access the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org**

and was first confronted with an access denial screen stating “We’re sorry, access to <http://www.healthcareadvocates.com> has been blocked by the site owner via robots.txt.”

Hacker #1 from Harding, Earley Law Firm Successfully Hacks into www.archive.org

49. On that same date, during the period from approximately 09:09:37 EDT through approximately 09:15:52 EDT, this same Defendant made eight unsuccessful attempts to access the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org**.

50. On that same date, at approximately 09:16:31 EDT, this same Defendant finally managed to successfully circumvent the security offered by the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site. This Defendant then sought access to the web page describing Plaintiff Healthcare Advocates’ services from an archived January 16, 1999 version of the **www.healthcareadvocates.com** web site on Defendant Internet Archive’s computer servers.

Hacker #2 from Harding, Earley Law Firm on Notice that Archived Content Blocked

51. On July 9, 2003, at approximately 09:18:19 EDT, another one of Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., or Kimberly Titus on a different computer using DNS address **w202.z064000220.phl-pa.dsl.cnc.net** attempted to access the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and was first confronted with an access denial screen stating “We’re sorry, access to http://www.healthcareadvocates.com/* has been blocked by the site owner via robots.txt.”

Hacker #2 from Harding, Earley Law Firm Successfully Hacks into www.archive.org

52. On that same date, at approximately 09:24:47 EDT, this same Defendant made two unsuccessful attempts to access the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org**.

53. On that same date, at approximately 09:25:41 EDT, this same Defendant finally managed to successfully circumvent the security offered by the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site. This Defendant then sought to access the web page containing an article on relationships from an archived June 9, 2000 version of the **www.healthcareadvocates.com** web site on Defendant Internet Archive's computer servers.

Harding, Earley Law Firm Hacks www.archive.org at Least 86 Times on July 9, 2003

54. Throughout July 9, 2003, employing variations on this theme of repeated unsuccessful attempts to access to the archived historical content of the **www.healthcareadvocates.com** web site followed by one or more successful circumventions of the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site, Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., and Kimberly Titus made approximately 711 unsuccessful attempts to access the archived historical content of the **www.healthcareadvocates.com** web site stored on Defendant Internet Archive's computer servers and, using DNS address **w202.z064000220.phl-pa.dsl.cnc.net**, succeeded in

(a) circumventing the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site;

(b) making an unauthorized request to **www.archive.org** for archived historical content of the **www.healthcareadvocates.com** web site stored on Defendant Internet Archive's computer servers;

(c) causing Defendant Internet Archive's computer servers to request and to obtain access to

(i) archived historical content of the **www.healthcareadvocates.com** web site from Defendant Internet Archive's computer servers; or

(ii) content of the then current version of the **www.healthcareadvocates.com** web site from the computer server hosting the **www.healthcareadvocates.com** web site; and

(d) displaying that content on the screen of the computer at the offices of Defendant Harding, Earley law firm that initiated the request on at least the following 86 separate occasions:

| | Approximate Time of Circumvention of Denial Text String in robots.txt File and Access to Web Site Content |
|----|--|
| 1. | 09:16:31 EDT |
| 2. | 09:19:25 EDT |
| 3. | 09:22:31 EDT |
| 4. | 09:25:41 EDT |
| 5. | 09:59:17 EDT |
| 6. | 10:18:07 EDT |

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| 7. | 10:19:38 EDT |
| 8. | 10:20:18 EDT |
| 9. | 10:20:28 EDT |
| 10. | 10:20:51 EDT |
| 11. | 10:21:03 EDT |
| 12. | 10:24:17 EDT |
| 13. | 10:24:31 EDT |
| 14. | 10:28:03 EDT |
| 15. | 10:28:45 EDT |
| 16. | 10:53:30 EDT |
| 17. | 10:53:35 EDT |
| 18. | 10:55:02 EDT |
| 19. | 10:55:49 EDT |
| 20. | 10:56:05 EDT |
| 21. | 10:58:16 EDT |
| 22. | 11:06:11 EDT |
| 23. | 11:06:21 EDT |
| 24. | 11:06:24 EDT |
| 25. | 11:11:53 EDT |
| 26. | 11:12:27 EDT |
| 27. | 11:12:41 EDT |
| 28. | 11:12:50 EDT |
| 29. | 11:13:15 EDT |

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| 30. | 11:13:39 EDT |
| 31. | 11:13:51 EDT |
| 32. | 11:14:00 EDT |
| 33. | 11:14:09 EDT |
| 34. | 11:14:23 EDT |
| 35. | 11:14:36 EDT |
| 36. | 11:27:02 EDT |
| 37. | 11:27:45 EDT |
| 38. | 11:28:44 EDT |
| 39. | 11:29:18 EDT |
| 40. | 11:29:43 EDT |
| 41. | 11:57:01 EDT |
| 42. | 11:58:18 EDT |
| 43. | 11:58:31 EDT |
| 44. | 12:07:02 EDT |
| 45. | 12:31:37 EDT |
| 46. | 13:10:31 EDT |
| 47. | 13:15:58 EDT |
| 48. | 13:20:07 EDT |
| 49. | 13:20:20 EDT |
| 50. | 13:20:28 EDT |
| 51. | 13:26:09 EDT |
| 52. | 13:26:11 EDT |

| | |
|-----|--------------|
| 53. | 13:26:11 EDT |
| 54. | 13:26:23 EDT |
| 55. | 15:19:22 EDT |
| 56. | 15:23:57 EDT |
| 57. | 15:27:07 EDT |
| 58. | 15:45:10 EDT |
| 59. | 16:02:05 EDT |
| 60. | 16:11:00 EDT |
| 61. | 16:11:39 EDT |
| 62. | 16:11:54 EDT |
| 63. | 16:12:06 EDT |
| 64. | 16:12:15 EDT |
| 65. | 16:12:24 EDT |
| 66. | 16:12:34 EDT |
| 67. | 16:12:41 EDT |
| 68. | 16:12:48 EDT |
| 69. | 16:12:55 EDT |
| 70. | 16:13:03 EDT |
| 71. | 16:32:00 EDT |
| 72. | 16:32:11 EDT |
| 73. | 16:32:17 EDT |
| 74. | 16:32:28 EDT |
| 75. | 16:34:02 EDT |

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| 76. | 16:34:17 EDT |
| 77. | 16:35:09 EDT |
| 78. | 16:35:33 EDT |
| 79. | 16:38:08 EDT |
| 80. | 16:44:11 EDT |
| 81. | 16:44:52 EDT |
| 82. | 16:45:02 EDT |
| 83. | 16:49:31 EDT |
| 84. | 16:51:00 EDT |
| 85. | 16:55:39 EDT |
| 86. | 16:55:41 EDT |

Internet Archive Fails to Honor Its Own Exclusion Policy at Least 12 Times on July 9, 2003

55. While repeatedly obtaining unauthorized access to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** on July 9, 2003, Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., and Kimberly Titus viewed and “surfing” the archived content of the **www.healthcareadvocates.com** web site for capture dates that was incomplete.

56. Despite the existence of the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site on July 9, 2003, Defendant Internet Archive “crawled” the **www.healthcareadvocates.com** web site to capture unavailable links and missing data for the incomplete archived web pages of the **www.healthcareadvocates.com** web

site that were being viewed and “surfed” by Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., and Kimberly Titus on at least the following 12 separate occasions that day:

| | Approximate Time of Circumvention of Denial Text String in robots.txt File by Internet Archive |
|-----|---|
| 1. | 10:55:57 EDT |
| 2. | 10:55:58 EDT |
| 3. | 10:55:59 EDT |
| 4. | 11:06:18 EDT |
| 5. | 13:01:03 EDT |
| 6. | 13:15:46 EDT |
| 7. | 13:15:59 EDT |
| 8. | 13:26:11 EDT |
| 9. | 13:26:12 EDT |
| 10. | 13:26:26 EDT |
| 11. | 13:26:30 EDT |
| 12. | 16:34:08 EDT |

57. On each of these 12 separate occasions, Defendant Internet Archive circumvented the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site and, thus, failed to honor its own exclusion policy.

Internet Archive Advised of Repeated Unauthorized Accesses

58. On July 9, 2003, Mr. Flynn advised a representative of Defendant Internet Archive about the unusually heavy volume of web inquiries emanating from **www.archive.org** and directed toward the **www.healthcareadvocates.com** web site. He provided Defendant Internet Archive with copies of the relevant web logs from the computer server hosting the **www.healthcareadvocates.com** web site and requested that Defendant Internet Archive identify and resolve the problem.

Internet Archive Professes to Have Resolved the Problem

59. On July 10, 2003, a representative of Defendant Internet Archive advised Mr. Flynn that the heavy volume of web inquiries emanating from **www.archive.org** and directed toward the **www.healthcareadvocates.com** web site on the previous day occurred because (a) an individual was “aggressively” utilizing the Wayback Machine to gather archived historical content of the **www.healthcareadvocates.com** web site; and (b) the mechanism preventing **www.archive.org** from searching a particular web site’s host computer server for a denial text string in the robots.txt file more than once per day was “broken.”

60. This representative of Defendant Internet Archive further advised Mr. Flynn that “[w]e’ve reset the once-per-day mechanism and so the problem should be ended, for now.”

61. This representative of Defendant Internet Archive then admitted to Mr. Flynn that a “robots.txt rule can’t really protect against this sort of glitch on our end.”

Harding, Earley Law Firm Hacks www.archive.org at Least 6 More Times on July 14, 2003

62. On July 14, 2003, during the period from approximately 09:33:27 EDT through approximately 09:34:02 EDT, one of Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., or Kimberly Titus made five unsuccessful attempts to access the archived historical

content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org**.

63. Thereafter, on that date, despite the advice from the representative of Defendant Internet Archive that the security problem had been resolved, this same Defendant, using DNS address **w202.z064000220.phl-pa.dsl.cnc.net**, succeeded in

(a) circumventing the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site;

(b) making an unauthorized request to **www.archive.org** for archived historical content of the **www.healthcareadvocates.com** web site stored on Defendant Internet Archive's computer servers;

(c) causing Defendant Internet Archive's computer servers to request and to obtain access to

(i) archived historical content of the **www.healthcareadvocates.com** web site from Defendant Internet Archive's computer servers; or

(ii) content of the then current version of the **www.healthcareadvocates.com** web site from the computer server hosting the **www.healthcareadvocates.com** web site; and

(d) displaying that content on the screen of the computer at the offices of Defendant Harding, Earley law firm that initiated the request on at least the following 6 separate occasions:

| | Approximate Time of Circumvention of Denial Text String in robots.txt File and Access to Web Site Content |
|---|--|
| 1 | 09:34:54 EDT |
| 2 | 09:41:41 EDT |
| 3 | 09:41:44 EDT |
| 4 | 09:41:49 EDT |
| 5 | 09:42:06 EDT |
| 6 | 09:54:46 EDT |

Internet Archive Admits Liability for Failing to Prevent Hacking

64. On November 17, 2003, in an effort to provide an explanation for the repeated unauthorized accesses to the archived historical content of the **www.healthcareadvocates.com** web site stored on Defendant Internet Archive's computer servers by Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., and Kimberly Titus on July 9, 2003 and July 14, 2003, a representative of Defendant Internet Archive advised Mr. Flynn that "[i]t sounds like we let a robot through for a while that should have been blocked."

Admissions Under Oath by Defendant Frank J. Bonini, Jr.

65. In an affidavit dated May 20, 2004 that was filed in the Underlying Lawsuit, Defendant Frank J. Bonini, Jr. admitted under oath as follows:

- (a) Defendant Harding, Earley law firm, on behalf of its then client Health Advocate, undertook to investigate the claims raised by Plaintiff Healthcare Advocates in

the complaint filed in the Underlying Lawsuit by accessing publicly available Internet web sites, including **www.archive.org**;

(b) the Internet web site **www.archive.org** stores “previously public website pages of others;”

(c) “[a]s part of [Defendant Harding, Earley law firm’s] investigation, attorneys in [Defendant Law Firm], and a legal assistant, acting under the direction of one or more attorneys of [Defendant Law Firm], accessed public information from the publicly accessible web site, www.archive.org, using the methods provided at the web site;”

(d) “[i]n conducting the investigation, when [Defendant Harding, Earley law firm] accessed archive.org, and searched the Wayback Machine provided on the archive.org web site, an array of pages by date were presented for the domain name searched;”

(e) Defendant Harding, Earley law firm was contemporaneously submitting to the court *in camera* copies of the materials that “were obtained from archive.org and include copies of previously published web pages of Plaintiffs;” and

(f) “[t]he materials were obtained for the purpose of investigation and analysis of the Plaintiffs’ claims, and providing a defense to Health Advocate, Inc., and other Defendants.”

Partners of Harding, Earley Law Firm Acted in Their Own Self-Interest

66. Upon information and belief, Defendants John Does 1-5 aided, abetted, counseled, commanded, induced, procured, supervised, or directed Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., and Kimberly Titus in obtaining unauthorized access

to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org**.

67. Upon information and belief, Defendants John Does 1-5 stood to reap personal financial gain from the successful defense of their then clients which included Health Advocate and several associated individuals.

68. Upon information and belief, Defendants John Does 1-5 were motivated by personal financial gain rather than by acting in the best interests of Defendant Harding, Earley law firm when they aided, abetted, counseled, commanded, induced, procured, supervised, or directed Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., and Kimberly Titus in obtaining unauthorized access to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org**.

Healthcare Advocates Never Received Copies of the Purloined Web Site Content

69. Despite repeated requests during the course of discovery in the Underlying Lawsuit, Plaintiff Healthcare Advocates has never been provided a copy of or otherwise granted access to the copyright-protected content of the **www.healthcareadvocates.com** web site that Defendants John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., and Kimberly Titus had improperly accessed through **www.archive.org**, downloaded to computers at the offices of Defendant Harding, Earley law firm, copied as part of Defendant Law Firm's submission to the court in the Underlying Lawsuit, and provided to that court *in camera* on or about May 20, 2004.

70. In late 2004, counsel for Plaintiff Healthcare Advocates in the Underlying Lawsuit requested from Defendant Harding, Earley law firm's co-counsel in the Underlying Lawsuit copies of any and all copyright-protected content of the **www.healthcareadvocates.com**

web site that Defendant Harding, Earley law firm had provided to co-counsel. Without denying receipt of any such material, co-counsel refused to comply.

COUNT I

**Violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201, et seq.
(By Harding, Earley Law Firm, John F.A. Earley, III, Charles L. Riddle,
Frank J. Bonini, Jr., Kimberly Titus, and John Does 1-5)**

71. Healthcare Advocates repeats and realleges paragraphs 1 through 70 of the Complaint as if fully set forth at length herein.

72. Healthcare Advocates owns all rights of copyright in the contents of the **www.healthcareadvocates.com** web site.

73. The denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site was a technological measure.

74. The denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site effectively controlled access to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org**.

75. Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 knowingly, willfully and intentionally circumvented and caused to be circumvented the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site on at least 92 separate occasions on July 9, 2003 and July 14, 2003.

76. Healthcare Advocates has sustained damages as a consequence of these acts of circumvention by Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendants Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5:

- (i) for actual damages suffered as a result of each such act of circumvention, and any profits that are attributable to the acts of circumvention and not taken into account in computing the actual damages;
- (ii) in the alternative, for maximum statutory damages per act of circumvention;
- (iii) for the destruction of the computers and any other devices or products involved in the acts of circumvention;
- (iv) for attorneys' fees and costs of suit; and
- (v) for such other relief as the Court deems equitable and just.

COUNT II

Copyright Infringement

(By Harding, Earley Law Firm, John F.A. Earley, III, Charles L. Riddle,
Frank J. Bonini, Jr., Kimberly Titus, and John Does 1-5)

77. Healthcare Advocates repeats and realleges paragraphs 1 through 76 of the Complaint as if fully set forth at length herein.

78. Healthcare Advocates owns all rights of copyright in the contents of the **www.healthcareadvocates.com** web site.

79. Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 knowingly, willfully and intentionally infringed Healthcare Advocates' rights of copyright in the contents of the **www.healthcareadvocates.com** web site on July 9, 2003 and July 14, 2003 through unauthorized public display by unauthorized transmission of the archived historical contents of said web site to computers located in the

offices of Harding, Earley law firm and the subsequent projection of these contents on the associated computer screens in said offices.

80. Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 further knowingly, willfully and intentionally infringed Healthcare Advocates' rights of copyright in the contents of the **www.healthcareadvocates.com** web site on July 9, 2003 and July 14, 2003 through unauthorized reproduction by storing a copy or copies of both the archived historical contents and the then current contents of said web site on computers located in the offices of Harding, Earley law firm.

81. Upon information and belief, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 further knowingly, willfully and intentionally infringed Healthcare Advocates' rights of copyright in the contents of the **www.healthcareadvocates.com** web site through unauthorized reproduction by making a copy or copies of both the archived historical contents and the then current contents of said web site in anticipation of distributing said copy or copies to co-counsel in the Underlying Lawsuit.

82. Upon information and belief, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 further knowingly, willfully and intentionally infringed Healthcare Advocates' rights of copyright in the contents of the **www.healthcareadvocates.com** web site through unauthorized distribution by providing a copy or copies of both the archived historical contents and the then current contents of said web site to co-counsel in the Underlying Lawsuit.

83. Healthcare Advocates has sustained damages as a consequence of these acts of infringement by Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendants Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5:

- (i) for actual damages suffered as a result of the infringement, and any profits that are attributable to the infringement and not taken into account in computing the actual damages;
- (ii) in the alternative, for maximum statutory damages with respect to each infringed work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally or, to the extent that Healthcare Advocates prevails in its burden of persuasion that infringement of any such work was committed willfully, for the maximum statutory damages then available to Healthcare Advocates;
- (iii) for attorneys' fees and costs of suit; and
- (iv) for such other relief as the Court deems equitable and just.

COUNT III

**Violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(a)(2)(C)
(By Harding, Earley Law Firm, John F.A. Earley, III, Charles L. Riddle,
Frank J. Bonini, Jr., Kimberly Titus, and John Does 1-5)**

84. Healthcare Advocates repeats and realleges paragraphs 1 through 83 of the Complaint as if fully set forth at length herein.

85. On at least 92 separate occasions, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 knowingly, willfully and intentionally accessed and caused to be accessed Internet Archive's computer servers storing

archived historical web site content accessible via the Wayback Machine at www.archive.org in a manner that exceeded authorized access.

86. On each of these occasions, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 obtained and caused to be obtained information from these computer servers and/or from the computer server hosting the www.healthcareadvocates.com web site.

87. Such conduct on each occasion involved interstate communications.

88. Healthcare Advocates suffered loss by way of economic damages aggregating at least \$5,000 during a one-year period as a result of such conduct.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendants Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5:

- (i) for compensatory economic damages;
- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

COUNT IV

Civil Conspiracy to Violate 18 Pa.C.S. §§ 7613(a) & 7614(a) (By Harding, Earley Law Firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus, and John Does 1-5)

89. Healthcare Advocates repeats and realleges paragraphs 1 through 88 of the Complaint as if fully set forth at length herein.

90. Harding, Earley law firm; John Does 1-5, each of whom upon information and belief was acting in his or her personal financial self-interest; John F.A. Earley, III; Charles L. Riddle; Frank J. Bonini, Jr.; and Kimberly Titus entered into an unlawful agreement for the

express purpose of committing criminal acts, that is violations of 18 Pa.C.S. §§ 7613(a) & 7614(a).

91. Each of Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 agreed to exceed authorized access to Internet Archive's computer servers storing archived historical web site content, to access archived historical content of the **www.healthcareadvocates.com** web site stored on these computer servers, and to make copies of this content residing in and communicated by these computer servers.

92. In furtherance of the conspiracy and to effectuate its objects, one or more of Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 committed overt acts, that is numerous circumventions of the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

93. Upon information and belief, such conspiratorial conduct has been undertaken willfully, maliciously and with intent to injure Healthcare Advocates.

94. As a direct and proximate result of this conspiratorial conduct, Healthcare Advocates has sustained damages.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendants Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5:

- (i) for compensatory, consequential and punitive damages, including interest thereon;
- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

COUNT V

**Action in Trespass for Trespass to Chattels
(By Harding, Earley Law Firm, John F.A. Earley, III, Charles L. Riddle,
Frank J. Bonini, Jr., Kimberly Titus, and John Does 1-5)**

95. Healthcare Advocates repeats and realleges paragraphs 1 through 94 of the Complaint as if fully set forth at length herein.

96. On at least 92 separate occasions, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 knowingly, willfully and intentionally exceeded and caused to be exceeded authorized access to Internet Archive's computer servers storing archived historical web site content via the Wayback Machine at **www.archive.org**.

97. On many of these occasions, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 accessed and caused to be accessed archived historical content of the **www.healthcareadvocates.com** web site stored on these computer servers.

98. Such conduct amounted to an intermeddling with Healthcare Advocates possessory rights in the archived historical content of the **www.healthcareadvocates.com** web site.

99. As a direct and proximate result of such conduct, Healthcare Advocates has sustained damages.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendants Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5:

- (i) for compensatory, consequential and punitive damages, including interest thereon;

- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

COUNT VI

Action in Trespass for Conversion

**(By Harding, Earley Law Firm, John F.A. Earley, III, Charles L. Riddle,
Frank J. Bonini, Jr., Kimberly Titus, and John Does 1-5)**

100. Healthcare Advocates repeats and realleges paragraphs 1 through 99 of the Complaint as if fully set forth at length herein.

101. On at least 92 separate occasions, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 knowingly, willfully and intentionally made and caused to be made unauthorized copies of the content of the **www.healthcareadvocates.com** web site stored on the Internet Archive's computer servers and/or on the computer server hosting the **www.healthcareadvocates.com** web site.

102. On each of these occasions, the content of the **www.healthcareadvocates.com** web site that was copied resided in and was communicated by Internet Archive's computer servers storing archived historical web site content and/or by the computer server hosting the **www.healthcareadvocates.com** web site.

103. Such conduct seriously interfered with Healthcare Advocate's lawful right of control over the content of the **www.healthcareadvocates.com** web site.

104. Such conduct was undertaken and accomplished without the consent of Healthcare Advocates and in the absence of any recognizable privilege or other lawful justification.

105. As a direct and proximate result of such conduct, Healthcare Advocates has sustained damages.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendants Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5:

- (i) for compensatory, consequential and punitive damages, including interest thereon;
- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

COUNT VII

Intrusion upon Seclusion

(By Harding, Earley Law Firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus, and John Does 1-5)

106. Healthcare Advocates repeats and realleges paragraphs 1 through 105 of the Complaint as if fully set forth at length herein.

107. On numerous occasions, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 knowingly, willfully and intentionally obtained unauthorized access to the archived historical content of the **www.healthcareadvocates.com** web site stored on the Internet Archive's computer servers via the Wayback Machine at **www.archive.org**.

108. Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 intruded upon this archived historical content despite Healthcare Advocates having blocked all public access, rendering it a private seclusion that Healthcare Advocates had thrown about its affairs.

109. Such interference with Healthcare Advocates' seclusion was substantial and would be considered highly offensive to the ordinary reasonable person.

110. As a direct and proximate result of such conduct, Healthcare Advocates has sustained damages.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendants Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5:

- (i) for compensatory, consequential and punitive damages, including interest thereon;
- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

COUNT VIII

**Violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201, et seq.
(By Internet Archive)**

111. Healthcare Advocates repeats and realleges paragraphs 1 through 110 of the Complaint as if fully set forth at length herein.

112. Healthcare Advocates owns all rights of copyright in the contents of the **www.healthcareadvocates.com** web site.

113. The denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site was a technological measure.

114. The denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site effectively controlled access to the content of the **www.healthcareadvocates.com** web site residing on the computer server hosting the **www.healthcareadvocates.com** web site.

115. Internet Archive knowingly, willfully and intentionally circumvented the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site on at least 12 separate occasions on July 9, 2003.

116. Healthcare Advocates has sustained damages as a consequence of these acts of circumvention by Internet Archive.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Internet Archive:

- (i) for actual damages suffered as a result of each such act of circumvention, and any profits that are attributable to the acts of circumvention and not taken into account in computing the actual damages;
- (vi) in the alternative, for maximum statutory damages per act of circumvention;
- (vii) for the destruction of the computers and any other devices or products involved in the acts of circumvention;
- (viii) for attorneys' fees and costs of suit; and
- (ix) for such other relief as the Court deems equitable and just.

COUNT IX
Breach of Contract
(By Internet Archive)

117. Healthcare Advocates repeats and realleges paragraphs 1 through 116 of the Complaint as if fully set forth at length herein.

118. Internet Archive had an agreement with Healthcare Advocates that Internet Archive would block public access to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and refrain from "crawling" the **www.healthcareadvocates.com** web site to capture and archive

any additional content if Healthcare Advocates installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

119. The consideration for this contract was that Healthcare Advocates would forebear from pursuing claims of copyright infringement and contributory copyright infringement against Internet Archive for engaging in and facilitating the unauthorized reproduction, public display and distribution of its copyright-protected web pages and content that Internet Archive had gathered, stored on its servers, made available to the public, and facilitated public dissemination without the authorization of Healthcare Advocates.

120. Healthcare Advocates installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site, and that denial text string remained properly installed on July 9, 2003 and July 14, 2003.

121. Internet Archive failed to perform its duty to Healthcare Advocates to block public access to the archived historical content of the **www.healthcareadvocates.com** web site and refrain from “crawling” the **www.healthcareadvocates.com** web site to capture and archive any additional content on these dates.

122. As a direct result of Internet Archive’s failure to perform this duty, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 repeatedly gained unauthorized access to archived historical content of the **www.healthcareadvocates.com** web site stored on Internet Archive’s computer servers on these dates.

123. As a further direct result of Internet Archive’s failure to perform this duty, Internet Archive itself repeatedly gained unauthorized access to content of the

www.healthcareadvocates.com web site residing on the computer server hosting the **www.healthcareadvocates.com** web site on July 9, 2003.

124. Healthcare Advocates sustained damages as a consequence of Internet Archive's failure to perform its duty to block public access to the archived historical content of the **www.healthcareadvocates.com** web site and refrain from "crawling" the **www.healthcareadvocates.com** web site to capture and archive any additional content.

125. Upon information and belief, Internet Archive's actions have been undertaken willfully, maliciously and with intent to injure Healthcare Advocates.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendant Internet Archive:

- (i) for compensatory, consequential and punitive damages, including interest thereon;
- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

COUNT X
Promissory Estoppel
(By Internet Archive)

126. Healthcare Advocates repeats and realleges paragraphs 1 through 125 of the Complaint as if fully set forth at length herein.

127. Internet Archive promised Healthcare Advocates that Internet Archive would block public access to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and refrain from "crawling" the **www.healthcareadvocates.com** web site to capture and archive any additional content if

Healthcare Advocates installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

128. Internet Archive should have reasonably expected that Healthcare Advocates would rely upon its promise that it would block public access to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and refrain from “crawling” the **www.healthcareadvocates.com** web site to capture and archive any additional content if Healthcare Advocates installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

129. Healthcare Advocates reasonably relied upon Internet Archive’s promise by installing the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site and by ensuring that the denial text string remained properly installed on July 9, 2003 and July 14, 2003.

130. As a direct result of Internet Archive’s failure keep its promise, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 repeatedly gained and caused to be gained unauthorized access to archived historical content of the **www.healthcareadvocates.com** web site stored on Internet Archive’s computer servers on these dates.

131. As a further direct result of Internet Archive’s failure keep its promise, Internet Archive itself repeatedly gained unauthorized access to content of the **www.healthcareadvocates.com** web site residing on the computer server hosting the **www.healthcareadvocates.com** web site on July 9, 2003.

132. Healthcare Advocates sustained damages as a consequence of its reliance upon Internet Archive's promise that it would block public access to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and refrain from "crawling" the **www.healthcareadvocates.com** web site to capture and archive any additional content if Healthcare Advocates installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

133. Injustice can be avoided only by enforcing the promise against Internet Archive.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendant Internet Archive:

- (i) for compensatory, consequential and punitive damages, including interest thereon;
- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

COUNT XI
Breach of Fiduciary Duty
(By Internet Archive)

134. Healthcare Advocates repeats and realleges paragraphs 1 through 133 of the Complaint as if fully set forth at length herein.

135. A special relationship existed between Healthcare Advocates and Internet Archive whereby Internet Archive had the power to take advantage of Healthcare Advocates and to exercise undue influence over Healthcare Advocates by virtue of Healthcare Advocates having effectively surrendered substantial control to Internet Archive over rights to its copyright-protected historical web site content.

136. This special relationship imposed a fiduciary duty upon Internet Archive to block public access to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and refrain from “crawling” the **www.healthcareadvocates.com** web site to capture and archive any additional content if Healthcare Advocates installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

137. Internet Archive negligently failed to act in good faith in performing its duty to block public access to the archived historical content of the **www.healthcareadvocates.com** web site and refrain from “crawling” the **www.healthcareadvocates.com** web site to capture and archive any additional content on July 9, 2003 and July 14, 2003.

138. As a direct result of Internet Archive’s negligent failure to act in good faith, Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 repeatedly gained and caused to be gained unauthorized access to archived historical content of the **www.healthcareadvocates.com** web site stored on Internet Archive’s computer servers on these dates.

139. As a further direct result of Internet Archive’s negligent failure to act in good faith, Internet Archive itself repeatedly gained unauthorized access to content of the **www.healthcareadvocates.com** web site residing on the computer server hosting the **www.healthcareadvocates.com** web site on July 9, 2003.

140. Healthcare Advocates sustained damages as a consequence of Internet Archive’s negligent failure to act in good faith in performing its duty to block public access to the archived historical content of the **www.healthcareadvocates.com** web site and refrain from “crawling”

the **www.healthcareadvocates.com** web site to capture and archive any additional content on July 9, 2003 and July 14, 2003.

141. Upon information and belief, Internet Archive's actions have been undertaken willfully, maliciously and with intent to injure Healthcare Advocates.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendant Internet Archive:

- (i) for compensatory, consequential and punitive damages, including interest thereon;
- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

COUNT XII
Negligent Dispossession
(By Internet Archive)

142. Healthcare Advocates repeats and realleges paragraphs 1 through 141 of the Complaint as if fully set forth at length herein.

143. Internet Archive owed Healthcare Advocates a duty to block public access to the archived historical content of the **www.healthcareadvocates.com** web site through the Wayback Machine at **www.archive.org** and refrain from "crawling" the **www.healthcareadvocates.com** web site to capture and archive any additional content if Healthcare Advocates installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

144. Healthcare Advocates installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site, and that denial text string remained properly installed on July 9, 2003 and July 14, 2003.

145. Internet Archive breached this duty by not exercising reasonable care to prevent Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 from repeatedly gaining unauthorized access to archived historical content of the **www.healthcareadvocates.com** web site stored on Internet Archive's computer servers on these dates.

146. Internet Archive's breach of this duty allowed Harding, Earley law firm, John F.A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr., Kimberly Titus and John Does 1-5 to interfere with and dispossess Healthcare Advocates' property, that is the archived historical content of the **www.healthcareadvocates.com** web site stored on Internet Archive's computer servers, Healthcare Advocates' Internet bandwidth, and unauthorized use of the computer server hosting the **www.healthcareadvocates.com** web site.

147. As a direct, proximate and foreseeable result of Internet Archive's breach of its duty, Healthcare Advocates has sustained damages.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendant Internet Archive:

- (i) for compensatory, consequential and punitive damages, including interest thereon;
- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

COUNT XIII
Negligent Misrepresentation
(By Internet Archive)

148. Healthcare Advocates repeats and realleges paragraphs 1 through 147 of the Complaint as if fully set forth at length herein.

149. Internet Archive failed to exercise reasonable care when falsely advising Healthcare Advocates and other web site owners that the archived historical content of their web sites stored on Internet Archive's computer servers would be blocked from public access and that Internet Archive would refrain from "crawling" their web sites to capture and archive any additional content if Healthcare Advocates or the other web site owners installed a denial text string in the robots.txt files on the computer servers hosting their web sites.

150. Internet Archive owed Healthcare Advocates a duty to block public access to the archived historical content of the **www.healthcareadvocates.com** web site and refrain from "crawling" the **www.healthcareadvocates.com** web site to capture and archive any additional content if Healthcare Advocates installed the denial text string in the robots.txt file on the computer server hosting the **www.healthcareadvocates.com** web site.

151. Internet Archive intended that Healthcare Advocates rely upon this misrepresentation for guidance as to blocking public access to the archived historical content of the **www.healthcareadvocates.com** web site and preventing Internet Archive from "crawling" the **www.healthcareadvocates.com** web site to capture and archive any additional content.

152. Healthcare Advocates reasonably relied upon this misrepresentation in its efforts to block public access to the archived historical content of the **www.healthcareadvocates.com** web site and prevent Internet Archive from "crawling" the **www.healthcareadvocates.com** web site to capture and archive any additional content.

153. As a direct and proximate result of such conduct, Healthcare Advocates has sustained damages.

WHEREFORE, Plaintiff Healthcare Advocates demands that judgment be entered against Defendant Internet Archive:

- (i) for compensatory, consequential and punitive damages, including interest thereon;
- (ii) for attorneys' fees and costs of suit; and
- (iii) for such other relief as the Court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff Healthcare Advocates demands a trial by jury on all claims for relief alleged herein on which it has a right to trial by jury.

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DATED: May 26, 2006