

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ICOPYRIGHT, INC.,	:	10 CV 8860 (NRB)
Plaintiff,	:	
-against-	:	
THE ASSOCIATED PRESS and PRESS	:	DECLARATION OF BRUCE GLOVER
ASSOCIATION, INC.,	:	IN OPPOSITION TO PLAINTIFF’S
Defendants.	:	MOTION FOR PRELIMINARY
-----	X	INJUNCTION

BRUCE GLOVER hereby declares the following pursuant to the provisions of 28 U.S.C. § 1746:

1. I am the Deputy Director, Business Development for defendant The Associated Press (“AP”). I make this declaration in opposition to the motion of plaintiff iCopyright, Inc. (“iCopyright” or “Plaintiff”) for a preliminary injunction.

2. My responsibilities at AP include identifying business opportunities, negotiating license and distribution agreements with commercial customers on behalf of AP for use of AP content on the Internet, on wireless devices, on desktop computers, and to manage those customer relationships.

3. In the spring of 2008, on behalf of AP, I negotiated and concluded the iCopyright Content Services Agreement (the “CSA”) between Press Association, Inc., a wholly owned subsidiary of AP (both companies are referred to herein as “AP”) and iCopyright. I was responsible for the management of the business relationship between AP and iCopyright from the effective date of the CSA (April 15, 2008) until November 15, 2010, when AP terminated the CSA because of iCopyright’s failure to make

payments due under that contract.

4. My primary contact at iCopyright was Andrew S. Elston, now iCopyright's CEO. I have reviewed Mr. Elston's November 22, 2010 Declaration, and the summary of facts contained in the Plaintiff's brief in support of its motion.

5. Many of Mr. Elston's and iCopyright's assertions are false, incomplete, or misleading. I will give details below, but to summarize:

a. Plaintiff was not AP's general agent for licensing of all AP content. As iCopyright itself publicly acknowledged, AP gave it the right to license only a limited segment of AP news stories that AP tagged on its "AP Hosted platform" (so-called "AP Hosted content," which is more fully explained below) to a relatively small market of end-users: those who wanted to electronically obtain the right to make hard copy reprints of discrete articles from the AP Hosted service, to circulate AP stories via e-mail, to display discrete stories on websites and the like. AP entered into the CSA with iCopyright because it was more efficient from our perspective to outsource these small, one-off licensing requests than to handle them internally. However, AP has relationships with other companies that license AP content to different user markets via other methods and AP itself handles its own licensing for members and major subscribers.

b. AP did fully perform its obligations under the CSA. As stated in more detail in the accompanying Declaration of Todd Martin, AP's Vice President and Chief Technology Officer, AP made its AP Hosted content available to iCopyright, and enabled iCopyright tags (a type of hyperlink which allowed customers to obtain republication or reprint rights on the iCopyright.com website). While there were occasional technical problems with the links between AP articles and the iCopyright website, AP technical

personnel addressed these problems as they arose, and iCopyright acknowledged that AP was responsive to its concerns. The problem links affected only about 1% of the AP Hosted content that was tagged with the iCopyright symbol.

c. AP did promote iCopyright's services to AP members and subscribers. We provided Plaintiff with unique access to our members not given to other licensing vendors, and instructed our bureau chiefs (who are AP's main liaisons with members) on how to advise members/subscribers of iCopyright's services. We actively sought to interest important AP customers such as USA Today, Google and Yahoo! in iCopyright's services. Mr. Elston, in documents he failed to provide in his Declaration, acknowledged our efforts, and repeatedly admitted that AP did not have any obligation to promote iCopyright to any particular customer. To the contrary, he recognized that it was iCopyright's responsibility, not AP's, to contact and conclude agreements with AP members and subscribers.

d. These excuses for non-payment are pretexts. On a number of occasions, I informed Mr. Elston that if iCopyright did not believe AP was living up to its contract obligations, it could notify us of a breach and terminate the contract. He always refused to do this and claimed that he wanted the relationship with AP to continue. Not until recently, when we informed Mr. Elston that AP would have to suspend iCopyright's services and access to AP content if the required contract payments were not made, did he begin making claims that AP was in breach.

e. Starting in March 2010, Plaintiff failed to pay AP the monthly \$15,000 minimum due to AP. While Mr. Elston now claims that he told us in May 2010 that iCopyright was going to suspend payment because AP was not performing, this is false.

In fact, in May 2010, he promised that iCopyright would pay its arrears. When sent notices of the amounts due to AP, Mr. Elston did not claim that AP was in breach; rather, he and others at iCopyright continuously attempted to obtain additional AP business by offering to provide services to a news registry which AP was then developing. Neither I nor anyone at AP ever told Mr. Elston that AP would forgive iCopyright's debts to AP.

f. AP terminated the CSA on November 15, 2010, because at that time iCopyright had failed to pay AP the minimum due under the contract for many months, owed AP \$130,000, and refused to make arrangements for payment of the overdue amount. As the only performance that AP was to receive under the CSA was the payment of the money in return for the opportunity to license AP content, this was unquestionably a major breach of the contract. AP then removed iCopyright's tags from AP content and terminated its access to AP's services, as it was entitled to do.

g. As shown in Mr. Martin's Declaration, AP has not misappropriated any of iCopyright's confidential information or technology.

h. As stated in Mr. Martin's Declaration, there is no connection between the termination of this contract and the AP News Registry (the "News Registry"). The News Registry, as explained below, is being developed by AP for itself and other news providers, as a means of tracking authorized and unauthorized use of news content on the web. It was publicly announced in April 2009. iCopyright was well aware of it at that time. Indeed, it has made many attempts (including non-confidential presentations to AP personnel) to become a vendor or supplier to the News Registry. AP has decided, however, that iCopyright's service offerings are not a good fit for the needs of the News Registry. iCopyright never provided any technology to AP regarding the News Registry.

This is just another of iCopyright's pretexts for not paying what it owes AP.

AP and AP-HOSTED CONTENT

6. Founded in 1846, AP today is the oldest and largest news agency in the world, serving as the gold standard for news gathering and reporting. On any given day, more than half the world's population sees news from AP. AP serves thousands of newspapers, radio and television stations around the world.

7. AP has won 49 Pulitzer Prizes, more than any news organization for categories in which AP is entitled to compete.

8. AP employs an editorial staff that is unparalleled in the news business. It has over 3,700 editorial, communications and administrative employees working worldwide in more than 300 locations. Two-thirds of AP's worldwide staff are newsgatherers.

9. AP is organized as a not-for-profit, membership cooperative, and is owned by its U.S. daily newspaper members. In addition, AP supplies news services to associate members (which include many broadcast media companies) and others which are not members of AP but which subscribe to one or more of AP's services.

10. The platforms for reading, watching and listening to news have expanded greatly in the digital era. AP has likewise expanded the way in which it makes its news content available to its members and subscribers. Almost all AP members and subscribers now have Internet websites which feature news content. To respond to this market demand and to optimize delivery, AP has developed a variety of products to make it easier for its customers to feature AP news on their websites.

11. One of these products is called AP Hosted Custom News, often referred to “AP Hosted Report” or simply “AP Hosted.” This is a turnkey solution, best adapted to smaller subscribers. The pages, which include top news of the day, and which can also include photo and video content, are designed by AP to look like they are part of the subscriber’s website. Thus, the AP Hosted pages bear a particular subscriber’s brand, logos, etc., and are similar in design to the other pages of the subscriber’s website. In reality, the actual news content and formatting is hosted on an AP computer server, and is continuously updated by AP. Headlines can be built into the subscriber’s homepage which then links to the AP Hosted page. Currently, there are about 700 subscribers to the AP Hosted service: approximately 600 U.S. newspapers and 100 U.S. broadcasters. A current brochure describing the AP Hosted service is attached as Exhibit 1.

12. The “Hosted” service currently resides on two sets of AP servers. The first set, which uses an older, legacy software array, is known as “Hosted 1.” The second, which uses newer software, is known as “Hosted 2.” Currently (as was true during the entirety of the relationship between AP and iCopyright), at least 90% of the web traffic accessing the “Hosted” service runs through the older “Hosted 1” set of servers.

LICENSING OF AP CONTENT

13. AP is a news wholesaler. It does not own or operate newspapers or television or radio stations. Rather, AP supplies newspapers, broadcasters, and others with print, photo and video news pursuant to licensing contracts and under AP’s membership agreements. These customers then publish AP’s news to the world. Licensing revenue is AP’s lifeblood; it is what pays for AP’s prize-winning reporting.

AP has been licensing others to publish AP news for well over 100 years.

14. In today's increasingly digital environment, AP has pursued a number of avenues for licensing. It has created a variety of novel news products (AP Hosted being one example) to meet special market needs. It has also recognized that there are many uses for AP content beyond the existing member and subscriber base that can generate licensing revenue for AP.

15. Many of AP's Internet licensing deals are large and handled internally within AP: for example, our existing contracts with Internet portals such as Google and Yahoo! are administered by AP employees. This allows these and other customers to feature photos and text from AP stories. Deals with major newspapers and broadcasters are also handled internally.

16. However, there are other, smaller opportunities for revenue as well. AP has contracted with several outside companies to offer AP content for licensing through the vendor's content marketplace or platform.

17. For many years, there has been a small but active market for reprints of AP stories. To take a hypothetical (but current) example, AP may write a story about bedbug infestations. A company that exterminates bedbugs may decide that it would like to provide potential customers with a reprint of the story in its marketing materials, so that they can understand the seriousness of the problem. Or a company that has been featured in an AP business story and wants to interest investors may want to send out an e-mail with a copy of the story. While there is always a problem with Internet users copying AP stories without permission and thus infringing AP's rights, other users and businesses want to act properly, and use AP news under license.

18. Because these kinds of end-user license transactions are small, we have found that it is not efficient for AP to handle license requests internally. Thus, AP has entered into contracts with a variety of outside companies to handle license requests on AP's behalf. These contracts are limited to particular market segments and segments of AP content, and do not permit widespread republication of AP stories. The vendors share the licensing revenue with AP as provided for in their particular contract, or are required to pay AP a minimum fee regardless of revenue.

THE iCOPYRIGHT CONTENT SERVICES AGREEMENT

19. Prior to entering into the CSA with iCopyright in April 2008, AP had a contract to grant reprint rights with a company called Wright's Reprints, which authorized the licensing of paper and electronic reprints of some of our content. This contract lapsed on January 1, 2008.

20. In 2007, we were approached by iCopyright, which made an ambitious proposal to have AP authorize it to be its exclusive outside agent for licensing for a broad array of AP content, and to order AP members to use iCopyright as the sole agent to license AP content through those members' own websites for reuse. We informed iCopyright, during negotiations, that (a) we already had licensing arrangements with a number of outside vendors, so that we could not grant exclusivity except for a narrow segment of our content and user markets, and (b) we had no power to direct AP members to do business with iCopyright.

21. Ultimately, we decided to authorize iCopyright to handle licensing only for a small segment of AP's content offerings, namely content carried on the AP Hosted service described above that were tagged by AP. (CSA, § 1.5; Schedule C). Moreover,

iCopyright was only authorized to issue a limited set of licenses: Instant Licenses with automated pricing for e-mails, photocopies, excerpts, or reprints; Customized Licenses, for larger orders, again limited to paper or electronic reprints or certain limited republication rights; and free uses that would carry advertising.

22. iCopyright publicly acknowledged that the exclusive part of this agreement was limited to AP-tagged AP Hosted content. In a press release that it issued on April 14, 2008, announcing the signing of the CSA, iCopyright said that it had become the “exclusive licensing agent for AP’s hosted content.” (Exhibit 2).

23. AP agreed to affix iCopyright Tags to AP Hosted content. These tags are logos that are actually active hyperlinks to iCopyright servers. Upon clicking on the link, a user would be taken to the iCopyright.com website from which various license rights could be ordered.

24. AP and iCopyright both understood, from the beginning, that there could be technical difficulties with this system once in operation. Section 1.7 of the CSA provided that each party would use commercially reasonable efforts to cooperate to ensure that the iCopyright service performed as contemplated. AP agreed to appoint a contact to be responsible for resolving business and technical issues; I was designated as the business issues contact (CSA, Schedule A). As explained in the accompanying Declaration of Todd Martin, there were some minor technical difficulties in some iCopyright tags on AP “Hosted 2” content, but this affected only a very small portion of the overall “Hosted” content, and could not have had any significant economic impact on iCopyright.

25. Where there were problems, we addressed them. For example, early in the

implementation, Mr. Elston advised me that there were problems with the establishment of iCopyright tags. Mr. Elston selectively quotes from an e-mail of mine dated July 16, 2008 in which I said that this was “unacceptable”. (Elston Decl ¶ 5). But what he does not say is that I immediately pressed AP’s technical personnel to fix the problem, and that the very next day, July 17, 2008, Mr. Elston e-mailed me back, saying “Thanks for all this. The links at the top are working again, so thanks to you and Dave or whoever helped pushed this along. The bottom link is still not working, but I think Sri and Neal are working on that now.” (The full e-mail chain is reproduced at Exhibit 3). This demonstrates that when technical problems arose, I and others at AP were responsive, and Mr. Elston acknowledged that in fact we had addressed the problem.

26. In the CSA, AP agreed to “promote iCopyright as its preferred agent for managing the services set forth in Schedule C to such AP licensees, Members and websites.” (Exhibit 4: CSA § 1.2). This did not mean that AP was required to sell iCopyright services to any particular member. Rather, it meant that AP would ease the way so that iCopyright, using its own sales staff, could try to convince these AP members and subscribers to contract with iCopyright for licensing services. AP in fact did all that was required of it under this provision, and iCopyright never claimed (until shortly before AP was compelled to terminate the CSA for non-payment) that AP was not fulfilling this provision.

27. The only performance that AP was to receive from iCopyright, in return for allowing iCopyright exclusive rights to license Hosted content to this specified market, was payment of money. The revenues earned from licensing were to be split as specified in Schedule B of the CSA. (Id.). iCopyright was required to “pay AP, each

month, a Minimum Fee (“Minimum Fee”) equal to \$15,000 or the total of all the revenue share due AP under the terms of the Agreement, whichever is greater.” (Id. § 2.5).

28. The purpose of the Minimum Fee was to provide AP assurance of some compensation in return for entering into this relationship and for allowing iCopyright to use its AP relationship in its efforts to obtain business from other publishers. At the time we entered into the CSA, both AP and iCopyright recognized that it was impossible to know whether a substantial amount of revenue would be earned from iCopyright’s licensing of our content. iCopyright agreed to assume the risk that the effort would not be successful, and to pay the Minimum Fee regardless of what licensing revenue was actually earned. iCopyright’s promise to pay a Minimum Fee was essential to our agreeing to the CSA; we would not otherwise have entered into this deal.

29. The Minimum Fee was supposed to increase after the thirteenth month of the contract. However, at iCopyright’s insistence, AP agreed in the First Amendment to iCopyright Content Services Agreement, effective as of March 15, 2009 to modify this provision so that the “Minimum Fee owed by iCopyright shall not increase but remain flat at \$15,000 per month.” (Exhibit 5). This amendment shows that when AP and iCopyright agreed to modify a provision of the CSA, they followed the procedures of § 9.9 of the CSA, which states that “This Agreement can be amended only in writing, signed by an authorized representative of each of the parties. . . .”

30. Neither I or anyone else at AP ever waived AP’s right to receive the monthly Minimum Fee on a timely basis. Without that payment, there was no reason for AP to continue its relationship with iCopyright. Mr. Elston’s assertion that I or AP agreed or acquiesced in his oral statement that iCopyright would stop paying the

Minimum Fee is completely false. Moreover, AP never signed any written agreement to this change, which would have been necessary under § 9.9 of the CSA to change the contract's Minimum Fee requirement.

AP FULLY PERFORMED UNDER THE CSA

Technical and Support Performance

31. Mr. Elston's Declaration asserts that AP somehow breached the CSA by non-performance, and that this excuses iCopyright's continued refusal to pay the minimum fee. These assertions are entirely false.

32. Mr. Martin's Declaration shows that AP undertook its support responsibilities under the CSA in a commercially reasonable manner.

33. As iCopyright's business contact, I undertook to make sure that support was provided when iCopyright asked for it. I was not always satisfied how quickly we acted, but understood that AP technical personnel were often stretched between meeting AP's needs and those of our vendors. On some occasions, I expressed sympathy to iCopyright and apologized where I felt we had not immediately addressed technical issues. However, as noted above, Mr. Elston generally agreed that AP was responsive to his concerns.

34. In July 2010, I had a series of communications with Andrew Elston about problems with the links and the AP feed. On or about July 23, 2010, I spoke with him to better understand the problem. At that time, I told him that if iCopyright felt that AP's technical issues constituted a breach of the CSA, then it could send a notice terminating the contract. Mr. Elston assured me that iCopyright did not want to send such a notice or

terminate the contract. Indeed, then and at many later times, Mr. Elston stated that iCopyright wanted the CSA to continue in force. I also later said to Mr. Elston that if he believed the deal was not making money for iCopyright, that iCopyright should terminate. Again, he said that iCopyright did not want to terminate.

Promotion of iCopyright Services

35. Mr. Elston also claims that AP did not comply with the CSA's provisions regarding promotion of iCopyright's services to AP members and subscribers. This is also false. It was in AP's interest to promote those services (in order to earn revenue share in excess of the Minimum Fee) and we took numerous steps to do so.

36. First, we "pre-cleared" existing AP licensees to participate in the iCopyright licensing system. We set up a simple, one-page agreement (which is Schedule D to the CSA). By signing this agreement, the AP licensee or member agreed to have iCopyright activate its services for all the AP news content carried on its website. The agreement specified that "AP prefers that Publisher activate all the iCopyright services AP has deployed on its Hosted News Service . . . in order to maximize revenue" and stated that it preferred the publisher "deploy the Best Practices Implementation . . . form of tags that is recommended by iCopyright to maximize revenue. By bringing publishers into this arrangement, we made it easier for iCopyright to sell its licensing services for the publisher's own content to that publisher.

37. Second, we reached out to the regional AP vice presidents and bureau chiefs. These are the AP managers with direct business contact with AP members and licensees in their geographic region. We explained the iCopyright system and provided them with a Frequently Asked Questions list that would allow them to approach AP

members and licensees to explain the iCopyright system. Similarly, we provided iCopyright with a spreadsheet listing our bureau chiefs so that it could contact them directly. As Mr. Elston has admitted (see accompanying Declaration of Paul Colford and above) it was up to iCopyright, not AP, to handle the selling of iCopyright's services to these AP members and licensees.

38. Third, although we were not required to promote iCopyright's services to any particular AP member or licensee, we did undertake to introduce the iCopyright system to some of AP's important members and licensees, including Google, AOL, Yahoo!, The New York Times, and USA Today. In meetings, e-mails, and telephone conversations with these companies, we spoke highly of iCopyright and encouraged these major publishers to meet with iCopyright representatives to discuss the services iCopyright could provide. Some e-mails showing our efforts to promote iCopyright's services are attached as Exhibit 6.

39. However, as iCopyright has acknowledged, it was entirely iCopyright's responsibility to make sales to these publishers, not AP's. For example, in an e-mail to me of April 2, 2009, Mr. Elston said that "We will continue to push your licensees and newspaper members to implement iCopyright . . . It has been challenging to get the larger web sites and newspaper publishers to deploy iCopyright in a timely fashion, but we have many in the pipeline, notably Gannett, AOL, and Google News." (Exhibit 7).

40. Mr. Elston asserts in his declaration that an AP representative told him not to approach CNN. This was a unique situation. The CNN relationship, at the time, was under review and AP was in confidential discussions with CNN. In fact, CNN later cancelled its subscriptions to AP content and is no longer one of our licensees. We

believed that it would have neither advanced AP's interest nor iCopyright's for iCopyright to contact CNN at that difficult stage.

41. Again, until we told Mr. Elston that AP would have to cancel the CSA for iCopyright's non-payment, neither he nor anyone else at iCopyright ever said to me that AP had breached any promotion obligation under the CSA, much less claim that this was a material breach.

iCOPYRIGHT'S REFUSAL TO PAY AND AP'S TERMINATION OF THE CSA FOR BREACH

42. AP's accounting department invoiced iCopyright on a monthly basis for Minimum Fee due under the CSA, and determined whether iCopyright paid these invoices on a timely basis.

43. On March 25, 2010, Lynette Conard sent an e-mail to Andrew Elston of iCopyright, noting that iCopyright was past due in paying \$40,500.00 to AP. (Exhibit 8).

44. Mr. Elston responded by an e-mail of March 25, 2010. (Id.). He did not claim that AP was in breach of the CSA, or that iCopyright did not owe money to AP, but asked for "an accounting of the amount past due."

45. Ms. Conard provided the requested accounting in another e-mail dated March 25, 2010. (Exhibit 9).

46. iCopyright did not pay as requested and continued not to pay the Monthly Minimum Fee when due.

47. On May 7, 2010, Ms. Conard informed me by e-mail that she had spoken with Mr. Elston, who was "very vague on when payment will be issued." (Exhibit 10). She also said that "Andrew promised to issue payment but again he would not say when."

She advised that she would call back Mr. Elston on May 10 for check information.

48. On June 16, 2010, Ms. Conard sent another e-mail to Mr. Elston, informing him that the past due amount was now \$70,500.00. (Exhibit 11). Mr. Elston did not respond to this e-mail and iCopyright did not pay the amount due.

49. Mr. Elston says in paragraph 9 of his Declaration that due to “AP’s repeated failures to perform,” in May 2010, iCopyright unilaterally decided to pay only the actual revenue share due AP and not the monthly minimum payment. He never informed me of this decision nor of the alleged AP failures to perform. His statement in paragraph 9 that AP “acquiesced in the payment of [AP’s] actual share of revenues (as opposed to the higher minimum payment)” is just as false. AP never agreed to this change in our contract (and any change would have to be agreed to in writing, as specified in CSA § 9.9).

50. Although iCopyright was not making its Minimum Fee payments to AP, it was actively continuing to seek to be a supplier of services to the AP News Registry, as noted in Mr. Martin’s Declaration.

51. On August 2, 2010, Ms. Conard informed me that “Andrew Elston has stopped returning my calls and responding to my emails,” and that she would be sending a suspension letter unless I disagreed. (Exhibit 12). I asked her to hold off for now.

52. However, iCopyright was doing nothing to reduce its arrears, and it became clear that AP would have to act. Responsibility for the past due iCopyright account was transferred to an AP collections manager, Ann-Marie Casale. On October 14, 2010, she sent an e-mail to Mr. Elston, with a copy to me. (Exhibit 13). This

informed Mr. Elston that the amount due and unpaid from iCopyright was now \$130,500. It also informed him that if payment was not received by October 19, 2010, AP would suspend service and the account would be forwarded for further collection or legal review. Concurrently, I made inquiries to AP technical personnel as to what would be involved in removing iCopyright links from the AP Hosted content and how long this would take.

53. It was only after receiving Ms. Casale's e-mail that Mr. Elston contacted me, via an e-mail dated October 19, 2010. (Id.). He did not claim that iCopyright did not owe the money to AP or that AP was in breach, but simply asked me to make sure that service was not suspended to iCopyright.

54. I reflected on the fact that iCopyright had not achieved the revenue goals that it had expected when the CSA was signed and that it did not look like iCopyright would be successful in growing the market or earning significant revenue in the future. I then responded to Mr. Elston by an e-mail of October 19, 2010, stating that "My feeling is that its best to end the current agreement --which wasn't favorable to iCopyright. Do you see a reason for keeping the deal in place?" (Id.).

55. Mr. Elston responded by an e-mail asking that the iCopyright tags be kept in place. He wanted AP to continue iCopyright's licensing services and eliminate its minimum payment obligation. (Id.). Again, he did not say that iCopyright did not owe the past due amounts or that AP was in breach of the contract.

56. I spoke with senior AP management, and responded by e-mail on October 20, 2010. (Id.). I said to Mr. Elston that we hadn't been able to develop a bigger business, and that it would be better to end the relationship and stop accruing the

minimum fee. I said that I did not see any purpose in keeping any aspect of the deal in place.

57. The AP collections manager wanted to suspend service to iCopyright immediately, but I again decided that this should not go forward until we could see whether some payment arrangement could be reached regarding the arrears.

58. On October 21, 2010, Mr. Elston responded by e-mail. (Id.). For the very first time, he asserted that “we stopped paying the fee because AP has not maintained or promoted the tags according to the terms of our agreement.” He asked me to tell the AP collections department that iCopyright does not owe the AP, and that our account was current. I did not do this, because in fact iCopyright did owe the past due amounts to AP.

59. However, in the same e-mail, Mr. Elston also stated that “[w]e don’t want to end the agreement.” He asserted that iCopyright’s services could fit into AP’s enforcement strategies, and cited statements by AP’s president regarding enforcement of intellectual property rights in news and a new rights clearinghouse initiative that would exist independent from AP. He did not assert that this initiative, the existing AP News Registry, or any other AP activity, misappropriated any intellectual property or confidential information of iCopyright.

60. I never said to Mr. Elston that “AP would not be coming after iCopyright for the back payment,” nor that AP had “not upheld [its] part of the agreement,” as he asserts in his Declaration.

61. I again reviewed the situation with AP management and it was agreed that (a) AP would insist on payment of the past due amount and (b) if payment or an

agreement on payment was not promptly forthcoming, the account would be placed into collection and AP would have to terminate for breach. In the interim, the iCopyright account was not placed in collection status. I was told on October 28, 2010 that I had until November 12, 2010 to reach a settlement with iCopyright; otherwise AP would pursue the collection or legal route.

62. Mr. Elston e-mailed Jane Seagrave, the Senior Vice President and Chief Revenue Office of AP, on November 2, 2010. (Exhibit 14). This e-mail was the first time that he asserted that that AP had failed to promote iCopyright services and had not used the most recent iCopyright tag formats, and that this was supposedly the reason why iCopyright stopped paying the minimum due. He again falsely asserted that he had told me about this “suspension” of minimum payments in early 2010; in fact, he did no such thing.

63. I called Mr. Elston on the same day, and told him that there was an absolute deadline of November 12 to reach a settlement, and otherwise the matter would be placed into collection. He raised his claim about the tags and I asked him whether he thought implementing the “preferred format” of these tags would have made a difference in traffic. He did not claim that it would. We also discussed iCopyright’s claim that AP was in breach of the CSA; he reminded me that I had said that if that was their position, they needed to notice termination. iCopyright never gave AP any notice of termination.

64. On November 3, 2010, Ms. Seagrave sent an e-mail to Mr. Elston. (Exhibit 15). This informed him that (a) there was a very substantial amount past due from iCopyright and that AP’s practice was to put such accounts into collection, (b) that Ms. Seagrave was not aware of any breach by AP and that iCopyright had not noticed

termination of the contract for breach, and (c) if iCopyright wanted to make an offer in compromise, it should contact me, setting a deadline of November 12, 2010. Mr. Elston responded on November 9, 2010 (Exhibit 16), with a wholly unacceptable proposal that would have excused iCopyright from paying its arrearages and would have locked AP into a further extension of a contract with iCopyright.

65. As of November 12, 2010, the deadline that I had given to Mr. Elston, it was clear that iCopyright would not pay the money owed to AP, that it would raise fictitious claims that AP was somehow in breach of the CSA if we insisted on our contract right to be paid, and that there was no basis on which any commercially reasonable compromise could be reached.

66. Accordingly, on November 15, 2010, I sent an e-mail to Mr. Elston, terminating the contract as of that date because of iCopyright's continuing failure to pay the amounts due AP under the CSA. (Exhibit 17). As this notice of termination for breach was not a notice required to be given under the terms of the CSA, the notice was sent as an e-mail rather than using the procedures set forth in the CSA for contractual notices.

67. I then instructed AP's personnel to (a) begin removing the iCopyright tags from the AP Hosted service as soon as possible, (b) terminate iCopyright's access to AP Hosted content on AP's servers, and (c) place the iCopyright account in collection. My understanding is that the service was suspended immediately, and that removal of the tags took a number of days, but was complete before the complaint and application for a temporary restraining order in this case was filed.

iCOPYRIGHT'S CLAIMS OF HARM

68. I have read Mr. Elston's statements that "in his opinion," AP's termination of the CSA will cause publishers that have signed agreements with iCopyright to remove iCopyright's tags from AP content or those publishers' own content. To my understanding, this is false. iCopyright has separate agreements with these publishers, and has whatever rights exist under those agreements. I know of no reason why those publishers, having signed agreements with iCopyright, would break those agreements. And AP has no intention of intervening with any publishers with whom iCopyright has a contractual relationship.

69. AP's problem with iCopyright involves one thing only: iCopyright promised to pay AP for the right to sell licenses for AP content, and did not make the promised payments.

70. Mr. Elston suggests that somehow the AP relationship is financially vital to iCopyright. The truth is that licensing revenues from the AP relationship are not essential to iCopyright's continuing in business. On November 8, 2010, iCopyright provided us with an invoice for the revenues earned from licensing AP content in October 2010. (Exhibit 18). The total amount earned from all of iCopyright's AP content licensing in that month was \$405.00, of which AP's 80% share (assuming that the Minimum Fee did not apply) would be \$324.00. iCopyright also provided us with a summary of the total revenue that would be due to AP for licensing in April-October 2010, were the Minimum Fee not in effect: it amounted to \$1,190.12. (Exhibit 19). Thus, the revenues iCopyright has earned from the AP relationship cannot possibly be significant to its business.

71. Moreover, iCopyright's own promotional materials emphasize that they have many other publishing clients. (Exhibit 20). These materials do not claim that AP is vital to iCopyright's business, nor even that AP is iCopyright's most important customer.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December ^{3rd} , 2010.


BRUCE GLOVER