

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CHARLES HARRIS**, as an individual and )  
**UNIQUE PRODUCTS AND SERVICES**, a )  
Pennsylvania Corporation )

Plaintiffs, )

v. )

No.: 2:10-cv-05655-JD

Judge: Jan E. DuBois

**OPRAH WINFREY**, as an individual, and )  
**THE OPRAH WINFREY SHOW d/b/a** )  
**HARPO PRODUCTIONS INC.**, an Illinois )  
Corporation. )

Defendants. )

**DEFENDANTS’ MEMORANDUM OF LAW  
IN SUPPORT OF THEIR MOTION TO DISMISS**

Defendants Oprah Winfrey, as an individual, and The Oprah Winfrey Show d/b/a Harpo Productions Inc. (hereafter “Harpo”) file this Memorandum of Law in support of their Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

**I. INTRODUCTION**

Oprah Winfrey, perhaps, needs no introduction, but she has, as Plaintiffs allege, a “television show, the ‘Oprah Winfrey Show.’” (“TOWS”). Complaint ¶ 14. In early 2009 TOWS dedicated a program to Oprah’s “Search For The World’s Smartest and Talented Kids.” During that broadcast, Ms. Winfrey introduced “a first-grade whiz kid who knows more about American presidents than many adults . . . six-year-old Graham.”<sup>1</sup>

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<sup>1</sup> See Exhibit 1 at p. 9. A transcript of TOWS in question is attached as Exhibit 1 which the Court may consider even in the context of a Rule 12(b)(6) motion. *Buck v. Hampton Township School Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) (“In evaluating a motion to dismiss, we (continued...)”)

Plaintiff Harris alleges that “to his shock and dismay” Oprah asked little Graham “the exact same questions” that were included in his copyrighted booklet “How America Elects Her Presidents.” Complaint ¶ 19. A review of the TOWS transcript though shows that Oprah’s questions were: “Which one of our presidents weighed the most?” and “What did he weigh?” Graham answered William Howard Taft and 327 pounds. Exh. 1 at p. 10. The copyrighted work on the other hand does not ask any questions about Presidents (much less the same exact ones) but does show a picture of President Taft and next to it the following: “12. Heaviest President William H. Taft 354 pounds. - (1909-1913).” *See* Doc. No. 1-7 at p. 1.

Plaintiffs claim copyright infringement, conversion, unjust enrichment, and quantum meruit which are all based on Defendants’ alleged use of the material about President Taft, i.e., historical facts that are not original to Plaintiffs or subject to copyright protection. In their demand letter (attached to the Complaint as Exhibit 8) Plaintiffs value their claim at \$100,000,000 and state “the demand is non-negotiable and is very reasonable . . . .” Doc. No. 1-4 at p. 5.

The Defendants move to dismiss the Complaint with prejudice because it does not assert plausible claims and, even if it does, the Copyright Act does not protect the expressions at issue here, and the other claims are preempted. Defendants also seek their attorneys fees and costs under 17 U.S.C. § 505 because such an award is justified under the circumstances of this case.<sup>2</sup>

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may consider . . . any matters incorporated by reference or integral to the claim.”). The February 6, 2009 TOWS transcript is readily available to the public online through the TOWS website for purchase for \$29.95.

<sup>2</sup> On November 15, 2010, Defendants also put the Plaintiffs and their lawyers on notice under Rule 11 that the Complaint is frivolous, harassing, and further that they failed to make  
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## II. BACKGROUND FACTS

According to Plaintiffs, 10 copies of Mr. Harris's booklet "How America Elects Her Presidents," (hereafter the "Booklet") were shipped and delivered to the Oprah Winfrey Show in Chicago in January, 2008. Complaint ¶¶ 15-16. Also according to the Complaint, when Mr. Harris later contacted Harpo and spoke with a "Mr. Carlton," he was told that "neither the Oprah Winfrey show nor HARPO accepted any calls or packages at any time" and further that, "no packages or deliveries were ever accepted from Unique Products and Services." *Id.* at ¶ 17.

The Complaint goes on to allege that, on February 16, 2009, Mr. Harris "saw Ms. Winfrey reading out to the studio and viewing audiences several of the exact same questions that are included in his [Booklet] . . . verbatim . . . ." *Id.* at ¶ 19. According to Plaintiffs, "the language and the structure of the questions were exactly the same to [sic] material copyrighted in Mr. Harris's booklet." *Id.* at ¶ 20. Plaintiffs attach a "non-negotiable" and "very reasonable" demand letter valuing their claim at \$100,000,000." Doc. No. 1-3 pp. 6-8 and Doc. No. 1-4 pp. 1-5. The demand letter attaches as exhibits 8, 9 and 10 purported specimens of the Booklet containing historical facts regarding past Presidents. *See* Doc. No. 1-6 at p.7, 1-7 at pp. 1 and 3.

On the basis of these facts, Plaintiffs' Complaint alleges: (Count I) Defendants infringed their copyright in violation of 17 U.S.C. §§ 101 et seq.; (Count II) Defendants tortiously converted the contents of the copyrighted work; (Count III) Defendants were unjustly enriched by their use and retention of Plaintiffs' copyrighted work; and (Count IV) Plaintiffs are entitled

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reasonable inquiry into the law and the facts. However, that motion is not yet ripe for the Court's consideration.

to recover under quantum meruit for Defendants' use of Mr. Harris's copyrighted work without compensation.

### **III. ARGUMENT AND AUTHORITIES**

#### **A. The Motion to Dismiss Standard of Rule 12(b)(6)**

Rule 12(b)(6) seeks to promote judicial economy by eliminating unwarranted discovery and fact finding. *United States of America ex rel. Repko v. Guthrie Clinic, P.C.*, 557 F. Supp. 2d 522, 525 (M.D. Pa. 2008). Only a complaint that states a plausible claim for relief may survive a motion to dismiss. *McTernan v. City of York, Pa.*, 577 F.3d 521, 530 (3d Cir. 2009). Recently in *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (U.S. 2009), the Supreme Court elaborated on its holding in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and stated:

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'

*Ashcroft*, 129 S. Ct. at 1949 (internal citations omitted).

#### **B. The Fact That President Taft Was The Heaviest President Is Not Subject to Copyright Protection.**

Determining whether a complaint states a plausible claim for relief is a context specific task that requires the court to draw on its judicial experience and common sense. *McTernan*, 577 F.3d at 530. That the Complaint lacks "facial plausibility" because it seeks relief due to Ms. Winfrey's question about President Taft is clear. To establish copyright infringement, the

plaintiff must show (1) ownership of a valid copyright,<sup>3</sup> and (2) copying of constituent elements of the work that are original. *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).

Here, Plaintiffs' legal position, that the Defendants committed various torts by allegedly asking questions such as "Who was the heaviest President?"<sup>4</sup> is utterly untenable in light of well-settled Supreme Court precedent and statutory exceptions to the copyright owner's rights. *See* Complaint; 17 U.S.C. §§ 107-118 (2006). After all, "[n]ot all copying ... is copyright infringement." *Kay Berry, Inc. v. Taylor Gifts, Inc.*, 421 F.3d 199, 208 (3d Cir. 2005) (quoting *Feist Publ'ns*, 499 U.S. at 361). Rather, to be actionable, the alleged copying must amount to unlawful appropriation of protectable material. *Id.*; *Douglas v. Osteen*, 560 F. Supp. 2d 362, 367 (E.D. Pa. 2008). Protectable material includes only the original elements of the plaintiff's work, not expressions of ideas, the ideas themselves, or matters in the public domain. *Douglas*, 560 F. Supp. 2d at 362. For example, "historical facts ... [are] not *per se* copyrightable" nor is information in the public domain. *See Harper & Row, Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 545, 556 (1985). Moreover, even assuming arguendo, without admitting, that Defendants copied some of Plaintiffs' questions verbatim as they allege, a copyright owner's

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<sup>3</sup> In addition to its other failings, the Complaint fails to plead any facts whatsoever to support Plaintiff Unique Products and Service's alleged standing to bring these claims. Only Mr. Harris's name appears on the Copyright Registration form attached as Exhibit 1 to the Complaint Doc. No. 1-1 at p. 6. Only owners and beneficial owners of copyrights are entitled to bring an action under the Copyright Act. 17 U.S.C. § 501(b). The statement that "Mr. Harris has been corporately selling 'How America Elects Her Presidents' through his company Unique Products and Services" does not allege its ownership or beneficial interest in the copyrighted work. Consequently, Plaintiff Unique Products and Services does not appear to have standing to bring this action and it should be dismissed.

<sup>4</sup> *See* Doc. No. 1-3 at p. 8. The demand letter also claims that Oprah asked, "A person must live in the U.S. how long before they become President?" and "The only President who never went to school?" but the TOWS transcript does not support this. In any event, these questions are not actionable either.

rights are subject to the traditional privilege of others to make “fair use” of an earlier writer’s work. *See id.* at 548. Indeed, fair use has traditionally been defined as “a privilege in others than the owner of the copyright to use the copyrighted material in a reasonable manner without his consent.” *Id.* at 549.

Aside from the concept of fair use, as the Supreme Court stated in *Feist*, 499 U.S. at 344-45, “[t]hat there can be no valid copyright in facts is universally understood. The most fundamental axiom of copyright law is that ‘no author may copyright his idea or the facts he narrates.’” In *Feist*, a telephone utility company brought a copyright infringement action against a publisher of an area-wide telephone directory for the publisher’s use of the utility’s white pages. At issue was whether the plaintiff utility company could prove whether the defendant copied constituent elements of the work that were original. The Court, in holding there was no infringement, reiterated the well known proposition that “facts are not copyrightable.” *Id.* at 344-45. In addressing the “originality” element of copyright infringement, the Court stated:

The question is whether Rural has proved the second element. In other words, did *Feist*, by taking 1,309 names, towns, and telephone numbers from Rural’s white pages, copy anything that was ‘original’ to Rural? Certainly, the raw data does not satisfy the originality requirement. Rural may have been the first to discover and report the names, towns, and telephone numbers of its subscribers, but this data does not ‘owe its origin’ to Rural. Rather these bits of information are uncopyrightable facts; they existed before Rural reported them and would have continued to exist if Rural had never published a telephone directory. The originality requirement ‘rule[s] out protecting ... names, addresses, and telephone numbers of which the plaintiff by no stretch of the imagination could be called the author.

*Id.* at 361 (citations omitted).

Here, as in *Feist*, the “raw data” which Plaintiffs’ claim Defendants have infringed does not satisfy the originality requirement. Historical facts about America’s Presidents do not “owe” their origin to Mr. Harris, and it goes without saying that they obviously pre-existed Mr. Harris’s Booklet and will continue to exist regardless of whether Mr. Harris had written the Booklet.

Furthermore, even if Plaintiffs here were to claim that their selection, coordination, and arrangement of the facts about America’s presidents contained in the Booklet were original to Mr. Harris, which they have not, the Booklet would still receive only limited protection. Section 103 of the Copyright Act explains that the “subject matter of the copyright . . . includes compilations,” but that copyright protects only the author’s original contributions, not the facts or information conveyed:

The copyright in a compilation . . . extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material.

*Feist*, 499 U.S. at 359; 17 U.S.C. § 103(b).

Mr. Harris’s copyright registration, however, is not a compilation.<sup>5</sup> But even if it were, “[a]s § 103 makes clear, copyright is not a tool by which a compilation author may keep others from using the facts or data he or she has collected.” *Feist*, 499 U.S. at 359; 17 U.S.C. § 103(b). The Court in *Feist* continued, “copyright . . . has no effect one way or the other on the copyright or public domain status of the pre-existing material.” *Feist*, 499 U.S. at 359. “Rather, the facts contained in existing works may be freely copied because copyright protects only the elements that owe their origin to the compiler—the selection, coordination, and arrangement of facts.” *Id.* The originality requirement “remains the touchstone of copyright protections today”; it is “the very premise of copyright law” and “constitutionally mandated for all works.” *Id.* at 347 (emphasis in original).

A recent case out of the Eastern District of Pennsylvania, *Douglas v. Osteen*, 560 F. Supp. 2d 362 (E.D. Pa. 2008) (a pre-*Twombly* and *Ashcroft* decision) is illustrative of this case. There the plaintiff brought suit against a television evangelist, Joel Osteen, for copyright

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<sup>5</sup> See Exhibit 1 to the Complaint.

infringement and other claims alleging Osteen's book contained several similarities to the plaintiff's book, including the same biblical stories, similar words and expressions and the same literary style. The district court, in holding "Plaintiff may not claim a copyright in biblical stories, which are in the public domain," held:

The two books at issue in this case are motivational religious books. It is unsurprising that they contain the same biblical stories, similar expressions and phrases, and similar literary styles because the two books explore the same idea, namely religious motivation. Further, nowhere in the Amended Complaint has Plaintiff alleged that Defendants copied any of the original elements of his work; Plaintiff merely alleges that both he and Osteen wrote motivational religious books, which contain common elements that are not subject to copyright protection. As such, Plaintiff's copyright infringement claim will be dismissed for failure to state a claim.

*Id.* at 367-69 (citations omitted).

The same can be said here where facts about America's Presidents are at issue. Because President Taft's hefty weight is not original to Plaintiffs, it is not subject to copyright protection even though it may be an element common to both the Booklet and Defendants' Show. To contend otherwise is purely ludicrous. Indeed, a Google search of "heaviest president" results in over 4,500 hits in a matter of seconds. Thus, on its face the Complaint fails to state plausible grounds for relief for copyright infringement and the Complaint should be dismissed.

**C. The Complaint's Allegations Are Deficient Under The *Twombly*, *Ashcroft* Precedent.**

The Complaint also fails to adequately allege sufficient facts to meet the pleading standard of Rule 8. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged-but it has not 'show[n]'-that the pleader is entitled to relief." *Ashcroft*, 129 S. Ct. at 1950; Fed. R. Civ. P. 8(a)(2). "A pleading that offers 'labels and conclusions' or a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual enhancement.'" *Id.*, (citing *Twombly*, 550 U.S. at 557).



In *Ashcroft*, for example, the Court held allegations that the defendants “‘knew of, condoned, and willfully and maliciously agreed to subject [plaintiff]’ to harsh conditions of confinement ‘as a matter of policy, solely on account of his religion, race, and/or national origin and for no legitimate penological interest,’” that Ashcroft was the “‘principal architect’ of this invidious policy, and that Mueller was ‘instrumental in adopting and executing it,’” were bare assertions, much like the pleadings in *Twombly* that amounted to nothing more than formulaic recitations of the elements of a constitutional discrimination claim, conclusory and not entitled to be assumed true. *Ashcroft*, 129 S. Ct. at 1951.

In deciding a motion to dismiss, a court may identify pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. *Ashcroft*, 129 S. Ct. at 1950. Legal conclusions must be supported by factual allegations. *Id.* Only where there are well pleaded factual allegations should the court assume their veracity and then determine whether their plausibility gives rise to an entitlement to relief. *See id.* In this case, none of Plaintiffs’ four causes of action<sup>6</sup> can withstand scrutiny under the *Twombly* and *Ashcroft* analysis.<sup>7</sup>

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<sup>6</sup> While we focus on the inadequacies of the copyright infringement claim, each of the remaining three stated claims of conversion, unjust enrichment and quantum meruit fails for the same reasons. They too are nothing more than sweeping legal conclusions and bare assertions that are not entitled to the assumption of truth. *See Ashcroft*, 129 S. Ct. at 1950.

<sup>7</sup> For example, in *Ashcroft*, the Court explained that in *Twombly* (where the court held an antitrust complaint deficient under Rule 8) the Court first noted that the plaintiff’s assertion of an unlawful agreement was a legal conclusion, and, as such, was not entitled to the assumption of truth. *Id.* at 1950. The court continued, “[h]ad the Court simply credited the allegation of conspiracy, the plaintiffs would have stated a claim for relief and been entitled to proceed performe. The court next addressed the ‘nub’ of the plaintiffs’ complaint—the well pleaded, nonconclusory factual allegation of parallel behavior—to determine whether it gave rise to a ‘plausible suggestion of conspiracy.’ Acknowledging that parallel conduct was consistent with an unlawful agreement, the Court nonetheless concluded that it did not plausibly suggest an illicit accord because it was not only compatible with, but indeed was more likely explained by, lawful, un-choreographed free-market behavior. Because the well-pleaded fact of parallel  
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For example, the allegations that Defendants had “access”<sup>8</sup> to “plagiarize” and copied the questions “verbatim” are not entitled to an assumption of truth because, as in *Twombly* and *Ashcroft*, they are conclusory and amount to nothing more than “formulaic recitation of the elements” of an infringement claim. *See Ashcroft*, 129 S. Ct. at 1951. The same is true for Plaintiffs’ allegations of “unauthorized use and/or reproduction and/or derivative work ... constitute copyright infringement in violation of the Copyright Act, 17 U.S.C. §§ 101, et. seq.,” and “the unlawful actions of Defendants ...was deliberate, willful, malicious, oppressive and without regard to Plaintiff’s property rights.” Complaint ¶¶ 26, 27.

The state law claims for tortious conversion (Count II – that Defendants “tortuously [sic] converted the contents...by virtue of unauthorized appropriation thereof...Defendants’ unauthorized conversion ...occurred without legal justification, . . . .”); unjust enrichment (Count III – “Defendants have unjustly secured . . . economic gain and advantage on the basis of their unauthorized possession,<sup>9</sup> control and use of Plaintiffs’ copyrighted works, . . . .”), and quantum meruit (Count IV – “Defendants have had use of Mr. Harris’ copyrighted work . . . Defendants will realized [sic] additional unauthorized benefit from the use of Plaintiffs copyrighted work as a result of additional dissemination via the internet . . . .”) suffer from the same pleading ills

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conduct, accepted as true, did not plausibly suggest an unlawful agreement, the Court held the plaintiff’s case must be dismissed.” *Id.* (citations omitted).

<sup>8</sup> The Complaint alleges “Defendants had easy access to Mr. Harris’ booklet to plagiarize the questions verbatim.” Complaint ¶ 25. Indeed, Plaintiffs’ allegation that Defendants had access to the copyrighted work should not be assumed as true for the additional reason that it is contradicted by their nearly simultaneous acknowledgement that Harpo neither accepted calls or packages at any time and further that “no packages were ever accepted from Unique Products and Services.” *Id.* at ¶ 17.

<sup>9</sup> Once again, Plaintiffs’ inconsistency in pleading strips their allegations of any assumption of truth. Plaintiffs contend that they sent the Booklets to Defendants yet claim at the same time that Defendants were in “unauthorized possession” of same.

because they are broad formulaic recitations of the elements of the causes of action based on bare assertions unsupported by facts.

In fact, when Plaintiffs' claims are stripped of their conclusions, what is left is a "factual vacuum." *See Lookout Windpower Holding Co., LLC v. Edison Mission Energy*, 714 F. Supp. 2d 547, 555 (W.D. Pa. 2010). A factual vacuum does not satisfy Fed. R. Civ. P. 8. Because the pleading standard of Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation," the Complaint is deficient and should be dismissed. *See Ashcroft*, 129 S. Ct. at 1949; *see also Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 n.8. (3d Cir. 1997) (bald assertions, unwarranted inferences, or sweeping legal conclusions cast in the form of factual allegations are not entitled to a presumption of truth).

**D. Plaintiffs' State Law Claims Are Preempted by 17 U.S.C. § 301(a).**

Section 301 of the Copyright Act preempts any state law claims that (1) fall within the subject matter of copyright and (2) create rights that are the equivalent of any of the exclusive rights created by copyright law. 17 U.S.C. § 301(a); *see also Orson, Inc. v. Miramax Film Corp.*, 189 F.3d 377, 382 (3d Cir. 1999). The Act provides for a number of exclusive rights, including the right to distribute, reproduce, and display a work, as well as the right to produce derivative works. 17 U.S.C. § 106; *TEGG Corp. v. Beckstrom Elec. Co.*, 650 F. Supp. 2d 413, 421 (W.D. Pa. 2008).

To determine whether a state law claim is functionally equivalent to or qualitatively different from a right protected by the Copyright Act, the Third Circuit applies an "extra element" test. *Dun & Bradstreet Software Servs., Inc. v. Grace Consulting, Inc.*, 307 F.3d 197, 217-18 (3d Cir. 2002). Courts look at what the plaintiff seeks to protect, the theories under which the matter is thought to be protected and the rights sought to be enforced. *TEGG*, 650 F. Supp. 2d at 422. "A right is equivalent to copyright if it is 'infringed by the mere act of

reproduction, performance, distribution, or display,’ and ‘the fact that the state-created right is either broader or narrower than its federal counterpart will not save it from preemption.’” *Id.* (citing Melville B. Nimmer and David Nimmer, Nimmer on Copyright § 1.01[B][1]).

Here, Plaintiffs’ claims for tortious conversion, unjust enrichment, and quantum meruit are all based on the same factual predicate as the copyright infringement claim and indistinguishable from and, therefore, equivalent to their claim of copyright infringement. *See* Compl. at Counts II-IV. The gravamen of each of the state law claims is that Plaintiffs seek restitution for Defendants’ alleged unauthorized use of Plaintiffs’ copyrighted work. *See id.* Accordingly, as the rights asserted in the tortious conversion, unjust enrichment, and quantum meruit claims are equivalent to those protected by federal copyright law, they must be dismissed as we show below.

(i) **Count II: Tortious Conversion.** Plaintiffs claim Defendants have “tortuously [sic] converted the contents of Mr. Harris’ copyrighted work by virtue of unauthorized appropriation thereof and incorporation of the same in Ms. Winfrey’s Q cards for the ‘Oprah Winfrey Show.’” Complaint ¶ 32. The rights they seek to recover for—the conversion of the contents of the copyrighted work—are the functional equivalent of the exclusive right to copy, distribute and create derivative works from their copyrighted work; the same rights governed under the Copyright Act, 17 U.S.C. § 106. Accordingly, Plaintiffs’ claim for tortious conversion is preempted by Section 301 and should be dismissed. *See e.g., TEGG*, 650 F. Supp. 2d at 432-34 (holding conversion claim preempted by Copyright Act where Plaintiff sought to protect its copyrighted software, to recover for their unauthorized distribution and reproduction, and enforce its rights to control the use of such property).

(ii) **Count III: Unjust Enrichment.** In support of their unjust enrichment claim the Complaint alleges that Defendants have unjustly secured economic gain and advantage on the basis of their unauthorized possession, control and “use of Plaintiffs’ copyrighted works.” Complaint ¶¶ 37-41. Plaintiffs seek “complete restitution” for such “use.” *Id.* at ¶ 40. As a result, the unjust enrichment claim squarely seeks to recover for one of the exclusive rights under the Copyright Act and is, therefore, pre-empted. *See Curtin v. Star Editorial Inc.*, 2 F. Supp. 2d 670, 674-75 (E.D. Pa. 1998) (dismissal of unjust enrichment claim stating that “to the extent that plaintiff asserts an exclusive right to and reimbursement for the use of his compilation of photographs, his claim for unjust enrichment is preempted.”); *Live Face on Web, LLC v. Howard Stern Prods., Inc.*, No. 08-2579, 2009 WL 723481 (E.D. Pa., Mar. 17, 2009). The Complaint does not allege any extra element beyond copying and use of their work that would qualitatively distinguish the unjust enrichment claim from their copyright claim. Accordingly, it is preempted and should be dismissed.

(iii) **Count IV: Quantum Meruit.** Plaintiffs allege that “Defendants have had use of Mr. Harris’ copyrighted work in the Oprah Winfrey Show . . . without compensating owner of said copyrighted material. Moreover, Defendants will realize additional unauthorized benefit from use of the Plaintiffs copyrighted work as a result of additional dissemination via the internet, dvd and ect[sic].” Complaint ¶¶ 43-44. Finally, they state that they are entitled to recover the “value of the cost for the use and display” of the copyrighted work. *Id.* at ¶ 45. As with the conversion and unjust enrichment claims, this state law claim is the functional equivalent of their copyright infringement claim and, therefore, is preempted and should be dismissed.

WHEREFORE PREMISES CONSIDERED, Defendants respectfully pray that their Motion be granted in all respects, that the Complaint be dismissed with prejudice and for such other and further relief, at law or in equity, to which Defendants may justly be entitled.

Dated: November 29, 2010

Respectfully submitted,

**OPRAH WINFREY, as an individual, and The  
OPRAH WINFREY SHOW d/b/a HARPO  
PRODUCTIONS INC.**

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