

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

AVEPOINT, INC.,)	
)	
Plaintiff)	
)	
v.)	Case No. 7:11-CV-00424
)	
GETTY IMAGES (US), INC.)	
)	
Defendant)	

**COMPLAINT FOR DECLARATORY RELIEF
NON-INFRINGEMENT OF COPYRIGHT**

Plaintiff AvePoint, Inc. (“AvePoint”) herby files a complaint for Declaratory Judgment of Non-Infringement of Copyright against Defendant Getty Images (US), Inc. (“Getty”), and requests that this Court enter a Declaratory Judgment which sets for that (1) Avepoint is not liable for copyright infringement for use of images on its website www.avepoint.com; and (2) Getty is not entitled to any compensation from AvePoint. As support for this Complaint for Declaratory Judgment, AvePoint state as follows:

JURISDICTION AND VENUE

1. This is an action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 and under the Copyright Act, 17 U.S.C. 101 et seq. (the “Copyright Act”), requesting relief: (1) that AvePoint has not infringed any copyrights, if any, of Getty; and (2) that Getty is not entitled to any compensation from AvePoint.

2. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as this action arises under the laws of the United States, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2201, and the Copyright Act.

3. This Court has personal jurisdiction over Getty since it conducts ongoing and continuous business in the Commonwealth of Virginia.

4. Venue is proper under 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to the claims asserted herein occurred in this Judicial District.

THE PARTIES

5. AvePoint is a Delaware corporation with business operations in Virginia.

6. Getty is a New York corporation with its principal place of business at 601 North 34th Street, Seattle, Washington 98103.

FACTS

7. In or around early May, 2011, Getty first contacted AvePoint alleging copyright infringement arising out of AvePoint's use of two images on its website located at <http://www.avepoint.com>.

8. In response, AvePoint requested that Getty provide proof that these images are the subject of a valid copyright registration with the U.S. Copyright Office and that Getty has been assigned the exclusive right to enforce copyright infringement of these images.

9. To date, despite numerous requests from AvePoint, Getty has failed to provide this requested proof to AvePoint.

10. Despite its inability or unwillingness to provide this requested proof to AvePoint, Getty continues to wrongfully accuse AvePoint of copyright infringement, demand that AvePoint pay Getty for the use of these two images, and threaten litigation against AvePoint.

11. On August 15, 2011, AvePoint was contacted by Getty's outside counsel, McCormack Intellectual Property, P.S., 617 Lee Street, Seattle, Washington 98109. Getty's outside counsel stated that it had been retained to pursue copyright infringement claims against AvePoint. Getty's outside counsel stated that Getty would not pursue its copyright infringement claims against AvePoint if AvePoint executed a settlement and release agreement and paid \$2,450.00.

12. There is an actual case or controversy between the parties concerning (1) whether AvePoint can be liable to Getty for copyright infringement and, if so, (2) whether Getty is entitled to any compensation from AvePoint.

CAUSES OF ACTION

COUNT NO. 1 – DECLARATORY JUDGMENT

13. AvePoint realleges and incorporates by reference the allegations contained in paragraphs 1 through 12 as if fully set forth herein.

14. There is an actual case or controversy between the parties concerning (1) whether AvePoint can be liable to Getty for copyright infringement and, if so, (2) whether Getty is entitled to any compensation from AvePoint.

15. Getty alleges that AvePoint is liable for copyright infringement for using certain images on its website.

16. AvePoint denies that it can be held liable to Getty for copyright infringement.

17. AvePoint denies that Getty is entitled to any compensation for AvePoint's alleged copyright infringement.

18. AvePoint therefore seeks a declaratory judgment from this Court (1) stating that AvePoint is not liable for copyright infringement; and (2) stating that Getty is not entitled to any compensation from AvePoint.

PRAYER FOR RELIEF

WHEREFORE, AvePoint prays that the Court enter judgment awarding AvePoint the following relief:

- i. Entry of judgment according to the declaratory relief sought herein;
- ii. AvePoint's attorneys' fees and costs; and
- iii. Such further and other relief as the Court deems just and equitable.

Dated: September 7, 2011

Respectfully submitted,

/s/ Joshua F. P. Long
Joshua F. P. Long (VSB#65684)
WOODS ROGERS PLC
P. O. Box 14125
Roanoke, VA 24038-4125
(540)983-7725 phone
(540)983-7711 fax
Email: jlong@woodsrogers.com

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 AvePoint, Inc.

(b) County of Residence of First Listed Plaintiff _____
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Joshua F. P. Long, WOODS ROGERS PLC, P. O. Box 14125,
 Roanoke, VA 24038-4125

DEFENDANTS

County of Residence of First Listed Defendant Getty Images (US), Inc.
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 2201 & 17 USC 101

Brief description of cause:
Declaratory Judgment Copyright Non-Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

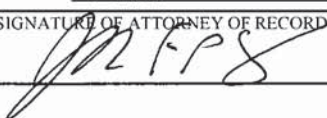
DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 09/06/2011

SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY: RECEIPT # 1375310 AMOUNT 350.00 APPLYING IFP _____ JUDGE WILSON MAG. JUDGE _____