

A. Copyright's May 2009 Meeting with AP

4. In his Declaration, Todd Martin, AP Vice President and Chief Technology Officer, states that at a May 2009 meeting, iCopyright provided a “non-confidential” presentation and that “[n]either at this meeting, nor at any other time, did iCopyright provide AP with any technology, software, or other confidential information concerning Discovery, or any other iCopyright system that could potentially be useful to the News Registry. All the information . . . was at a high level of generality and was publicly disclosed by iCopyright[.]” Martin Decl. ¶ 26. Mr. Martin’s statements regarding iCopyright’s disclosures during the May 2009 meeting and the meeting’s “non-confidential” nature are false.

5. I attended the May 2009 meeting between iCopyright and AP.

6. I do not recall ever meeting Mr. Martin nor do I recall him attending the May 2009 meeting.

7. The primary purpose of the May 2009 meeting was to again urge AP to effectively implement the terms of the CSA and to execute a full and correct deployment and promotion of iCopyright’s services, including updating iCopyright’s tags, so the full revenue potential could be realized for both parties.

8. At the outset of the meeting, one of the AP attendees stated that AP was in the process of reviewing non-confidential ideas from potential vendors. I explained that iCopyright was an existing AP partner with a confidentiality agreement that already covered what we were about to discuss, and that the purpose of the meeting was to explain how AP could more effectively implement the existing contract. The meeting then proceeded forward on the basis of confidentiality.

9. The May 2009 meeting focused on a spreadsheet that outlined how the AP could increase its annual revenue through a full and correct deployment of iCopyright’s suite of tools.

This spreadsheet was expressly marked “CONFIDENTIAL Intellectual property of iCopyright” so there can be no doubt that the information disclosed to AP was confidential. Mr. Martin’s statements to the contrary are false.

10. Bruce Glover’s statements that the CSA only concerned “small, one-off licensing requests” is false and misleading. Glover Decl. ¶ 5.a. The confidential document presented to AP by iCopyright in May 2009 revealed that AP had the potential to realize \$290 million in new annual revenue by correctly implementing our contract. Indeed, fully implementing the iCopyright clearinghouse for AP content represented a 39% increase of AP’s then-current revenue and more than a 1,000% increase in Net Income. As a result, the AP representatives at the May 2009 meeting appeared to become very interested in the confidential document and the potential presented by iCopyright and the CSA.

B. AP’s News Registry

11. Mr. Martin’s statement that in launching the AP’s Registry, AP representatives evaluated “what was publicly known of the iCopyright system and determined that it was not suitable for AP’s purposes” is incorrect. Martin Decl. ¶ 27.

12. First, to the extent Mr. Martin claims AP only evaluated “publicly known” material, he is wrong. As described above, AP was in possession of and did evaluate iCopyright’s confidential information – information not “publicly known” – concerning the iCopyright system and its use on AP content.

13. Moreover, Mr. Martin’s statement that AP determined iCopyright was not suitable for AP’s purpose is directly contrary to statements made to me by AP and its agents.

14. On June 5, 2009, I received a telephone call from Tom Kohn, a consultant hired by AP to advise it on Internet copyright issues. Mr. Kohn stated that after his extensive analysis

he was in favor of iCopyright's plan, despite the fact that he was using more conservative inputs in his revenue calculations than iCopyright would have used.

15. On June 15, 2009, Andrew Elston reported to me (and others at iCopyright) that he had participated in a telephone call with Srinandan Kasi, AP's General Counsel and head of Business Development, and Bruce Glover, AP Deputy Director of Business Development. He was told that iCopyright came across strong in Tom Kohn's report and that Tom Curley, AP's CEO, made the institution of Internet copyright technology a top priority. Mr. Kasi said he would be designating Riyad Omar as the key AP contact for iCopyright's involvement with the Registry going forward. Although Mr. Glover stated that AP was evaluating the "buy-build-partner equation," he stated no other company had all the components AP needed. Mr. Elston reported: "Bruce says it seems apparent internally that iCopyright has made a very compelling case. AP does not have the capabilities internally to build what we have already built. There may be some perception that iCopyright changed the nature of what AP thought it was trying to do before we made our pitch."

16. On August 12, 2009, Mr. Elston circulated an internal email summarizing a discussion with Mr. Omar, who was in charge of the News Registry project: "He did say they are planning on building in the iCopyright tags and supporting the plan to push this to members."

17. On August 14, 2009, Mr. Elston circulated an internal email summarizing another discussion with Mr. Omar. Among other things, Mr. Omar assured iCopyright that it was the only end-user rights licensing application AP was considering, that AP planned to include iCopyright in its new platforms, that AP was not building something to replace iCopyright, that AP would honor the CSA, that the Registry would make it easy for publishers to tag their own content as well as AP content, and that they have a "commercial desire to work together on providing the service to 3rd parties.". *See* Exhibit 1.

18. On August 19, 2009, Mr. Omar again confirmed that iCopyright would be part of AP's launch of its new platform. Mr. Omar also stated that AP was not used to making bold moves quickly, and that AP's culture is more accustomed to lumbering along without a proactive plan. Mr. Omar stated that he admired iCopyright's ability to react quickly. *See Exhibit 2.*

19. On December 10, 2009, Mr. Glover stated to Lary Stromfeld, a member of iCopyright's board, that AP's project was moving along and the features involving iCopyright would be the next stage.

20. In 2010, however, Mr. Omar's responsibilities changed at AP.

21. Statements by AP's representatives that iCopyright would be included in the News Registry, thereby extending its tags to all AP members and licensees, forestalled iCopyright from filing this action in 2009. Only after November 18, 2010, when AP cut off iCopyright's access and announced a competing clearinghouse in violation of AP's obligation to promote the iCopyright clearinghouse did iCopyright reluctantly conclude legal action was necessary.

C. AP's Failure to Deploy iCopyright's Proper Tags Were Not "Minor Issues"

22. Copyright's business plan is dependent upon promoting uniform tags (our "Best Practices Implementation") that are properly and widely deployed by iCopyright's business partners, such as the AP and its members. This was a key purpose in upgrading the AP – iCopyright relationship in April 2008. AP agreed to display iCopyright's "best practices implementation" tags and promote them to its members and licensees in exchange for a minimum revenue guarantee.

23. iCopyright's goal is ubiquity of these buttons across the internet – much like Facebook and Twitter buttons. We want these buttons to be instantly recognizable by everyone, and to become the universally accepted method of monetizing the reuse of content on the

Internet. Wide recognition of these buttons, combined with a robust suite of underlying services to protect, promote, and monetize content, is a multi-billion dollar concept because it solves the most important challenge confronting every digital publisher today. The AP agreement has always been the crux of that plan to achieve ubiquity.

24. As Mr. Martin acknowledges, among other things, AP was required to place iCopyright tags on the content distributed by AP on two sets of AP computer servers: Hosted 1 (hosted.ap.org) and Hosted 2 (hosted2.ap.org). Martin Decl. ¶ 8-9.

25. AP failed to properly affix and maintain the tags in the “best practices” format. In fact, AP failed to deploy either the format that was “best practices” as of the date the CSA was executed or the new “best practices” format.

26. For example, on July 29, 2009, iCopyright, pursuant to the CSA, requested that the latest “best practices” tags be deployed on AP’s content. This process of implementing iCopyright’s tags generally takes approximately five minutes to two hours for correct and full deployment.

27. Although AP agreed in that meeting to deploy the updated tags, AP failed to deploy *any* of the updated tags on content located on the Hosted 2 server. Unlike the “best practices” tags, the tags deployed by AP on Hosted 2 did not appropriately deploy the iCopyright logo, negating any branding and promotion benefit to iCopyright under the CSA and essentially coopting most of the buttons as AP services.

28. Additionally, because the tag format was non-standard, they did not contribute to iCopyright’s goal of building user familiarity with the services, so as to increase click-through rates.

29. Additionally, AP’s failure to deploy the most up-to-date tags prevented end users from using iCopyright’s latest technological tools.

30. Additionally, AP deleted the critically important “Post” button, which makes our suite of services for republishing articles on other websites easily accessible to readers.

31. Further, near the bottom of every article on Hosted 2, AP published the statement “[t]his material may not be published, broadcast, rewritten or redistributed” directly above the altered iCopyright’s tags. This statement is directly contrary to the purpose of the iCopyright tags and the contract. This undoubtedly confused end users and discouraged the use of the altered tags.

32. To add to the confusion, the AP’s display of the “share” icon next to the tags further confuses end users. The “share” icon allows an end user to distribute content on an unmonetized basis whereas iCopyright’s tags promote the distribution of content on a monetized basis. Our “best practices” format is designed to minimize user confusion between these options. AP ignored iCopyright’s requests to fix all these problems.

33. Mr. Martin dismisses these issues by stating: “There were also minor issues raised about where the iCopyright link should appear on the Hosted 2 content, and whether the appearance of the tag on Hosted 2 content was in precisely the form desired by iCopyright.” (Martin Decl. ¶ 14),

34. In addition to AP’s failure to properly update and service iCopyright’s tags on Hosted 2, AP failed to update any of iCopyright’s tags on Hosted 1. AP refused to deploy the “best practices” tags and maintained iCopyright’s prior outdated tags.

35. Despite iCopyright’s repeated requests to deploy the correct tags, at no point from July 29, 2009 until AP unilaterally (and inappropriately) terminated the CSA on November 15, 2010, did AP fix the iCopyright’s tags on either Hosted 1 or Hosted 2. Contrary to Mr. Martin’s declaration (Martin Decl. ¶ 15), AP did not fix the problem.

36. In fact, despite repeated prior assurances that it would update the tags, on May 6, 2010, Jay Tuten, AP Manager of Platform Development, in an email to Mr. Elston refused to correct the tags. *See* Exhibit 3. This was a reversal from prior statements by Mr. Tuten and his colleagues that AP would redeploy the tags.

37. With this as a backdrop, Mr. Elston informed Mr. Glover that iCopyright would not make further minimum payments until the tags were properly deployed, and Mr. Glover acknowledged this was due to AP's failure to perform its obligations under the CSA.

38. On July 28, 2010 Mr. Tuten wrote: "Please send me a copy of the agreement as I don't recall there being specific design requirements included." *See* Exhibit 4. No fixes were ever forthcoming.

39. Rather than a showcase for iCopyright's suite of tools and products, AP's deployment of iCopyright's tags became an example of how content providers should *not* implement the tags. AP's continued and long-standing failures to deploy the tags correctly was not "minor" as Mr. Martin asserts, but rather contradicts a key motivation for iCopyright agreeing to pay a minimum guarantee.

D. AP Underestimates the Impact of its Failure to Institute the Tags Properly

40. In his Declaration, Mr. Martin vastly misstates the amount of "internet user traffic" or page views handled between the Hosted 1 and Hosted 2 servers in an effort to minimize the impact of AP's failure to deploy the "best practices" format on Hosted 2.¹

41. Mr. Martin admits that as early as December 2008 AP encountered technical problems causing broken links to iCopyright's products and disallowing users from purchasing

¹ Although Mr. Martin does not define the term "internet user traffic," Mr. Martin's use of the term appears to refer to page views. Martin Decl. ¶ 11.

licenses because AP content was not properly transmitted to iCopyright’s servers. Martin Decl. ¶ 12. However, Mr. Martin falsely minimizes the effects AP’s technical problems and, more important, incorrect formatting had on the total number of pages views with iCopyright’s tags.

42. Mr. Martin declares that “[f]rom December 2008 until the CSA was terminated in November 2010, the maximum traffic served by the Hosted 2 system at any given time was no more than about 10% of the total AP Hosted traffic (that is, Hosted 1 served 90% or more of the traffic).” Martin Decl. ¶ 11. As a result, it is Mr. Martin’s contention that because Hosted 2 carried only 10% of the traffic, AP’s technical problem and unauthorized tag format only affected a small percentage of user traffic to the AP Hosted System. Martin Decl. ¶¶ 13, 14. Mr. Martin’s contentions pertaining to “internet traffic” or page views conflict with copious evidence.

43. Based on iCopyright’s own tracking tools, independent web sources, and statements made by AP representatives, the traffic to Hosted 2 was far greater than 10%.

44. iCopyright maintained a page view counter on the Hosted 1 website which showed the following information:

| Three Month Period | Hosted 1 Tagged Page Views |
|----------------------------------|-----------------------------------|
| May 2008 through July 2008 | 48.2 Million |
| May 2009 through July 2009 | 34.3 Million |
| May 2010 through July 2010 | 25.0 Million |
| August 2010 through October 2010 | 21.2 Million |

45. AP failed to deploy a page counter on the Hosted 2 server which would have provided a count of the number of articles affected by AP’s breach. However, the Hosted 1 page view counter indicates that there was a 56% decline of page views on Hosted 1 between the first

three months under the CSA and the three months leading up to the AP's purported termination of the CSA.

46. Based on AP's representations, iCopyright understood the decline in Hosted 1 page views to be a result of AP's migration of user traffic from the Hosted 1 server to the Hosted 2 server. Mr. Tuten reiterated AP's plan to migrate all of the content on Hosted 1 to Hosted 2 as late as August 2010.

47. This migration from Hosted 1 to Hosted 2 is further corroborated by comparing the number of clicks on both iCopyright's Hosted 1 and Hosted 2 tags and the number of page views on Hosted 1:

| Three Month Period | Hosted 1 Tagged Page Views | Hosted 1 & Hosted 2 iCopyright Tag Clicks |
|----------------------------------|-----------------------------------|--|
| May 2008 through July 2008 | 48.2 Million | 394,739 |
| May 2009 through July 2009 | 34.3 Million | 390,602 |
| May 2010 through July 2010 | 25.0 Million | 622,234 |
| August 2010 through October 2010 | 21.2 Million | 452,955 |

As this chart indicates, while page views on Hosted 1 *declined*, tag clicks on Hosted 1 and Hosted 2 combined *increased*, indicating that AP indeed migrated far more than 10% of the content to the Hosted 2 server.

48. Additionally, an independent source, Compete.com, which tracks online consumer behavior through page views, confirms that from October 2009 to March 2010 the internet viewing traffic on Hosted 2 had considerable growth, and from April 2010 to October 2010 the number of page views were almost equal to the number of page views on Hosted 1 and at times *surpassed* the number of pages views on Hosted 1. *See* Exhibit 5.

49. Accordingly, Hosted 2 carried far more than 10% of the “overall Internet user traffic to the entire AP hosted system” as Mr. Martin contends and the refusal to deploy the “best practices” format of tags there was a breach which iCopyright could not be expected to tolerate. Martin Decl. ¶ 13. Thus Mr. Martin’s admissions that AP “encountered technical problems” (Martin Decl. ¶ 12) and “issues raised about where the iCopyright link should appear on the Hosted 2 content, and whether the appearance of the tag on Hosted 2 content was in precisely the form desired by iCopyright,” *see* Martin Decl. ¶ 14, affected far more of the content viewed on to AP’s hosted servers than Mr. Martin testified in his Declaration.

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

Executed: December 7, 2010
Chappaqua, New York


Daniel Sauerhaft