

UNITED STATE DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STEPHANIE SINCLAIR)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No.: 1:18-cv-00790
)	
ZIFF DAVIS, LLC, and)	
MASHABLE, INC.,)	
)	DEMAND FOR JURY TRIAL
<i>Defendants.</i>)	
)	

SECOND AMENDED COMPLAINT

COMES now the Plaintiff, Stephanie Sinclair, and alleges as follows:

I. INTRODUCTION

1. This second amended complaint arises under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 et. seq. (the “Copyright Act”) and has been amended and is being filed with consent of Defendants.

2. Plaintiff alleges Defendants are liable for direct and willful copyright infringement in violation of 17 U.S.C. §§ 106 and 501.

II. PARTIES

3. Plaintiff Stephanie Sinclair (“Sinclair”) is a citizen of the United States, a resident of the state of New York, and maintains her principal place of business in the state of New York.

4. Defendant Ziff Davis, LLC (“Ziff Davis”) is and was at all relevant times an active foreign business corporation duly existing under the laws of the state of New York (NYS DOS ID #: 4511407), with the business address: 28 East 28th Street, New York, NY 10016, owning and operating a commercial website called “Mashable” at www.mashable.com.

5. Defendant Mashable, Inc. (“Mashable”) is and was at all relevant times an active foreign business corporation duly existing under the laws of the state of New York (NYS DOS ID # 4553187), with the business address: 114 Fifth Avenue, 15th Floor, New York, NY, 10011, operating a commercial website called “Mashable” at www.mashable.com and is upon information wholly owned and controlled by Defendant Ziff Davis LLC.

III. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1338 (copyrights).

7. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391 because Defendants’ principle place of business can be found in this District. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1400(a) (venue for copyright cases) because all Defendants may be found in this District.

8. This Court has *in personam* jurisdiction over Defendants because the Defendants availed themselves of the privileges of conducting business in this district and the State of New York and incurred a benefit from such infringement, thus it is reasonable for Defendants to submit to the jurisdiction of a New York federal district court.

IV. FACTUAL BACKGROUND

9. Plaintiff Sinclair is a freelance photojournalist well-known for gaining unique access to the world’s most sensitive gender and human rights issues, such as female genital mutilation, self-immolation, and, most notably, child marriage.

10. Plaintiff Sinclair has spent significant time and money amassing her twenty-year body of work, regularly risking life and limb to photograph people and events in dangerous circumstances such as war zones and similarly hostile environments.

11. Plaintiff Sinclair covered the United States' invasion of Iraq as a unilateral (non-embedded) journalist while an employee of the *Chicago Tribune* in 2003. She subsequently moved to Iraq to continue covering the war as a freelance photojournalist. She later moved to Beirut, Lebanon after covering the region for six years to New York, from where she continues to operate and take assignments worldwide.

12. Plaintiff Sinclair is a regular contributor to publications such as *National Geographic*, the *New York Times*, the *New York Times Magazine*, *Time*, *Newsweek*, *Stern*, *GEO*, and *Marie Claire*.

13. Plaintiff Sinclair has partnered with many reputable and notable institutions and organizations in her work on the issue of child marriage including the United Nations Population Fund (UNFPA), the U.S. Department of State, USAID, the government of Canada, the UK's Department for International Development (DFID), Human Rights Watch, and Plan International.

14. Plaintiff Sinclair was a Pulitzer Prize winner in 2000 while working for the *Chicago Tribune*, has been nominated for an Emmy Award, and has won numerous photojournalism industry awards including an unprecedented three (3) Vias D'or and, most recently, the *International Women's Media Foundation's* Anja Niedringhaus Courage in Photojournalism Award.

15. Plaintiff Sinclair regularly licenses her photographs to clients for use in reputable journalistic publications and/or on websites. To this end, Plaintiff owns and maintains a publically-searchable website (www.StephanieSinclair.com) to showcase her images and invites offers from potential licensors. The fees collected from licensing constitute a sizeable portion of Plaintiff's income to support herself and her family.

16. Defendant Ziff Davis LLC is a technologically-focused and sophisticated digital media and advertising company in the business of producing and distributing audiovisual content and selling advertising space, marketing, data, and licensing services on its own advertising network (NetShelter), and across their online brands and print titles, which include PC Mag, IGN, AskMen, Offers.com, Speetest, TechBargains, Mashable.com and more. According to its public website, Defendant Ziff Davis publishes its content in twenty-five (25) languages across one hundred and fourteen (114) countries.

17. Among Defendant Ziff Davis' media properties that it owns and/or controls is Defendant Mashable Inc. (www.mashable.com), a media and entertainment platform. Mashable operates on a variety of platforms, but their flagship property is its website, www.mashable.com. On Mashable's web site, it reads "Mashable is among the federally registered trademarks of Ziff Davis, LLC and may not be used by third parties without explicit permission."

18. When Defendant Mashable was sold to Defendant Ziff Davis in 2017 for at or around \$50 million, upon information and belief Defendant Mashable retained its legal status as an independent entity. However, the obligatory legal notices published on www.mashable.com (consisting of separate pages for "Privacy Policy", "Terms of Use", and "Cookie Policy") each redirect users to corresponding legal notices published on www.ZiffDavis.com, which detail users' legal relationship not with Defendant Mashable but with Defendant Ziff Davis. Included among these legal notices is a Copyright Policy expressly directing copyright owners with infringement claims to contact Ziff Davis' designated copyright agent, Stephen Hicks at Ziff Davis' corporate address in New York City, or by email at "ZDLegal1@ziffdavis.com". In other words, Defendant Mashable does not maintain an agent at Mashable.com, but instead directs copyright holders seeking redress for infringements made on www.mashable.com to Defendant

Ziff Davis' website and Defendant Ziff Davis' copyright agent working out of Defendant Ziff Davis' corporate offices.

19. Further, Defendant Mashable's entry with the U.S. Copyright Office's DMCA Designated Agent Directory (created pursuant to 17 U.S.C. §512 for the purpose of regulating "safe harbor" protections for online "service provider" entities) for www.mashable.com lists as Mashable's official Service Provider: "Mashable. Inc., c/o Ziff Davis LLC, 28 East 28th Street, Attn: Legal Department, New York, NY 10016"; and as Mashable's official Designated Agent: "Stephen Hicks, Ziff Davis, LLC, 28 East 28th Street, New York, NY 10016, Phone: 212-503-3569, Email: legal@ziffdavis.com". According to the Copyright office entry, this status is currently active and has been in effect since January 22, 2018. For purposes of this second amended complaint, Plaintiff is suing both Defendant Mashable, Inc. and Defendant Ziff Davis as she alleges that Ziff Davis maintains control over Mashable, Inc. and holds itself out as Mashable's agent for copyright issues.

20. Defendant Mashable's website, www.mashable.com, currently garners over 1,300,000 unique daily viewers, and almost 2,000,000 daily page views according to website traffic monitoring organization, Website Informer (www.websiteinformer.com). At the time of this filing, Mashable also had over 6,700,000 followers of its English language Facebook page and over 9,800,000 followers of its Twitter account.

21. Defendant Ziff Davis generates revenue, in part, through advertisements and targeted promotional placements on www.mashable.com and on its other branded media outlets. As web traffic and download rates across these platforms increase, Defendant is able to charge advertisers higher rates for placing advertisements in front of their millions of followers, subscribers, downloaders, and public viewers.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.