

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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BRUCE CHAPMAN and HANDLE WITH CARE  
BEHAVIOR MANAGEMENT SYSTEM, INC.,

Plaintiffs,

-v-

1:04-CV-867

NEW YORK STATE DIVISION FOR YOUTH;  
NEW YORK STATE DEPARTMENT OF SOCIAL  
SERVICES; NEW YORK STATE OFFICE OF  
CHILDREN & FAMILY SERVICES; JOHN JOHNSON,  
Commissioner of New York State Office of Children  
and Family Services and former Commissioner of the  
New York State Division for Youth, in his official and  
individual capacity; MARGARET DAVIS, former  
Director of Training for the New York State Division  
for Youth and former Director of Training for New York  
State Office of Children and Family Services, in her  
official and individual capacity; PATSY MURRAY, former  
Associate Training Technician for the New York State  
Division for Youth and current Trainer for New York State  
Office of Children and Family Services, in her official and  
individual capacity; CORNELL UNIVERSITY; JEFFREY  
LEHMAN, President of Cornell University, in his official  
and individual capacity; DR. HUNTER RAWLINGS, III,  
former President of Cornell University, in his official and  
individual capacity; NEW YORK STATE COLLEGE OF  
HUMAN ECOLOGY; FAMILY LIFE DEVELOPMENT  
CENTER; RESIDENTIAL CHILD CARE PROJECT;  
THERAPEUTIC CRISIS INTERVENTION; MARTHA  
HOLDEN, Project Director of the Residential Child Care  
Project and Therapeutic Crisis Intervention Trainer and  
Coordinator, in her official and individual capacity;  
MICHAEL NUNNO, Project Director of the Residential  
Child Care Project and Therapeutic Crisis Intervention  
Trainer and Coordinator, in his official and individual  
capacity; HILLSIDE CHILDREN'S CENTER; DENNIS  
RICHARDSON, President and CEO of Hillside Children's  
Center, in his official and individual capacity; DOUGLAS  
BIDLEMAN, Employee of Hillside Children's Center and  
Therapeutic Crisis Intervention Trainer, in his official and  
individual capacity; and JOHN DOE 1 through 99,

Defendants.

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APPEARANCES:

OFFICE OF HILARY ADLER  
Attorney for Plaintiffs  
184 McKinstry Road  
Gardiner, NY 12525

OFFICE OF ALAN N. KACHALSKY  
Attorney for Plaintiffs  
800 Westchester Avenue  
Suite S-608  
Rye Brook, NY 10573

HON. ERIC T. SCHNEIDERMAN  
Attorney General of the  
State of New York  
Attorney for Defendants NYS Division for Youth;  
NYS Department of Social Services; NYS  
Office of Children & Family Services; John  
Johnson; Margaret Davis; and Patsy Murray  
Department of Law  
The Capitol  
Albany, NY 12224

OFFICE OF UNIVERSITY COUNSEL  
Attorneys for Cornell University; Jeffrey Lehman;  
Dr. Hunter Rawlings, III; NYS College of  
Human Ecology; Family Life Development  
Center; Residential Child Care Project;  
Therapeutic Crisis Intervention; Martha Holden;  
and Michael Nunno  
300 CCC Building  
Garden Avenue  
Ithaca, NY 14853

PETRONE, PETRONE LAW FIRM  
Attorneys for Hillside Children's Center; Dennis  
Richardson; and Douglas Bidleman  
1624 Genesee Street  
Utica, NY 13502

DAVID N. HURD  
United States District Judge

OF COUNSEL:

HILARY ADLER, ESQ.

ALAN N. KACHALSKY, ESQ.

DOUGLAS J. GOGLIA, ESQ.  
Asst. Attorney General

NELSON E. ROTH, ESQ.

JOHN R. PETRONE, ESQ.

## **MEMORANDUM-DECISION AND ORDER**

### **I. INTRODUCTION**

Plaintiffs, Handle With Care Behavior Management System, Inc. ("HWC") and its president, Bruce Chapman ("Chapman," collectively "plaintiffs"), market a behavior management program that is used by professionals who must physically restrain others. Plaintiffs have brought this action against three sets of defendants—the "state defendants," the "Cornell defendants," and the "Hillside defendants"—regarding the alleged misuse of their copyrighted program materials and manipulation of the market for their products. Plaintiffs seek monetary damages and injunctive relief.

The state defendants include: New York State Office of Children and Family Services ("OCFS"), which, in 1998, assumed the functions of defendants New York State Division for Youth ("DFY") and New York State Department of Social Services ("DSS"); John Johnson ("Johnson"), Commissioner of OCFS; and Margaret Davis ("Davis") and Patsy Murray ("Murray"), former OCFS employees. The Cornell defendants include: Cornell University itself; Jeffrey Lehman, the University's former president; Dr. Hunter Rawlings, III, the University's current president; New York State College of Human Ecology ("the College"), a statutory college of the State University of New York; the Family Life Development Center, the Residential Child Care Project ("RCCP"), and Therapeutic Crisis Intervention ("TCI")—alleged subsidiaries of the College; and Martha Holden and Michael Nunno, employees of RCCP and TCI. The Hillside defendants include: the Hillside Children's Center ("HCC"), a private childcare provider and residential treatment center; Dennis Richardson, HCC's president; and Douglas Bidleman, an HCC employee.

On September 29, 2005, defendants' motion to dismiss was granted and the complaint, which contained three federal causes of action and seven state causes of action, was dismissed in its entirety. Chapman v. N.Y. Div. for Youth, 2005 WL 2407548 (N.D.N.Y. 2005).<sup>1</sup> Plaintiffs appealed, and, on October 14, 2008, the Second Circuit reinstated only the federal copyright infringement cause of action against the state defendants, noting:

The district court dismissed plaintiffs' copyright claim on the basis that the contract at issue unambiguously granted the state defendants the right to copy plaintiffs' materials indefinitely. We disagree with that conclusion, find the contract ambiguous, and remand the case to the district court to determine the duration of the license to copy plaintiffs' materials granted under the contract.

Chapman v. N.Y. Div. for Youth, 546 F.3d 230, 234 (2d Cir. 2008), cert. denied, 130 S. Ct. 552 (2009).

Therefore, the only cause of action at issue is the federal claim for copyright infringement in violation of the Copyright Act of 1976, 17 U.S.C. §§ 101–1332 (2006), against the state defendants.<sup>2</sup> Further, the only issue to be determined is the duration of the license to copy plaintiffs' training materials.

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<sup>1</sup> It is noted that Chapman also filed a qui tam action on December 30, 2004, asserting eighteen causes of action under the False Claims Act against a different group of state and Cornell defendants. The United States of America declined to intervene in that action, which was based on the same business relationship and facts at issue here. That complaint was dismissed in its entirety on February 16, 2010. United States ex rel. Chapman v. Office of Children & Family Servs. of N.Y., No. 1:04-CV-1505, 2010 WL 610730 (N.D.N.Y. 2010), aff'd, Chapman v. Office of Children & Family Servs. of N.Y., No. 10-967-CV, 2011 WL 2163997 (2d Cir. 2011) (summary order).

<sup>2</sup> Subsequent orders, dated May 1 and May 12, 2009, reinstated the previously dismissed pendent state claims but stayed further action and discovery on these claims. See Dkt. Nos. 143, 148. These orders also made clear that if the state defendants' expected motion for summary judgment on the one remaining federal claim is granted, supplemental jurisdiction over the state claims would not be exercised. If, however, the state defendants' motion for summary judgment is denied, supplemental jurisdiction would be exercised and discovery would be reopened on the state claims at that time.

The state defendants<sup>3</sup> have moved for summary judgment, pursuant to Federal Rule of Civil Procedure 56, regarding the federal copyright infringement claim. Dkt. No. 217. Plaintiffs oppose the motion and have cross-moved for summary judgment. Dkt. No. 227. The motions were considered on submit.

## **II. FACTUAL BACKGROUND**

Unless otherwise noted, the following facts are undisputed. HWC is a New York corporation that provides crisis intervention services and trains childcare workers in physical restraint techniques. On June 7, 1984, Chapman—founder and president of HWC—filed with the United States Copyright Office a manual entitled "Handle With Care - A Revolutionary Approach to Behavior Management" ("the 1984 Manual").

DFY was a New York state agency that, until 1998, was responsible for the care and welfare of juveniles in the state's custody. DFY was obligated by law to train staff to use proper techniques to restrain juveniles in certain circumstances. DSS was a New York state agency that, until 1998, licensed, regulated, and supervised childcare agencies within the state. In 1998, DFY and DSS merged into OCFS, which assumed the functions of the two agencies. At that time, Johnson, who was the Director of DFY, became Commissioner of OCFS. Davis, who was the Director of Training at DFY, became Assistant Director of Training at OCFS but has since retired. Murray, who was Associate Training Technician for DFY, served as a trainer at OCFS from 1998 until 2003.

The interaction between the parties began in late 1987 when DFY and Chapman entered into a contract under which Chapman trained DFY staff in physical restraint

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<sup>3</sup> As the sole federal claim at issue is asserted against the state defendants only, all references to "defendants" hereinafter is to be understood as a reference to the state defendants.

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