

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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LARRY PHILPOT :

Plaintiff, :

v. :

Case No. _____

MEDIA RESEARCH CENTER INC. :

Defendant. :

JURY TRIAL DEMANDED

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COMPLAINT

Plaintiff Larry Philpot (“Philpot”), by his undersigned counsel, for his complaint against defendant Media Research Center Inc. (“MRC”), alleges:

Nature of the Action

1. Philpot is bringing this copyright infringement action to obtain damages resulting from the unauthorized copying and public display of Philpot’s photographs of singers and songwriters (i) Kenny Chesney (the “Chesney Photograph”) and (ii) Kid Rock (the “Kid Rock Photograph”), for which Philpot owns the copyrights (the “Chesney Copyright” and “Kid Rock Copyright” respectively).

Jurisdiction and Venue

2. This Court has subject matter jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331 and § 1338(a) because they arise under the Copyright Act, 17 U.S.C. § 101 *et seq.*

3. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a) because MRC has its principal place of business in this District.

4. The Court has personal jurisdiction over MRC because MRC has its principal place of business in this District.

The Parties to this Action

5. Philpot is a natural person having a place of business at 12527 Winding Creek Lane, Indianapolis, Indiana 46236. Philpot is a professional music photojournalist.

6. Upon information and belief, MRC is a nonprofit organization with its principal places of business at 1900 Campus Commons Drive, Reston, Virginia 20191. At all relevant times, MRC has owned and operated the website located at the URL www.mrctv.org.

Statement of Facts

A. Philpot's Ownership of the Photographs

7. Philpot created the Chesney Photograph, a copy of which is attached as Exhibit A.

8. Philpot is the author of the Chesney Photograph, and has, at all times been the sole owner of all right, title, and interest in the Chesney Copyright.

9. Philpot registered the Chesney Copyright, in a collection of photographic works, with the United States Copyright Office. On or about August 21, 2013, Philpot received for those works United States Copyright Registration Number VAu 1-164-624, which is valid and enforceable. A true and correct copy of the certificate of registration is attached as Exhibit B.

10. Philpot created the Kid Rock Photograph, a copy of which is attached as Exhibit C.

11. Philpot is the author of the Kid Rock Photograph, and has, at all times been the sole owner of all right, title, and interest in the Kid Rock Copyright.

12. Philpot registered the Kid Rock Copyright, in a collection of photographic works, with the United States Copyright Office. On or about December 9, 2013, Philpot received for those works United States Copyright Registration Number VAu 1-182-727, which is valid and enforceable. A true and correct copy of the certificate of registration is attached as Exhibit D.

B. MRC's Infringing Activities

i. The Chesney Photograph

13. Upon information and belief, on or about January 22, 2015, an employee or agent of MRC (i) made a copy of the Chesney Photograph on a computer, (ii) uploaded the Chesney Photograph to the URL <https://cdn.mrctv.org/sites/default/files/uploads/KennyChesney.jpg> (the "Chesney URL"), (iii) published an article at the URL <http://www.mrctv.org/blog/8-list-celebrties-are-pro-life-0> (the "Chesney Article"), and (iv) using HTML source code, caused the Chesney Photograph at the Chesney URL to appear with the Chesney Article. Upon information and belief, MRC's purpose in causing the Chesney Photograph to appear with the Chesney Article was to improve the quality of the website, and encourage users to click on MRC's content and ads, generating advertising revenue for MRC. A true copy of the Chesney Photograph appearing in the Chesney Article is attached as Exhibit E.

14. Upon information and belief, at all relevant times, MRC has been the registrant for the domain name mrctv.org (the "Domain"), and has owned and controlled the server for the domain name "mrctv.org" (the "Server").

15. Upon information and belief, MRC never licensed the Chesney Photograph from Philpot, or had Philpot's permission to copy or display the Chesney Photograph.

16. MRC did not credit Philpot as the author of the Chesney Photograph.

ii. The Kid Rock Photograph

17. Upon information and belief, on or about July 13, 2017, an employee or agent of MRC (i) made a copy of the Kid Rock Photograph on a computer, (ii) uploaded the Kid Rock Photograph to the URL <https://cdn.mrctv.org/files/styles/medium/s3fs/2017-07/KidRock.jpg> (the “Kid Rock URL”), (iii) published an article at the URL <https://www.mrctv.org/blog/kid-rock-announces-2018-us-senate-bid> (the “Kid Rock Article”), and (iv) using HTML source code, caused the Kid Rock Photograph at the Kid Rock URL to appear with the Kid Rock Article. Upon information and belief, MRC’s purpose in causing the Kid Rock Photograph to appear with the Kid Rock Article was to improve the quality of the website, and encourage users to click on MRC’s content and ads, generating advertising revenue for MRC. A true copy of the Kid Rock Photograph appearing in the Kid Rock Article is attached as Exhibit F.

18. Upon information and belief, at all relevant times, MRC has been the registrant for the Domain, and has owned and controlled the Server.

19. Upon information and belief, MRC never licensed the Kid Rock Photograph from Philpot, or had Philpot’s permission to copy or display the Kid Rock Photograph.

20. MRC did not credit Philpot as the author of the Kid Rock Photograph.

A FIRST CLAIM FOR RELIEF
(Infringement of the Chesney Copyright – 17 U.S.C. §§ 106, 501)

21. Philpot incorporates by reference each allegation contained in Paragraphs 1 through 20 above.

22. Philpot owns the Chesney Copyright and the copyright registration for it, which are both valid and enforceable.

23. MRC infringed the Chesney Copyright in at least the following ways.

A. Liability for Reproduction under 17 U.S.C. § 106(1)

24. MRC infringed the Chesney Copyright by reproducing the Chesney Photograph on a hard drive and on the server at the Chesney URL in violation of 17 U.S.C. § 106(1).

B. Liability for Public Display under 17 U.S.C. § 106(5)

25. MRC infringed the Chesney Copyright by publicly displaying the Chesney Photograph on the Internet at the Chesney URL and/or the Chesney Article in violation of 17 U.S.C. § 106(5).

26. Upon information and belief, the foregoing acts of infringement by MRC were willful and/or in reckless disregard of Philpot's rights.

27. As a direct result of MRC's infringement of the Chesney Copyright, Philpot is entitled, pursuant to 17 U.S.C. § 504(b), to his damages and/or MRC's profits from the infringement.

28. Alternatively, Philpot is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) of up to \$150,000 for the willful infringement of the Chesney Copyright.

A SECOND CLAIM FOR RELIEF
(Infringement of the Kid Rock Copyright – 17 U.S.C. §§ 106, 501)

29. Philpot incorporates by reference each allegation contained in Paragraphs 1 through 28 above.

30. Philpot owns the Kid Rock Copyright and the copyright registration for it, which are both valid and enforceable.

31. MRC infringed the Kid Rock Copyright in at least the following ways.

A. Liability for Reproduction under 17 U.S.C. § 106(1)

32. MRC infringed the Kid Rock Copyright by reproducing the Kid Rock Photograph on a hard drive and on the server at the Kid Rock URL in violation of 17 U.S.C. § 106(1).

B. Liability for Public Display under 17 U.S.C. § 106(5)

33. MRC infringed the Kid Rock Copyright by publicly displaying the Kid Rock Photograph on the Internet at the Kid Rock URL and/or the Kid Rock Article in violation of 17 U.S.C. § 106(5).

34. Upon information and belief, the foregoing acts of infringement by MRC were willful and/or in reckless disregard of Philpot's rights.

35. As a direct result of MRC's infringement of the Kid Rock Copyright, Philpot is entitled, pursuant to 17 U.S.C. § 504(b), to his damages and/or MRC's profits from the infringement.

36. Alternatively, Philpot is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) of up to \$150,000 for the willful infringement of the Kid Rock Copyright.

PRAYER FOR RELIEF

WHEREFORE, Philpot respectfully requests judgment as follows:

A. That MRC be adjudged to have infringed upon Philpot's copyrights in the Chesney Photograph and Kid Rock Photograph in violation of 17 U.S.C § 106;

B. That Philpot be awarded the greater of (a) Philpot's actual damages and/or MRC's profits attributable to its infringement of Philpot's copyrights, or (b) alternatively, statutory damages of up to \$150,000 per work, pursuant to 17 U.S.C. § 504, the precise amount to be determined by the trier of fact in this action;

C. That MRC and its officers, directors, employees, agents, representatives, affiliates, subsidiaries, distributors, licensees and all persons or entities acting in concert or participation

with it, be enjoined from infringing the Chesney Photograph and Kid Rock Photograph pursuant to 17 U.S.C. § 502;

D. That Philpot be awarded his costs, including attorneys' fees, pursuant to 17 U.S.C. § 505; and

E. That Philpot be granted such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Philpot hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: July 20, 2017

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