

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS HARDING, EARLEY, FOLLMER & FRAILEY, JOHN F. A. EARLEY, III, CHARLES L. RIDDLE, FRANK J. BONINI, JR. AND KIMBER (misdesignated “Kimberly”) TITUS TO PLAINTIFFS’ SECOND AMENDED COMPLAINT

Defendants, Harding, Earley, Follmer & Frailey, John F. A. Earley, III, Charles L. Riddle, Frank J. Bonini, Jr. and Kimber (misdesignated “Kimberly”) Titus, by and through the undersigned counsel, McKissock & Hoffman, P.C., hereby answers Plaintiff’s Second Amended Complaint with the following Answer and Affirmative Defenses, and in support thereof aver as follows:

NATURE OF THE CASE

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

trespass for trespass to chattels, action in trespass for conversion, intrusion upon seclusion, breach of contract, promissory estoppel, breach of fiduciary duty, negligent dispossession, and/or negligent misrepresentation under the common law of the Commonwealth of Pennsylvania.

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

THE PARTIES

2. Admitted upon information and belief.

3. Admitted upon information and belief with the exception of the averment that the law firm is a partnership. It is denied that the law firm is a partnership.

4. Admitted upon information and belief.

5. Admitted upon information and belief.

6. Admitted upon information and belief.

7. Denied as stated. Defendant Kimber (misdesignated “Kimberly”) Titus was not employed as a legal assistant for the Defendant Harding, Earley law firm. To the contrary, she was employed by a temporary employment agency who provided her services to the Defendant Harding, Earley law firm.

8. Denied as conclusions of law. Furthermore, as a matter of law, an entity cannot enter into a conspiracy with its own principals and/or employees.

9. Admitted upon information and belief.

JURISDICTION AND VENUE

10. Denied as a conclusion of law. By way of further response, it is affirmatively averred that plaintiff has failed in Counts I, II, and III to state a claim upon which relief may be granted. Such a finding would result in this Court lacking jurisdiction over this matter. 28

U.S.C. § 1367(c)(3). Alternatively, the alleged claims under 18 Pa.C.S. §§ 7613(a) and 7614(a) and the common law of the Commonwealth of Pennsylvania substantially predominate over Counts I, II, and III, resulting in this Court lacking jurisdiction. 28 U.S.C. §1367(c)(2).

11. Denied. Furthermore, to the extent the allegations contained in this paragraph are conclusions of law, no response is required; therefore, they are denied.

12. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

13. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

14. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

15. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

The Underlying Lawsuit

16. Admitted.

Defendant Harding, Earley Law Firm

17. Denied as of this time. Defendant Earley is now president-elect of the association.

18. Admitted.

19. To the extent the allegations contained in this paragraph constitute conclusions of law, no response is required; therefore, they are denied. The remaining allegations are admitted upon information and belief.

20. Admitted upon information and belief.

Defendant Internet Archive and the Wayback Machine

21. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

22. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

23. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

24. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

25. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

26. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state

conclusions of law, no response is required; therefore, they are denied.

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

27. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

28. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

29. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

30. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

31. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

32. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

33. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

34. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

35. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

36. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

Internet Archive's [Alleged] Infringement of Healthcare Advocates' Rights of Copyright

37. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

38. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

39. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

The [Alleged] Fiduciary Relationship Between Healthcare Advocates and Internet Archive

40. Denied. Furthermore, to the extent the allegations contained in this paragraph constitute conclusions of law, no response is required; therefore, they are denied.

41. Denied. Furthermore, to the extent the allegations contained in this paragraph constitute conclusions of law, no response is required; therefore, they are denied.

42. Denied. Furthermore, to the extent the allegations contained in this paragraph constitute conclusions of law, no response is required; therefore, they are denied.

Healthcare Advocates' [Alleged] Contract with Internet Archive

43. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

44. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

Healthcare Advocates [Allegedly] Blocks Public Access to Its Archived Web Site Content

45. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they

are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

46. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

47. The allegations contained in this paragraph constitute conclusions of law to which no response is required; therefore, they are denied. The remaining averments are denied.

[Alleged] Hacker #1 from Harding, Earley Law Firm [Allegedly] on Notice That Archived Content Blocked

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

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

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

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

[Alleged] Hacker #2 from Harding, Earley Law Firm [Allegedly] on Notice that Archived Content [Allegedly] Blocked

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

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

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

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

defendant Internet Archive's computer servers. It is denied that this access involved the circumvention of any security.

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

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

Internet Archive [Allegedly] Fails to Honor its Own [Alleged] Exclusion Policy at Least 12 Times on July 9, 2003

55. It is admitted only that on July 9, 2003 a representative of answering defendant firm sought access to plaintiff's archived website on defendant Internet Archive's computer servers. It is denied that this access involved the circumvention of any security and/or was made without authorization. The remaining averments are denied.

56. To the extent the averments contained in this paragraph are directed at defendants other than answering defendants, no response is required; therefore, they are denied. To the extent a response is required, it is admitted only that a representative of answering defendant

firm sought access to plaintiff's archived website on defendant Internet Archive's computer servers on July 9, 2003.

57. The averments contained in this paragraph are directed at defendants other than answering defendants to which no response is required; therefore, they are denied.

58. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

Internet Archive [Allegedly] Professes to Have Resolved the [Alleged] Problem

59. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

60. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied.

61. After reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted in this paragraph; therefore, they are denied. Furthermore, to the extent the allegations contained in this paragraph state conclusions of law, no response is required; therefore, they are denied.

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

62. Denied to the extent that an individual from defendant firm is classified as "hacker." Further, to the extent that the allegations contained in this paragraph are legal

conclusions no response is required and they are therefore denied. It is admitted that on July 14, 2003, a representative of answering defendant firm sought access to plaintiff's archived web site on defendant Internet Archive's computer servers.

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

Internet Archive [Allegedly] Admits Liability for Failing to Prevent Hacking

64. To the extent the allegations contained in this paragraph pertain to defendants other than answering defendants, no response is required; therefore, they are denied. To the extent a response is required, after reasonable investigation, answering defendants are without information or knowledge sufficient to attest to the truth of the matters asserted; therefore, they are denied.

[Alleged] Admissions Under Oath by Defendant Frank J. Bonini, Jr.

65. Admitted.

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

66. Denied as stated. It is admitted that various members of answering defendants law firm directed others to gain access to archived historical content of the

www.healthcareadvocates.com web site through the Wayback Machine at www.archive.org. It is denied that this access involved the circumvention of any security and/or was made without authorization. Furthermore, as a matter of law, an entity cannot enter into a conspiracy with its own principals and/or employees. To the extent that the averments in this paragraph are not specifically admitted, they are denied.

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

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

Healthcare Advocates Never Received Copies of the [Allegedly] Purloined Web Site Content

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

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

COUNT I

[Alleged] 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. Answering defendants incorporates herein by reference the averments contained in paragraphs 1 through 70.

72. Denied as a conclusion of law.

73. Denied as a conclusion of law.

74. Denied as a conclusion of law.

75. Denied as a conclusion of law.

76. Denied as a conclusion of law.

Count II

[Alleged] 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. Answering defendants incorporates herein by reference the averments contained in paragraphs 1 through 76.

78. Denied as a conclusion of law.

79. Denied as a conclusion of law.

80. Denied as a conclusion of law.

81. Denied as a conclusion of law.

82. Denied as a conclusion of law.

83. Denied as a conclusion of law.

COUNT III

[Alleged] 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. Answering defendants incorporates herein by reference the allegations contained in paragraphs 1 through 83.

85. Denied as a conclusion of law.

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

87. Denied as a conclusion of law.

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

COUNT IV

**[Alleged] 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. Answering defendants incorporates herein by reference the allegations contained in paragraphs 1 through 88.

90. Denied as a conclusion of law.

91. Denied as a conclusion of law.

92. Denied as a conclusion of law.

93. Denied.

94. Denied as a conclusion of law.

COUNT V

**[Alleged] 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. Answering defendants incorporates herein by reference the averments contained in paragraphs 1 through 94.

96. Denied as a conclusion of law.

97. Admitted.

98. Denied as a conclusion of law.

99. Denied as a conclusion of law.

COUNT VI

[Alleged] 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. Answering defendants incorporates herein by reference the averments contained in paragraphs 1 through 99.

101. Denied as a conclusion of law.

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

103. Denied as a conclusion of law.

104. Denied as a conclusion of law.

105. Denied as a conclusion of law.

COUNT VII

[Alleged] 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. Answering defendants incorporates herein by reference the averments contained in paragraphs 1 through 105.

107. Denied as a conclusion of law.

108. Denied as a conclusion of law.

109. Denied as a conclusion of law.

110. Denied as a conclusion of law.

COUNT VIII

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

111-116. No response is required because this count is addressed to another defendant.

COUNT IX

**[Alleged] Breach of Contract
(By Internet Archive)**

117-125. No response is required because this count is addressed to another defendant.

COUNT X

**[Alleged] Promissory Estoppel
(By Internet Archive)**

126-133. No response is required because this count is addressed to another defendant.

COUNT XI

**[Alleged] Breach of Fiduciary Duty
(By Internet Archive)**

134-141. No response is required because this count is addressed to another defendant.

COUNT XII

**[Alleged] Negligent Dispossession
(By Internet Archive)**

142-147. No response is required because this count is addressed to another defendant.

COUNT XIII
[Alleged] Negligent Misrepresentation
(By Internet Archive)

148-153. No response is required because this count is addressed to another defendant.

Separate and Affirmative Defenses

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

If plaintiff suffered the damages alleged, which fact this defendant expressly denies, such damages resulted from other and further reason for which none of the answering defendants would not be responsible.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

None of the answering defendants have infringed the copyrights which are the subject of the second amended complaint.

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to damages because answering defendants all had an innocent intent.

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

Robot.txt does not effectively control access to work protected under 17 U.S.C. § 1201, *et seq.*

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

Answering defendants did not act with malice.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff lacks standing to assert any cause of action.

TWENTY-THIRD AFFIRMATIVE DEFENSE

None of the answering defendants supplied the plaintiff with any information.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

None of the answering defendants have infringed the copyrights which are the subject of the second amended complaint.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

PRAYER FOR RELIEF

WHEREFORE, defendants Harding, Earley, Follmer & Frailey, John F.A. Earley, III, Charles L. Riddle, Frank A. Bonini and Kimber (misdesignated "Kimberly") Titus request that this Court enter judgment in its favor and against the plaintiff in no amount.

Respectfully submitted,

MCKISSOCK & HOFFMAN, P.C.

By: /s/Jeffrey P. Lewis
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F.A. Earley III, Charles I. Riddle and Frank
J. Bonini

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

CERTIFICATE OF SERVICE

JEFFREY P. LEWIS, ESQUIRE, attorney for defendants, Harding, Earley, Follmer & Frailey, certifies that a true and correct copy of the foregoing Answer with Affirmative Defenses to the Second Amended Complaint has been forwarded to all parties listed below, as indicated, on September 1, 2006, as follows:

Via First Class Mail and Electronic Mail
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