

1 Jason Schultz (SBN 212600)
jason@eff.org
2 Corynne McSherry (SBN 221504)
corynne@eff.org
3 ELECTRONIC FRONTIER FOUNDATION
4 454 Shotwell Street
5 San Francisco, CA 94110
6 Telephone: (415) 436-9333 x112
7 Facsimile: (415) 436-9993

8 Attorneys for Plaintiff
9 JEFFREY DIEHL

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 JEFFREY DIEHL,) Case No. _____
13))
14 Plaintiff,) **COMPLAINT**
15))
16 v.) (Jury Trial Demanded)
17))
18 MICHAEL CROOK,)
19))
20 Defendant.)
21))
22))
23))
24))
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26))

27 1. This is a civil action seeking injunctive relief and damages for misrepresentation of
28 copyright claims under the Digital Millennium Copyright Act and intentional interference with
contractual relations; injunctive relief, restitution and disgorgement for unfair business practices;
and declaratory relief.

2. This case arises out of legal threats issued by the Defendant, namely threats of
copyright litigation made in an attempt to stifle public discussion and criticism of the Defendant.
The threats have successfully induced the removal of the information from websites run by
Plaintiff Jeffrey Diehl under duress and in direct response to Defendant's abuse of law.

PARTIES

3. Plaintiff Jeff Diehl ("Diehl") is an individual residing in San Francisco, California.
4. On information and belief, Defendant Michael Crook ("Crook") is an individual

1 residing at 8417 Oswego Rd. #179, Baldwinsville, New York.

2 **JURISDICTION AND VENUE**

3 5. This court has subject matter jurisdiction over this claim pursuant to the Copyright
4 Act (17 U.S.C. §§ 101 et seq.), and 28 U.S.C. §§ 1331 and 1338 and the Declaratory Judgment Act
5 (28 U.S.C. § 2291). This court has supplemental subject matter jurisdiction over state law claims
6 pursuant to 28 U.S.C. § 1367(a) in that the state law claims form part of the same case or
7 controversy and transaction or occurrence as the federal claims.

8 6. Plaintiff is informed, believes and thereon alleges that Defendant has sufficient
9 contacts with this district generally and, in particular, with the events herein alleged, that he is
10 subject to the exercise of jurisdiction of this court and that venue is proper in this judicial district
11 pursuant to 28 U.S.C. § 1391.

12 **FACTUAL ALLEGATIONS**

13 7. Jeffrey Diehl is an individual who publishes and edits 10 Zen Monkeys, an Internet
14 magazine, or “webzine.” The webzine is available at www.10zenmonkeys.com, and is hosted by
15 Laughing Squid Web Hosting, an independent web hosting service located in San Francisco,
16 California that specializes in providing hosting services to artists, musicians, non-profits and small
17 businesses.

18 8. Until September 20, 2006, 10 Zen Monkeys was hosted by BluFX Hosting, which
19 leases server space from Layered Technologies, an online service provider with its principal place
20 of business in Frisco, Texas.

21 9. Michael Crook is an individual who owns and operates a number of websites,
22 including michaelcrook.com; craigslist-perverts.com and racismworks.com. These sites are known
23 collectively as “Michael Crook Internet Properties.”

24 10. On or around August and September, 2006, Crook – posing as a young woman
25 named “Melissa,” “Amanda,” or “Nicole” – posted personal ads on Internet classified advertising
26 site craigslist.org seeking a casual sexual encounter. Crook posted the responses he received to the
27 ads on his website www.craigslist-perverts.org, including information regarding the respondents,
28 such as photographs, phone numbers, and the names of respondents’ employers. The website has

1 since been taken down.

2 11. On August 21, 2006, Crook stated, on his website, that he and his associates had
3 begun “serving various web hosts and datacenters with DMCA (Digital Millennium Copyright Act)
4 complaints against various websites which have allegedly violated my copyright laws.” A true and
5 correct copy of that post is attached hereto as Exhibit A.

6 12. On September 18, 2006, Lou Cabron, a contributor to 10 Zen Monkeys, wrote an
7 article about the Crook controversy entitled “In the Company of Jerkoffs” (“Crook Article”). The
8 article characterized Crook as “pathetic” and “hypocritical,” and included a still image of Crook
9 being interviewed by Fox News (“Fox News Image”). Plaintiff Diehl also contributed to the article
10 and edited it for publication on 10 Zen Monkeys. A true and correct copy of the article and the Fox
11 News Image are attached hereto as Exhibit B. They have been separated since the original post
12 combining them has been taken down.

13 13. On or around September 19, 2006, Layered Technologies received a letter from
14 Crook stating under penalty of perjury that Crook was the owner of the copyright in the Fox News
15 Image that Cabron had posted on 10 Zen Monkeys and that Crook had not authorized the use of the
16 image, and demanding that it be removed pursuant to section 512 of the Digital Millennium
17 Copyright Act.

18 14. Layered Technologies forwarded the notice to Hunter Hastings at BlueFX Hosting.
19 Hunter Hastings contacted Diehl and demanded that he remove the photograph. Diehl complied
20 under duress. Because he strongly disagreed with Crook’s copyright claim, and was disturbed that
21 BluFX did not challenge it, Diehl also immediately began searching for a new hosting service.

22 15. On September 20, Diehl contracted with Laughing Squid to provide hosting
23 services, moved 10 Zen Monkeys to the new host, and put the Fox News Image back up.

24 16. Diehl spent over 10 hours finding his new hosting service, transferring the 10 Zen
25 Monkeys site, and responding to the Crook DMCA notices. In addition, the 10 Zen Monkeys
26 website was shut down for 48 hours during the transfer from BluFX to Laughing Squid. Moreover,
27 Diehl had to relocate five other online publications as a result of the move, including
28 mondoglobo.net, rusiriusradio.com, mondoglobo.net/neofiles, destinyland.mondoglobo.net, and

1 mondoglobo.net/pastorjack. This process took over a week to fully resolve, with the publications
2 being offline for a good portion of that time.

3 17. Laughing Squid's hosting service costs Plaintiff Diehl \$1,320 per year more than
4 the hosting service provided by BluFX.

5 18. Laughing Squid leases server space from RackSpace Managed Hosting
6 ("Rackspace"), an online service provider with its principal place of business in San Antonio,
7 Texas.

8 19. On September 22, 2006, Rackspace received a notice from Crook stating under
9 penalty of perjury that he was the owner of the copyright in the Fox News Image, had not
10 authorized the use of the Fox News Image and demanding that it be taken down pursuant to section
11 512 of the Digital Millennium Copyright Act. A true and correct copy of that notice is attached
12 hereto as Exhibit C.

13 20. That same day, Rackspace forwarded the notice to Scott Beale, owner of Laughing
14 Squid, and requested that he remove the Fox News Image.

15 21. Beale immediately contacted Diehl and requested that he remove the Fox News
16 Image from the 10 Zen Monkeys website. Diehl did so, again under duress.

17 22. Subsequently, Diehl found the Fox News Image on an AOL.com website and linked
18 to that image from the Crook Article.

19 23. On October 24, 2006, Crook sent an additional DMCA notice to Rackspace and
20 Laughing Squid again stating under penalty of perjury that he was the owner of the copyright in the
21 Fox News Image, had not authorized the use of the Fox News Image and demanding that it be
22 taken down pursuant to section 512 of the Digital Millennium Copyright Act. A true and correct
23 copy of that notice is attached hereto as Exhibit D.

24 24. This notice was also sent to Plaintiff with a demand that he remove the link to the
25 Fox News Image hosted on the AOL.com website. Plaintiff again complied under duress.

26 **COUNT I: 17 U.S.C. 512(f) MISREPRESENTATION**

27 25. Plaintiff repeats and incorporates herein by reference the allegations in the
28 preceding paragraphs of this complaint.

1 26. Defendant Crook does not own any copyright interest in the Fox News Image that
2 served as the basis of his complaints under Section 512 of the DMCA. On information and belief
3 Crook knew he had no copyright interest in the Fox News Image and was not authorized by the
4 copyright owner to send a notice under Section 512 to any Internet Service Provider, including
5 Layered Technologies, BluFX, Rackspace, or Laughing Squid. Thus, Crook knowingly
6 misrepresented both the identity of the copyright owner of the Fox News Image and any
7 authorization he received from Fox in all the notices Crook sent pursuant to Section 512 of the
8 DMCA. On information and belief, Crook also knew that posting the image in the context of
9 critical commentary over the Craigslist controversy was a fair use of that photograph and therefore
10 not an infringement of any copyright in it.

11 27. In his notices of September 19 and September 22, 2006, purportedly issued under
12 the authority of 17 U.S.C. § 512, Crook knowingly materially misrepresented that publication of
13 the Fox News Image was infringing copyrights, thus violating 17 U.S.C. § 512(f).

14 28. Crook also knowingly materially misrepresented that he owned the copyright in the
15 Fox News Image, thus violating 17 U.S.C. § 512(f).

16 29. As a direct and proximate result of Crook's actions, Plaintiff has been injured
17 substantially and irreparably. Such injuries include but are not limited to the financial and personal
18 expenses associated with responding the notices as well as switching web hosts and the harm to his
19 free speech rights under the First Amendment.

20 **COUNT II: INTERFERENCE WITH CONTRACT**

21 30. Plaintiff incorporates the allegations set forth above by references, as if set forth
22 fully herein.

23 31. From September 15th, 2006 to September 20th, Diehl contracted with BluFX
24 Hosting for Internet connectivity for his webzine.

25 32. On information and belief, Crook knew of the contractual relationship between
26 Diehl and BluFX as well as the existence of a contractual relationship between BlueFX and
27 Layered Technologies.

28 33. On information and belief, Crook's DMCA notice to Layered Technologies was

1 intended to cause Layered Technologies to terminate, interfere with, interrupt, or otherwise limit
2 Diehl's contractual rights with BluFX by misrepresenting that the publication of the Fox New
3 image allegedly violated Crook's copyrights.

4 34. Crook's actions did disrupt Diehl's contract for Internet connectivity. Because of
5 these actions, Diehl was forced to moved 10 Zen Monkeys to a new hosting service.

6 35. Plaintiff presently contracts with Laughing Squid for Internet connectivity for his
7 webzine, 10 Zen Monkeys. A true and correct copy of that notice is attached hereto as Exhibit E.

8 36. On information and belief, Crook knew of the contractual relationship between
9 Diehl and Laughing Squid as well as the existence of a contractual relationship between Laughing
10 Squid and Rackspace.

11 37. On information and belief, Crook's DMCA notices to Rackspace and Laughing
12 Squid were intended to cause Rackspace and Laughing Squid to terminate, interfere with, interrupt,
13 or otherwise limit Diehl's contractual rights with Laughing Squid by misrepresenting that the
14 publication of the Fox New image allegedly violated Crook's copyrights.

15 38. As a direct and proximate result of Crook's actions, Plaintiff has been injured
16 substantially and irreparably. Such injuries include but are not limited to the financial and personal
17 expenses associated with responding the notices as well as switching web hosts, and the harm to
18 his free speech rights under the First Amendment.

19 **COUNT III: UNFAIR, UNLAWFUL AND FRAUDULENT BUSINESS PRACTICES**

20 39. Plaintiff incorporates the allegations set forth above by references, as if set forth
21 fully herein.

22 40. Crook has engaged in unfair, unlawful and fraudulent business practices as set forth
23 above.

24 41. By engaging in the above-described acts and practices, Crook has committed one or
25 more unfair and unlawful business practices within the meaning of Cal. Bus. & Prof. Code §17200,
26 et seq. These include but are not limited to violations of the public policies set forth in 17 U.S.C.
27 § 512 *et seq* and Article 1, Section 2 of the California Constitution.

28 42. Crook's above-described deceptive and misleading acts and practices have and/or

1 are likely to deceive Rackspace, Laughing Squid, Layered Technologies and BluFX Hosting, to the
2 detriment of Diehl.

3 43. As a direct and proximate result of Crook's actions, Diehl has suffered injury in fact
4 and lost money or property as a result of Crook's unfair and fraudulent business practices. Such
5 injuries and losses include, but are not limited to, the expense of switching servers and injury to his
6 First Amendment rights.

7 44. As a result, Diehl seeks an order of this Court awarding restitution, disgorgement,
8 injunctive relief and all other relief allowed under §17200 *et seq.*

9 **COUNT IV: DECLARATORY RELIEF OF NON-INFRINGEMENT**

10 45. Plaintiff repeats and incorporates herein by reference the allegations in the
11 preceding paragraphs of this complaint.

12 46. There is a real and actual controversy between Diehl and Defendant regarding
13 whether the publication of the Fox News Image constitutes infringement of a copyright lawfully
14 owned by Defendant.

15 47. Diehl contends that, consistent with the Copyright Act of the United States of
16 America, including those laws prohibiting direct, contributory or vicarious infringement, laws
17 protecting fair use and the First Amendment to the United States Constitution, and judicial
18 decisions construing such laws, doctrines, and provisions, publication of the Fox News Image was
19 and is lawful;

20 48. Wherefore, Diehl requests that the Court determine and adjudge that each and every
21 of the above-stated propositions states the law applicable to the facts involved in this action.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, the Plaintiff prays for judgment as follows:

- 24 1. A declaratory judgment that as it relates to the Defendant and the Fox News Image
25 that publication of the Fox News Image by Plaintiff does not infringe any copyright
26 owned by Defendant;
- 27 2. Injunctive relief restraining the Defendant, his agents, servants, employees,
28 successors and assigns, and all others in concert and privity with him, from bringing

1 any lawsuit or threat against Plaintiff or any other person or entity for copyright
2 infringement in connection with the Fox News Image, including its publication,
3 linking to or hosting services described above;

4 3. Damages according to proof;

5 4. Attorneys fees pursuant to 17 U.S.C. § 512(f), other portions of the Copyright Act
6 including Section 505, on a Private Attorney General basis, or otherwise as allowed
7 by law;

8 6. Plaintiff's costs and disbursements; and

9 7. Such other and further relief as the Court shall find just and proper.

10 Plaintiff hereby requests a jury trial for all issues triable by jury including, but not limited
11 to, those issues and claims set forth in any amended complaint or consolidated action.

12
13 DATED: November 1, 2006

14 By _____

15 Jason M. Schultz, Esq.
16 Corynne McSherry, Esq.
17 ELECTRONIC FRONTIER FOUNDATION
18 454 Shotwell Street
San Francisco, CA 94110
Telephone: (415) 436-9333 x112
Facsimile: (415) 436-9993

19 Attorneys for Plaintiff
20 JEFFREY DIEHL