

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DATAPRO INTERNATIONAL INC.,)	No.
)	
Plaintiff,)	COMPLAINT
)	
vs.)	JURY DEMAND
)	
EBAY, INC.,)	
)	
Defendant)	

DataPro International Inc. alleges for its Complaint against eBay, Inc., as follows:

NATURE OF ACTION

1. This is a copyright infringement lawsuit brought by DataPro, the author of an online instructional guide, against eBay for the unauthorized copying, adaptation, and publication of DataPro's guide, and the removal and alteration of DataPro's copyright registration information to wrongly claim DataPro's original work as its own. DataPro seeks an injunction to enjoin eBay from continuing this infringement, along with actual or statutory damages, and an award of its reasonable attorney's fees, in addition to the other relief provided by law.

PARTIES

2. DataPro is a Delaware corporation. Its principal place of business is located in Seattle, Washington.

1 3. eBay is a Delaware corporation. Its principal place of business is located in San
2 Jose, California.

3 **JURISDICTION AND VENUE**

4 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
5 1338(a), and 17 U.S.C § 1203(a).

6 5. The Court has personal jurisdiction over eBay because eBay maintains offices in
7 Washington and this District; it continually transacts business in Washington and this District; it
8 displayed the work at issue in this lawsuit in Washington and this District; and the effects of its
9 infringement was directed to and felt in this district, where DataPro resides. For these reasons,
10 the Court has both general and specific jurisdiction over eBay, including pursuant to RCW
11 4.28.185, and *Calder v. Jones*, 465 U.S. 783 (1984), and its progeny.

12 6. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), and (d), and
13 28 U.S.C. § 1400(a) because both parties for venue purposes reside in this District, because eBay
14 may be found in this District, because eBay is subject to the Court's personal jurisdiction in this
15 District, and because a substantial part of the events giving rise to the claims DataPro asserts
16 herein occurred in this District.

17 **FACTUAL ALLEGATIONS**

18 7. DataPro is a family-owned corporation engaged in the business of manufacturing
19 and distributing data cables. It has been in business for more than 30 years. It has earned a well-
20 known reputation for the quality and customer service it provides.

21 8. DataPro enhances its reputation and markets its products in part by publishing
22 information about cable products and the cable industry on its publicly-accessible website,
23 located at <https://www.datapro.net>.

24 9. Indeed, the content DataPro publishes is an important reason why it ranks
25 favorably in search engine results. Such results are critical to DataPro's ability to reach new
26

1 customers and sell its products. For this reason, it devotes significant resources and effort to
2 create informative and reliable content on its website.

3 10. As part of these efforts, in 2003, DataPro employee Anthony van Winkle wrote a
4 new and original instructional guide regarding the selection and use of digital video interface
5 cables, titled, "A Complete Guide to the Digital Video Interface." A true and correct copy of the
6 guide is attached hereto as Exhibit A (the "Guide").

7 11. Mr. van Winkle wrote the Guide during the course of his employment for
8 DataPro's benefit. As such, the manual, and all associated copyrights, are owned solely by
9 DataPro.

10 12. Soon after the Guide was written, DataPro began publishing it on its website.

11 13. The page on which the Guide appears soon became – and continues to be – among
12 DataPro's top web pages in visitor traffic. It also typically appears in the first page of search
13 results.

14 14. The page conspicuously displays DataPro's copyright notice, along with the
15 statement: "Written by Anthony van Winkle for DataPro International Inc. Unauthorized
16 duplication strictly prohibited."

17 15. On or about January 30, 2008, DataPro registered the text of its Guide with the
18 U.S. Copyright Office (Reg. No. TXu 1-647-313). Its registration has an effective date of
19 February 18, 2008. A true and correct copy of the registration certificate is attached as Exhibit B
20 (the "'313 Registration").

21 16. On or about September 21, 2011, DataPro registered the text, photographs, and
22 artwork elements of its website with the U.S. Copyright Office (Reg. No. Txu 1-771-808). This
23 registration covered the text of its Guide in substantially the same form that DataPro previously
24 registered. However, because this registration excluded the text covered in DataPro's '313
25 Registration, the new registration mainly covered, in relevant part, the revisions to the Guide that
26

were not covered by the '313 Registration. This registration has an effective date of September 26, 2011. A true and correct copy of the registration certificate is attached as Exhibit C (the "'808 Registration").

17. In 2014, eBay began publishing an online instructional guide regarding the selection and use of digital video interface cables, titled, "How to Distinguish Between Various DVI Connectors." A true and correct copy of its guide is attached hereto as Exhibit D (the "Copied Guide"). eBay made its Copied Guide available to the public on its website, including at <http://www.ebay.com/gds/How-to-Distinguish-Between-Various-DVI-Connectors/10000000178258880/g.html>.

18. eBay's Copied Guide is an unauthorized copy, or adaptation, of the original text contained in DataPro's Guide. In summary, eBay's Copied Guide reads like a lazy fifth-grader's research report lifted from Wikipedia – except, in this case, the lazy fifth-grader is eBay, and Wikipedia is DataPro. Among other things, eBay's Copied Guide copies or adapts the structure and large portions of the text of DataPro's Guide. For illustrative purposes, a sentence-by-sentence comparison of the first section of the parties' works is set forth below:

DataPro's Guide	eBay's Copied Guide
DVI stands for (D)igital (V)ideo (I)nterface.	DVI stands for digital video interface.
DVI is a popular form of video interface technology made to maximize the quality of flat panel LCD monitors and modern video graphics cards.	This is a popular form of video interface technology which is designed to increase the quality of modern video graphics cards[,] video graphics cards and flat panel LCD monitors.
It was a replacement for the short-lived P&D Plug & Display standard, and a step up from the digital-only DFP format for older flat panels.	DVI replaced the P and D (Plug and Display) standard, which was short-lived. It is also a step up from the DFP format used in older flat panels which was digital-only.
DVI cables are very popular with video card manufacturers, and most cards nowadays include one or two DVI output ports.	DVI cables are widely used by manufacturers of video cards, with most cards today including a DVI output port or two.
In addition to being used as the standard computer interface, the DVI standard was, for a short while, the digital transfer method of	For a while, besides being used as the standard computer interface, the DVI standard was the leading digital transfer method for

choice for HDTVs and other high-end video displays for TV, movies, and DVDs.	HDTVs, as well as other high end video displays for DVDs, movies, and TV.
Likewise, even a few top-end DVD players have featured DVI outputs in addition to the high-quality analog Component Video.	Likewise, some top-end DVD players have contained DVI outputs along with high quality analog component video.
The digital market has now settled on the HDMI interface for high-definition media delivery, and DVI more exclusive to the computer market.	The HDMI interface is now the top choice within the digital market for high definition media delivery, while DVI remains more exclusive to the computer market.

19. Many more examples of copied and adapted text exist. Indeed, eBay's Copied Guide copies and adapts the original text and arrangement of DataPro's Guide in this fashion throughout the remainder of its work.

20. However, several notable differences exist. The Copied Guide conspicuously removes DataPro's copyright notice and authorship claim, as well as the statements that the Guide was "[w]ritten by Anthony van Winkle for DataPro International Inc." and that "[u]nauthorized duplication [is] strictly prohibited." In its place, the Copied Guide falsely substitutes eBay's own copyright notice and authorship claim, along with the statement that the Copied Guide is "Published by eBay."

21. In 2015, DataPro learned of the Copied Guide and the other wrongful acts described herein.

22. As of January 2017, eBay's web page displaying the Copied Guide stated that it had 1,600 views.

CAUSES OF ACTION

Claim One: Infringement of DataPro's Registered Copyrights (17 U.S.C. §§ 101, *et seq.*)

23. DataPro re-alleges the allegations set forth above.

24. DataPro is the author and owner of the Guide.

25. The text and arrangement of DataPro's Guide is part of an original work, and are protected by the '313 Registration and '808 Registrations.

1 26. DataPro's copyrights are valid and enforceable.

2 27. eBay's Copied Guide infringes DataPro's copyrights in its Guide as reflected in
3 DataPro's registrations.

4 28. eBay willfully infringed DataPro's copyrights by displaying, reproducing,
5 preparing derivative works of the text of DataPro's Guide, and distributing copies of its Copied
6 Guide, without DataPro's permission.

7 29. eBay's infringements occurred after DataPro's copyright registrations issued.

8 30. DataPro has been and will continue to be damaged by eBay's copyright
9 infringements in a manner that cannot be measured or compensated in economic terms. Such
10 irreparable harm will continue unless eBay's infringement is restrained or enjoined under
11 17 U.S.C. § 502.

12 31. eBay is liable to DataPro in either the amount of DataPro's actual damages and
13 any additional profits of eBay in an amount to be determined at trial, or in the amount of statutory
14 damages, under 17 U.S.C. § 504.

15 **Claim Two: Removal and Alteration of Copyright Management Information**
16 **(17 U.S.C. § 1202)**

17 32. DataPro re-alleges the allegations set forth above.

18 33. As described above, eBay knowingly, and with the intent to enable, facilitate, or
19 conceal its infringement of DataPro's copyrights in the Guide, provided information on its
20 website and in its Copied Guide that falsely claimed that eBay owns exclusive copyrights in the
21 Copied Guide, in violation of 17 U.S.C. §§ 1202(a)(1) and (2).

22 34. eBay also intentionally removed and/or altered DataPro's copyright management
23 information, distributed its Copied Guide knowing that DataPro's copyright management
24 information had been removed or altered without authority of DataPro or the law, distributed its
25 Copied Guide knowing that DataPro's copyright management information had been removed
26 and/or altered without authority of DataPro or the law, and had reasonable grounds to know that

1 these wrongful actions would enable, facilitate, or conceal the infringement of DataPro's
2 copyrights, in violation of 17 U.S.C. § 1202(b).

3 35. DataPro has been and will continue to be damaged by eBay's violations of
4 17 U.S.C. §§ 1202(a) and (b) in a manner that cannot be measured or compensated in economic
5 terms. Such irreparable harm will continue unless eBay's violations are restrained or enjoined
6 under 17 U.S.C § 1203(b)(1).

7 36. eBay is liable to DataPro in either the amount of DataPro's actual damages and
8 any additional profits of eBay in amounts to be determined at trial, or in the amount of statutory
9 damages, under 17 U.S.C. §§ 1203(b) and (c).

10 **JURY DEMAND**

11 37. DataPro respectfully demands a trial by jury on all claims stated herein.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, DataPro respectfully requests judgment against eBay as follows:

14 1. That the Court issue temporary, preliminary, and permanent injunctive relief
15 against eBay, its officers, agents, representatives, servants, employees, attorneys, successors and
16 assigns, and all others in active concert or participation with eBay, enjoining and restraining them
17 from:

18 a. displaying, reproducing, preparing derivative works, and distributing
19 copies of the work titled, "A Complete Guide to the Digital Video Interface," described in, and
20 protected by, U.S. Copyright Reg. Nos. TXu 1-647-313; Txu 771-808, and attached as Exhibit A;

21 b. displaying, reproducing, preparing derivative works, and distributing
22 copies of any parts of DataPro's website, located at *https://www.datapro.net*, including but not
23 limited to, the text displayed therein;

1 c. displaying or distributing any part of the work titled, "How to Distinguish
2 Between Various DVI Connectors," which is or was accessible [http://www.ebay.com/gds/How-to-](http://www.ebay.com/gds/How-to-Distinguish-Between-Various-DVI-Connectors/10000000178258880/g.html)
3 [Distinguish-Between-Various-DVI-Connectors /10000000178258880/g.html](http://www.ebay.com/gds/How-to-Distinguish-Between-Various-DVI-Connectors/10000000178258880/g.html), and is attached as Exhibit D.

4 d. assisting, aiding or abetting any other person or business entity in engaging
5 in or performing any of the activities referred to in subparagraphs (a) through (c) above;

6 2. That the Court enter an Order directing eBay to file with this Court and serve on
7 DataPro's attorneys within 30 days after service of an injunction, a report in writing, under oath,
8 setting forth in detail the manner and form in which eBay has complied with the injunction;

9 3. That the Court enter an Order awarding DataPro its actual damages, statutory
10 damages, enhanced damages for eBay's willful infringement, and any additional profits of eBay
11 in an amount to be determined at trial;

12 4. That the Court enter an Order awarding DataPro its reasonable costs and
13 attorneys' fees;

14 5. That the Court enter an Order awarding DataPro its pre- and post-judgment
15 interest; and

16 6. That the Court grant such additional relief as it deems just and appropriate.

17 DATED this 14th day of July, 2017.

18 ATKINS INTELLECTUAL PROPERTY, PLLC

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