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ATTORNEYS FOR PLAINTIFF iPARADIGMS, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ADR

iPARADIGMS, LLC, A CALIFORNIA
LIMITED LIABILITY COMPANY,

) CASE No.
) 06-07493

PLAINTIFF,

) **COMPLAINT FOR DECLARATORY
RELIEF**

v.

McLEAN COMMITTEE FOR
STUDENT RIGHTS AN
UNINCORPORATED ASSOCIATION OF THE
COMMONWEALTH OF VIRGINIA,

DEFENDANT.

iParadigms, LLC. v. McLean Committee for Student Rights

Doc. 1

1 Plaintiff iParadigms, LLC (“iParadigms”) allege as follows:
2

3 **INTRODUCTION**

4 1. Plaintiff iParadigms needs declaratory relief from this Court to
5 confirm the copyright legality of its Turnitin® system. Turnitin® is a proprietary
6 technology system, which evaluates the originality of written works in order to
7 prevent plagiarism. The Turnitin® system allows educators at schools and
8 universities to quickly and effectively check — via an online system, rather than
9 manually — whether written works submitted by students are original. To do this,
10 the Turnitin® system makes a digital “fingerprint” of works submitted by students,
11 and then digitally archives that fingerprint so it can be compared to the work of
12 future students. Quite significantly, the Turnitin® system does not distribute,
13 publish or otherwise make publicly available any student works. Because of its
14 effectiveness in curbing plagiarism, Turnitin® is now used by thousands of
15 academic institutions in over ninety countries worldwide, is used by millions of
16 teachers and students, and receives nearly 100,000 student papers per day.
17 Turnitin® thus serves a highly valuable educational purpose. Rather than
18 infringing intellectual property rights, iParadigms is trying to protect the copyright
19 interests of students and other authors by preventing plagiarism of the very student
20 papers that Turnitin® receives.

21 2. In or around August 2003, McLean High School in McLean, Virginia
22 decided to adopt the Turnitin® system. Now, over three years later, a group of
23 students at McLean High School — represented by the McLean Committee for
24 Student Rights — have contended that the Turnitin® system infringes copyrights
25 in their written works. iParadigms needs a judicial declaration from this Court to
26 confirm the copyright legality of the Turnitin® system, and allow iParadigms to
27 continue providing — without any doubts caused by MCSR’s unfounded claim —
28 its highly valuable educational service to McLean High School.

1 **JURISDICTION AND VENUE**

2 3. Plaintiff iParadigms, LLC is a limited liability company organized
3 under the laws of the State of California with its principal place of business in the
4 State of California, County of Alameda, City of Oakland.

5 4. Plaintiffs are informed and believe, and on that basis allege, that
6 defendant McLean Committee for Student Rights (“MCSR”) is an unincorporated
7 association of the Commonwealth of Virginia, made up of students at McLean
8 High School in McLean, Virginia and individual members thereof.

9 5. This Court has original jurisdiction under 28 U.S.C. sections 1331 and
10 1338(a), because this action arises the U.S. Copyright Act, 17 U.S.C. sections 101
11 *et seq.* This Court also has original jurisdiction pursuant to 28 U.S.C. section
12 1332, in that this is a civil action between citizens of different states in which the
13 matter in controversy exceeds \$75,000.00 exclusive of interest and costs.

14 6. Venue is proper in this district under 28 U.S.C. section 1391(b)
15 because: (1) members of the Defendant association have consented to this district’s
16 jurisdiction via an online User Agreement which provides that student users of
17 Turnitin® (the online system at issue in this case) “consent to the exclusive
18 jurisdiction and venue of courts in Alameda County, California, U.S.A. in all
19 disputes arising out of or relating to the use of this [Turnitin] web site”; and (2)
20 iParadigms’ business operations which are at issue in this case occur in this
21 district, and thus a substantial part of the events giving rise to iParadigms’ claim
22 occurred in this district.

23
24 **THE TURNITIN® SYSTEM**

25 7. iParadigms has developed a proprietary technology system called
26 Turnitin®, the world’s leading online system to evaluate originality of works and
27 to prevent plagiarism. The Turnitin® system allows educators at schools and
28 universities to quickly and effectively check — via an online system, rather than

1 manually — whether written works submitted by students are original. Turnitin®
2 helps ensure that students submit original work and receive honest grades, and
3 helps ensure a level playing field for all students.

4 8. Schools and academic institutions make the choice about whether to
5 use the Turnitin® system. For participating schools, students submit their written
6 works to Turnitin® via a web-based system available at www.turnitin.com or via
7 an integration between Turnitin® and a school's course management system.
8 Before submitting their works to the online system, students create a user profile
9 and must agree to a "click-wrap" user agreement displayed to them online. A copy
10 of the User Agreement is attached hereto as Exhibit 1. The User Agreement is
11 governed by the laws of the State of California, and provides that student users of
12 Turnitin® "consent to the exclusive jurisdiction and venue of courts in Alameda
13 County, California, U.S.A. in all disputes arising out of or relating to the use of this
14 [Turnitin] web site."

15 9. Once a student work is submitted to Turnitin®, the Turnitin® system
16 makes a "fingerprint" of the work by applying mathematical algorithms to its
17 content. This fingerprint is merely a digital code.

18 10. Using the digital fingerprint made of the student's work, the
19 Turnitin® system compares the student's work electronically to content available
20 on the Internet (both currently and archived instances), student papers previously
21 submitted to Turnitin®, and commercial databases of journal articles and
22 periodicals. The Turnitin® system then produces an Originality Report for each
23 submitted student work, which identifies the percentage of a student's paper which
24 is not original. It is then up to the student's teacher or instructor to evaluate the
25 Originality Report and address any issues with the student.

26 11. Furthermore, the Turnitin® system then digitally archives the
27 student's submitted work so the work becomes part of the database used by
28 Turnitin® to evaluate the originality of other students' works in the future. Thus,

1 this helps protect the student rights to their works, by helping to ensure that other
2 students in the future do not plagiarize the works already submitted to Turnitin.®

3 12. Quite significantly, the Turnitin® system does **not** distribute, publish
4 or otherwise make publicly available any student works. Nor does it prevent or
5 restrict students from reusing or otherwise exploiting works submitted to
6 Turnitin.®

7 13. Turnitin® serves a valuable educational purpose for academic
8 institutions and their students. Because of its effectiveness in curbing plagiarism,
9 Turnitin® is now used by thousands of academic institutions in over ninety
10 countries worldwide, is used by millions of teachers and students, and receives
11 nearly 100,00 student papers per day. Rather than infringing intellectual property
12 rights, iParadigms is trying to protect copyright interests by students and other
13 authors by preventing plagiarism of the very student papers that Turnitin®
14 receives.

15 16 **MCLEAN HIGH SCHOOL ADOPTS TURNITIN®**

17 14. In or around August 2003, the Fairfax County School Board in
18 Fairfax, Virginia adopted the Turnitin® system. The Fairfax County School Board
19 entered into an agreement with iParadigms to subscribe to the Turnitin® system.
20 The Fairfax County School Board has since implemented the Turnitin® system at
21 various schools within its governance, including McLean High School in McLean
22 Virginia, and now successfully uses Turnitin® at 16 of its 18 high schools. At
23 McLean School, the Turnitin® system has been implemented in classes for
24 freshman and sophomore students, but not yet junior and senior students.

25 26 **NEED FOR JUDICIAL RELIEF**

27 15. Defendant MCSR consists of various students at McLean High School
28 and other individuals who are opposed to McLean High School's use of the

1 Turnitin® system. On November 15, 2006, over three years after McLean High
2 School adopted the Turnitin® system counsel for defendant MCSR sent a letter to
3 iParadigms complaining that iParadigms infringes the copyrights of student works
4 which are submitted to the Turnitin® system. In that letter, MCSR alleged that
5 iParadigms infringed the copyright interests of its student members by keeping a
6 digital archive of student works. The MCSR claimed to represent sixteen (16)
7 students at McLean High School, and demanded certain relief as to those sixteen
8 students. If iParadigms would not agree to MCSR's demand for relief, MCSR
9 threatened to file suit against iParadigms seeking injunctive relief, statutory
10 damages, costs and attorney fees. A true and correct copy of that November 15,
11 2006 demand letter from MCSR is attached hereto as Exhibit 2. [The student
12 names from the last page of the letter have been redacted.]

13 16. iParadigms disputes the contentions of the MCSR. First, iParadigms
14 believes that its Turnitin® system does not infringe the copyright interests of any
15 student members of MCSR (or the rights of any other students of McLean High
16 School) and/or makes a fair use of the student works as permitted under the 17
17 U.S.C. § 107 of the U.S. Copyright Act. Second, iParadigms is informed and
18 believes that ten of the sixteen student members of MCSR have **not** yet submitted
19 any works to the Turnitin® system, and thus, as a matter of law, iParadigms could
20 not have infringed, nor be infringing, any copyrights of those students. Thus,
21 iParadigms believes that it has no liability to the MCSR or its members, and
22 MCSR is not entitled to any relief.

23 17. A judicial declaration on these issues would serve the interests of
24 justice. A declaration would avoid a multiplicity of actions by enabling the parties
25 to understand their respective rights and duties with respect to the Turnitin®
26 system, without the need for further litigation (for example, each time a student
27 member of MCSR or other students at McLean High School disputes the
28 lawfulness of Turnitin.®)

1 18. With greater understanding of how copyright law applies in the digital
2 and online worlds, courts are routinely confirming that "use" of copyrighted works
3 similar to that made by iParadigms (such as creating a digital fingerprint of the
4 work, and retaining that fingerprint in a digital archive) is not infringing and/or
5 constitutes a fair use. iParadigms would thus have no liability because the fair use
6 doctrine, 17 U.S.C. § 107, is a complete defense to any infringement action the
7 MCSR could bring related to student works submitted to Turnitin®.

8
9 **FIRST CAUSE OF ACTION**

10 **(Declaratory Relief as to Student Works Submitted to Turnitin®)**

11 19. Plaintiffs repeat and reallege each and every allegation set forth in
12 paragraphs 1 through 18 of this Complaint as if fully set forth herein.

13 20. There currently exists an actual controversy between iParadigms and
14 MCSR concerning whether the Turnitin® system infringes copyright rights (if any)
15 of the student members of MCSR who have submitted works to Turnitin.®

16 21. iParadigms contends that it does not infringe any copyright rights (if
17 any) of students in MCSR or at McLean High School who have submitted their
18 works to Turnitin® and/or that the Turnitin® system is making a fair use of such
19 student works that is permissible under 17 U.S.C. § 107 of the U.S. Copyright Act.

20 22. The MCSR and its student members dispute the aforementioned
21 contentions, as evidenced by the November 15, 2006 demand letter sent by MCSR.
22 Declaratory relief is therefore appropriate.

23
24 **SECOND CAUSE OF ACTION**

25 **(Declaratory Relief as to Student Works Not Submitted to Turnitin®)**

26 23. Plaintiffs repeat and reallege each and every allegation set forth in
27 paragraphs 1 through 18 of this Complaint as if fully set forth herein.

28 24. There currently exists an actual controversy between iParadigms and

1 MCSR concerning whether the Turnitin® system infringes copyright rights (if any)
2 of the student members of MCSR who have not yet submitted any works to
3 Turnitin.®

4 25. iParadigms contends that at least ten (10) student members of MCSR
5 have not yet submitted any works to the Turnitin® system. Accordingly,
6 iParadigms believes that it could not, as a matter of law, have infringed or be
7 infringing copyright interests (if any) of those MCSR students.

8 26. The MCSR and its student members dispute the aforementioned
9 contentions, as evidenced by the November 15, 2006 demand letter sent by MCSR.
10 Declaratory relief is therefore appropriate.

11 **PRAYER**

12 WHEREFORE, Plaintiff iParadigms, LLC pray for judgment as follows:

- 13 1. For a judicial declaration that its Turnitin® service (including digital
14 fingerprinting and digital archival of fingerprints of student works) does not
15 infringe copyrights (if any) to works submitted to Turnitin® by any student
16 members of defendant MCSR or McLean High School and/or constitutes a fair use
17 of such works pursuant to 17 U.S.C. § 107;
- 18 2. For a judicial declaration that iParadigms has not infringed and is not
19 infringing the purported copyrights of any members of defendant MCSR
20 (including at least ten students listed in MCSR's November 15, 2006 demand
21 letter) who have not submitted any of their works to the Turnitin® system.
- 22 3. For costs of suit herein.
- 23 4. For such other and further relief as the Court deems just and proper.

24
25 DATE: DECEMBER 6, 2006

FOLEY & LARDNER LLP
JAMES D. NGUYEN

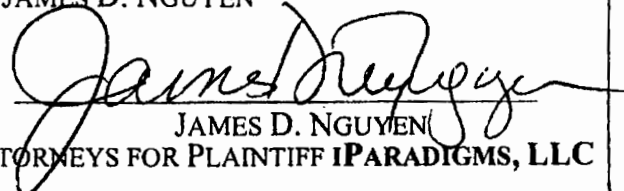
26
27 BY: 
28 JAMES D. NGUYEN
ATTORNEYS FOR PLAINTIFF IPARADIGMS, LLC

EXHIBIT 1

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You agree that no joint venture, partnership, employment or agency relationship exists between you and iParadigms, LLC as a result of this agreement or use of this web site.

iParadigms' performance of this agreement is subject to existing laws and legal process, and nothing contained in this agreement is in derogation of iParadigms' right to comply with law enforcement requests or requirements relating to your use of this web site or information provided to or gathered by iParadigms' with respect to such use.

If any part of this agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision; the remainder of the agreement shall continue in effect.

This agreement constitutes the entire agreement between the user and iParadigms' with respect to usage of this web site and it supersedes all prior communications and proposals, whether electronic, oral, or written, between the user and iParadigms' with respect to usage of this web site. A printed version of this agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

Fictitious names of companies, products, people, characters, and/or data mentioned herein are not intended to represent any real individual, company, product, or event.

Any rights not expressly granted herein are reserved.

By using the Turnitin service, the user of Turnitin acknowledges that he or she has read this Agreement, understands it and agrees to be bound by its terms and conditions.

As provided in the Digital Millenium Copyright Act of 1998, we have designated the following individual for notification of potential copyright infringement regarding Web sites hosted by Turnitin:

John Barrie
510-287-9720 ext 227
510-444-1952 (fax)
legal@iparadigms.com

If you believe content hosted by Turnitin infringes a copyright, please provide the following information to the person identified above (17 U.S.C. §512)<BR

A physical or electronic signature of the copyright owner or authorized agent; Identification of the copyrighted work(s) claimed to have been infringed; Identification of the material that is claimed to be infringing or to be the subject of the infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; Information regarding how we may contact you (e.g., mailing address, telephone number, e-mail address); A statement that the copyright owner or its authorized agent has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and A statement that the information in the notification is accurate, and made under penalty of perjury, and, if an agent is providing the notification, a statement that the agent is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

EXHIBIT 2

ROBERT A. VANDERHYE

Attorney at Law
801 Ridge Dr.
McLean, VA 22101-1625
703-442-0422
703-790-1070 (fax)
rvan@turnitin.com

November 15, 2006

VIA Fax #1-510-444-1952/THEN MAIL

Dr. John Barrie
IParadigms, LLC
1624 Franklin Street, 7th Floor
Oakland, CA 94612

RE: Turnitin.com; McLean High School

Dear Dr. Barrie:

I represent the McLean Committee for Student Rights (an unincorporated association of the Commonwealth of Virginia) made up of students at McLean High School [MHS] in McLean, Virginia, and individual members thereof.

As you are aware, freshmen and sophomore students at MHS are – and in the future all students will be – required to submit unpublished manuscripts that they create to your Turnitin® system. You then archive those unpublished manuscripts in machine readable form, and put them into a permanent database of student authored documents. The archiving of these unpublished manuscripts is clearly copyright infringement. All of the students listed on the attached sheet require that you stop archiving their unpublished manuscripts immediately.

Your archiving of unpublished manuscripts is a clear violation of §106 of the Copyright Act [17 U. S. C.], and is not “fair use” under §107 of the Copyright Act. This is readily apparent from the statutes themselves, and existing case law. All four factors that are typically considered in evaluating fair use under §107 indicate no fair use. You should already have grave concerns in this area because the very Foley & Lardner legal opinion that you have posted on your website – and refer to in many written and oral communications – states those concerns. Page 7 of the web version of that opinion provides “The archival of a submitted work is perhaps the most legally sensitive aspect of the TURNITIN system.” (emphasis added). In fact the very case cited by Foley & Lardner at the top of page 8 of the opinion – *Harper & Row v Nation Enterprises*, 105 S. Ct. 2218, 471 U. S. 539 (1985) – makes it clear that not only is your archiving “legally sensitive”, it is clearly copyright infringement.

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So that it is not an issue in your future evaluation, I can assure you that the fact that students at MHS are required – under penalty of getting a “zero” on a class assignment – to submit manuscripts to your system is not an indication that they are agreeing to your archival of their unpublished manuscripts. The law in Virginia – and virtually everywhere else in the U. S. – is that performing an act, or signing a document, under duress negates any legal validity of the act or document. Duress is found whenever there is external pressure and internal loss of volition in response to outside compulsion. “Duress may exist whether or not the threat is sufficient to overcome the mind of a man of ordinary courage, it being sufficient to constitute duress that one party to the transaction is prevented from exercising his free will by reason of threats made by the other and that the contract is obtained by reason of such fact.” *8B Michle's Jurisprudence Duress and Undue Influence*, §§2-3 (Repl. Vol. 1985). The question of duress is evaluated in view of all of the surrounding circumstances, including age, capacity, situation, and relation of the parties. *Jacobs v Jacobs*, 237 S.E.2d 124, 218 Va. 264 (Va. 1977).

There can be no doubt that informing a minor at a public school, which the minor is required to attend and guaranteed the right to attend by law, that she/he will get zeroes on all class writing assignments unless he/she submits the assignment to your service and allows you to convert her/his property to your own, is duress. It is clearly a wrongful act to require students to give up their property (be it intellectual or any other) in order to get the education they are guaranteed by the Commonwealth of Virginia.¹ Each student's free will is completely destroyed. Therefore this is a classic case of duress, and the fact that the listed students will be submitting manuscripts to your system cannot be considered by you as their agreement for you to archive their manuscripts and infringe their copyrights.

You consistently argue that your system and acts are appropriate as being covered by the “fair use” exception. As indicated above, an examination of the facts relating to your archiving in relation to existing law clearly illustrates that is incorrect.

That your act of archiving student submissions is not “fair use” is especially true since Turnitin® is taking unpublished manuscripts and in effect “publishing” them. Unpublished manuscripts have a higher degree of protection

¹ As stated by the Supreme Court in *Tinker v Des Moines*, 393 U. S. 503 (1969) “It can hardly be argued that either students or teachers shed their constitutional rights ... at the schoolhouse gates”. This includes that they not be required to give up personal property at school to be converted to another's use. No one would have a right to make a student in a public high school in Virginia pay \$5 to Coca Cola to get into school every day, and intellectual property rights are potentially much more valuable.

Dr. Barrie
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Page 3

under the copyright law², as the first case cited by your attorneys on the subject, *Harper & Row v Nation Enterprises, supra*, makes clear (even though your attorneys ignored this aspect of *Harper & Row* in their opinion). In *Harper & Row* the Supreme Court found that the use of 300 words from an unpublished manuscript of former president Ford was not "fair use" despite the public interest in disclosing President Ford's analysis of world events. *Harper & Row* pointed out that under common law the "fair use" doctrine had no relationship to unpublished manuscripts. Even though a 1992 amendment to §107 (last sentence) states that the fact that a manuscript is unpublished does not alone mean there can be no "fair use", unpublished manuscripts are still given broad protection. See *Sundeman v Seajay*, 142 F.3d 104 (4th Cir 1998), decided six years after the 1992 amendment to §107 and specifically discussing it.

The first of the four factors given in §107 is "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes". Even if you did not already admit at the MHS meeting on October 16, 2006 that your purpose is commercial, there would be no doubt that it is. You make money by selling your services. One of the selling points you use to entice and keep customers is that your database of student submissions is continuously increasing. The figures you used at the MHS October 16 meeting were about 80,000 student papers added to your database every day, and likely 100,000 per day in the future. You are thus clearly getting a commercial benefit from students' unpublished manuscripts that you archive.

The fact that your archived version of a student's unpublished manuscript is in machine readable form rather than in human readable form does not provide it with an exculpatory character. A work is transformative if it adds something new to the original. Your use adds nothing. It merely changes how the work is "fixed", that is on paper or in a machine. It is no different than if a copyrighted book were read on the radio, put in DVD form, or published in a different language. It is the same work. 17 U. S. C. §101 defines "copies" protected under the Copyright Act as material objects "in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." Existence in a computer in machine readable form is clearly a copy under this definition. *Mai Systems Corp v Peak Computer, Inc.*, 991 F.2d 511 (9th Cir 1993); *Advanced Computer Servs. of Michigan v Mai Systems Corp.*, 845 F. Supp. 356 (E D Va. 1994).

Therefore this first factor clearly indicates no "fair use".

² Including the right by the owner not to publish at all.

Dr. Barrie
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The second factor in §107 is the nature of the copyrighted work. As indicated above since the students' works are typically unpublished manuscripts, they are entitled to a heightened level of protection. *Harper & Row, supra.*; *Sundeman v Seajay, supra.* Further, many of the works have truly creative expressions, including fictional accounts, poetry, and metaphor. Thus for this reason too they are entitled to a heightened level of protection. *Gorman, Fact or Fantasy? The Implication for Copyright*, 29 J. Copyright Soc., 560, 561, 563 (1982). Therefore this factor clearly indicates no "fair use".

The third factor in §107 is the amount and substantiality of the portion used in relation to the copyrighted work as a whole. You input the entire work in each case. Therefore this factor clearly indicates no "fair use".

The fourth factor in §107 is the effect of the use upon the potential market for or value of (two different criteria) the copyrighted work.

With respect to "potential market for", there can be no doubt original term papers, research papers, and the like can be sold; but no one will buy a plagiarized paper. For example, ibuytermpapers.com purchases original high school students' papers for cash. However, they check for originality. If they check Turnitin.com, they will find it plagiarized, completely destroying its marketability.

Also, newspapers and magazines purchase articles from freelance writers all the time (as one of hundreds of examples see www.undercover-medicine.com), and have no age requirement for the submitter. If a student submits an unpublished manuscript used in a course at MHS, or used as the basis for a derivative work (specifically protected and authorized under §108(2)), and that is checked against Turnitin.com, again it will be found to have been plagiarized, completely destroying its marketability. Your statement at the MHS October 16 meeting that this last scenario could never happen is totally unconvincing. You have no positive knowledge of what present abilities magazines or newspapers have to use the student paper parts of your database, let alone what availability they might have in the future.

Further, if a student submits his/her essay prepared for a course at MHS in the World Bank's essay contest, it will come back as plagiarized, and she/he will have her/his essay disqualified.

With respect to "value of the copyrighted work, the situation is even more serious. College essays submitted by college applicants are commonly run through Turnitin.com (as Mrs. Strauss pointed out at the October 16 MHS meeting). Therefore if an MHS student produces a derivative work from an unpublished manuscript she/he produced in an MHS course -- as he/she has

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every right to do – that is used as a college essay, it will be found plagiarized. What chance does the student have of getting into that college then? Thus, not only is the "value of" the paper destroyed, there are potentially enormous consequential damages in the future. It is well known that getting into and graduating from prestigious colleges and universities greatly enhances one's earning ability, therefore there could be significant economic loss (perhaps even hundreds of thousands of dollars worth) from your archiving of a student's unpublished manuscript in this situation.

As yet another scenario related to the "value of" a copyrighted work, consider the situation where a student at MHS transfers to another high school next year, one that uses Turnitin®. The student wants to get on the school newspaper staff at his/her new school and produces a derivative work from a course work unpublished manuscript she/he created at MHS. The student submits the derivative work for publication consideration to the staff of the newspaper at the new school. The derivative work is run through your service, and found plagiarized by comparing it to the student's own MHS manuscript. The student then has no chance of getting on the staff of the new school's newspaper, again with potential economic consequences in the future.³

Therefore this fourth factor also clearly indicates no "fair use".

We know from the published details of your contract with the University of Maryland, and your statements at MHS on October 16, that you have the technical ability to purge a student's paper once reviewed, rather than archiving it. To resolve this matter to my clients' satisfaction it is necessary that you purge from Turnitin.com all of the manuscripts of all of the students on the attached list within one week of submittal of each manuscript to Turnitin.com.

Please provide me with your written assurance, by December 7, 2006, that you will proceed as requested in the preceding paragraph. If I have not heard from you by then, I will assume you do not agree to proceed as we have requested, and we will institute suit for copyright infringement in the U. S. District Court for the Eastern District of Virginia, Alexandria Division. Since there will be litigation if you do not comply it is necessary that you retain all attorney client communications with respect to this or related matters (since you have waived attorney client privilege we will be entitled to see all opinions, notes of conversations with your attorneys, etc.), and retain all e-mails, letters, reports,

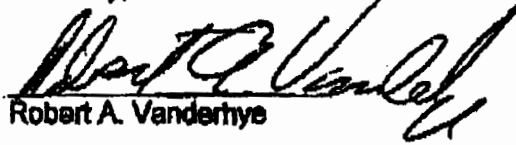
³ The fact that in these scenarios it MAY be possible to somewhat mitigate the consequences by getting more detailed information from you, MHS, or other sources, is irrelevant. The first impression is negative and may be impossible to recover from. Also, the organization may never even tell the student what happened, leaving no possibility for mitigation. Requiring the student to explain the situation in advance would also be impractical and prejudicial.

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computer discs, or other documents that in any way relate to the relationship of copyright to your services, and your technical abilities to do what we ask. If litigation is necessary we will be seeking an injunction, statutory damages, costs, and attorney fees, all of which are provided for by the Copyright Act.

I look forward to hearing from you.

Sincerely,


Robert A. Vandertye

Attachment

cc: Mrs. Jane K. Strauss
Mr. Paul Wardinski

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**ATTACHMENT - LIST OF McLEAN HIGH SCHOOL STUDENT REQUIRING
PURGING OF THEIR UNPUBLISHED MANUSCRIPTS WITHIN ONE WEEK OF
SUBMISSION TO TURNITIN.COM**

REDACTED