

# Tab 1

## Complaint for Copyright Infringement

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

VALENCIA M. MCCLATCHEY, )

Plaintiff, )

v. )

THE ASSOCIATED PRESS, )

Defendant. )

JURY TRIAL DEMANDED

05 - 145 J

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff Valencia M. McClatchey ("Plaintiff" or "Ms. McClatchey") complains of defendant The Associated Press ("AP" or "Defendant") as follows:

NATURE OF THE ACTION

1. This Complaint states claims for violations of the Copyright Act, 17 U.S.C. §§ 101, et. seq.

JURISDICTION AND VENUE

2. Jurisdiction exists under 28 U.S.C. § 1338(a) because the Defendant is charged with copyright infringement under the Copyright Act, 17 U.S.C. § 101, et. seq.

3. AP resides in and/or does business in this State and District by intentionally engaging in acts targeted at this District, purporting to enter into agreements with residents of this State and District, and purposefully availing themselves of the privilege of conducting activities in this State and District.

4. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(a) because this is a judicial District in which a substantial part of the events giving rise to the claims occurred, and this is a judicial District in which the AP resides or may be found.

PARTIES

5. Plaintiff Valencia McClatchey is an individual and resident of Pennsylvania, with

a principal address at 107 Osage Path, Stoystown, Pennsylvania, 15563. Ms McClatchey is the registered copyright owner of a photograph entitled "End of Serenity", and bearing copyright registration number VA 1-128-462. A copy of the copyright registration is attached as Exhibit A. In addition, a copyrighted photocopy of the photograph is attached as Exhibit B.

6. Defendant The Associated Press is a not-for-profit corporation incorporated under the laws of New York with 242 bureaus worldwide and headquarters at 40 W. 33<sup>rd</sup> Street, New York, New York 10001. AP is registered to do business in Pennsylvania and has a registered office at the Telegraph Building, Harrisburg, Pennsylvania, 17105. In addition, AP has an office located at 6 Gateway Center, Suite 222, Pittsburgh, Pennsylvania, 15222. AP is in the business of producing and archiving news information and related media, including videos and photographs, for third party news provider use. More than a billion people a day read, hear, or see AP's news. In the United States, AP serves 1,700 newspapers and 5,000 radio and television stations. The AP also has more than 8,500 International subscribers in newspaper, radio and television in 121 countries. As such, the AP has obtained significant prestige as a national news media provider.

#### **BACKGROUND**

7. In the aftermath of the September 11, 2001 terrorist attacks, the media was flooded with articles, photographic and video footage related to the attacks.

8. AP has published a significant number of articles, photographs, and similar materials on and related to the September 11, 2001 terrorist attacks.

9. AP has made their publications, both print and online, available throughout the United States and the world.

10. Despite the flood of media attention related to the attacks, Plaintiff took what turned out to be the only existing photograph of the immediate aftermath of the crash of Flight 93 in Somerset County, Pennsylvania. Plaintiff entitled her photograph "End of Serenity." The

photograph has been used across the nation, internationally, and is in the Smithsonian Institution's exhibit on the September 11 attacks. The original digital image is in custody of the FBI.

11. At all relevant times, copyright in the photograph has been filed and registered in Plaintiff's name with the United States Copyright Office. The effective date of registration of the photograph is January 29, 2002.

12. Plaintiff donates the photograph free of charge for use by non-commercial organizations and entities. Further, a substantial portion of any proceeds that Plaintiff has received from commercial sale and use of the photograph is donated to the Todd M. Beamer Foundation, which aids children affected by the 9/11/01 attacks.

13. On or about September, 2002, Charles Sheehan, a writer for the Associated Press, interviewed the Plaintiff about the photograph for a news article entitled "Photo Brought Fame, Not Fortune For Woman." The article, which published on September 13, 2002, is attached as Exhibit C. In the article, Mr. Sheehan describes the unique nature of the photograph, "[t]he picture is one of the few images of the crash, and within two weeks it had been purchased by major U.S. magazines including U.S. News & World Report, Newsweek, Time, and several major magazines in Europe."

14. Plaintiff provided to the AP a courtesy copy of the photograph to use in connection with the proposed article. The courtesy copy included and incorporated a copyright notice line identifying Plaintiff as the rights holder to the work.

15. At no time did Plaintiff, either orally or in writing, provide to AP any express or implied authority to license or re-sell the "End of Serenity" photograph.

16. As a gesture of goodwill, Plaintiff gave Gene Puskar, an AP photographer, an 8X10 of the photograph for his personal use, which included and incorporated a copyright notice line identifying Plaintiff as rights holder to the work. Plaintiff further reminded Mr. Puskar that

the photograph was copyrighted.

17. At no time did Plaintiff, either orally or in writing, authorize Mr. Puskar to provide to AP any express or implied authority to license or re-sell the "End of Serenity" photograph.

18. Upon information and belief, either Mr. Puskar provided the photograph to the AP, or the AP made use of the courtesy copy of the photograph they had been given for use in the article. The AP then removed the Plaintiff's name and copyright notice from the photograph, and placed the photograph in a downloadable database on their Internet web site.

19. AP collects licensing revenue from customers and licensees, such as America Online ("AOL"), in connection with providing access to AP's downloadable database and archived materials.

20. Upon information and belief, on or about August 2003, AOL downloaded Plaintiff's copyrighted photograph from AP's database. The downloaded photograph did not contain a copyright notice identifying Plaintiff as the copyright owner of the work. On August 8, 2003, the "End of Serenity" appeared on AOL's home page. See the August 8, 2003 AOL homepage screen shot attached as Exhibit D.

21. At no time prior to or following providing AOL or any other customer's access to the photograph did AP obtain permission from Plaintiff to alter, license to the public, or authorize use of Plaintiff's copyrighted work.

**COUNT I**  
**(Direct Copyright Infringement)**

22. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 21 as if fully set forth herein.

23. Plaintiff has complied in all respects with the Copyright Act of 1976, 17 U.S.C. § 101 et. seq., as amended, and all other laws and regulations governing copyrights, and has secured the exclusive rights and privileges in and to the copyright of the photograph "End of

Friday, September 13, 2002

The Tribune-Democrat, Johnstown, Pa.

WORLD IN TURMOIL

# Photo brought fame, not fortune for woman

## Shanksville resident captured horror

By CHARLES SHEEHAN  
THE ASSOCIATED PRESS

SHANKSVILLE - The horror unfolding on Val McClatchey's television the morning of Sept. 11 was just beginning to sink in when a violent blast outside cut the power to her home and blackened the screen.

Running outside, McClatchey, 46, captured with a digital camera the moment that the terrorist attacks, once hundreds of miles away, came to this Western Pennsylvania community of 245 people.

The time and date recorded on the image marked the beginning of a tumultuous year for McClatchey. She came to the crash site, about a mile from her home where she took the picture, to mark the anniversary with thousands of others Wednesday.

"I just felt that this was one of the only places I could kind of blend in and find some anonymity," she said. "It's been chaos since that day." In the image, which has brought

limited amount of fame to McClatchey, a sinister black, mushroom-shaped cloud rises from an otherwise peaceful view of a farm with a painted red barn.

United Airlines Flight 93 crashed just outside Shanksville shortly after 10 a.m. Sept. 11. Investigators say passengers aboard the Boeing 767 fought hijackers for control before the airliner crashed upside down in an open field, killing all 40 passengers and crew.

The picture is one of the few images of the crash, and within two weeks it had been purchased by major U.S. magazines including U.S. News & World Report, Newsweek, Time and several major magazines in Europe.

But ripples from the terrorist attacks had an almost immediate effect on McClatchey and her husband, John.

JOM Industries, a sawmill owned and operated by John McClatchey with 46 employees, was forced to file for bankruptcy protection on Sept. 20.

panies just didn't want to cover companies that did work that's considered risky," Mr. McClatchey said. "We had always been able to get insurance, but things changed."

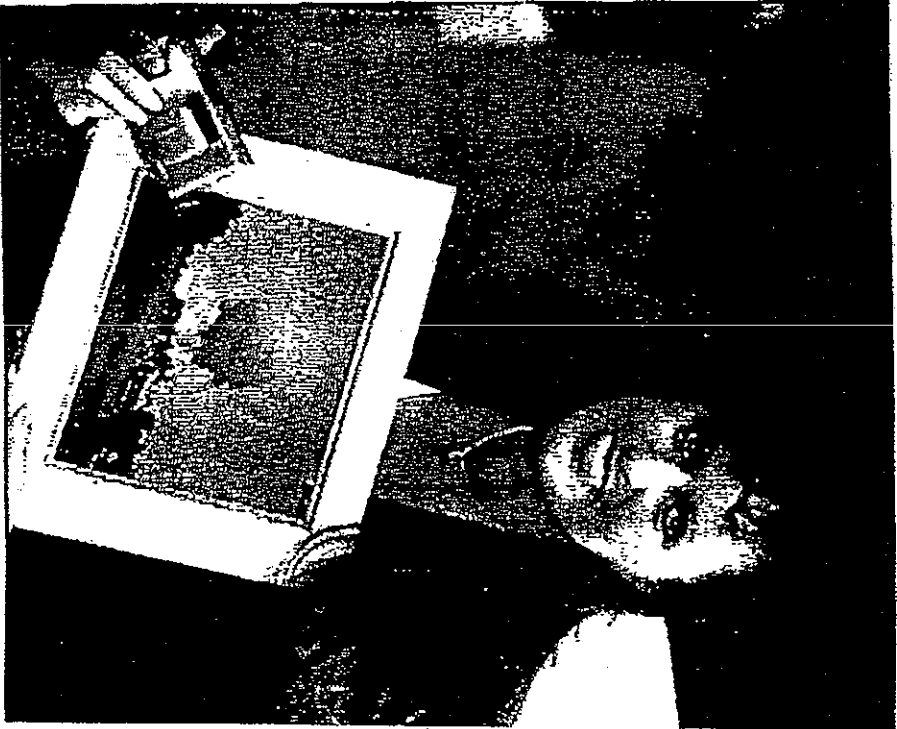
He said the attacks may not have been the sole reason for the collapse of his business, but they played a direct role.

In the year after the attacks, with the sawmill gone, Mrs. McClatchey's health would take a turn for the worse. She would need gallbladder surgery and tumors removed from her kidneys and liver.

"We're struggling," she said. "My husband got a job brokering pallets. I took real estate classes and got my license, but it's been hard."

The images McClatchey said she sold for \$250 to \$350 have not done much to help the couple financially.

Some residents of the region who wanted copies of the image have insisted on paying cash to cover costs of printing, and McClatchey said she has donated almost all of that money to the Todd M. Beamer Foundation, a fund named after one



THE TRIBUNE-DEMOCRAT

Val McClatchey of Shanksville holds the photograph she snapped outside her home shortly after the crash of United Airlines Flight

93 of the passengers aboard Flight 93 that aids children affected by the terrorist attacks.

But the McClatcheys say they are waiting to see what next year will bring, and they remain optimistic.

"It depends on how things go the bankruptcy, but I know we stronger people now than we were year ago," she said. "This year town is, but I think we're ready break."

EXHIBIT  
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America Online

File Edit Print Window Sign Off Help

Mail People Services Settings Favorites

Read Write IM Chat Shop Internet AOL Help My Favorites Radio Parent Control

Type AOL Keywords or Web Addresses here

SEARCHED BY Google

WELCOME

Auto

Careers & Work

Computer Center

Entertainment

Games

Health

Home/Real Estate

International

Kids Only

Local Guide

Music

News

Parenting

Personal Finance

Research & Learn

Shopping

Sports

Teens

Travel

Women

Welcome, Invent600!

AMERICA Online

Mail Center  
New: 0

Picture Center

People & Chat

CD Quality Radio

Small Biz Tools

Business E-Mail  
Get It & Save 25%  
Got Biz E-Mail?  
Access It Here

The Markets Full Coverage

Index	Value	Change
DJIA	9,176.80	+50.35
Nasdaq	1,647.33	-4.85
S&P 500	977.78	+3.66
10yr Bond	4.21%	-0.17

Get Quote

Special Offers

Ship Online, Save 10%

FedEx Express Shipping

Bitter on AOL for BROADBAND

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Charlie Chaplin Is  
The Vagabond.  
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EXHIBIT

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