

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT CRAIG ATTIG,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
DRG, INC., et al.,	:	NO. 04-CV-3740
Defendants.	:	

MEMORANDUM ORDER

AND NOW, this 30th day of March 2005, presently before the Court is the Motion for Summary Judgment filed by Defendants Joshua Paul Dunoff, Wesley M. Johnson, Safety Hoist Company, and Wes Johnson, Inc. (“Defendants”) on February 14, 2005 (Doc. No. 30). For the reasons that follow, Defendants’ Motion is GRANTED.

It is further ORDERED that the Motion to Compel filed by Plaintiff Robert Craig Attig on February 3, 2005 (Doc. No. 28) is hereby DISMISSED as moot.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

Presently before the Court is a dispute as to who possesses the rights to use the code and files associated with two websites: <http://www.SafetyHoistCompany.com> (“SHC website”) and <http://www.BrakeProducts Company.com> (“BPC website”). Plaintiff Robert Craig Attig (“Plaintiff”) alleges that the copyrights in the these websites vested solely in him when he created them pursuant to an oral agreement with Defendants. Plaintiff further contends that Defendants’ actions in subsequently copying and moving these sites to a new webhosting services constitute copyright infringement under 17 U.S.C.A. § 101 *et seq.* Defendants dispute that the copyrights vested exclusively in Attig and further deny that their actions constituted infringement.

Defendants in this matter are (1) Safety Hoist Company (“SHC”), a general partnership, the general partners of which are 4111 Barberry Corporation and Confast Corporation; (2) Joshua Paul Dunoff (“Dunoff”), a shareholder of 4111 Barberry Corporation; (3) Brake Products Company (“BPC”), a partnership, the partners of which are SHC and Wes Johnson, Inc.; (4) Wes Johnson, Inc., a part owner of BPC; and (5) Wesley M. Johnson, President of Wes Johnson, Inc. Dunoff Depo. at 15-16, 21, 51-52; Pl.’s Amend. Compl. at ¶¶ 4-13 (Doc. No. 3). As stated above, Plaintiff Robert Craig Attig is a computer consultant engaged by Defendants to update and host two websites. Pl.’s Amend. Compl. at ¶ 3; Def.’s Mot. at 3.

A. Plaintiff’s Modification of the SHC and BPC Websites

In late 1999, Plaintiff entered into an agreement with the Defendants to update and host the SHC website, which Dunoff originally had created using a template. Defs.’ Mot. at 3; Pl.’s Opp’n at 7; Dunoff Depo. at 97-98. According to Plaintiff’s notes, his initial contact with Dunoff took place in November of 1999, at which time Dunoff asked Plaintiff to help him “put some basic product info up on line.” Pl.’s Opp’n at Ex. E. Though the agreement between Plaintiff and Defendants was not memorialized in a formal writing, Plaintiff encapsulated his understanding of the agreement between the parties in a December 10, 1999 letter to Dunoff. See Defs.’ Mot. at Ex. B. In the letter, Plaintiff states that he will (1) do a “general facelift” to clean up the sites presentation by resizing fonts and graphics, (2) reorganize the web pages contained in the site in order to make it more accessible to viewers, and (3) remove pricing information that previously existed on the site. Id. Plaintiff quoted Defendants a rate of \$60.00 per hour and stated that the “straightforward nature” of the project would result in a fee to Defendants of a maximum of \$1000.00. Id. Plaintiff also described the process by which the site would be

overhauled: Plaintiff would first put together a test site, Defendants would then have the opportunity to make changes to the site, Plaintiff would make those changes, Defendants would then issue their final approval, and Plaintiff would publish the site using Defendants' existing web host providers. Id. The letter does not address which party would own the rights to the SHC website nor does it address the issue of licensing fees. Invoices dated January 5, 2000 and March 13, 2000 reveal that Attig spent roughly 13 hours completing what the January 5 invoice describes as an "initial facelift" to the SHC website, for which Defendants paid him a total of \$773.00 in fees (\$758.00 from the January 5 invoice and \$15.00 from the March 13 invoice). Defs.' Mot. at Ex. E; See Pl.'s Opp'n at Ex. I at 2, 4.

Sometime before December 21, 2000, Defendant orally asked Plaintiff to do some work on the BPC website. Def.'s Mot. at 5. Plaintiff agreed to perform what he again described as a "facelift" to the BPC website for Defendants. See Pl.'s Opp'n at Ex. I at 11. An invoice dated December 21, 2000 indicates that Plaintiff spent 11.5 hours performing this work, for which Defendants paid him a total of \$684.00 in fees. Id. at 12; Defs.' Mot. at Ex. F.

On the finalized version of the SHC website, Plaintiff placed a notice stating "Copyright © 2000 by Safety Hoist Company. All Rights Reserved." Defs.' Mot. at Ex. D (copy of SHC website dated Aug. 18, 2000 from Archive.org<sup>1</sup>). At his deposition, Plaintiff stated that "as long as [Defendant Dunoff] was paying me to maintain the website, [he] was happy to have [the copyright notice] there . . . ." and that he "did not realize at that point that simply having a copyright notice does not actually transfer copyright rights." Pl. Depo. at 59. Plaintiff also stated

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<sup>1</sup> Both Plaintiff and Defendant agree that the copies of the BPC and the SHC websites obtained from Archive.org are admissible evidence based on the holding of Telewizja Polska USA, Inc. v. EchoStar Satellite Corp., 2004 WL 2367740 (N.D. Ill. Oct. 15, 2004).

that, at the time, he was unaware that copyright rights vested in the author of the work. Id.

Plaintiff placed no copyright notices of any sort on the finalized BPC website. Id. at 5; Defs.’

Mot. at Ex. G (copy of BPC website dated Feb. 2, 2001 from Archive.org).

#### B. Plaintiff’s Webhosting Services

After revamping Defendants’ websites, Plaintiff also provided them with webhosting services for both websites. Plaintiff paid a webhosting service called Interland, Inc. \$59.85 per quarter year in 2000 and \$68.85 per quarter year in 2001; Plaintiff invoiced Defendants \$90.00 per quarter per website, for a total of \$180.00 per quarter once both websites were up and running. Pl.’s Depo. at 41-43; Pl.’s Opp’n at Ex. I. Plaintiff sent Defendants invoices for his design and webhosting services from January of 2000 until March 2002, all of which were paid promptly by Defendants. See Pl.’s Opp’n at Ex. I; Pl. Depo. at 74; Defs.’ Mot. at Ex. L. Plaintiff then ceased billing Defendants. Pl. Depo. at 75.

Defendants assumed Plaintiff’s cessation in billing was due to the fact that Interland had, in September of 2001, begun to charge Defendant Josh Dunoff’s credit card directly for webhosting services. Dunoff Depo. at 93. For a period of roughly six months, then, Dunoff was double-billed for webhosting - once by Plaintiff and once by Interland. A February 8, 2002 email from Plaintiff to Dunoff reveals that Interland had not charged him for hosting the SHC website for the quarters ending August 24, 2001 and November 24, 2001. Defs.’ Mot. at Ex. H. Plaintiff’s email suggests that he take back over the billing for the SHC website and proposes a new billing schedule. Id. This email is the last contact in the record between Plaintiff and Defendants until February of 2004. In a letter dated February 1, 2004, Plaintiff reinitiated contact with Defendants, stating that he had been “very busy” and informing Defendants that he was

owed \$1,200 for 21 months of webhosting services for the SHC and BPC websites from June 2002 until February 2004. Defs.' Mot. at Ex. J. In a February 2004 email to Defendant Dunoff explaining his position on the matter, Plaintiff states that he is the owner of the websites, despite having been paid consideration to create them by Defendants. Defs.' Mot. at Ex. L. In this email, Plaintiff also acknowledges the "lack of concern" regarding the rights to the website indicated by his lack of communication with Dunoff and explains his motivation for attempting to collect the \$1,200 in webhosting fees two years after he had stopped billing Defendants:

Why am I even worried about this stuff now, Josh, having let a few years slip by with little concern on my part? Simple (here's the honest answer!) last week the ol' X-spouse hit me up for a gigantic sum of money. Gigantic. Financially cripplingly gigantic. So I am scrambling to tie up all my old loose ends.

Id.

Defendants ultimately engaged technology consultant Ronald Rosen to find a new home for the SHC and BPC websites in March 2003.<sup>2</sup> Dunoff Depo. at 81; Rosen Depo. at 30. Rosen ultimately performed about 2 hours of work for Defendants for \$300 in compensation in early 2003, moving the websites from the Interland service to a new provider known as LunarPages.

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<sup>2</sup> There is some disparity in the record as to the exact timing of Rosen's engagement by Defendants and his performance of his duties pursuant to that engagement. Both Rosen and Defendants claim that he was engaged in March 2003, a fact which is supported by an invoice issued by Rosen to Defendants on May 2, 2003 and several email messages exchanged between Rosen and Dunoff between early March and late April of 2003. These emails and other documents are attached as exhibits to Plaintiff's Expert Report on Damages, which Plaintiff incorporated into his opposition to Defendants' motion for summary judgment. Pl.'s Opp'n at 29. The record is clear, then, that the files were moved from Interland to LunarPages in early 2003. The record is unclear as to when the copyright notices were changed; however, this lack of clarity does not effect the Court's analysis that summary judgment is appropriate under the theory that Plaintiff granted Defendants an implied irrevocable license. As will be seen, that question of law is settled upon facts that existed long before Defendants' alleged infringement. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986) (stating that only facts that may affect the outcome of a case are "material").

Dunoff Depo. at 83; Rosen Depo. at 45. At some point, Rosen, of his own accord, updated the existing copyright notices on the SHC website to reflect the current year (*i.e.* changing “Copyright © 2000 by Safety Hoist Company. All Rights Reserved.” to “Copyright © 2003 by Safety Hoist Company. All Rights Reserved.”), added copyright notices to the pages on the SHC website that did not have them, and added copyright notices to the BPC website. Rosen Depo. at 34-35. The only additional change that Rosen made to the websites was the removal of the name of Plaintiff’s company from the websites. Rosen Depo. at 32.

C. Plaintiff’s Protective Legal Measures

After his February 2004 attempts to collect the \$1,200 in webhosting fees from Defendants were unsuccessful, Plaintiff took a series of steps to assert his legal rights over the SHC and BPC websites. On May 28, 2004, Plaintiff filed a Certificate of Registration with the Copyright Office for the SHC website. Defs.’ Mot. at Ex. M. This Certificate stated that the title of the work is the “Website for ‘Safety Hoist Company’.” *Id.* The copy of the SHC website contained the language “Copyright © 2000 Robert Craig Attig. All Rights Reserved.” *Id.* This language had never appeared on the SHC website hosted by Plaintiff on Interland or subsequently hosted on Lunar Pages. Pl. Depo. at 67. Similarly, on June 4, 2004, Plaintiff filed a Certificate of Registration with the Copyright Office for the BPC website. Defs.’ Mot. at Ex. M. This Certificate stated that the title of the work is the “Website for ‘Brake Products Company’.” *Id.* As with the SHC registration, the BPC website filed by Plaintiff with the Copyright Office contained language that had never appeared on the publicly-available BPC website – “Copyright © 2000 Robert Craig Attig. All Rights Reserved.” *Id.*; Pl. Depo. at 7.

Plaintiff filed a complaint against Defendants on August 6, 2004 (Doc. No. 1) and an

amended complaint on August 18, 2004 (Doc. No. 3). In his amended complaint, Plaintiff alleges two counts of federal copyright infringement in violation of 17 U.S.C.A. § 101 *et seq.* Defendants have moved for summary judgment on both counts.

## II. STANDARD OF LAW

In considering a motion for summary judgment, the court must determine whether “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 568 (3d Cir. 1986). Only facts that may affect the outcome of a case are “material.” Anderson, 477 U.S. 248. All reasonable inferences from the record are drawn in favor of the non-movant. See id. at 256.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. See J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)), cert. denied, 499 U.S. 921 (1991). A plaintiff cannot avert summary judgment with speculation or by resting on the allegations in his pleadings, but rather must present competent evidence from which a jury could reasonably find in his favor. Anderson, 477 U.S. at 248; Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Williams v. Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989); Woods v. Bentsen, 889 F. Supp. 179, 184 (E.D. Pa. 1995).

## III. DISCUSSION

In their motion for summary judgment, Defendants assert that Plaintiff's claims fail as a matter of law for a variety of reasons, including that (1) Defendants possess an irrevocable, nonexclusive, implied license to use the programs and files comprising the SHC and BPC websites; (2) Plaintiff was Defendants' employee for purposes of the "work for hire" doctrine; (3) Defendants are joint authors of the SHC and BPC websites; (4) Plaintiff's claims are barred by laches; and (5) Plaintiff's copyright registrations are not valid due to fraud upon the Copyright Office. Defs.' Mot. at 11, 16, 19, 20, 23. Plaintiff claims that he created the BPC and SHC websites for Defendants as an independent contractor and that he never intended to transfer any rights related to those works to Defendants, whether expressly or impliedly. Pl.'s Opp'n at 3-4.

Generally, the Copyright Act of 1976 provides that the owner of a copyright possesses the exclusive right to copy, distribute, or display his or her work. 17 U.S.C.A. § 106. Under the Copyright Act, ownership "vests initially in the author or authors of the work." 17 U.S.C.A. § 201(a). An author is, of course, the person who actually creates the work by transforming an idea or concept into a tangible expression that is protectible as a copyright under 17 U.S.C.A. § 102.

An owner can accomplish the transfer of a copyright through sale or an exclusive license committed to writing. 17 U.S.C.A. § 101; § 204(a) (stating that transfer of copyright ownership other than by operation of law, is not valid unless "an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent."). Both Plaintiff and Defendants agree that Plaintiff neither sold nor agreed in writing to license the SHC and BPC websites to Defendants. Thus, no transfer of copyright within the confines of § 204(a) has taken place in this case.

There are, however, ways in which a party who is not the dominant or primary creator of

a work may use copyrighted material without fear of infringement, and Defendants rely upon these doctrines in their motion for summary judgment. Defendants argue first that they actually own some rights to the BPC and SHC websites under the “work for hire” and “joint authorship” theories of copyright.<sup>3</sup> Defendants also argue that, even in the absence of any ownership rights in those sites, they have the ability to use, reproduce, derive and display the websites, as Plaintiff has granted them a nonexclusive license to do so.

A. The Conduct of the Parties Results in an Implied Nonexclusive License

The Court believes that the last doctrine resolves the instant motion most neatly and correctly. A nonexclusive license is a judicially-created solution for situations in which two parties intend to transfer a copyright, but neglect to do so in writing. Holtzbrinck Publishing Holdings, L.P. v. Vyne Communications, Inc., 2000 WL 502860 \*4 (S.D.N.Y., Apr. 26, 2000) (citations omitted). A licensor may grant such an interest in a copyright orally, or a court may imply the existence of a nonexclusive license from the conduct of the parties. 3 Melville B. Nimmer & David Nimmer, Nimmer on Copyright, § 10.03[a][7] (2004). A nonexclusive license does not amount to a transfer of ownership; the copyright owner simply permits the use of a copyrighted work in a particular manner. I.A.E., Inc. v. Shaver, 74 F.3d 768, 775 (7th Cir. 1996). A nonexclusive license therefore bars a suit for copyright infringement by the licensor, unless the licensee’s use goes beyond the scope of the nonexclusive license. MacLean Assoc. v. Wm. Mercer-Meidinger-Hansen, 952 F.2d 769, 779 (3d Cir. 1991).

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<sup>3</sup> Under the “work for hire” doctrine, no written agreement is necessary for a copyright created by an employee to vest in an employer. 17 U.S.C.A. § 101; see also Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989). The “joint ownership” doctrine automatically divides copyright interests between two authors who endeavor in concert to create a single work. 17 U.S.C.A. § 101.

A nonexclusive license arises where the creator of a work, at the defendant's request, "hand[s] it over, intending that the defendant copy and distribute it." MacLean Assoc., 952 F.2d at 778 (citing Effects Assocs. v. Cohen, 908 F.2d 555, 558 (9th Cir. 1990)). The Ninth Circuit has formulated the test in this way: a nonexclusive license is granted where (1) a person (the licensee) requests the creation of a work, (2) the creator (the licensor) makes that particular work and delivers it to the licensee, and (3) the licensor intends that the licensee copy and distribute his work. Effects Assocs., 908 F.2d at 558-59. The court in Effects suggested several objective factors that should inform a court's inquiry as to whether an implied license exists: the language of the copyright registration certificate, the letter agreement, deposition testimony, and the delivery of the copyrighted material without warning that its further use would constitute copyright infringement. Id. at 559 n.6.

The first two prongs of the Effects test are clearly met in this instance. Defendants clearly requested that Plaintiff modify its existing SHC and BPC websites. First, the email from Plaintiff to Dunoff clearly states what Dunoff has asked Plaintiff to do ("put some basic product info up on line") and how Plaintiff intends to deliver a finished product to Defendants. Pl.'s Opp'n at Ex. E. Second, it is undisputed that Plaintiff delivered the websites to Defendants when, after getting Dunoff's final approval, he launched the redesigned sites using the Interland hosting service. See Holtzbrinck, 2000 WL 502860 at \*4. This leaves only the issue as to whether there is a question of material fact as to Plaintiff's intent that Defendants copy and distribute his work.

The Court finds that there is no such question of fact related to Plaintiff's intent. The decision of the court in Holtzbrinck is particularly helpful to the Court's determination on this

point. In that case, the plaintiff created and hosted a website for Scientific American pursuant to an oral contract between the parties. After a dispute arose between the parties as to the ownership and use of the graphics, coding, and programming that constituted the website, the plaintiff filed a registration with the copyright office and accused Scientific American of infringement. The court granted summary judgment in favor of Defendants by finding that plaintiff had intended to grant Scientific American a nonexclusive licence in the programs and files that he had created. In so doing, the court focused on several key facts: (1) without such a licence, plaintiff's work would be worthless to Scientific American and yet they had paid a substantial amount of money for his work, (2) documentation submitted by the parties specifically stated that the parent company of Scientific American would own the site and all the associated files and programs, (3) plaintiff had given the parent company the password to the website, and (4) plaintiff had placed a copyright notice on the site indicating that Scientific American was the owner without reserving any similar notice of his claim to copyright protection. Id. at \*5.

While the facts of this case do not match up exactly with those in Holtzbrinck, the Court finds them similar enough to mandate the same result. The only writing related to the agreement between Plaintiff and Defendants is the email dated December 10, 2000. Unlike in Holtzbrinck, no explicit statement was ever made or committed to writing that Defendants would have the rights to possess or use the content that Attig developed for the SHC and BPC websites. However, the December letter does provide some insights as to Attig's intent to allow Defendants to use the content of his creations. In that letter, Plaintiff repeatedly uses possessive terms such as "you" and "yours" when referring to the SHC website, indicating that he viewed

the website as belonging to Defendants.’ Defs.’ Mot. at Ex. B (“I will put together a test version of your new website. . . . “I am sure we can make some great improvements on your site!”). Moreover, though neither party could produce any definitive evidence that Plaintiff did or did not give Dunoff the passwords to the websites,<sup>4</sup> Plaintiff’s testimony indicates that the relationship and understanding between the parties was such that such an action would have been possible and likely. Pl. Depo. at 102 (“I believe I may have provided Mr. Dunoff with a password at some point.”); 104 (“I believe that Josh and I both had the password.”).

Plaintiff’s actions with respect to placing or failing to place copyright notices on the websites are also revealing. Attig placed a copyright notice on the SHC website stating that the copyright belonged to SHC without reserving any claim to copyright protections for himself. His failure to reserve any claim to copyright protection to the BPC website is equally fatal to his claim that he intended to reserve any protectible rights in the BPC website solely for himself. As noted by the Ninth Circuit in Effects, Plaintiff’s failure to warn Defendants at the outset that their unauthorized use would constitute infringement indicates his willingness for Defendants to use the materials associated with the website. See Effects Assocs., 908 F.2d at 559 n.6. In addition, once Plaintiff did attempt to register the copyrights, the language of the registration certificate clearly stated that the works were “for ‘Safety Hoist Company’” and “for ‘Brake Products Company.’” Defs.’ Mot. at Ex. M. Each of Plaintiff’s actions or omissions with respect to the placement or procurement of copyrights related to the website points to a finding that an implied

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<sup>4</sup> Plaintiff’s deposition testimony indicates that though Defendants would have been able to move the websites without the passwords, Mr. Rosen would somehow have had to come into possession of the passwords in order to make the changes to the copyright notices that Plaintiff alleges. Pl. Depo. at 104-104.

license exists.

Moreover, common sense dictates that Plaintiff intended for Defendants to have an implied license to use the websites at issue. Courts and commentators have noted that a finding that there was no implied nonexclusive license in situations such as this would be equivalent to a finding that the creation itself was of no value. As the court stated in Holtzbrinck, it would be counterintuitive to hold that an entity or persons in the position of Defendants in this matter “would pay good consideration to have a website created and not be able to use it.” Holtzbrinck 2000 WL 502860 \*5. See also, Del Gallo at 900; Joshua Warmund, Development Agreements Are Vital to Prevent Later Disputes Over Proprietary Interests in Web Sites, 74 N.Y. State B.J. 34, 36-37 (Nov./Dec. 2002) (“Clearly, a hiring party would not pay consideration to have a website created without the correlating intent to use it.”). Plaintiff’s actions in placing the copyright language “Copyright © 2000 by Safety Hoist Company. All Rights Reserved” on the SHC website and his statement at his deposition that he did not mind if the copyrights appeared to vest in Defendants so long as he was being paid indicate that he intuited this principle himself at the time he performed his work for Defendants.

The only evidence in the record that could be construed as supporting Plaintiff’s contentions that he did not intend for Defendants to have access to and use of the websites are his own statements at his deposition. See Pl. Depo. at 35 (“I in no way ever intended to transfer copyright ownership of what work I did over to [Defendants].”). While a party’s sworn testimony setting forth detailed factual allegations based upon first-hand knowledge does constitute admissible evidence which may demonstrate a genuine issue of material fact, see Fed. R. Civ. P. 56(e), Plaintiff offers no evidence of his intent other than conclusory statements, which

are contradicted by the language of his communications with Defendants, his actions during and subsequent to his facelift of the websites at issue, and standard industry practice. Even construing all the evidence in the light most favorable to Plaintiff, there are no specific factual allegations that create a material issue of fact as to his intent to allow Defendants to use the BPC and SHC websites.

B. Defendants' Conduct Was Within the Scope of the License

The Court further finds that Defendants' actions do not exceed the scope of the original agreement and therefore the license is not revocable. Plaintiff claims that the license is revocable because Defendants' failure to remunerate him after March 2002.<sup>5</sup> Plaintiff therefore proceeds on the theory that, because he performed work for Defendants that he was not compensated for, Defendants' license to use that work is revocable.

The implied license in this case is for the various components of the SHC and BPC websites. The record clearly indicates that Defendants paid the \$773.00 in Plaintiff's fees associated with the renovation of the SHC website and the \$684.00 in Plaintiff's fees associated with the renovation of the BPC website. Plaintiff was therefore fully compensated for his creation of the files, graphics, and codes that were moved by Defendants to Lunarpages. Pl. Depo. at 74. The only invoice that remains unpaid by Defendants is the \$1,200 in webhosting services that Plaintiff alleges is still due him. Id.; Pl.'s Opp'n at Ex. I at 24 (Feb. 2004 invoice). A failure to compensate Plaintiff for webhosting services after March 2001 has no impact on the

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<sup>5</sup> In his opposition, Plaintiff claims that Defendants stopped paying him as of March of 2001. Pl.'s Opp'n at 26. The Court believes that this is a typographical error, as Plaintiff's own exhibits show that Plaintiff continued to invoice Defendants through March of 2002 and Plaintiff testified that the only bill left unpaid by Defendants was the March 2004 invoice for 21 months of webhosting. See Pl.'s Opp'n at Ex. I; Pl. Depo. at 74.

consideration paid for the creation of the websites and therefore on the revocability of the implied license.<sup>6</sup>

No triable issue of fact remains as to whether an implied irrevocable license was created that allowed Defendants to use the files, graphics, and codes associated with the BPC and SHC websites at issue in this case. In addition, there is no triable issue of fact as to whether Attig performed additional work for Defendants related to the creation of the websites for which he was not given adequate consideration by Defendants. As such, the Court finds that summary judgment on the issue of copyright infringement should be granted to Defendants.

#### **IV. CONCLUSION**

Defendants in this matter paid Plaintiff adequate consideration for which they received an implied nonexclusive license to use the SHC and BPC websites. As such, Plaintiff's suit for copyright infringement based on Defendants' copying of those websites cannot stand as a matter of law. Defendants' Motion for Summary Judgment is granted.

BY THE COURT:

/s/  
Legrome D. Davis, J.

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<sup>6</sup> Moreover, Defendants' alleged failure to compensate Plaintiff for webhosting services after having paid for the substantive work done to their sites is understandable, given that Plaintiff had ceased to bill them and that Dunoff was being charged directly by the webhosting provider for its services.