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

HEALTHCARE ADVOCATES, INC., Plaintiff, v. HARDING, EARLEY, FULLER & FRAILEY; JOHN F.A. EARLEY, III, CHARLES L. RIDDLE, FRANK BONINI, JR., KIMBERLY TITUS, AND JOHN DOES 1-5, and INTERNET ARCHIVE, Defendants.	Civil Action No. 05-3524 The Hon. Robert F. Kelly

DEFENDANT INTERNET ARCHIVE'S ANSWER TO PLAINTIFF'S SECOND 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") 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 ("Second 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 lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 7, and on that basis denies those allegations.

8. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 8, and on that basis denies those allegations.

9. Internet Archive admits the allegations of Paragraph 9.

JURISDICTION AND VENUE

10. Answering the allegations of Paragraph 10, 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 10.

11. Internet Archive admits that venue is proper in this judicial district. Except as expressly admitted, Internet Archive denies the allegations of Paragraph 11.

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. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 13, and on that basis denies those allegations.

14. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 14, and on that basis denies those allegations.

15. Answering the allegations of Paragraph 15, Internet Archive admits that Healthcare Advocates attached as Exhibit A to its Second Amended Complaint what appear to be copies of Certificates of Registration for a single iteration of the "Health Care Advocates Web Site," dated February 28, 2003, for "A Collection of Healthcare Advocates' Materials" dated February 28, 2003, and for "A collection of works from HCA," dated March 26, 2003. Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 15.

16. Internet Archive admits the allegations of Paragraph 16.

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 lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 18, and on that basis denies those allegations.

19. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 19, and on that basis denies those allegations.

20. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 20, and on that basis denies those allegations.

21. Internet Archive admits the allegations of Paragraph 21.

22. Internet Archive admits the allegations of Paragraph 22.

23. Internet Archive admits the allegations of Paragraph 23.

24. Internet Archive admits the allegations of Paragraph 24.

25. Internet Archive admits the allegations of Paragraph 25.

26. Internet Archive denies the allegations of Paragraph 26.

27. Answering the allegations of Paragraph 27, Internet Archive admits that it provides information on its web site informing web site owners that they may exclude their site from the Wayback Machine by placing a robots.txt file on their server. 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. Answering the allegations of Paragraph 31, Internet Archive admits between 2001 and 2003 the public could access 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 31.

32. Internet Archive denies the allegations of Paragraph 32.

33. Internet Archive denies the allegations of Paragraph 33.

34. Internet Archive denies the allegations of Paragraph 34

35. Internet Archive denies the allegations of Paragraph 35.

36. Internet Archive denies the allegations of Paragraph 36.

37. Internet Archive denies the allegations of Paragraph 37.

38. Answering the allegations of Paragraph 38, Internet Archive admits between 2001 and 2003 the public could access 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 38.

39. Internet Archive denies the allegations of Paragraph 39.

40. Internet Archive denies the allegations of Paragraph 40.

41. Internet Archive denies the allegations of Paragraph 41.

42. Internet Archive denies the allegations of Paragraph 42.

43. Internet Archive denies the allegations of Paragraph 43.

44. Internet Archive denies the allegations of Paragraph 44.

45. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 45, and on that basis denies those allegations.

46. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 46, and on that basis denies those allegations.

47. 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 lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 50, and on that basis denies those allegations.

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 denies the allegations of Paragraph 55.

56. Internet Archive denies the allegations of Paragraph 56.

57. Internet Archive denies the allegations of Paragraph 57.

58. Answering the allegations of Paragraph 58, 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 58.

59. Answering the allegations of Paragraph 59, 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 59.

60. Internet Archive admits the allegations of Paragraph 60.

61. Answering the allegations of Paragraph 61, 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 61.

62. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 62, and on that basis denies those allegations.

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. Answering the allegations of Paragraph 64, Internet Archive admits it informed Mr. Flynn that "[i]t sounds like we let a robot through for a while that should have been

blocked." Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 64.

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.

69. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 69, 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, John F.A. Earley, III, Charles L. Riddle, Frank Bonini, Jr., Kimberly Titus, and John Does 1-5)

70. Internet Archive incorporates its responses to Paragraphs 1 through 69 above as if fully set forth in response to Paragraph 70 of the Amended Complaint.

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. Answering Paragraph 73, Internet Archive admits that a robots.txt file is a "technological measure" insofar as it is software code executed on a computer. Except as thus expressly admitted, Internet Archive denies the allegations of Paragraph 73.

74. Internet Archive denies the allegations of Paragraph 74.

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.

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

77. Internet Archive incorporates its responses to Paragraphs 1 through 76 above as if fully set forth in response to Paragraph 77 of the Amended Complaint.

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.

80. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 80, and on that basis denies those allegations.

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 lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 83, 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, John F.A. Earley, III, Charles L. Riddle, Frank Bonini, Jr., Kimberly Titus, and John Does 1-5)

84. Internet Archive incorporates its responses to Paragraphs 1 through 83 above as if fully set forth in response to Paragraph 84 of the Amended Complaint.

85. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 85, and on that basis denies those allegations.

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 lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 88, 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, John F.A. Earley, III, Charles L. Riddle, Frank Bonini, Jr., Kimberly Titus, and John Does 1-5)

89. Internet Archive incorporates its responses to Paragraphs 1 through 88 above as if fully set forth in response to Paragraph 89 of the Amended Complaint.

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

91. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 91, and on that basis denies those allegations.

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 lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 93, and on that basis denies those allegations.

94. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 94, and on that basis denies those allegations.

COUNT V

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

95. Internet Archive incorporates its responses to Paragraphs 1 through 94 above as if fully set forth in response to Paragraph 95 of the Amended Complaint.

96. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 96, and on that basis denies those allegations.

97. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 97, and on that basis denies those allegations.

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.

COUNT VI

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

100. Internet Archive incorporates its responses to Paragraphs 1 through 99 above as if fully set forth in response to Paragraph 100 of the Amended Complaint.

101. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 101, and on that basis denies those allegations.

102. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 102, and on that basis denies those allegations.

103. Internet Archive denies the allegations of Paragraph 103.

104. Internet Archive denies the allegations of Paragraph 104.

105. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 105, and on that basis denies those allegations.

COUNT VII

Intrusion upon Seclusion

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

106. Internet Archive incorporates its responses to Paragraphs 1 through 105 above as if fully set forth in response to Paragraph 106 of the Amended Complaint.

107. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 107, and on that basis denies those allegations.

108. Internet Archive denies the allegations of Paragraph 108.

109. Internet Archive denies the allegations of Paragraph 109.

110. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 110, and on that basis denies those allegations.

COUNT VIII

Violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201, et seq.

(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 lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 112, and on that basis denies those allegations.

113. Answering Paragraph 113, Internet Archive admits that a robots.txt file is a "technological measure" insofar as it is software code executed on a computer. Except as thus expressly admitted, 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 lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 116, and on that basis denies those allegations.

COUNT IX
Breach of Contract
(By Internet Archive)

117. Internet Archive incorporates its responses to Paragraphs 1 through 116 above as if fully set forth in response to Paragraph 117 of the Amended Complaint.

118. Internet Archive denies the allegations of Paragraph 118.

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.

124. Internet Archive denies the allegations of Paragraph 124.

125. Internet Archive denies the allegations of Paragraph 125.

COUNT X
Promissory Estoppel
(By Internet Archive)

126. Internet Archive incorporates its responses to Paragraphs 1 through 125 above as if fully set forth in response to Paragraph 126 of the Amended Complaint.

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.

130. Internet Archive denies the allegations of Paragraph 130.

131. Internet Archive denies the allegations of Paragraph 131.

132. Internet Archive denies the allegations of Paragraph 132.

133. Internet Archive denies the allegations of Paragraph 133.

COUNT XI
Breach of Fiduciary Duty
(By Internet Archive)

134. Internet Archive incorporates its responses to Paragraphs 1 through 133 above as if fully set forth in response to Paragraph 134 of the Amended Complaint.

135. Internet Archive denies the allegations of Paragraph 135.

136. Internet Archive denies the allegations of Paragraph 136.

137. Internet Archive denies the allegations of Paragraph 137.

138. Internet Archive denies the allegations of Paragraph 138.

139. Internet Archive denies the allegations of Paragraph 139.

140. Internet Archive denies the allegations of Paragraph 140.

141. Internet Archive denies the allegations of Paragraph 141.

COUNT XI
Negligent Dispossession
(By Internet Archive)

142. Internet Archive incorporates its responses to Paragraphs 1 through 141 above as if fully set forth in response to Paragraph 142 of the Amended Complaint.

143. Internet Archive denies the allegations of Paragraph 143.

144. Internet Archive lacks knowledge or information sufficient to admit or deny the allegations of Paragraph 144, and on that basis denies those allegations.

145. Internet Archive denies the allegations of Paragraph 145.

146. Internet Archive denies the allegations of Paragraph 146.

147. Internet Archive denies the allegations of Paragraph 147.

COUNT XIII
Negligent Misrepresentation
(By Internet Archive)

148. Internet Archive incorporates its responses to Paragraphs 1 through 147 above as if fully set forth in response to Paragraph 148 of the Amended Complaint.

149. Internet Archive denies the allegations of Paragraph 149.

150. Internet Archive denies the allegations of Paragraph 150.

151. Internet Archive denies the allegations of Paragraph 151.

152. Internet Archive denies the allegations of Paragraph 152.

153. Internet Archive denies the allegations of Paragraph 153.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

155. 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

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

158. 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

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

162. 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

163. Plaintiff is not entitled to damages because Internet Archive had innocent intent.

ELEVENTH AFFIRMATIVE DEFENSE

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

168. Plaintiff's state law claims against Internet Archive are barred because they are preempted by federal copyright law.

SIXTEENTH AFFIRMATIVE DEFENSE

169. 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: June 12, 2006

/s/ Kenneth B. Wilson

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