

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
(ALEXANDRIA DIVISION)

A. V., a minor, by his next friend )  
Robert Vanderhye )  
)  
K. W., a minor, by his next friend )  
Kevin Wade, Sr. )  
)  
E. N., a minor, by her next friend )  
Scott Nelson and )  
)  
M. N., a minor, by her next friend )  
Scott Nelson )  
Plaintiffs ) Civil Action No. 1:07 CV 293  
)  
Versus )  
)  
iParadigms, LLC )  
)  
Defendant )  
)

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiffs A. V., K. W., E. N. and M. N., all minors, by their next friends Robert Vanderhye, Kevin Wade, Sr., and Scott Nelson, respectively, and with the support of the McLean Committee for Student Rights, through counsel, hereby say:

The Parties

1. Plaintiffs are all minors. A. V. and K. W. reside in the public school district in Fairfax County, Virginia, where McLean High School is located, and are underclassmen at McLean High School [“MHS”], while E. N. and M. N. reside in Arizona and are underclassmen at the public Desert Vista High School in the Tempe Union High School District in Phoenix, Arizona (hereafter collectively “Plaintiffs” and individually “A. V.”,

“K. W.”, “E. N.” or “M. N.”). [Plaintiffs names and addresses are not provided in order to comply with Civil Local Rule 7.]

2. The defendant iParadigms, LLC is a corporation of California which has as its headquarters address 1624 Franklin St., 7<sup>th</sup> Floor, Oakland, California 94612 (hereafter “iParadigms”). iParadigms has a contract with the Fairfax County, Virginia, Public School System from which it obtains substantial yearly revenue, and iParadigms personnel regularly visit the Fairfax County Public School System, or individual schools thereof. Many students in many public high schools in Fairfax County regularly (virtually on a daily basis when school is in session) submit unpublished manuscripts to iParadigms which iParadigms runs a computer check on and then archives in a database.

3. iParadigms’ service address for purposes of this complaint, upon agreement of counsel, is c/o James F. Rittinger, Satterlee Stephens Burke & Burke LLP, 230 Park Avenue, Suite 1130, New York, NY 10169.

#### Jurisdiction and Venue

4. This Court has subject matter jurisdiction under 28 U. S. C. §§ 1331 & 1338(a), under the Copyright Act, 17 U. S. C. § 101 *et seq.* Venue is proper in this judicial district pursuant to 28 U. S. C. § 1391(b) & (c) since A. V. and K. W. reside in this judicial district and the damage suffered by these plaintiffs occurs in this judicial district. Venue is also proper under 28 U. S. C. § 1400(a) since iParadigms may be found in this judicial district because it engages in extensive, continuous, and on-going commercial activities in this judicial district, including as a result of its on-going contract with the Fairfax County Public School System.

5. This Court also has both general and special personal jurisdiction over iParadigms because it has engaged, and still engages, in extensive, continuous, and on-going commercial activities in this judicial district, including as a result of its on-going contract with the Fairfax County Public School System, submission of student unpublished manuscripts to it on a daily basis when school is in session in Fairfax County, Virginia, and regular visits by its employees to Fairfax County, and because at least some of the damage to the plaintiffs has been done in Fairfax County.

#### Facts

6. iParadigms is the owner and operator of an alleged “plagiarism detection” system accessible over the Internet through the website Turnitin.com, and known by the trademark Turnitin® [hereafter “the Turnitin system”]. The Turnitin system is capable of detecting only the most ignorant or lazy attempts at plagiarism by students without significant monetary resources, and is ineffective if a plagiarist does anything aside from virtually exactly copying another’s work, or obtains his or her paper from a pay web site. As such the Turnitin system serves no public interest whatsoever. Despite these staggering limitations, the Turnitin system is – on information and belief – used by hundreds of institutional clients in more than 70 countries.

7. As part of its marketing effort for the Turnitin system, iParadigms represents that about 100,000 unpublished manuscripts a day written by high school students (most of them minors) are submitted to and archived by iParadigms. This results in a constantly enlarging database, with commensurate significant economic advantage to iParadigms, so much so that in 2003 alone iParadigms had revenues of \$10,000,000. However,

iParadigms pays nothing to the students, and in most cases archives the unpublished manuscripts even without the consent of the students who submit them.

8. iParadigms has known for several years that the archiving of student authored unpublished manuscripts without the permission of the students is inappropriate; in fact iParadigms' allegedly exculpatory attorney opinion (posted on the turnitin.com web site) states: "The archival of a submitted work is perhaps the most legally sensitive aspect of the TURNITIN system."

9. In addition to archiving student unpublished manuscripts without their permission, iParadigms may send a full and complete copy of a student's unpublished manuscript to an iParadigms client anywhere in the world upon request of the client, and without the student's permission. iParadigms also puts its own copyright notice on receipts students receive acknowledging submission of their unpublished manuscripts to iParadigms, and retains student manuscripts with personal and confidential information thereon in violation of Federal Law. Thus iParadigms acts contrary to the public interest.

10. In about September, 2006, MHS stated for the first time that it was implementing use of the Turnitin system. The Turnitin system had been used by other public high schools in Fairfax County since about 2003. Despite widespread protests by MHS students and parents, starting in October or November, 2006, MHS required all freshmen and sophomores (all of whom are minors) to submit unpublished manuscripts written in response to various class assignments to the Turnitin system. If a student refused he/she was given two choices: get a Zero on the assignment, or "go" to a different school that didn't use the Turnitin system.

11. In order to access Turnitin.com, a student is required to sign in, and click on, an “I agree” icon, signifying “agreement” to a contract of adhesion. Unless the student clicks “I agree” the student will not get on the web site, and then will be presented with the choice of getting a Zero on the assignment, or going to another school. The contract of adhesion provides in one paragraph thereof: “This agreement is governed by the laws of the State of California. You hereby consent to the exclusive jurisdiction and venue of courts in Alameda County, California, U. S. A., in all disputes arising out of or relating to the use of this web site. Use of this web site is unauthorized in any jurisdiction that does not give effect to all provisions of these terms and conditions, including without limitation this paragraph.”

12. On November 15, 2006, an attorney for students at MHS wrote to iParadigms and demanded that iParadigms stop archiving unpublished manuscripts of identified students who objected to archival. The letter of November 15 set forth in great detail how iParadigms was infringing the rights of the MHS students, and why such archiving was not fair use under 17 U.S.C. §107. iParadigms never substantively responded to the detailed analysis in the letter, and retains the student manuscripts. Also, without advising the attorney for the students or – on information and belief -- anyone else at MHS, iParadigms initiated a bad faith, frivolous, lawsuit against unnamed students at MHS. The bad faith, frivolous, suit was styled as a declaratory judgment action in Federal Court in the Northern District of California, located in San Francisco County. The suit alleged an amount in controversy of more than \$75,000, and that jurisdiction and venue was proper over minor MHS students because of coerced agreement to the contract of adhesion paragraph set forth in ¶ 11 above. iParadigms subsequently dismissed the bad

faith, frivolous, suit but only immediately after – on information and belief -- an inquiry by a reporter from the Washington Post,.

13. Desert Vista High School, a public high school which E. N. and M. N. attend, also has just this school year required students to submit their unpublished manuscripts to Turnitin.com, or get a zero on any related class assignment, or be ineligible for literary contests. iParadigms has been advised to purge E. N.'s and M. N.'s manuscripts from its system, but has not done so.

14. A. V., a minor, is the author and owner of Copyright Registration TXu 1-326-961, a copy of which is provided as Exhibit A hereto. [A. V.'s name, address, and other identifying data, are redacted from Exhibit A in order to comply with Civil Local Rule 7.] A. V. has at all times been owner of the registration of Exhibit A. The registration of Exhibit A covers an unpublished [at the effective date of registration] manuscript entitled "Scenes of Realism". The effective date of the registration of Exhibit A is prior to the first, coerced, submission by A. V. of the unpublished manuscript covered by Exhibit A to the Turnitin system. A. V. submitted the unpublished manuscript of Exhibit A to the Turnitin system only as a result of duress and coercion, so that the submission was made without A. V.'s free will.

15. K. W., a minor, is the author and owner of Copyright Registrations TX 6-495-427 and TXu 1-332-313, a copy of each of which is provided as Exhibits B & C hereto, respectively. [K. W.'s name, address, and other identifying information are redacted from Exhibits B & C in order to comply with Civil Local Rule 7.] K. W. has at all times been owner of the registrations of Exhibits B & C. The manuscript of Exhibit B is entitled "DBQ1: Ancient Greek Contributions" and was unpublished when submitted

to the Turnitin system on January 3, 2007 with the specific instruction that the manuscript not be archived, as so indicated on the submittal. The submission to the Turnitin system was coerced, and made without K. W.'s free will. The registration of Exhibit C covers an unpublished [at the effective date of the registration] manuscript entitled "What Lies Beyond The Horizon". The effective date of the registration of Exhibit C is prior to the submission by K. W. of the unpublished manuscript covered by Exhibit C to the Turnitin system. K. W. submitted the unpublished manuscript of Exhibit C to the Turnitin system with the specific instruction that the manuscript not be archived, as so indicated on the submittal, yet it has been archived.

16. E. N., a minor, is the author and owner of Copyright Registration TXu 1-332-312, a copy of which is provided as Exhibit D hereto. [E. N.'s name, address, and other identifying information are redacted from Exhibit D in order to comply with Civil Local Rule 7.] E. N. has at all times been owner of the registration of Exhibit D. The registration of Exhibit D covers an unpublished [at the effective date of registration] manuscript entitled "Under A Pear Tree". The effective date of the registration of Exhibit D is prior to the first, coerced, submission by E. N. of the unpublished manuscript covered by Exhibit D to the Turnitin system. E. N. submitted the unpublished manuscript of Exhibit D to the Turnitin system only as a result of duress and coercion, so that the submission was made without E. N.'s free will.

17. M. N., a minor, is the author and owner of Copyright Registrations TXu 1-326-962, and TXu 1-326-960, a copy of each of which is provided as Exhibits E & F, respectively, hereto. [M. N.'s name, address, and other identifying information are redacted from Exhibits E & F in order to comply with Civil Local Rule 7.] M. N. has at

all times been owner of the registrations of Exhibit E & F. The registration of Exhibit E covers an unpublished [at the effective date of registration] manuscript entitled “Golden Heart“, and the registration of exhibit F covers an unpublished [at the effective date of registration] manuscript entitled “Day is Weary”. The effective dates of the registrations of Exhibit E and F are prior to the first, coerced, submission by M. N. of the unpublished manuscripts covered by Exhibit E & F to the Turnitin system. M. N. submitted the unpublished manuscript of Exhibits E & F to the Turnitin system only as a result of duress and coercion, so that the submissions were made without M. N.’s free will.

18. The minor plaintiffs have all voided the contract of adhesion mentioned in ¶11 above, including the paragraph of the contract of adhesion quoted.

#### Claim for Relief

19. Plaintiffs incorporate all the allegations of paragraphs 1-18 inclusive.

20. Plaintiffs have complied in all respects with 17 U. S. C. §§101 *et seq.*, and have, as owners of the registrations, the exclusive rights and privileges accorded by the registrations of Exhibits A-F, including the right to be free of infringement.

21. iParadigms’ conduct is copyright infringement under 17 U. S. C. §501 since it violates the exclusive rights accorded to plaintiffs by the Copyright Laws of the United States, including plaintiff’s rights under 17 U. S. C. §106.

22. iParadigms’ infringement of plaintiffs’ rights was committed willfully as indicated by iParadigms’ own legal opinion posted on its website, its failure to substantively respond to the detailed allegations of unexcused copyright infringement in the letter of November 15, 2006, its placement of its own copyright notice on receipts which include the works of students submitting to the Turnitin system, and its filing of a

bad faith, frivolous, lawsuit against MHS students. The willfulness of iParadigms' infringement is further apparent since its actions are the quintessence of hypocrisy, essentially stealing students' unpublished manuscripts while alleging protecting against intellectual theft.

23. Plaintiffs are entitled to statutory damages of \$30,000 under 17 U. S. C. §504(c)(1) for each infringed registration. In view of the willfulness of the infringement, the plaintiffs are entitled to enhanced statutory damages in the amount of \$150,000 for each registration, under 17 U. S. C. §504(c)(2).

24. Plaintiffs also have been, and will continue to be in the future, irreparably injured since the disposition of the plaintiffs' own property will be out of their control unless this Court intervenes. Therefore plaintiffs are also entitled to injunctive relief under 17 U. S. C. §502.

25. Since jurisdiction and venue properly lie in this court, and the law of Virginia applies to all aspects of this case [including voidability of a contract by a minor, duress, and how a minor is treated] not exclusively directed to copyright law, under the terms of the contract of adhesion set forth in ¶11 above, the use of the Turnitin system is unauthorized in this judicial district and the contract between the Fairfax County Public School System (and any other client in this judicial district) and iParadigms is void because the only possible use is unauthorized.

26. Since the relationship between iParadigms and the students who are coerced into submitting, without compensation, unpublished manuscripts to iParadigms is a violation of the prohibition against involuntary servitude of the 13<sup>th</sup> Amendment to the U. S. Constitution, all archiving of student unpublished manuscripts without the permission

of the students is illegal under the 13<sup>th</sup> Amendment to the U. S. Constitution. Unlike the high school community service requirement and military draft cases, this is not a situation where public or charitable entities, or the public at large, benefit from the students' involuntary servitude; rather the only benefit that accrues is to the for-profit defendant.

Prayer for Relief

THEREFORE, plaintiffs pray for judgment in their favor and against defendant iParadigms as follows:

A. An injunction prohibiting iParadigms from infringing any existing or hereafter secured copyright of any of the plaintiffs, including – without limitation – archiving or distributing in any way any unpublished manuscript authored by any of the plaintiffs that is submitted to the Turnitin system at any time in the past or future;

B. An injunction prohibiting iParadigms from violating the 13<sup>th</sup> Amendment to the U. S. Constitution by archiving or distributing in any way any unpublished manuscript authored by any student that is submitted to the Turnitin system unless iParadigms has the specific consent of the student;

C. A statutory damage award from iParadigms to the plaintiffs of \$150,000 for the infringement of each Copyright Registration;

D. An injunction declaring the use of the Turnitin system in the Eastern District of Virginia unauthorized, and therefore any contract of iParadigms with a client in the Eastern District of Virginia void;

E. An award from iParadigms to the plaintiffs of their full costs of suit, including a reasonable attorney's fee as provided by 17 U. S. C. §505; and

F. Such other and further relief that this Court determines just and proper.

Jury Demand

Plaintiffs demand, pursuant to the 7<sup>th</sup> Amendment to the U. S. Constitution, a jury trial on all issues – including, without limitation, statutory damages – triable by right to a jury.

A. V., a minor, by his next friend Robert Vanderhye  
K. W., a minor, by his next friend Kevin Wade, Sr.  
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By their attorney

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March 19, 2007  
Date