

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

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DISTRICT OF UTAH
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<p>INTELLECTUAL RESERVE, INC., a Utah corporation, Plaintiff, vs. UTAH LIGHTHOUSE MINISTRY, INC., a Utah corporation, et al., Defendants.</p>	<p>ORDER Case No. 2:99-CV-808C</p>
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This matter is before the court on plaintiff's motion for a temporary restraining order and preliminary injunction. The court, after conducting a hearing on October 18, 1999, issued a temporary restraining order. The court also set a schedule for additional briefing on the motion for a preliminary injunction and set a date for a hearing on the motion.

Defendants, in a memorandum filed on October 28, 1999, stated that they had no objections to the temporary restraining order remaining in effect as a preliminary injunction. Plaintiff filed a reply on November 5, 1999, which alleged that defendants were in contempt of the court's temporary restraining order and were engaged in new infringements of the copyright. Defendants filed an additional memorandum on November 8, 1999.

On November 10, 1999, the court conducted a hearing on the motion for preliminary injunction, at which plaintiff was represented by Todd E. Zenger and Berne S. Broadbent,

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defendants were represented by Brian Barnard.

Now having fully considered the arguments of counsel, the submissions of the parties and applicable legal authorities, the court now enters the following order for temporary injunctive relief:

Discussion

The United States Copyright Act allows a court to “grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” 17 U.S.C. § 502(a). In determining whether plaintiff is entitled to injunctive relief, the following factors are to be considered:

(1) substantial likelihood that the movant will eventually prevail on the merits; (2) a showing that the movant will suffer irreparable injury unless the injunction issues; (3) proof that the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) a showing that the injunction, if issued, would not be adverse to the public interest.

Equifax Servs., Inc. v. Hitz, 905 F.2d 1355, 1360 (10th Cir. 1990).

First, the defendants, for purposes of the temporary restraining order and preliminary injunction, concede that plaintiff has a valid copyright in the “Church Handbook of Instructions” and that defendants directly infringed plaintiff’s copyright. Based on the record now before the court, it appears that there is a substantial likelihood that the plaintiff will eventually prevail on its claim of contributory infringement. See Gershwin Publ’g Corp. v. Columbia Artists Mgt., Inc., 443 F.2d 1159, 1162 (2d Cir. 1991) (stating that “one who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another, may be held liable as a ‘contributory’ infringer”). The evidence shows that defendants have placed on their website a notice that states “Church Handbook of Instructions is back online!”

and then lists three website addresses which allegedly contain an infringing copy of plaintiff's copyrighted material. Additionally, posted on defendants' website are instructions on how to correctly type in the web address so that a person can view, and download, the alleged infringing material. Although the court will address this issue again at the hearing on the motion for a preliminary injunction, the court finds for purposes of a temporary relief, that plaintiff has demonstrated a substantial likelihood of success on the merits.

Second, plaintiff has also sufficiently shown that it will suffer irreparable harm if injunctive relief is not granted. The Tenth Circuit has stated that once plaintiff has demonstrated a likelihood of success on the merits in a copyright infringement case, there is a presumption of injury. See Country Kids 'N City Slicks, Inc. v. Sheen, 77 F.3d 1280, 1288-89 (10th Cir. 1996). Plaintiff has also provided evidence that without an expansion and clarification of the temporary restraining order, plaintiff will suffer additional irreparable harm because copies of its copyrighted material will be viewed and downloaded. The court is unaware of any remedial measures that could be taken to retrieve all the copies of the copyrighted material that are downloaded.

Third, defendants have not alleged that they will suffer any harm from a temporary restraining order issuing. Although defendants, at the first hearing on the motion for a temporary restraining order, stated that their First Amendment rights may be at issue, they have not advanced any arguments nor provided any support for that position.

Finally, the court finds that it is in the public's interest to protect the copyright laws and the interests of copyright holders.

Order

Therefore, for the reasons stated, the court orders as follows:

1. The conditions of the temporary restraining order entered on October 18, 1999, remain in effect and defendants shall abide by those conditions.
2. Defendants shall remove from defendants' website the three website addresses claimed by plaintiff to be websites where infringing material is posted. Defendants, their agents, and those under their control, shall not post any additional materials or website addresses that contain the alleged infringing copyrighted material.
3. Defendants shall remove from the pleadings and from other material posted on their website, any website addresses where the alleged infringing copyrighted material is posted.
4. Defendants shall not post any additional infringing copyrighted material on their website.
5. This order will remain in effect until plaintiff's motion for preliminary injunction is resolved.

IT IS SO ORDERED this 10 day of November, 1999.

BY THE COURT:

Tena Campbell
TENA CAMPBELL
United States District Judge