

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALESSANDRO MASI,

Plaintiff,

- against -

YAHOO! INC.

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Alessandro Masi (“Masi” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Yahoo! Inc. (“Yahoo” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Poonam Sachin in the rain, an owned and registered by Masi, a London based photojournalist. Accordingly, Masi seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

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

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Masi is an award winning professional documentary photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 6 Balmoral Road, London, NW25DY, United Kingdom. Masi's is deeply committed to spreading awareness and supporting action towards children's rights and education. Masi won the Premio Anima 2015 Soul Prize for Photography in Italy. His images are exhibited as part of the UNICEF Germany collaboration with the Arp Museum Bahnhof Rolandseck in Germany.

6. Upon information and belief, Yahoo is a corporation duly organized and existing under the laws of the State of Delaware, with a principal place of business at 701 first Avenue, Sunnyvale, California, 94089. Upon information and belief, Yahoo is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Yahoo has owned and operated a website at the URL: Yahoo.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. In 2009, Masi travel to the city of Bhopal, India to document the severe illnesses faced by children as a result of poisonous drinking water contaminated by the waste of Union Carbide, left behind after the 1984 Gas Tragedy. On or about August 25, 2009, during a heavy rain storm, Masi photograph Poonam Sachin, who was six year old. (the "Photograph"). Poonan

was born with six toes on her left foot. The Photograph won second place in the Photographers Giving Back Photo Award. As a result Poonam and her family received \$5,000. A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Masi is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with Copyright Office and was given Copyright Registration Number VA 1-925-877.

B. Defendant's Infringing Activities

10. Upon information and belief, on or about March 5, 2015, Yahoo ran an article on the Website entitled *Poonam, la bimba Indiana salvata da una foto*. See <https://it.notizie.yahoo.com/blog/poonam--la-bimba-indiana-salvata-da-una-foto-103327501.html>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

11. Yahoo did not license the Photograph from Plaintiff for its article, nor did Yahoo have Plaintiff's permission or consent to publish the Photograph on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST YAHOO)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Yahoo infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Yahoo is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Yahoo have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

19. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Yahoo be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

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

Dated: Valley Stream, New York
June 23, 2016

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