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6
7 **IN THE UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF ARIZONA

8 JAN E. KRUSKA,)	
9)	
10 Plaintiff,)	No. CIV 08-00054-PHX-SMM
11 vs.)	
12 PERVERTED JUSTICE FOUNDATION)	PLAINTIFF'S MOTION FOR SUMMARY
13 INCORPORATED et al.,)	JUDGMENT AS TO COUNT VII
14 Defendants.)	COPYRIGHT INFRINGEMENT AGAINST
15)	DEFENDANTS PERVERTED JUSTICE
)	FOUNDATION INC., AND XAVIER VON
)	ERCK

16 (Assigned to the Honorable
17 Stephen M. McNamee)

18
19 COMES NOW Plaintiff by and through herself hereby
20 RESPECTFULLY requests that this Court GRANT Plaintiff
21 Summary Judgment in Full as to Defendants Perverted Justice
22 Foundation Inc., and Xavier Von Erck with respect to (Count
23 VII) Copyright Infringement in accordance with this Courts
24 Order dated 08/04/2009 (Doc. 184).
25
26
27

28 **MEMORANDA AND POINTS**

In its 08/04/2009 ORDER (Doc. 184) the Court DENIED

1 defendants Perverted Justice Foundation Inc., and Xavier
2 Von Erck's Motion To Dismiss Plaintiff's claim (Count VII)
3 for Copyright Infringement.
4

5 Under Title 17 Chapter 1 §106 and 106A Plaintiff as the
6 rightful owner enjoys exclusive rights as to her
7 photographs, writings and published articles.

8 Defendants Perverted Justice and Xavier Von Erck infringed
9 upon those exclusive rights repeatedly on their
10 "wikisposure_JanKruska" web page.
11

12 Defendants violated 17 U.S.C. 501(a) and (b). Specifically,
13 defendants used without authorization and/or consent four
14 copyright protected photographs of Plaintiff
15 and fourteen (14) excerpts from articles Plaintiff
16 published. No permission was given by Plaintiff to
17 defendants for use of the infringing material which
18 appeared on defendants wikisposure website. Additionally,
19 no such permission was even ever sought by defendants.
20
21

22 17 U.S.C. § 107 - Fair use doctrine does not apply. Indeed,
23 the defendants never argued that it did. **NOWHERE** did
24 defendants post any disclaimer or other notice whatsoever
25

26
27 **In 1990, the Copyright Remedy Clarification Act amended section 501(a) by adding the last two sentences. Pub. L. No. 101-**
28 **553, 104 Stat. 2749. The Visual Artists Rights Act of 1990 also amended section 501(a) as follows: 1) by inserting "or of the author as**
provided in section 106A(a)" after "118" and 2) by striking out "copyright." and inserting in lieu thereof "copyright or right of the
author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include
the rights conferred by section 106A(a)." Pub. L. No. 101-650, 104 Stat. 5089, 5131.

1 claiming that the "fair use doctrine" applies/applied.

2 The sole intent of the use of Plaintiff's four copyrighted
3 photos was used solely for a smear campaign knowingly
4 undertaken by defendants in an attempt to defame,
5 intimidate and harass Plaintiff and not for any
6 "educational puposes" for which the fair use doctrine
7 provides certain exceptions. It still, however is not a
8 substitution for authorization from the rightful owner -
9 Plaintiff.
10
11

12 Quoted excerpts from Plaintiff's article were purposefully
13 taken "out of context" so as to convey an entirely
14 different meaning altogether than what the original
15 articles had stated and intended.
16

17 No permission was given or even solicited from Plaintiff
18 for use of the infringing materials by defendants.

19 Defendants used **and altered** the copyright protected
20 photographs of Plaintiff coupled with wholly false
21 allegations that Plaintiff was convicted of molesting a
22 child in Massachusetts. Plaintiff has no criminal record in
23 Massachusetts whatsoever!
24

25 Plaintiff also has no conviction for child molestation
26 anywhere nor has she ever publicly claimed that she has, as
27 the wikisposure website purports.
28

1 Clearly, the infringements were not based upon or used
2 strictly for "educational purposes" but rather for purposes
3 of mis-information and in an attempt to expose Plaintiff to
4 public contempt and hatred. Thus there can be no valid
5 excuse for infringing on the copyright or even attempting
6 to claim {now} that the fair use doctrine could possibly be
7 alleged as any sort of defense in this cause.
8

9 Plaintiff is not now nor has she ever been listed on any
10 public sex offender registry. As such, no recent photos of
11 Plaintiff are publicly available or owned. Plaintiff's
12 photographs are solely her own private property for which
13 she enjoys exclusive rights. Additionally, Plaintiff is not
14 a public figure and cannot be held to the different
15 standards governing such.
16
17

18
19 **Prayer For Relief**
20

21
22 There were 49 separate acts of editing and reposting of the
23 "wikisposure" page on Plaintiff. Each act serves as a
24 distinct and individual publication. Thus, defendants are
25 liable for 49 separate instances of republication of the
26 offending infringements. (See U.S.C. 17 § 501(a)(b)).
27
28 Defendants used the infringing materials for commercial

1 gain and to solicit donations. (See attached Exhibit A).

2 Defendants used FOUR copyright protected photographs of
3 Plaintiff who is not a public figure and who enjoys
4 exclusive rights of such under Title U.S.C 17 §106 and
5 106A.
6

7 Defendants used (14) fourteen individual excerpts from
8 various article written by Plaintiff who exclusive rights
9 to such.
10

11 Defendants Wikisposure page with the infringing material
12 has been viewable on the internet "Wikisposure" page on
13 Plaintiff for 23 months - approximately 690 days and is
14 still up as of this time. The multiple infringements by
15 defendants are willful and ongoing.
16

17 Plaintiff requests that this court ORDER defendants to
18 remove the wikisposure page on Plaintiff along with all of
19 the infringing materials.
20

21 Plaintiff requests this court ORDER defendants to destroy
22 all copies, images and records of the infringements
23 wherever they are stored and in any and all formats
24 immediately. The Court should also order in accordance with
25 U.S.C. 17 §503 (a) and (b) impounding and disposition of
26 infringing materials.
27

28 Plaintiff requests this court ORDER an immediate and

1 permanent injunction as to defendants against further
2 violations against Plaintiff. (See U.S.C. 17 § 502(a) (b)
3 Plaintiff requests this court enter judgment in favor of
4 Plaintiff for the following statutory damages under U.S.C.
5 504 (a), (2), (c) (1) and (2):
6

7 The law provides for damages of \$150,000 per offending
8 infringement when the infringement is willful, which it is
9 as well as ongoing.
10

11 Defendants infringed upon four copyrighted photographs at
12 \$150,000.00 each totaling: \$600,000.00

13 Defendants infringed upon fourteen copyrighted excerpts
14 from articles Plaintiff published at a cost of \$150,000.00
15 each totaling: \$2,100,000.00
16

17 Additionally, defendants engaged in 49 separate and
18 individual acts of publishing and republishing. Adding the
19 above damages and multiplying by the 49 separate
20 publications and republications, the total amount of
21 damages due to Plaintiff is: \$102,900,000.00.
22

23 Plaintiff **DEMANDS** an immediate and permanent injunction as
24 to defendants copyright violations and infringements.

25 Plaintiff **DEMANDS** damages for said infringements as
26 statutorily allowed in the amount of \$102,900,000.00.
27

28 Plaintiff requests ENTRY of judgment in FULL as soon as

1 practical and possible.

2 Plaintiff **DEMANDS** in accordance with U.S.C. §17 505
3 reimbursement for reasonable attorney's fees in the amount
4 of \$25,000.00
5

6 Plaintiff also requests this court to refer and remand
7 defendants Perverted Justice Foundation Inc., and Xavier
8 Von Erck for criminal prosecution as is defined and allowed
9 by U.S.C. 17 §506 (a), (1) (a) and(c), and 3(b).
10

11
12 RESPECTFULLY submitted this 6th Day of August 2009.
13

14
15
16 

17 Jan E. Kruska - Plaintiff/Pro Se

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20 602-579-8580
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Jan Kruska

From Wikisposure

Revision history

View logs for this page

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- (cur) (last) 06:46, 23 August 2007 Determined (Talk | contribs) (322 bytes) (New page: {{wip}}
 {{Infobox | name = | Age = | Birthdate = | Race = | Occupation = | Location = | Physical Description = |
 Affiliations = | Synopsis = }} {{footer}} [[Category:Female P...)

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CERTIFICATE OF SERVICE

A TRUE AND CORRECT COPY OF THE FOREGOING WAS MAILED
VIA electronic MAIL THIS 6th DAY OF AUGUST 2009 TO THE
FOLLOWING:

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A handwritten signature in black ink, consisting of a large, stylized 'J' followed by several loops and a final flourish, positioned above a horizontal line.

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