

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DOCUMENT  
ELECTRONICALLY FILED  
DOC #: 12/7/10  
DATE FILED:  
Civil Action No. 10CV8860 (GAS)

iCOPYRIGHT, INC.,

Plaintiff,

-against-

THE ASSOCIATED PRESS and  
PRESS ASSOCIATION, INC.,

Defendants.

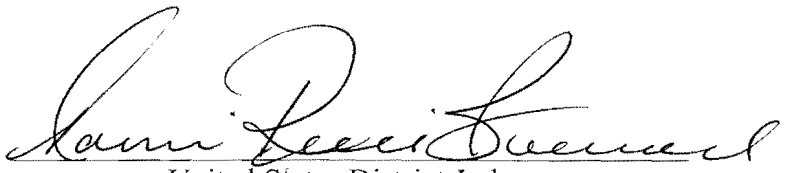
**ORDER TO SHOW CAUSE  
FOR PRELIMINARY  
INJUNCTION AND  
TEMPORARY  
RESTRAINING ORDER**

Upon the Declaration of Andrew S. Elston in Support of Plaintiff iCopyright, Inc.'s ("iCopyright") Motion for Preliminary Injunction and Temporary Restraining Order (the "Injunction Motion") dated November 22, 2010, the memorandum of law in support of iCopyright's Injunction Motion dated November 23, 2010, and upon the accompanying complaint, and all other papers submitted by iCopyright, Inc., it is

ORDERED, that the defendants The Associated Press and Press Association, Inc. ("Defendants") show cause before the Hon. NAOMI REICE <sup>BUCHWALD</sup>, at Room 214, United States Courthouse, 500 Pearl Street, in the City, County and State of New York, on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon thereof, or as soon thereafter as counsel may be heard, why an order should not be issued pursuant to Rule 65 of the Federal Rules of Civil Procedure requiring Defendants during the pendency of this action to restore all rights to iCopyright and to fulfill its obligations under the iCopyright Content Services Agreement (the "CSA") and to restore the status quo that existed under the CSA between iCopyright and the Defendants' prior to Defendants' purported termination on November 15, 2010 of the CSA; and it is further

ORDERED that, sufficient reason having been shown therefor, pending the hearing of Plaintiff's application for a preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, Defendants are required to restore all rights to iCopyright and to fulfill all of Defendants' obligations and to restore the status quo that existed under the CSA between iCopyright and the Defendants prior to Defendants' purported termination of the CSA on November 15, 2010; and it is further

ORDERED that personal service of a copy of this order and annexed affidavit upon the Defendants or their counsel on or before 6.00 o'clock in the after noon, November 23, 2010, shall be deemed good and sufficient service thereof.

  
United States District Judge  
12/7/10 H

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ICOPYRIGHT, INC.,

**Plaintiff**

v.

THE ASSOCIATED PRESS;  
PRESS ASSOCIATION, INC.

**Defendants**

CIVIL ACTION NO. \_\_\_\_\_

**DECLARATION OF  
ANDREW S. ELSTON**

I, Andrew S. Elston, declare as follows:

1. I am currently Chief Executive Officer of iCopyright, Inc. ("iCopyright").
2. I have been at iCopyright since September 2006 and have served in my current position for approximately nine months. My current responsibilities include, among other things, management of iCopyright's business operations and the development and implementation of its business plans. From September 2006 to February 2010 my position was Vice President, Publisher Services, and my responsibilities included selling to and supporting publishers.
3. The Press Association, Inc., a wholly owned subsidiary of The Associated Press (collectively, "AP") entered into an iCopyright Content Services Agreement (the "CSA"), effective April 15, 2008, with iCopyright. On behalf of iCopyright, I took part in the negotiation and implementation of the CSA. I also played a significant role in maintaining the business relationship arising out of the CSA. As a result, I have had considerable contact with AP representatives concerning the CSA.

4. AP expressed to iCopyright that it entered into the CSA partly because iCopyright's services raise awareness of copyright protections and provide a legal and practical way to reuse and republish copyrighted content. iCopyright saw the CSA as a good way to promote its business, as well as to generate revenue, due to the increased exposure of AP's content.

5. In my opinion and as acknowledged by AP representatives, subsequent to the CSA's effective date, AP did not fully perform its obligations under the CSA. Indeed, AP's own representatives expressed their dissatisfaction with the way in which AP was implementing iCopyright's services on several occasions. For example, Bruce Glover, Deputy Director of Business Development of AP, sent me an email on July 16, 2008 stating that it was "unacceptable" that iCopyright's links were not working properly.

6. AP representatives admitted other problematic conduct. In an email to me on September 11, 2008, AP's director of media relations Paul Colford provided me with a preview of a paragraph he posted as a comment to a paidContent.org story regarding the relationship between iCopyright and AP. In this post, AP publicly declared that it "had not promoted the [iCopyright] service[s]." Even more damaging to iCopyright, AP representative David Gwizdowski made several statements admonishing iCopyright for having discussions about its service with AP customers. On August 19, 2008, Mr. Gwizdowski left me a voicemail stating there have to be "two commas in revenue" before he would recommend iCopyright. In an email dated October 3, 2008, he demanded that iCopyright not contact CNN (an AP member) "until further notice." Later in October 2008, he also informed me to stay away from his (AP's) clients.

7. On several occasions, AP representatives have acknowledged that AP has not upheld their part of the CSA, including an email I received from Mr. Glover on July 22, 2010 in which he stated that he believes AP is "contractually obligated" to fix AP's feed problems. On July 28, 2010, Jay Tuten, an AP employee responsible since April 2008 for ensuring the iCopyright tags are correctly displayed on AP's website, attempted to defend AP's lack of compliance with a pivotal aspect of the CSA by writing in an email to me, "please send me a copy of the agreement as I don't recall there being specific design requirements included."

8. iCopyright did not terminate the CSA in part because of AP's importance as a distributor of news content. iCopyright performed its duties under the CSA by, among other things, processing and fulfilling requests for services, continuing to provide services for the contracted term, using AP's logos, design, layouts, and other graphical elements in accordance with AP's Brand Guidelines, and taking reasonable measures to protect AP's confidential information. iCopyright additionally was paying AP under the contract until AP's repeated and persistent failures ultimately led the parties to revisit the section of the CSA concerning payments by iCopyright.

9. Due to AP's repeated failures to perform, iCopyright decided in May 2010 that it would begin to pay only based upon the actual revenue share due AP under the revenue sharing arrangement in the CSA.

10. AP repeatedly acknowledged its breaches and acquiesced in the payment of its actual share of revenues (as opposed to the higher minimum payment). Indeed, on October 22, 2010, Bruce Glover of AP stated in a telephone conversation with me that AP would not be coming after iCopyright for the back payment nor would AP turn off the tags. Mr. Glover stated

that he had discussed the issue with Sue Cross, his superior at AP, and she "agreed to continue with the status quo," because AP had "not upheld their part of the agreement."

11. Since at least March 26, 2010, AP has been actively working to develop a product (called "The Registry") that appears to have many of the same functions and services as those provided by iCopyright.

12. I believe that AP's repeated failures under the contract were an attempt to induce iCopyright to terminate the CSA and to replace iCopyright's services with those of The Registry. Further, I believe that AP has used, or intends to use, iCopyright's confidential and proprietary information in order to develop The Registry.

13. Prior to AP's purported termination of the CSA, iCopyright provided AP with access to iCopyright's highly confidential and proprietary information, including revenue projections, business plans, and intellectual property. The information provided to AP is carefully safeguarded by iCopyright and is not made accessible to the public or to competitors.

14. On September 14, 2010, Mr. Glover forwarded me an email exchange between himself and Srinandan Kasi (an AP employee believed to be leading the development of The Registry). In this email exchange, Mr. Glover informed Mr. Kasi that I had requested clarification about The Registry, to which Mr. Kasi responded: "Thanks. Will explain tomorrow." The next day, Mr. Glover informed me that though he had had meetings with Mr. Kasi that day, he had no "explanation" he could share with me. In the following days I left numerous phone messages for Mr. Kasi but received no response.

15. On October 19, 2010, Mr. Glover sent me an email stating that "it is best to end the current agreement." The following day, Mr. Glover sent another email reaffirming this statement and stated that "[t]ransacting rights for secondary use of AP stories published on the

web doesn't seem to be an area where we're focused on at this point." Yet that same week Tom Curley, CEO of AP, made a highly publicized speech in which he said "For nearly a decade, the content our industry has created has been losing value on the Internet. That's due mostly to two things. First, the common practice of leaving content exposed on the Web to scraping, copying, pasting and aggregating has led to the creation of secondary markets for our content that have siphoned away considerable value...Just this past week, the Board of Directors of the Associated Press authorized management to pursue initiatives in both areas. Today, we are announcing our intent to create an independent rights clearinghouse for news publishers to manage the distribution and use of their content beyond their own Web properties."

16. On November 15, 2010, I received an email from Mr. Glover that stated: "the AP must terminate the agreement today."

17. On November 20, 2010, AP's counsel stated they would not discuss the matter further prior to November 29, 2010.

18. Recently AP has taken dramatic steps that are significantly harming iCopyright. These actions are threatening iCopyright's long term viability.

19. Specifically, on or about November 15, 2010, AP prohibited iCopyright from accessing AP's content servers. Without access to these servers, iCopyright's tools and services cannot function properly. While the access to AP's servers is blocked, iCopyright cannot fulfill user requests properly, causing a negative user and publisher experience. Prior to AP's purported termination, there were many millions of views of iCopyright tags per month. On November 18, 2010, through counsel, iCopyright notified AP that access to its content be restored. Rather than restore access, AP removed iCopyright's tags from its new content.

20. In my opinion, AP's action will cause publishers that have agreed to use iCopyright's tags and tools for AP generated content to cease using iCopyright's platform for that content. In short, as AP removes iCopyright's tags on AP Hosted, each of the AP members that have signed a copy of Schedule D to the CSA will also remove iCopyright's tags from AP content on those publishers' websites.

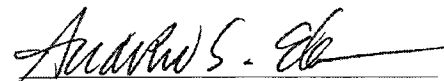
21. In my opinion, AP's action will cause reactions harmful to iCopyright by customers of iCopyright that are also AP members. iCopyright has agreements with several AP members to provide services relating to content those members produce. As these AP members learn that they can no longer use iCopyright services for the AP content on their sites, they are likely to stop using iCopyright for their own content, whether to maintain a consistent presentation or out of concern about iCopyright's ability to meet its financial obligations in light of AP's claims.

22. In my opinion, iCopyright's reputation is, and will continue to be, harmed as a result of AP's purported termination of the CSA and refusal to permit iCopyright the interconnections it is due under the CSA.

23. iCopyright has placed the amount that AP contends is due to AP under the CSA in an escrow account.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 22, 2010  
Seattle, Washington

  
Andrew S. Elston

*No prior application has been made seeking this relief.*

