

July 20, 2009

Mr. Peter Wienand  
Mr. Anthony Misquitta  
Farrer & Co.  
66 Lincoln's Inn Fields  
London WC2A 3LH  
UNITED KINGDOM

Dear Messrs. Wienand and Misquitta:

I have been retained to represent Derrick Coetzee, who participates in the Wikipedia community under the user name "dcoetzee." On July 10, 2009, you sent a message to Mr. Coetzee making a variety of allegations against him on behalf of your client, the National Portrait Gallery of London (NPG).

We are investigating the allegations made in your July 10 correspondence. As you know, Mr. Coetzee resides in the United States, where:

- the photographs of the NPG's public domain paintings are not copyrightable, *see Feist Publications, Inc. v. Rural Telephone Service Co.*, 499 U.S. 340 (1991); *The Bridgeman Art Library, Ltd. v. Corel Corp.*, 25 F. Supp. 2d 421 (1998);
- your client possesses no independent "database rights," as such rights are not recognized under U.S. law;
- your client's "browsewrap" contract claims are specious, *see Specht v. Netscape Communications Corp.*, 306 F.3d 17 (2d Cir. 2002); and
- your client's circumvention claims are baseless, as the "Zoomify" technology previously used on NPG's website does not effectively control access to a work protected under copyright law.

All of the activities described in your July 10 message (i.e., copying images and uploading to Wikipedia) appear to have occurred in the U.S., where Mr. Coetzee resides. Furthermore, based on an expert report prepared in another matter in 2007 by the late Professor Sir Hugh Laddie, a noted UK copyright law commentator, it is my understanding that Wikipedia does not "in the United Kingdom...communicate to the

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public” within the meaning of s.16(1) of the UK Copyright, Designs and Patents Act of 1988 as amended.<sup>1</sup>

We are continuing to evaluate your UK law claims, and look forward to any additional information you can provide to support your contention that Mr. Coetzee committed any acts to which UK law might apply. Please direct all future correspondence regarding this matter to my attention.

Nothing herein constitutes a waiver of any rights or defenses on the part of Mr. Coetzee, nor submission to the jurisdiction of any foreign court.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. von Lohmann', with a long horizontal flourish extending to the right.

Fred von Lohmann  
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fred@eff.org  
(415) 436-9333 x123

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<sup>1</sup> The report was submitted in *Explorologist Ltd. v. Sapient*, No. 2:07-cv-01848-LP (E.D. Penn. Dec. 21, 2007) and is attached for your review.