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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AGENCE FRANCE PRESSE

Plaintiff,

v.

DANIEL MOREL

**Defendant and
Counterclaim Plaintiff**

v.

**AGENCE FRANCE PRESSE,
GETTY IMAGES, INC., CBS, INC.,
ABC, INC., TURNER BROADCASTING, INC
and (AFP and Getty Licensees et. al).**

Counterclaim Defendants

Case No: 10-cv-2730 (WHP)

ECF Case

**DANIEL MOREL'S AMENDED
ANSWER, AFFIRMATIVE
DEFENSE AND
COUNTERCLAIMS**

JURY TRIAL DEMANDED

Defendant, Daniel Morel (hereinafter "Mr. Morel"), by and through his attorney, Barbara T. Hoffman, hereby answers the Complaint of Plaintiff Agence France Presse ("AFP") in this action, dated March 26, 2010, as follows:

PARTIES

1. Denies knowledge or information sufficient to form a belief as to the allegations of the Complaint and therefore denies the same, except on information and

belief admits that AFP is an international wire service that provides photographs to subscribers and customers worldwide.

2. Admits that Mr. Morel is a photojournalist who conducts business in this district as a photojournalist and copyright licensor and denies that Morel has committed tortious acts in this District or any other District.

NATURE OF THE ACTION

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶3 of the Complaint and therefore denies the same, except admits that Plaintiff has asserted claims for declaratory relief and commercial disparagement.

4. Denies the allegations contained in ¶4 of the Complaint, except admits that Mr. Morel has asserted that Plaintiff has infringed Mr. Morel's rights in and to at least thirteen (13) of his copyrighted works, and further admits that Mr. Morel's current attorney Barbara T. Hoffman has sent correspondence and had settlement discussions with AFP's counsel as well as AFP's Washington office prior to AFP's retention of outside counsel, and further admits that Mr. Morel instructed his counsel to request third parties to cease and desist from any and all unauthorized use of his copyrighted photographs. The letters state *inter alia*, "at no time has Mr. Morel licensed either AFP and/or Getty Images ("Getty") the right to license the "Morel Photographs."

5. To the extent that ¶5 states conclusions of law, no response is appropriate or required. Denies the allegations of ¶5, except admits Mr. Morel posted photographs on Twitter.

6. Admits the allegations of ¶6, to the extent that Mr. Morel asserts rights in the photographs and that AFP's actions have infringed his copyright and other intellectual property rights.

7. States that the allegations contained in ¶7 of the Complaint are conclusions of law as to which no response is appropriate or required, but that to the extent any response is required, denies that this Court has subject matter jurisdiction over Plaintiff's claim.

8. States that the allegations in ¶8 of the Complaint are conclusions of law as to which no response is appropriate or required.

9. States that the allegations are conclusions of law as to which no responsive pleading is appropriate or necessary, but that to the extent any response is required, admits the Court has personal jurisdiction over Mr. Morel. Admits that the Defendant is subject to the personal jurisdiction of this Court and further admits that Defendant through his attorney wrote to AFP/Getty and USA Today, the Boston Globe, and other Getty customers, stating that "At no time has Mr. Morel licensed either Agence France Presse ("AFP") and/or Getty Images ("Getty") the right to license the Morel Photographs. Moreover, both AFP and Getty, have been informed that any permission or license granted is without Mr. Morel's approval." Denies the remainder of the allegations set forth in ¶9.

10. States that the allegations contained in ¶8 of the Complaint are conclusions of law as to which no responsive pleading is appropriate or necessary, but that to the extent any response is required, admits that venue is proper in this District.

COUNT I

DECLARATORY JUDGMENT OF NON-INFRINGEMENT AND LICENSE

11. Defendant repeats and realleges each and every response to ¶1-10 as is fully set forth herein.

12. States that the allegations contained in ¶12 are conclusions of law to which no response is appropriate or necessary, but that to the extent any response is required, admits he posted at least thirteen (13) photographs on Twitter in high resolution and that thirteen (13) digital images were stolen from his Twitter account, and denies the rest of the paragraph.

13. States that the allegations set forth in ¶13 are conclusions of law to which no response is appropriate or necessary, but to the extent any response is required, denies the same.

14. States that the allegations contained in ¶14 are conclusions of law to which no response is appropriate or necessary, but to the extent that a response is required, denies knowledge or information sufficient to form a belief as to the allegations in ¶14 and therefore denies the allegations of ¶14.

15. Denies knowledge or information sufficient to form a belief as to the allegations of ¶15 and therefore denies the same.

16. States that the allegations contained in ¶16 are conclusions of law to which no response is appropriate or necessary, the same is denied.

17. Denies the allegations in ¶17.

18. Denies knowledge or information to form a belief as to the allegations contained in ¶18 of the Complaint and therefore denies the same, except admits that AFP

was contacted by Mr. Morel's attorneys, in house counsel of Corbis and Barbara T. Hoffman.

19. Denies the allegations of ¶19 except admits that Mr. Morel maintains that AFP has infringed his copyright and other intellectual property rights.

20. States that the allegations contained in ¶20 of the Complaint are conclusions of law as the which no responsive pleading is appropriate and necessary, but to the extent a response is required, denies the same.

21. States that the allegations contained in ¶21 of the Complaint are conclusions of law as to which no responsive pleading is appropriate or necessary, but to the extent a response is required, denies the same.

22. States that allegations contained in ¶22 of the Complaint are conclusions of law as to which no responsive pleading is appropriate or necessary, but to the extent a response is required, denies knowledge or information to form a belief as to the allegations contained in ¶22 of the Complaint and therefore denies same, except admits the Plaintiff requests the Court enter an Order of non-infringement for Plaintiff.

23. ¶23 states conclusions of law to which no response is necessary or required, to the extent a response is required, denies the same.

COUNT II

COMMERCIAL DEFAMATION

24. Mr. Morel repeats and re-alleges his responses to paragraphs ¶1-23.

25. Admits that his attorney, Barbara T. Hoffman sent correspondence to third parties, including but not limited to the Boston Globe, the Denver Post, the New York Times, USA Today, and other third parties. Mr. Morel is without sufficient information

to admit or deny whether USA Today, the Boston Globe, and the Denver Post are subscribers or customers of AFP, or subscribers or customers of Getty Images.

26. States that the allegations contained in ¶26 are conclusions of law as to which no responsive pleading is appropriate or necessary, but that to the extent any response is required, denies the same.

27. States that the allegations contained in ¶27 are conclusions of law as to which no responsive pleading is appropriate or necessary, but that to the extent any response is required, denies the same, except admits that AFP is infringing upon Mr. Morel's photographs and that AFP did not have a license to distribute Mr. Morel's photographs.

28. States that the allegations contained in ¶28 are conclusions of law and that no response is appropriate or required, but to the extent any response is required, denies the same.

29. Denies the allegation of ¶29.

30. States that the first sentence inappropriately refers to settlement discussions, denies the remainder of the sentence.

31. Denies the allegations of ¶31.

32. States that the allegations contained in ¶32 are conclusions of law as to which no responsive pleading is appropriate or necessary, but that to the extent any response is required, denies the same, except admits that AFP is infringing upon Mr. Morel's photographs and that AFP did not have a license to distribute Mr. Morel's photographs. Affirmatively states that any damages suffered by AFP to its business

reputation, customer relationships, and/or damages incurred are caused by its willful and reckless disregard of Mr. Morel's intellectual property rights.

33. Denies the allegations of ¶33.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state any claim upon which relief can be granted.

DEFENDANT-COUNTERCLAIM PLAINTIFF DANIEL MOREL'S COUNTERCLAIMS

NATURE OF THE ACTION AND THE RELIEF SOUGHT

34. On January 12, 2010 at 4:53 p.m., a catastrophic earthquake of a magnitude of 7.0 struck Southern Haiti, devastating the capital city of Port au Prince.

35. Daniel Morel ("Counterclaim Plaintiff" or "Mr. Morel"), an award winning professional photojournalist was in Haiti when the earthquake struck. Narrowly escaping, he was one of the few professional photographers on the ground when the quake struck and one of even fewer able to transmit the tragedy and human suffering through his powerful and emotional images ("Haiti Earthquake Photographs").

36. Mr. Morel's counterclaims arise out of Plaintiff and Counterclaim Defendants Agence France Presse, Getty Images, Inc. willful and blatant violation of Mr. Morel's intellectual property rights in his photographs of the earthquake in Haiti ("Haiti Earthquake Photographs").

37. Plaintiff-Counterclaim Defendant AFP and Counterclaim Defendants have used the Haiti Earthquake Photographs without Mr. Morel's consent, in violation of the Copyright Act of 1976 as amended 17 U.S.C. §101, 106 and 501 et. seq. Namely, notwithstanding Mr. Morel's ownership of the original content of the Haiti Earthquake

Photographs, AFP and Getty, fully aware of Mr. Morel's Copyright, infringed, Mr. Morel's rights in thirteen (13) of the Earthquake Photographs , by displaying, distributing, selling and reproducing the Iconic Images worldwide, knowing they were stolen from Mr. Morel, under the name "AFP/Getty, Lisandro Suero," and then "AFP/Getty, Daniel Morel" (the "Infringing Iconic Images"). The Infringing Iconic Images were reproduced, distributed, sold and licensed to AFP/Getty subscribers, clients and customers, including the New York Times, the Boston Globe, USA Today, The Age (Australia), the Washington Post and other news outlets worldwide from the evening of January 12, 2010 and thereafter.

38. Upon information and belief, AFP and/or Getty from January 12 distributed, licensed and sold the Iconic Images *inter alia* to National Public Radio ("NPR"), National Geographic, Vanity Fair, Newsweek, MTV and Time Inc., who were induced to infringe and did infringe Mr. Morel's copyright by incorporating said images in news broadcasts, online photo-galleries, magazines and other media outlets which infringement continues as of this date with the exception of NPR and Vanity Fair.

39. Upon information and belief, AFP and/or Getty from January 12 distributed the Iconic Images to Christian groups, and relief organizations *inter alia* in Haiti, including the Jehovah's Witness Watchtower, the Presbyterian Church in Canada, Soles4Souls, who were induced to infringe and did infringe Mr. Morel's copyright by incorporating said images in news broadcasts, online photo-galleries, websites, newsletters, posters, such licensees both editorial and commercial.

40. Counterclaim Defendants CBS, Inc. and ABC, Inc. have also used Mr. Morel's Iconic Images.

41. Nowhere in Plaintiff's Complaint for declaratory judgment and other relief does it mention that Plaintiff and Counterclaim Defendants have made and continue to receive substantial benefit and revenue from the reproduction, display and distribution from Mr. Morel's Iconic Images to devastating commercial harm and impact on Mr. Morel's professional reputation and financial situation, including lost sales, lost opportunities to license and diminution in value of his copyrights.

PS **CONTROVERSE A HAITI** : Un cliché, deux photographes
 Avant de faire la une des journaux, la photo déboule d'abord sur Twitter, sur les comptes de Daniel Morel et de Lisandro Suero. Les pinceaux s'emmêlent;
 Dans les rédactions, on ne sait plus à quel crédit photo se vouer!
 24 heures plus tard, l'image a disparu du compte de Morel, photographe installé de longue date en Haïti:
 « Nous lui en avons acheté les droits », assure l'AFP.
 Elle s'évanouit aussi du compte de Lisandro Suero.
 On parlait de crédit...



See <http://forum.nikonpassion.com>.*

* Translation of caption above: Controversy in Haiti. One negative, two photographs. Before reproduction in the media, the photo appeared on Twitter, on the accounts of Daniel Morel and Lisandro Suero...24 hours later, the image was removed from Mr.

42. Iconic Infringing Image #1, set forth above, pirated by AFP, appeared on front pages of newspapers worldwide, on websites, and television and cable news networks, local and foreign, via satellite and other transmissions, and continues to be displayed and distributed worldwide on the internet and newspaper photo galleries with the logo “AFP/Getty” and the name “Lisandro Suero” or “Daniel Morel”

43. In light of Agence France Presse and Counterclaim Defendant Getty Images, Inc.’s unauthorized use of the Iconic Images in disregard of Mr. Morel’s copyright and other intellectual and commercial rights, Mr. Morel asserts claims under the Copyright Act 17 U.S.C. §101, 106 et. seq., (the “Copyright Act”), and/or for contributory infringement of Mr. Morel’s copyright, and/or vicarious infringement against Counterclaim Defendants and for the removal or alteration of copyright management information from the Iconic Images to conceal or induce infringement of copyright under 17 U.S.C. §1202(b)(1) and (3) against Agence France Presse and Getty. Defendant Daniel Morel further asserts claims against Plaintiff and Counterclaim Defendant Getty under §43(a) of the Lanham Act, 15 U.S.C. §1125(a) and §1125(b) for misattribution, false description or misleading the facts with respect to sponsorship or affiliation. Pursuant to the Copyright Act 17 U.S.C. §504(c) and 505, Counterclaim Plaintiff seeks actual damages or maximum statutory damages for willful infringement, for each infringement by each of the named Counterclaim Defendants.

PARTIES

44. Counterclaim Plaintiff Daniel Morel, a veteran, award winning freelance photojournalist, born in Haiti, has been working in and photographing the country for

Morel’s account, Morel is a resident for years in Haiti, “we purchased the rights from him,” assured AFP. The images also disappeared from the account of Lisandro Suero.

more than twenty-five years. Mr. Morel was an Associated Press resident photojournalist for fourteen years, during which time he received a Citation for Excellence from the Overseas Press Club of America and the AP Award of Excellence. He currently spends time between Port au Prince, Haiti and New York, New York.

45. Upon information and belief, Counterclaim Defendant Agence France Presse (“AFP”) is an international French news agency, with its principal US office in Washington, D.C. On information and belief, it has offered an international photo service to thousands of clients, mainly newspapers, since 1985, delivered by satellite as a “photo wire” or accessible on a web-based database called Image Forum. AFP is present in 165 countries and provides services in eight (8) main languages (French, English, Spanish, German, Italian, Portuguese, Arabic and Chinese), in the form of photos, graphics, texts and multi-media.

46. On information and belief, Counterclaim Defendant Getty Images, Inc. (“Getty”) is one of the world’s largest imagery companies, creating and providing a collection of still and moving images around the globe. Getty licenses its images to newspapers, magazines, advertising, film, television, books and websites. On information and belief, Seattle headquartered Getty is a global company and has customers in more than fifty (50) countries. Upon information and belief, AFP/Getty entered into a strategic partnership in 2003. Upon information and belief, under the terms of the Agreement, Getty has exclusive rights for the marketing of AFP images in North America and the United Kingdom.

47. Upon information and belief, Counterclaim Defendant CBS News is a division of CBS Corporation, a mass media company, with its principal corporate headquarters in New York, New York.

48. Upon Information and belief, ABC, Inc. (“ABC”) is a mass media company, including ABC National News and local TV stations, including affiliates Fresno and WABC News, New York, cable, radio, and internet business with its principal headquarters in New York, New York.

49. Turner Broadcasting, Inc. is a multimedia company with its principal headquarters in Atlanta, GA. It operates the CNN networks including CNN, CNN International, CNN Headline News, CNN.com and other affiliates (collectively “CNN”).

50. Counsel for Counterclaim Defendant Agence France Presse has agreed to defend the New York Times and the Age (Au), Getty, and Vanity Fair and Turner with respect to those Iconic images that Turner claims to have licensed from Getty

51. Counterclaim Plaintiff is unaware of the names and capacities, whether individual, corporate, or non-profit, of the subscribers, customers, clients and other individuals who have licensed the Iconic Images from AFP or Getty and therefore sue these defendants by their fictitious names. Counter Plaintiff will seek leave to amend this Complaint when the identities of the Doe defendants are known and if their presence as parties is required to grant full relief.

JURISDICTION AND VENUE

52. This action asserts counterclaims arising under the Copyright Act, 17 U.S.C. §101 et. seq. (the “Copyright Act”), and the Lanham Act §43(a) 15 U.S.C.

§1125(a) (“Lanham Act”). This Court has federal jurisdiction over Daniel Morel’s counterclaims pursuant to 28 U.S.C. §1331, 1338(a), and 1338(b).

53. Upon information and belief, this Court has personal jurisdiction over all Counterclaim Defendants because they have committed tortious acts outside of New York causing injury within the State of New York, regularly solicit business in New York, and derive substantial revenue from interstate commerce. Upon information and belief, this Court also has personal jurisdiction over all Counterclaim Defendants because they transact business in New York and/or maintain corporate headquarters in New York. Additionally, this Court has personal jurisdiction over AFP and Getty because they contract to supply goods or services in New York. Further, this Court has personal jurisdiction over AFP. It has chosen to avail itself of the laws and protections of this Court and Mr. Morel’s claims arise from the same series of operative facts that AFP alleges.

54. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) and (d).

FACTUAL BACKGROUND

Daniel Morel and his Photography

55. Daniel Morel was born in Haiti in 1951. The day he discovered photography wasn’t the happiest of days, but it set the stage for the rest of his life. It was Nov. 12, 1964, in Port-au-Prince, Haiti. The Haitian government canceled school and people came from miles to watch the execution of Louis Drouin and Marcel Numa - the last two survivors of a 13-member group that called themselves "Jeune Haiti," meaning Young Haiti. The group had planned to overthrow the regime of Franois Duvalier, also

known as "Papa Doc." The next day, a photographer, who shot the rebels' deaths frame by frame, posted them in the front of his studio. Morel said it was a gruesome sight for a young child - but it made him realize that he wanted to take pictures too. "I thought that by being a photographer, I would learn not to be scared of anything."

56. James North on November 29, 2009, in an article entitled "Haitians, like Palestinians, are misrepresented in the mainstream press," wrote:

If you have looked at a newspaper article about Haiti over the past 25 years, the chances are excellent that you have seen the work of the photographer Daniel Morel. He is himself Haitian; he has been a witness to much of the turbulence in his country; and other journalists have credited him with saving their lives in the streets of Port-au-Prince. It is not easy to work as a journalist in Haiti, where people are dignified but poor, and lashed at times by political violence and natural disaster. Morel's thought-provoking photos captured moments of pain, fear, death, and anarchy.

57. North continues that "Morel enjoys an excellent reputation among his colleagues, and he has pulled some of them out of the line of fire more than once. Mr. Morel uses his past U.S. Military experience to stay safe in the streets."

58. Mr. Morel's philosophy of photojournalism is equally critical of parachute photojournalism (journalists who land in a country to file stories and images) and art photography: "When I take peoples' pictures, I don't just stick the camera in their face. When people see me in Haiti, they know I'm there to spread the word, to spread the news. So they're always happy to see me. When they see me they know the world is going to learn something about their condition." Mr. Morel, in an interview with the New York Times in February, 2010, stated, "maybe I put 15% of art in my picture and the rest is history, is documentary. Because if you put too much art, you play with history." See *Media Nation* by Dan Kennedy www.dankennedy.net.

59. Mr. Morel was a resident photographer for The Associated Press in Haiti for fourteen years, until 2004. His photos have appeared on the front pages of such world-renowned publications as the New York Times, Vanity Fair, Newsweek, Toronto Star, Paris Match and others. He also served as the first Haitian bureau chief for the New York-based Haitian Times. He was also a freelance photojournalist for the wire service Reuters and many other leading publications. From 2004 he became less and less interested in news photography and in working with or for a wire service. He wanted to own the rights to his photographs and work on long term documentary photography and film projects as an independent photojournalist to develop his work beyond traditional media outlets. “Afterward is more important to me. Afterward is when you get the real news. Photojournalism is not about taking pictures of dead bodies. Photojournalism is about the beauty of humanity—happiness and pain.”

60. Daniel Morel’s commitment to the documentation of the history of the Haitian people is not limited to a commitment of time and money. He has often put his life in jeopardy to gain access and report the political situation and catastrophes and natural disasters of Haiti.

61. In December, 2005, a photo exhibit of 45 images taken in Haiti by Mr.



Caption: A boy cries over the body of his brother, allegedly shot by United Nations soldiers in April 2005.

Morel was exhibited in New York. This photojournalistic exhibition entitled *Haiti Eyes* focuses on the tumultuous and often violent times and events from 2003-2008 in Haiti.

The exhibition was divided into four subject areas: *Ouster* depicts demonstrations leading to the February 2004 expulsion of Aristede; *Desperate Belief* includes religion and practice photographs, a welcome respite amidst the other's cruel realities; *Violence*, a third segment includes, "many heart-wrenching photos of gang violence and UN activity. Aggression and its aftermath cross paths in one of Mr. Morel's photographs below from this segment. The final segment is called *In Dependence*, an irony of the word 'independence'. As Tequila Minsky, a freelance photographer for the New York Times wrote in her review of the exhibition in Heritagekonpa Magazine (December 13, 2005, www.heritagekonpa.com), dependence on outsiders (for aid, food, help) is a frequent need for many impoverished Haitians. In these images, those asking for help are victims this time of nature--the flood and hurricane that befell Haiti in 2004.

62. Mr. Morel has also produced two documentaries: "Unfinished Country," a PBS WIDE ANGLE film about Haiti's attempts to overcome chaos told by Haitians; and the Circle of Change film "A Quiet Revolution in Haiti," which focuses on grassroots reform of educational and leadership practices.

63. In 2007, Mr. Morel received an Open Society Institute Photography project distribution grant for his New York show, "Anfas Listwa nou -Facing Our History," was first shown to many groups in Haiti, especially students. He did not put the explanatory captions right next to his photographs because he did not want to distract from the images themselves.

64. Mr. Morel's biggest project – he has already been working on it for a

decade – is a book and film about the Haitian band called Septentrional d’Haiti, from the port of Cap Haitien in the North of Haiti, which has been making music for six decades.

65. It is not a coincidence that Mr. Morel’s photographs stand out for their iconic quality and newsworthiness by virtue of his creative process, judgment and expertise. As a photojournalist, he seeks not only to make a fine art or beautiful photograph, but to carefully seek out those elements that might make a compelling photograph that also is relevant to the story at hand. Such elements include his choice of camera and lens, the timing and selection of subject matter, the angle, lighting and shadows, depth of field, color contrast, symmetry, scale and focus, as well as capturing peak action, emotion or any number of other unique visual elements. It requires the creative talent and ability of a photographer of Mr. Morel’s dedication and expertise to recognize these elements and even when confronted with catastrophic images of pain and suffering to find a way to create a compelling photograph.

66. The outstanding quality and significance of Daniel Morel’s work has been recognized over the years with numerous awards. He received a Citation for Excellence from the Overseas Press Club of America and the AP Award of Excellence during his 14 years as an Associated Press resident photojournalist. Morel was co-recipient of the 2004 Sam Chavkin Prize for Integrity in Latin American Journalism. These awards reflect recognition within the photographic journalism communities of the extent to which Mr. Morel’s photographs have captured many significant moments in Haiti’s recent history.

The Haiti Earthquake and the Twitter Posts

67. On January 12, 2010 at 4:54 p.m., the most catastrophic earthquake in the Caribbean region in 200 years struck Haiti. Upon information and belief, an estimated 230,000 people died and 1.5 million were left homeless.

68. Daniel Morel was with an American journalist, Eric Parker in a school in Grand Rue, Port au Prince when the earthquake struck. Mr. Morel had been teaching the young students for the past three days how to make their own Facebook page and Mr. Morel was taking photographs to put on their Facebook pages, while his friend was buying art from the students.

Iconic Image 2



69. “I was about ready to leave and the earth started shaking. I got out in the street, it looked like the street was hit by 500 cruise missiles at the same time. My journalist friend was buried. After we dug him out, we hit the street to obtain daylight shots. Everybody was panicked. Sobbing and dazed people wandered around the street. It was rush hour. Lots of people were dead. Then I photographed until dark. I saw a lot of

Iconic Image 3



injured and dead—people crying for help. Buildings collapsed—the Natural Cathedral,

the Presidential Palace, the Palace of Justice, my father's bakery. The principal manifestations, institutions, and symbols of my Haitian childhood were destroyed in less than a minute. There were aftershocks every 15 to 20 minutes which lasted from three to five seconds.”

70. Few professional journalists and photographers were in Haiti at the time of the quake and even fewer had access to the internet. Upon information and belief, Mr. Morel's Haiti Earthquake Photographs, including the Iconic Images, were among the first photographs by a professional photojournalist taken before sunset on January 12, 2010 to show the evolving tragedy to the world.

71. At sunset, it was dark, there was no electricity or communication—all phone networks were down. Mr. Morel, nevertheless from the still-standing landmark Oloffson Hotel, with the assistance of his friend Richard A. Morse, manager of the hotel, was able to use a laptop to connect to the internet and have Mr. Morse open a Twitter account with the username “PhotoMorel” for him. Mr. Morel had no prior experience with Twitter, the social networking site and did not read the Terms of Service. A copy of the Twitter Terms of Service and rules governing usage by third parties is attached hereto as Exhibit A.

72. With the help of his friend, he was able to upload the Haiti Earthquake Photographs, including the Iconic Images (1-13) on TwitPic PhotoMorel at approximately 5:20 p.m. (EST 17:20)*. Iconic Image 1 appears on page 9, Iconic Images

* All times throughout this Counterclaim Complaint are Eastern Standard Time, which is the local time for New York City and Port au Prince, Haiti.

2 and 3 appear on page 18. Iconic Images 4-13 appear below. To the extent that under the circumstances a specific intent in posting the images on Twitter can be attributed to Mr. Morel given the circumstances, with the assistance of Mr. Morse, he posted his images online and advertised them on Twitter in the hopes that his images would span the globe to inform the world of the disaster, and that he would also receive compensation and credit as a professional photographer for breaking news of the earthquake before the news and wire services.



Iconic Image 7



Iconic Image 8



Iconic Image 9



Iconic Image 10



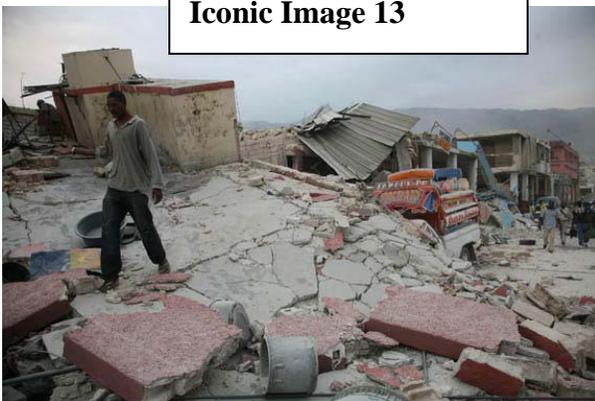
Iconic Image 11



Iconic Image 12



Iconic Image 13



Lisandro Suero Pirates the Iconic Images

73. Upon information and belief, on or about 5:28 p.m., Lisandro Suero of the Dominican Republic, pirates Daniel Morel's Iconic Images and places them on his TwitPic page. Lisandro Suero gives a Dominican cell phone number as his contact number. Dominican Republic cell phones do not function in Haiti. Lisandro Suero also offers the Iconic Images for credit and copyright. The Iconic Images have no captions and nothing on his Twitter page suggests, represents or indicates he is a photographer, or in Haiti. Copies of the Lisandro Suero TwitPic page are included as Exhibit B. Lisandro Suero has no history as a photographer.

74. At 6:01 p.m. EST, Lisandro Suero tweets that he has exclusive photographs of the catastrophe for credit and copyright:

<http://twitpic.com/photos/LisandroSuero> IMAGENES
EXCLUSIVA DE LA CATASTROFE POR FAVOR LOS CREDITOS!!!
COPYRIGHT! By: Lisandro Suero!!
7:01 PM Jan 12th via web

News Media Contact Mr. Morel to Acquire the Iconic Images

75. At 7:59 p.m. Ryan Osborn, a producer at NBC News contacted Mr. Morel via e-mail "saw on Twitter you have pictures of situation in Haiti," and at 8:05 p.m. requested to "see what the pictures look like before talk about cost."

76. At 8:13 p.m. Matthew Craig a Photo Editor from the Wall Street Journal contacted Mr. Morel offering to "publish [the Iconic Images] for \$\$"; at 8:49 p.m., Mr. Morel was also contacted by Jon Protas from the Wall Street Journal; and at 8:50 p.m.,

Taylor Umlauf, a photo editor from the Wall Street Journal, contacted Mr. Morel “looking for photos of the earthquake damage in Haiti,” and at 8:56 p.m. offered “[amount omitted] for the first pic.”

77. The Iconic Image purchased by the Wall Street Journal appears on www.wsj.com and to the right:



78. At 8:19 p.m. Steven McKinley Assistant Photo Editor from Canwest News Service contacted Mr. Morel regarding “getting some pix from Haiti.” Attached hereto as Exhibit C is a record of e-mail and Twitter correspondence, received in the early hours after the earthquake, between Daniel Morel and various news outlets interested in buying his Haiti Earthquake Photographs from January 12, 2010.

79. In an article appearing in the British Journal of Photography March 2010 issue “Buy My Pic” March 17, 2010 (www.bjp-online.com), the author states:

Social networking sites can be treasure chests of content for news agencies, but they can also become a source of embarrassment, especially when fake images find their way into print.

80. The author then goes on to say:

On 12 January, in the late hours of the evening, Santiago Lyon ([@slyon66](https://twitter.com/slyon66)), director of photography for Associated Press, was on Twitter. A few hours before, a magnitude 7.0 earthquake hit Haiti, killing more than 200,000 people. At 11.32pm, Lyon sent a message to Daniel Morel. The man, based in Haiti, had just posted on Twitpic an image of the earthquake’s aftermath. Lyon’s message went

straight to the point: “Santiago Lyon of the AP here. Great work so far in a difficult situation. Any chance we can do a deal for your images? Can I contact you? Would like to chat if possible.”

Searching social networks for “eyewitness content” has become standard procedure for news organisations, says Lyon. However, they must have systems in place to authenticate the images. At AP, “we assess each photo on a case-by-case basis, only selecting the images that we feel are coherent and newsworthy and actually show the events they purport to show.”

Then follows the difficult task of identifying the copyright owner. “We search for contact information, we call, email, or comment on the photo asking the person to get in touch with us.”

81. The article then describes that Reuters, another of the major news services, uses the same procedures as followed by AP:

Reuters uses the same procedures, Thomas Szlukovenyi, global editor of pictures, tells BJP. “We occasionally use pictures from social networking websites on major breaking news stories, but they go through an extensive verification and editorial evaluation process before we commit to using them and proceed with the photographer’s payment,” he says. “Haiti was a good example as we were not comfortable using the very early pictures available on social websites. Since we could not reach the people who posted the image, we did not use them. Our team of photographers was shortly in place and we were able to show the world ourselves.”

Once an image has been authenticated, it is distributed to the wire’s subscribers and members. “We try to credit using this phrasing: ‘In this image provided by Person’s Name (we add the occupation if we know it),’” says Lyon. “We don’t credit images just to social media. We try to identify an individual who provided the image and always try to get permission from that individual to use the image.”

AFP Pirates Mr. Morel’s Iconic Images

82. Upon information and belief, at approximately 7:12 p.m. Vincent Amalvy, photo editor from AFP, contacts Lisandro Suero via Twitter regarding his TwitPic.

83. At 9:41 p.m., Vincent Amalvy from AFP e-mails Mr. Morel, asking “do you have pictures?” On information and belief, attached hereto as Exhibit D is a partial record of Mr. Amalvy’s Twitter and e-mail correspondence relevant to the acquisition of the Iconic Images. Upon information and belief, certain tweets were removed from both Mr. Suero’s account and Mr. Amalvy’s account after Mr. Morel’s counsel contacted AFP since there are no new posts on the Suero Twitter page from approximately 9:45 p.m. on January 12, until the early morning of January 13, 2010 and nothing to show that the Iconic Images were uploaded from Lisandro Suero’s TwitPic, by AFP, which uploading AFP admits.

84. On information and belief, after AFP saw the images on Mr. Morel’s TwitPic on or about 9:45 p.m. EST, but was unable to contact him. AFP uploads thirteen (13) Infringing Iconic Images from the TwitPic page of Lisandro Suero. The images are distributed worldwide to all AFP subscribers through its wire service and other clients and customers of Getty and placed in the image database of both AFP and Getty for distribution, licensing for managed rights, editorial and commercial use. The Iconic Images were labeled “AFP/Getty/Lisandro Suero.” By way of example, copies of some of the Infringing Iconic Images are attached hereto as Exhibit E.

85. Upon information and belief, AFP willfully or with reckless disregard of Mr. Morel’s rights, in its rush to receive credit for the news-breaking photographs to the world, failed to use due diligence to ascertain the identity of Mr. Suero, or to verify his authorship of the photographs. No standard or traditional good journalistic practices were followed, practices particularly necessary to assure the authenticity of the content

and information when the source is a social networking site. Either AFP has no reliable process in place to verify the authenticity of the image or the accuracy of the source, or AFP failed to use such process or procedure.

86. What steps did AFP take to verify Suero's identity? From where were the images sent? Did they call Suero and ask him where he was when the images were taken? Did they contact other AFP resident photographers in Haiti or the Dominican Republic to inquire whether anybody had ever heard of Lisandro Suero? E-mails indicate that AFP was in contact with at least one AFP photographer on the ground in Haiti on January 12, 2010.

87. Upon information and belief, AFP was less concerned about verifying the authenticity of the Iconic Images because AFP knew the Suero images had been stolen from Daniel Morel, a well known resident Haitian photographer and therefore, notwithstanding the total lack of evidence that Suero was in Haiti to take the photographs, knew that the photographs were reliable images.

Image from www.boston.com
March 1, 2010



10 Haitians walk past damaged buildings on January 12, 2010 in Port-au-Prince Haiti after a huge earthquake. (LISANDRO SUERO/AFP/Getty Images) #

Image from www.washingtonpost.com, downloaded 4/14/10

Major earthquake hits Haiti - washin...

Major earthquake hits Haiti

This gallery collects all of our photos of the crisis in Haiti, starting with the most recent images and going back to the first photos that emerged after an earthquake hit the impoverished nation Jan. 12.

Jan. 12
A Haitian woman is helped from a damaged building in Port-au-Prince after huge earthquake rocked the impoverished Caribbean nation.
Lisandro Suero-AFP/Getty Images

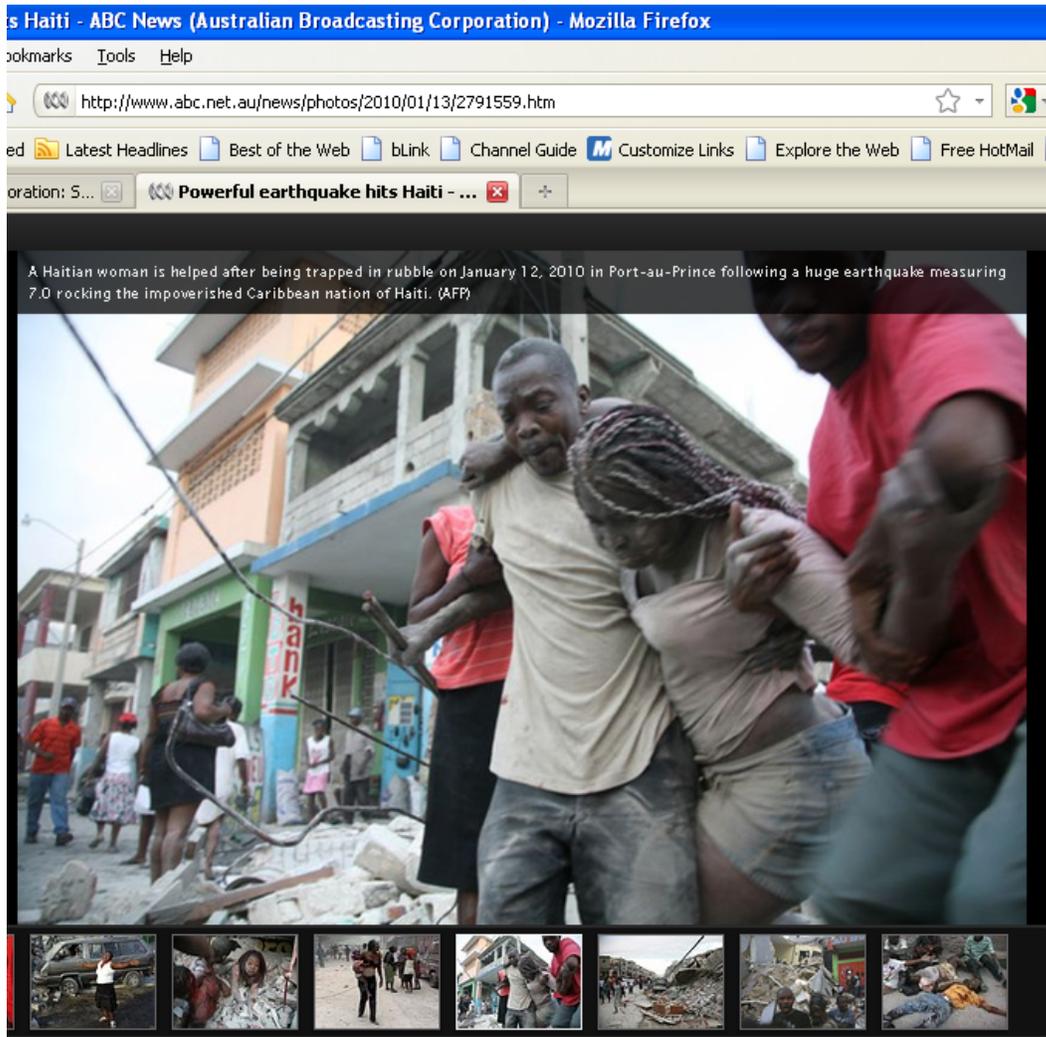
Related Content:

- Gallery: World reacts to Haiti earthquake
- Special Report: Earthquake devastates Haiti
- Earthquake Videos
- Washington Post Photo Store
- More Photos and Videos

View Thumbs Credits Autoplay Previous Next 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280

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AFP TRIES TO ACQUIRE RIGHTS FROM MR. MOREL

88. 2:06 a.m. January 13, 34Benjie tweeted to Mr. Morel, “Hi Daniel, great pictures from such a difficult environment. I work for AFP, please e-mail ben.fathers@afp.com.” At this time, even if not sooner, a “kill” should have been sent out to subscribers and clients since it was obvious that AFP had no authorization from Mr. Morel to send out the Infringing Iconic Images and the Infringing Iconic Images were not by Lisandro Suero.

89. 3:10 a.m. January 13, 2010, danidelpino tweeted to Mr. Morel “Well Daniel is working for AFP. At least all the pictures from Haiti that the agency is sending.”

90. 5:38 a.m. on January 13, 2010, Ben Fathers, “34benjie” tweeted to Mr. Morel, “Daniel, I work for AFP, please contact me ben.fathers@afp.com.”

91. 5:45 a.m. on January 13, 2010, a friend of Mr. Morel, Phyllis Galembo, “pgalembo,” tweeted, “Daniel—please contact Rita at Corbis—she is trying to contact you!!! you are not getting credit.”

92. 5:54 a.m. on January 13, 2010, Ben Fathers tweeted to Mr. Morel in French, “Daniel, I work for AFP, please contact me ben.fathers@afp.com.”

93. 5:55 a.m. on January 13, 2010, Ben Fathers tweeted to Mr. Morel in French, “Daniel, I work for AFP, I am very interested in your photos, please contact me ben.fathers@afp.com.”

94. 6:01 a.m. January 13, 2010 lpena tweeted to Mr. Morel, “There appears to be no album of portal for this photo, credited to Lisandro Suero/AFP.”

95. At or about 9:01 a.m. on January 13, 2010, Mr. Morel removed the Iconic Images from his TwitPic.

96. An article appears on the Twitter page of “Vite dit” at 9:35 a.m. on January 13, 2010, entitled “Haiti: Attempts to purchase photo on Twitter.” The article states:

Another photographer, Daniel Morel has also established a Twitter feed at night (French time), on which he circulated links to several pictures obviously taken at the scene of the earthquake, but no further details. French sites following the evolution of the situation as closely as 20minutes.fr, slate.fr, rue89, or The Post, have all identified his account.

Other journalists trying to reach Daniel Morel outright via the comments under the pictures, to use or buy [including AFP].

97. A copy of the article, in French and English is attached hereto as Exhibit

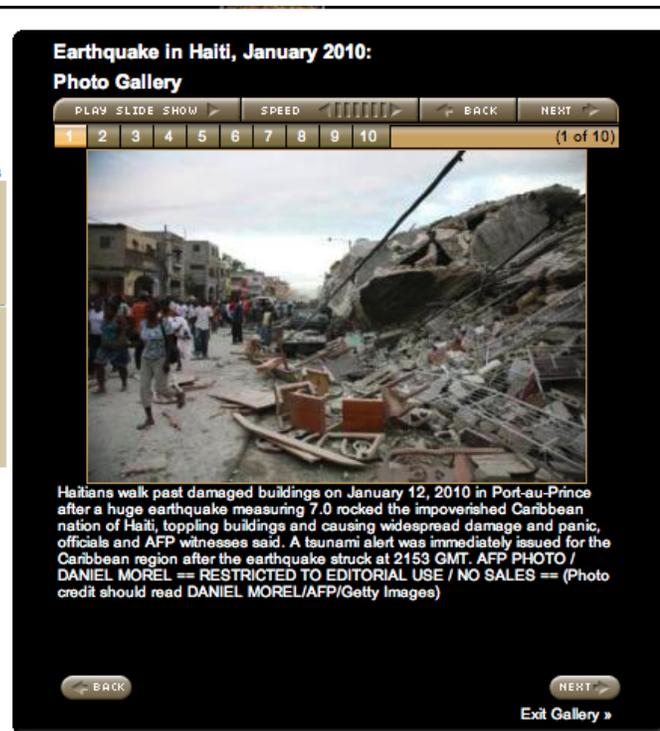
F. The page shows several Morel photographs, including several Iconic Images, refers to AFP's search to acquire images from Mr. Morel and includes at the end of the article

various tweets referred to in Exhibit

C.

98. Upon information and belief, not until January 13, at 5:30 a.m. EST did AFP issue a wire to change photo credit.

99. On January 13, 2010 at 9:20 a.m., Mark Memmot, on the NPR News blog writes that "some of the most gripping and most



heartbreaking pictures so far from Haiti, in the aftermath of yesterdays devastating earthquake are coming from photographer Daniel Morel. Many of his shots have been distributed by AFP/Getty Images. If you'd like to see more, go to his Twitpic page.”*

100. On or about January 13, 2010 at 10:54 a.m., Getty licenses to Soles4Souls, a charity that provides shoes to impoverished children, rights to use three of the Iconic Images for \$195 each (\$585 total), for their “Project Haiti” posters. Notwithstanding the correction, the Getty license to Soles4Souls is neither for an editorial use (i.e. advertising), nor does it credit Mr. Morel. AFP is listed as the photographer. Attached hereto as Exhibit G are a copy of the Getty Invoice and the poster showcasing the Iconic Images.

101. On a January 13, 2010, Iconic Image #1 appears on the front page of the Vancouver Sun, crediting “AFP/Getty – Lisandro Suero,” notwithstanding that as set forth in ¶78, Can Services, the owner of the Vancouver Sun had attempted to acquire

JANUARY 13, 2010

Previous Next



A Haitian woman is covered in rubble on January 12, 2010 in Port-au-Prince after a huge earthquake measuring 7.0 rocked the impoverished Caribbean nation of Haiti, toppling buildings and causing widespread damage and panic, officials and AFP witnesses said. A tsunami alert was immediately issued for the Ca
Photograph by: (DANIEL MOREL/AFP/Getty Images),

Search Results - Vancouver Sun

Photos: Catastrophic earthquake...

Previous Next



A Haitian woman is covered in rubble in Port-au-Prince after a huge earthquake measuring 7.0 rocked the impoverished Caribbean nation of Haiti, toppling buildings and causing widespread damage and panic, officials and AFP witnesses said.
Photograph by: Lisandro Suero, AFP/Getty Images

* On April 13, at 1:40 p.m., the blog quotes: “The photo that was with this post originally has been removed. Morel has raised questions about whether his photos could be used by other outlets. See www.npr.org/blogs/thetwo-way/2010/4/17/10 (4/17/10).

rights from Mr. Morel on the evening of January 12.

102. The Iconic Image #1 appears on the website of the Vancouver Sun as of April 19, 2010, with credit to “Daniel Morel AFP/Getty Images” in one photo gallery and “Lisandro Suero/AFP Getty Images” in a separate gallery. Four additional Iconic Images appear in the online gallery, three of which are credited to Lisandro Suero and one credited to Mr. Morel.



103. Upon information and belief, on or about January 13, 2010 at 11:00 a.m. EST and thereafter, Getty licenses the Infringing Iconic Images to various other charities and relief

organizations for a fee for commercial and editorial use. Some of the Infringing Iconic Images are credited to Lisandro Suero.

A screenshot of the IOCC website. At the top left is the IOCC logo, which features a cross and the text "INTERNATIONAL ORTHODOX CHRISTIAN CHARITIES". To the right of the logo is the text "IOCC Helping others help themselves INTERNATIONAL ORTHODOX CHRISTIAN CHARITIES". Below the logo and text is a navigation menu with the following items: "About IOCC", "News and Information", "Worldwide Programs", "Giving Opportunities", "Get Involved", "Events", and "DONATE". Below the navigation menu is a red banner with the text "News & Information". Below the banner is a news article titled "IOCC Mobilizes Disaster Response for Haiti Earthquake" dated "January 13, 2010". The article text reads: "Baltimore, Md. (IOCC) — International Orthodox Christian Charities (IOCC) is responding to the most devastating earthquake to hit the island nation of Haiti in 200 years. Authorities have not put an estimate of how many were killed by yesterday's magnitude 7.0 earthquake, but thousands are feared dead. People are still trapped in destroyed buildings and leveled shantytowns and there is growing concern about the lack of sanitation, water and electricity. IOCC has mobilized its disaster response team and is coordinating with our Orthodox and ecumenical partners to monitor and respond to the emerging needs in Haiti. "Our prayers are with the people of Haiti who have lost loved ones in this disaster that has brought even more suffering to one of the poorest nations in the hemisphere," said IOCC Executive Director & CEO Constantine M. Triantafilou. "IOCC will be working with our fellow ACT Alliance members who are already in place to provide humanitarian aid to those affected by the earthquake." To the right of the article text is a photograph showing several people, including a woman in a white shirt, being helped or carried by others in a damaged area. Below the photograph is the caption "(photo credit: LISANDRO SUERO/AFP/Getty Images)".

Some of the Infringing Iconic Images are credited to Daniel or David Morel. All images identify AFP/Getty images as the authorized source.

104. On or about January 6, 2004, Mr. Morel had entered into an exclusive representation agreement with Corbis, Inc. (“Corbis”), which is a premium creative photography and editorial photo agency, founded by Bill Gates and headquartered in Seattle, Washington. Corbis is in fierce competition of Getty in the licensing of iconic news photographs as well as rights managed stock photography. Mr. Morel’s agreement was for a year term, renewable automatically unless terminated with notice. Under that agreement, Corbis would be the exclusive worldwide licensing agent for those images which Mr. Morel sent to Corbis and which images Corbis accepted. Mr. Morel retained copyright in his photographs under the terms of the agreement, subject to any rights granted to Corbis.

105. At 12:49 p.m. EST on January 13, 2010 Mr. Morel e-mailed Corbis Photo Editor Rita Rivera, saying “I never send anything to Getty. I'm going to send you today stuff no time for caption no power here in the hotel.”

106. On or about January 13, 2010, in the afternoon, Mr. Morel transmitted images taken on January 13, 2010 to Corbis (“January 13 Images”). The January 13 Images were accepted by and posted to Corbis on or about 1:35 p.m. on January 13, 2010. Corbis currently is the exclusive agency with regard to Mr. Morel’s Haiti Earthquake Images.

107. On January 14, 2010 at 10:27 a.m., Rita Rivera of Corbis e-mailed Mr. Morel, informing him “we are trying to correct caption, one has your name and Getty, so half of it is ok! The other has the person who stole your images, Lisandro. We are working to correct this with NY Times and other news outlets.”

108. In “Haiti: the weight of words, the error of photos” (January 14, 2010, 12:41 p.m. EST) from 20 Minutes Fr., the author writes:

The challenge for photo agencies is to verify in real time, the source of images. Reuters chose caution if they broadcast the pictures of its own photographers, even if it means having less and less quickly. AFP photo, she sometimes accepted files stating that they “came from Twitter.”

But in this case, how to distinguish between Twitter account as a real photographer Daniel Morel and that of a Lisandro Suero, unknown to the battalion, which probably broadcasts at the speed of light, on-site micro-blogging photos without copyright. And so is good publicity. Contacted by 20minutes.fr, Lisandro Suero was “very busy.”

109. Upon information and belief, not until January 14 (based on representations made by AFP’s counsel Joshua Kaufman to Mr. Morel’s counsel) on March 3, 2010, following an email received by Getty from Corbis, claiming exclusive rights, which was sent on to AFP Washington, a 'KILL' was sent, at 2:58 p.m. EST and “the 8 images were removed from Imageforum (AFP’s online source of images) and deleted from its archives. The



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Daniel Morel: “CNN is playing with people. They are doing show business with people’s lives here.”

January 28, 2010 in Interview, Photography: Non-Prison, Photojournalism | Tags: Daniel Morel, Haiti, Interview, LENSblog, New York Times



normal Kill procedure was then followed which consists of sending via satellite a request to kill the images and an email to all third parties including Getty to delete the images from their archives.”

110. The “Kill letter” is attached hereto as Exhibit H and instructs that “Daniel Morel AFP/Getty Images” be killed because of a “copyright dispute.” No kill letter was issued for the “Lisandro Suero AFP/Getty” images and no kill letter was issued for the remaining five (5) Iconic Images. At the time that the “kill letter” was issued, AFP/Getty knew that there was no genuine copyright dispute either between Lisandro Suero and Daniel More or AFP/Getty and Corbis

111. On January 14, 2010 at 4:50 p.m. EST, Vincent Amalvy e-mails Thony Belizaire stating, “it’s very important to find Daniel Morel because we used the photos he put on Twitter and our possibilities of distribution are greater than that of Corbis who claims the photos. We haven’t made any commercial use and wait for his agreement. Tell him to call me.”

112. On January 15, at 9:01 a.m., Mr. Belizaire responds, “I am continuing my efforts to find him, our common friend Chantal Regnaut is informed and will help us. Thony.”

113. On January 15 at 10:33 a.m. Vincent Amalvy responds to Mr. Belizaire, stating that “AFP had distributed the [Iconic Images], but for editorial use only. The images are blocked by Corbis. Please have Daniel Morel contact [him]. We will not sell them without his agreement. I need a written agreement from Daniel, giving us the rights

of exploitation and the conditions that he wants to place on these photos. Thank you for your help and I hope it's quick. -Vincent.”

114. On or about January 22, 2010, the Iconic Images of the January 12, 2010 were made available to Corbis in high resolution for sale and were accepted*.

115. Attached hereto as Exhibit I are pages from the Corbis website showing the availability for license of Mr. Morel's Haiti Earthquake Photographs in the Corbis rights managed current news database.

The One Iconic Image of January 12, 2010

116. A blogger Michael David Murphy, on January 21, 2010, in “Does Haiti's Earthquake call for a new Photojournalism” (www.foto8.com) referring to Iconic Image #1 wrote:

If there's an iconic photograph from the disaster, it might belong to Daniel Morel, a Haitian photographer who lived through the earthquake, and was on-the-ground during the most desperate moments. It seems fitting that this image, made by a Haitian who's been documenting his country for the last 25 years, has been so widely published.



© Daniel Morel/ AFP-Getty

* Mr. Morel's right to pursue this action in his sole name is not disputed by Corbis and is with Corbis' consent.

117. The credit continues to falsely represent AFP/Getty as the exclusive agent for the license of Iconic Image #1.

118. In an article attached hereto as Exhibit J, downloaded from the Nikon Passion website, Iconic Image #1 is discussed by a photography critic who analyzes why it is such a powerful image of iconic quality.

119. Attached hereto as Exhibit K, are several examples from the hundreds of Infringing Iconic Image #1, distributed, sold, reproduced and licensed by AFP and Getty.

The Continuing Harm to Mr. Morel's Professional Reputation, Intellectual Property, and Financial Revenues caused by Plaintiff and Counterclaim Defendants

120. The Infringing Images compete directly with Corbis' ability to license Mr. Morel's Iconic Images, have resulted in a significant loss of licensing revenue, and dilute and diminish the value of his intellectual property.

121. On March 1, 2019, counsel for Mr. Morel wrote to AFP's legal counsel, Ms. Juliette Thiebault in it's Washington DC office:

Corbis, who now represents the Morel Photographs, has represented to me that this information has been requested, but despite the fact that six weeks has gone by, no information has been received. Corbis did not represent Mr. Morel when the Infringing Images were pirated from twitter.

I have been informed by Corbis' counsel that despite requests from Corbis, AFP has failed to respond and that AFP legal counsel has had no conversations with Corbis' Counsel. AFP has similarly failed to respond to my letter of Wednesday last week, although the claim is it was never received.

The purpose of this letter is to request that AFP cease and desist immediately from any and all use of the Morel Photographs and that it instruct its licensees, assigns and subscribers to immediately cease and desist from any and all uses of the Infringing Images.

You are also requested to provide to me on or before Thursday, March 4, 2010, printouts and other information indicating the number of subscribers who received the Infringing Images, the gross revenues received by AFP from the distribution, sale and/or licensing of the Infringing Images and the licensing history of each Infringing Image.

Finally, I request that AFP take all steps to inform Service and Content Providers to cease and desist from any reference to or display of any images relating or referencing Daniel Morel as an AFP photographer. Service and Content Providers should also be informed to take down any Haiti earthquake images by Daniel Morel with the tag AFP or AFP/Getty. Any and all uses of the Morel Photographs by AFP was and is illegal and unauthorized.

These steps must be taken immediately and confirmed in writing to me on or before March 4, 2010.

I, then, look forward to receiving complete information relevant to the infringing uses so that I can properly calculate the economic harm suffered by Daniel Morel as a result of AFP's actions.

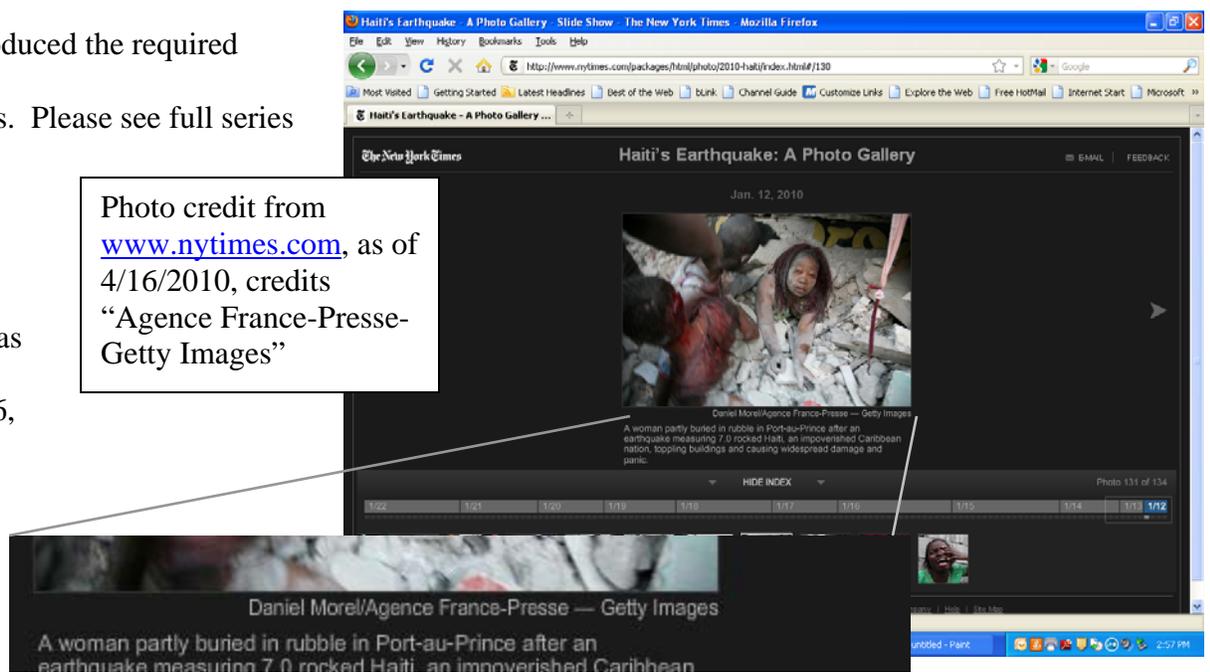
122. Mr. Morel's counsel also wrote *inter alia* cease and desist letters to the Boston Globe, the New York Times, the Presbyterian Church in Canada, The Age (Melbourne, Australia), Getty, Vanity Fair, USA Today, and the Denver Post.

123. In house counsel for each of these media outlets instructed that AFP's counsel would undertake representation of them and AFP's counsel agreed to act on their behalf.

124. Upon information and belief, neither the "Kill letter" nor the efforts of Corbis produced the required corrections. Please see full series

of Iconic Images displayed as of April 16, 2010 on

Photo credit from www.nytimes.com, as of 4/16/2010, credits "Agence France-Presse-Getty Images"



www.newsweek.com, the St. Louis Post Dispatch and the San Antonio Times website crediting “Lisandro Suero/AFP/Images,” attached hereto as Exhibits L1-L3, respectively.

Four out of five Iconic Images on the St. Louis Post Dispatch website still credit “Lisandro Suero/AFP/Getty Images” as of 4/16/2010.



Caption: A body lies amid rubble on January 12, 2010 in Port-au-Prince after a huge earthquake measuring 7.0 rocked the impoverished Caribbean nation of Haiti, toppling buildings and causing widespread damage and panic, officials and AFP witnesses said. A tsunami alert was immediately issued for the Caribbean region after the earthquake struck at 21:53 GMT. (Lisandro Suero/AFP/Getty Images)

Photo 63 of 66



Caption: A Haitian woman is helped after being trapped in rubble on January 12, 2010 in Port-au-Prince following a huge earthquake measuring 7.0 rocked the impoverished Caribbean nation of Haiti, toppling buildings and causing widespread damage and panic, officials and AFP witnesses said. A tsunami alert was immediately issued for the Caribbean region after the earthquake struck at 21:53 GMT. (Daniel Morel/AFP/Getty Images)

How Haiti and the Dominican Republic Made Peace <http://bit.ly/dEqSt>

In six words, What are your thoughts on America's economic recovery? Reply @Newsweek or email sixwords@newsweek.com

Jinle Sam Wants Your Tweets <http://bit.ly/cAMGoo>

Obama and Biden Reach Out to Poland <http://bit.ly/9l8dL4>

Advertisements on the iPad? Bring Em On. <http://bit.ly/szMYfd>



Lisandro Suero/AFP/Getty Image



Lisandro Suero/AFP/Getty Images

A survivor

[mySA News](#): Read the latest developments.

As of 4/16/2010, Newsweek (above) and the San Antonio Times (right) continue to credit "Lisandro Suero/AFP/Getty Images" for Mr. Morel's Iconic Image.

125. Time, Inc., in partnership with CNN, as of April 17, 2010, displayed on its website five of the Infringing Iconic Images, notwithstanding a cease and desist letter from Mr. Morel's counsel on March 9, 2010.

TIME Partners with **CNN**

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Photos

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Devastation from the Haiti Earthquake 29 of 42 [← BACK](#) [NEXT →](#)



LISANDRO SUERO / AFP / GETTY IMAGES

[← BACK](#) [NEXT →](#)

126. By letter dated March 12, 2010, Time Inc.'s deputy general counsel stated that Time had referred Mr. Morel's claim to Getty, from whom they licensed the images.

127. On March 9, 2010, Mr. Morel's counsel wrote to the Washington Post, requesting that it change the credits on its photo section on the Haiti Earthquake site to properly credit Mr. Morel. Mr. Morel did not request a takedown. As of April 18, 2010 Lisandro Suero is credited.

128. Attached hereto as Exhibit M are examples of a small number of the other Infringing Iconic Images uses by the media, charities, aid organizations,

and magazines, licensed by AFP and Getty as the attached Google search conducted March 22, 2010 indicates. Only NPR has noted any change as of April 18, 2010.

Iconic Images from www.washingtonpost.com, credit "Lisandro Suero AFP/Getty Images" as of 4/18/2010

Jan. 12

A Haitian woman is helped from a damaged building in Port-au-Prince after huge earthquake rocked the impoverished Caribbean nation.

Lisandro Suero-AFP/Getty Images

Related Content:

- Gallery: World reacts to Haiti earthquake
- Special Report: Earthquake devastates Haiti
- Earthquake Videos
- Washington Post Photo Store
- More Photos and Videos



Jan. 12

A body lies amid rubble in Port-au-Prince. Relief officials say Haiti is ill-prepared to handle a major disaster.

Lisandro Suero-AFP/Getty Images

Related Content:

- Gallery: World reacts to Haiti earthquake
- Special Report: Earthquake devastates Haiti
- Earthquake Videos
- Washington Post Photo Store
- More Photos and Videos



Jan. 12

A Haitian woman is helped from the rubble. Major relief effort will focus on rescuing survivors and setting up field hospitals for the wounded.

Lisandro Suero-AFP/Getty Images

Related Content:

- Gallery: World reacts to Haiti earthquake
- Special Report: Earthquake devastates Haiti
- Earthquake Videos
- Washington Post Photo Store
- More Photos and Videos



129. Conflict photographers on the first flights may be more experienced in reacting to events rather than telling a story. Twitter offers a real opportunity for independent distribution of photographic images beyond the one photo wire service or the Iconic Images; however, not if images are free for the taking for all media and commercial uses and the copyright management, such as name and source, are removed.

130. If the argument of AFP/Getty were to prevail and such activity were to become the norm it would ruin the livelihoods of the many photojournalists. It would also harm the interests of other content owners who rely on fair compensation for their work in order to support their creative endeavors. Licensing is an important source of revenue for content creators. This is especially true for photographers and photojournalists in these difficult times where cheap stock images provided by amateurs compete with quality images taken by photojournalists like Mr. Morel. The rule of law that AFP/Getty argues here essentially would permit someone to take and commercialize a content owner's property without attribution or reasonable compensation, undermining the long-established practice of using such revenue streams to support the ongoing creation of new content by these photojournalists.

131. In an article entitled "Fair Game: Intellectual Property in the Digital Age," (www.bigthink.com/ideas) blogger Francis Reynolds comments:

The means to plunder grow more prevalent every day, so much so that blogger Dave Taylor feels the need to ask, "is copyright irrelevant?"

...while society may seem to be moving in that direction, no matter how much this "plundering" may seem to chip away at our intellectual hierarchies, the politics of allusion and borrowing continues to be shaped by the existing power dynamics of ownership. That's why advocates of a world of free and therefore free-flowing content sometimes risk shortchanging those who have historically been wronged by cultural and intellectual appropriation or outright theft.

...when ideas, sounds, images are taken without consent, in today's world, someone ends up losing in terms of getting the credit and in terms of getting the money that sometimes accompanies that credit.

**FIRST COUNTERCLAIM
COPYRIGHT INFRINGEMENT**
(17 U.S.C. § 101 et seq.)
("AFP" and "Getty")

132. Mr. Morel incorporates by reference ¶¶ 1-128 above as if fully set forth herein.

133. On or about February 23, 2010, Mr. Morel, by his attorney, submitted for expedited copyright registration the January 12, 2010 Haiti Earthquake Photos, which included the Iconic Images. A copy of the registration certificate #VA 1-701-374 is attached hereto as Exhibit O with the Iconic Images submitted for registration in a timely fashion within three months of the publication of the Iconic Images or within one month of Mr. Morel's knowledge of the infringements set forth herein.

134. By the actions alleged above, Counterclaim Defendants AFP and Getty have willfully infringed and continue to infringe Daniel Morel's copyright in his original Iconic Images by reproduction, display, distribution, licensing and/or sale without his permission or authorization.

135. Counterclaim Defendants knew or should have known of Daniel Morel's rights in and to the Iconic Images, have willfully and intentionally infringed Mr. Morel's exclusive rights in the Iconic Images under 17 U.S.C. §106, in violation of 17 U.S.C. §501.

136. As a direct and proximate result of the copyright infringement detailed herein, Mr. Morel has been and continues to be damaged in an amount unknown at present and to be determined at trial. Counterclaim Defendants have garnered and/or will

garner substantial infringing profits in an amount presently unknown, which profits should be disgorged to Mr. Morel.

137. In the alternative and at his election, Mr. Morel is entitled to seek maximum statutory damages for each separate act of willful infringement by Counterclaim Defendants AFP and Getty in an amount of \$150,000 per each infringement.

138. Mr. Morel has no adequate remedy at law to protect its rights in the Iconic Images and to prevent Counterclaim Defendants from continuing to infringe the Iconic Images and to injure Mr. Morel. Mr. Morel has suffered and is continuing to suffer irreparable injury from the Counterclaim Defendants' conduct as alleged.

139. As a direct and proximate result of the copyright infringements detailed herein, Counterclaim Plaintiff is entitled to preliminary and permanent injunctive relief enjoining and restraining Counterclaim Defendants AFP and Getty from infringing his copyright.

**SECOND COUNTERCLAIM
COPYRIGHT INFRINGEMENT**
(17 U.S.C. § 101 et seq.)
(AFP and Getty)

140. Daniel Morel incorporates by reference ¶¶ 1-139 above as if fully set forth herein.

141. By the actions alleged above, Counterclaim Defendants AFP and Getty have encouraged, assisted, induced, caused, and/or materially contributed to a vast number of actual or imminent copyright infringements of the Iconic Images in violation of 17 U.S.C. §§ 106 and §501.

142. Counterclaim Defendants know or have reason to know of the actual copyright in the Iconic Images.

143. The infringements of Mr. Morel's Iconic Images that Counterclaim Defendants have encouraged, assisted, induced, caused and/or materially contributed to through the conduct described above is without Mr. Morel's consent and not otherwise permissible under the Copyright Act.

144. The foregoing acts of infringement by Counterclaim Defendants have been willful, intentional, purposeful, and with indifference to Daniel Morel's rights under the Copyright Act.

145. Mr. Morel is entitled to recover from Counterclaim Defendants the damages, including attorneys' fees, it has sustained and will sustain, and any gains, profits and advantages obtained by Counterclaim Defendants as a result of their acts of infringement alleged above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Mr. Morel, but will be established according to proof at trial. Mr. Morel is also entitled to recover statutory damages for AFP/Getty's willful infringement of its copyright.

146. Plaintiff and Counterclaim Defendant Getty have promoted, facilitated, and enabled—and continue to promote, facilitate, and enable—third party purchasers of the Infringing Iconic Images (“Infringing Third Parties”) to copy, display and distribute the Iconic Images.

147. The Infringing Third Parties have in fact licensed various uses of the Iconic Images from AFP/Getty, and used, sold and/or displayed such Infringing Iconic Images without Mr. Morel's authorization, thereby infringing Mr. Morel's copyrights.

148. AFP and Getty induced and promoted Infringing Third Parties' copyright infringement.

149. AFP and Getty are liable for the acts of infringement that result from the Infringing Third Parties' use of the Infringing Iconic Images.

150. The talent, skill and effort required to create compelling still images has fostered a vibrant market for professional photography, one on which the media and the photographers have come to rely on for their livelihood. Without licensing revenues made available to photojournalists worldwide, particularly in covering disasters, a robust First Amendment is placed in jeopardy.

THIRD COUNTERCLAIM
VICARIOUS COPYRIGHT INFRINGEMENT
(Getty and AFP/Getty Third Party Infringers)

151. Mr. Morel repeats and realleges the allegations of paragraphs 1-150 as if fully set forth herein.

152. At all times material hereto, Counterclaim Defendants The New York Times, Time Inc., USA Today, Vanity Fair, and Counterclaim Defendants Does 1-? had the right and ability to supervise the infringement of the Iconic Infringing Images and had a direct financial interest in that infringement.

153. Upon information and belief, Counterclaim Defendants have derived and continue to derive substantial and direct financial benefit from the infringement of Mr. Morel's Iconic Images.

154. Counterclaim Defendants' actions alleged herein constitute vicarious copyright infringement in violation of the Copyright Act, 17 U.S.C. §§101 *et seq.*

155. The conduct of Counterclaim Defendants, and each of them, was intentional, willful, malicious, fraudulent and calculated to injure Mr. Morel and infringe the Iconic Images.

156. As a result of the copyright infringements described above, Mr. Morel is entitled to relief including but not limited to, injunctive relief, actual or statutory damages in the maximum amount allowed by law, statutory costs and attorney's fees, and prejudgment interest.

FOURTH COUNTERCLAIM
VIOLATION OF THE DCMA (17 U.S.C. §1202)
(AFP and Getty)

157. Mr. Morel incorporates by reference paragraphs 1 through 156 above as if fully set forth herein.

158. Upon information and belief, AFP and Getty without authorization of Mr. Morel or the law, has intentionally removed and/or altered and had caused and induced others to remove and/or alter copyright management information from the Iconic Images including for the use in the Infringing Iconic Images, and have thereafter distributed said Iconic Images having reasonable grounds to know that such acts will induce, enable, facilitate or conceal an infringement of copyright under Title 17, United States Code, in violation of 17 U.S.C. §1202(b)(1) and (3).

159. AFP and Getty's removal or alteration of copyright management information from the Iconic Images, included for use on the Images, *inter alia* Mr. Morel's name, and subsequent distribution of the Infringing Iconic Images, as alleged above, was and is willful and intentional, and was and is executed with full knowledge of Mr. Morel's rights under the Copyright Law, and in disregard of those rights.

160. Mr. Morel is entitled to recover his actual damages suffered as a result of the violation and any profits of AFP and Getty attributable to the violation and not taken into account in computing actual damages, or, at Mr. Morel's election, statutory damages pursuant to 17 U.S.C. §1203(c).

161. Mr. Morel is entitled to recover costs and attorney's fees from Counterclaim Defendants pursuant to 17 U.S.C. §1203(b)(4) and (5).

162. Counterclaim Defendants' violations of 17 U.S.C. §1202(b)(1) and (3) have caused, and, unless restrained by this Court, will continue to cause, irreparable injury to Mr. Morel not fully compensable in monetary damages. Pursuant to 17 U.S.C. §1203(b)(1), Mr. Morel is entitled to a preliminary and permanent injunction enjoining Counterclaim Defendants from such further violations, including proper crediting of the Infringing Images to ©Daniel Morel/Corbis.

FIFTH COUNTERCLAIM
FALSE OR MISLEADING REPRESENTATION OF FACT
(15 U.S.C. 1125(a)(1))
(AFP and Getty)

163. Mr. Morel repeats and realleges paragraphs 1 through and including 162 set forth above as if the same were fully set forth herein.

164. Daniel Morel's claim arises under section 43(a) of the Lanham Act, 15 U.S.C. 1125(a)(1). The Lanham Act creates a cause of action of misattribution or for a

false or misleading representation of fact which deceives as to a relationship, sponsorship, or approval.

165. As above stated, Mr. Morel owns all intellectual property rights in and to the Iconic Images, including rights under Section 43(a) of the Lanham Act.

166. The use by Counterclaim Defendants AFP and Getty of the statements “AFP/Getty/Daniel Morel” or “AFP/Getty/Lisandro Suero”) in connection and association with the Iconic Images is a false description and representation that Mr. Morel’s Iconic Images are sponsored by, or otherwise affiliated with AFP and Getty or that AFP/Getty received authorization from Mr. Morel to act as his agent for the licensing or that he was their employee. Said acts are in violation of 15 U.S.C. §1125(a) in that AFP/Getty is using false or misleading attribution of fact, which is likely to cause confusion or to deceive as to affiliation, connection or association as to sponsorship or approval and has caused such goods to enter into or affect interstate commerce. Mr. Morel believes that he is and is likely to be respectively damaged by such false description and representation by reason of the likelihood that clients, customers, or viewers of the Iconic Images will be confused as to the true source, sponsorship or affiliation.

167. Counterclaim Defendants have used and continue to use in connection and association with their own services and goods in interstate commerce; false representations of association with Mr. Morel without license or authorization from Mr. Morel.

168. AFP and Counterclaim Defendants’ products and services are targeted to the exact same consumers, subscribers, clients and licensees as Daniel Morel and the

Counterclaim Defendants provide exactly the same services to Mr. Morel's competitors, as does Mr. Morel.

169. Plaintiff AFP and Counterclaim Defendant Getty's misrepresentation of fact is intentionally designed to deceive, and has deceived, consumers and customers, subscribers and clients that Mr. Morel's Iconic Images are authorized and licensed for use or otherwise approved by him for use by AFP and Getty.

170. As the insert below, from an article written by James Creedon on January 14, 2010 for France24 (www.france24.com, downloaded April 18, 2010) entitled "Haiti's nightmare dominates world's press," indicates, Mr. Morel's clients and customers, including the media have been deceived by AFP's misrepresentation:

INTERNATIONAL PRESS REVIEW: "The unluckiest country", "devastation", "cursed"... This morning's papers struggle to find words to sum up the disaster that has struck one of the world's poorest countries.

The front pages of papers around the world this morning lead with images of the devastation that has struck Haiti after a 7.0 magnitude earthquake ravaged its capital, Port-au-Prince. One photo taken by AFP photographer Daniel Morel appears on the front page of [Libération](#), [Le Parisien](#) and [France Soir](#) as well as the Italian daily [Corriere della Serra](#) and the British paper [The Guardian](#). It shows a woman, her face covered in dust, staring into the camera as she emerges from a collapsed building.

171. As a direct and proximate result of Plaintiff and Counterclaim Defendant Getty, the public is likely to be confused as to the origin and source of AFP and Getty's products and relationship to Mr. Morel and/or believe that AFP and Getty are licensed, sponsored or otherwise authorized by Mr. Morel to offer the Iconic Images and services, when they are not.

172. The public is also likely to be confused as to the authorship of the Iconic Images based on the misattribution by AFP/Getty.

173. Counterclaim Defendants AFP and Getty's blatant and continuing use of the AFP/Getty affiliation to the Iconic Images constitutes willful and intentional violation of the Lanham Act sec 43(a)-including unfair competition.

174. As a direct and proximate result of the willful and wanton conduct of AFP and Getty, Mr. Morel has been injured and will continue to suffer commercial harm in this District, the State of New York, and worldwide due to the pervasive reach of the Internet, in an amount unknown at present and to be determined at trial.

175. As a direct result of AFP and Getty's willful infringement and misrepresentation of fact, Mr. Morel is entitled to enhanced damages as provided by law.

176. As a direct and proximate result thereof, Mr. Morel is entitled to injunctive relief enjoining and restraining Counterclaim Defendants from use of the Iconic Images.

177. Mr. Morel has no adequate remedy at law.

SEVENTH COUNTERCLAIM
FALSE ADVERTISING
(15 U.S.C. §§1125(a)(2))
(AFP and Getty)

178. Mr. Morel repeats and realleges paragraphs 1 through and including 177 set forth above as if the same were fully set forth herein.

179. Mr. Morel's claim arises under the Lanham Act, 15 U.S.C. §§1125(a)(2).

180. Counterclaim Defendants AFP and Getty, with intent to deceive, have made material, false and misleading descriptions or misrepresentations of fact concerning Mr. Morel's Iconic Images in their licensing databases and in marketing the Iconic Images, by giving the clear but false impression that Mr. Morel licensed or otherwise authorized Counterclaim Defendants AFP and Getty to reproduce, display and distribute

the Iconic Images stolen from him, and that Mr. Morel has licensed or endorsed Counterclaim Defendants AFP and be to reproduce, license, or otherwise distribute the Infringing Iconic Images.

181. Counterclaim Defendants AFP and Getty's conduct is willful, deliberate, intentional and in bad faith.

182. Counterclaim Defendants AFP and Getty's false and misleading representations about the Iconic Images including the misrepresentation as to the authorship and Lisandro Suero's role therein have deceived or are likely to deceive a substantial segment of the intended audience and have caused and continue to cause Mr. Morel actual injury since media customers and websites have identified Lisandro Suero as one of the major photographers of the Haiti Earthquake, which identification is due to the distribution by AFP/Getty. Ironically, this willful confusion continued and continues because AFP/Getty when and if sending an e-mail to change the credit, continued to represent itself as the licensor of the Iconic Images.

183. The Iconic Infringing Images and the advertising and promotion therefore are being displayed and distributed in interstate commerce.

184. As a direct and proximate result of Counterclaim Defendants false and misleading representations, Mr. Morel has been damaged in an amount unknown at present and to be proved at trial.

185. Mr. Morel is entitled to treble damages based on the bad faith and willful conduct of defendant.

186. Mr. Morel has suffered and, unless Counterclaim Defendants are enjoined, will likely continue to suffer irreparable injury by reason of the false and misleading claims made by Counterclaim Defendants.

**EIGHT COUNTERCLAIM
FOR DIRECT COPYRIGHT INFRINGEMENT
(CBS)**

187. Mr. Morel repeats and realleges the allegations in paragraphs 1-186 set forth above.

188. At 8:01 p.m. on January 12, 2010, David Hancock, Home Page Editor from CBSNews.com, e-mailed Mr. Morel “looking for Haiti images...what you have and what price?.”

189. At 8:54 p.m. William Goodman, a producer from CBS News contacted Mr. Morel for information and photos and at 11:51 p.m. asked “if there was a way to view the photos and then try to find a price”;

190. At 9:08 p.m. Patricia Beauvais contacted Mr. Morel if he was “willing to share these photos with CBS News?.”

191. On January 13 at 12:21 a.m. Ryan Corsano contacted Mr. Morel requesting pictures and offering to “credit [Mr. Morel] tomorrow on CBS News.”

192. CBS’s in house counsel in a subsequent correspondence denied that either saw the images or obtained them from Twitter. Notwithstanding, CBS reproduced, displayed, and transmitted the following Iconic Images without authorization or license

from Mr. Morel and on information and belief, no other source for the Iconic Images is available.

193. Upon information and belief, at 4:57 p.m. during the January 13 broadcast of CBS Evening News with Katie Couric, the following four images were displayed:



The video remained in the CBS web archive until April 12, 2010 when Mr. Morel became aware of them and through his counsel, informed CBS's counsel.

194. Upon information and belief, CBS removed the Iconic Infringing Images.

195. The CBS web-based online photo gallery displayed nine (9) of the Infringing Iconic Images. These images were removed by CBS on receipt of a cease and desist letter from Mr. Morel's counsel on or about March 12, 2010. Copies of the images are attached hereto as Exhibit N.

196. CBS also displayed on its news website from January 13, 2010 other images and used two of Mr. Morel's Iconic Images as a banner headline on a daily basis in the first week of coverage.



Haiti Quake Was Disaster Waiting to Happen

Photo

Daniel Morel



Photo: http://www.cbsnews.com/elements/2010/01/12/world/photoessay6089557_1_2_photo.shtml

WKRG.com Related

- » Helping Earthquake Victims In Haiti
- » Mobile Doctor Was Born In Haiti
- » Ruffett Visits Haiti

Microsoft, Cisco, and others are also working through [NetHope](#) to help set up basic power, communications, and other infrastructure. Meanwhile, [Telecoms Sans Frontieres](#) (Telecoms Without Borders) has sent emergency response teams to help rebuild the communications system and assist aid workers.

Saturday, 06 February 2010 17:54 administrator Middle America - Haiti

Haiti Quake: Behind the Scenes of CBS' Coverage

Posted by CBSNews.com



(Daniel Morel)

CBS producer [Jeff Goldman](#) recalls two weeks on the ground in earthquake-ravaged Port-au-Prince

Last Updated on Saturday, 27 February 2010 23:48

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A survivor is pulled from the rubble following an earthquake in Port-au-Prince, Haiti. (Credit: Daniel Morel/CBS)

197. Mr. Morel learned of these infringing uses on or about February 22, 2010.

Vicarious Infringement by CBS

198. Upon information and belief, CBS claims to have licensed certain images from AFP/Getty. The only image discovered by Mr. Morel appears above:



199. By the actions alleged above, CBS has infringed the Iconic Images by using them without Mr. Morel's authorization.

200. Daniel Morel is entitled to recover from CBS his damages, including attorney's fees, he has sustained and will continue to sustain, and any gains, profits and advantages obtained by CBS as a result of its acts of infringement alleged above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained, but will be established according to proof at trial. Mr. Morel is also entitled to recover statutory damages for infringement and reasonable attorney's fees for CBS's willful infringement.

NINTH COUNTERCLAIM
DIRECT COPYRIGHT INFRINGEMENT
(ABC)

201. Mr. Morel repeats and realleges the allegations in paragraphs 1-200 set forth above.

202. On the evening of January 13, 2010 seven (7) of the Iconic Images, packaged on the ABC News World Tonight (the "Package"). The Package was then re-broadcast and used without Mr. Morel's permission, credit, or knowledge on the morning broadcast of ABC World News Now and Good Morning America, and thereafter on the ABC video archive online photo gallery until April 18, 2010.



abc 7 PHOTOS [HOME](#) [MOST POPULAR](#) [VIDEO](#) [LIVE VIDEO](#) [PHOTOS](#) [HELP?](#)

Haiti Earthquake Pictures (Graphic Content)

Slideshow posted in Eyewitness News | Tuesday, January 12, 2010

[<< Previous Photo](#) **138 of 161** [Next Photo >>](#)

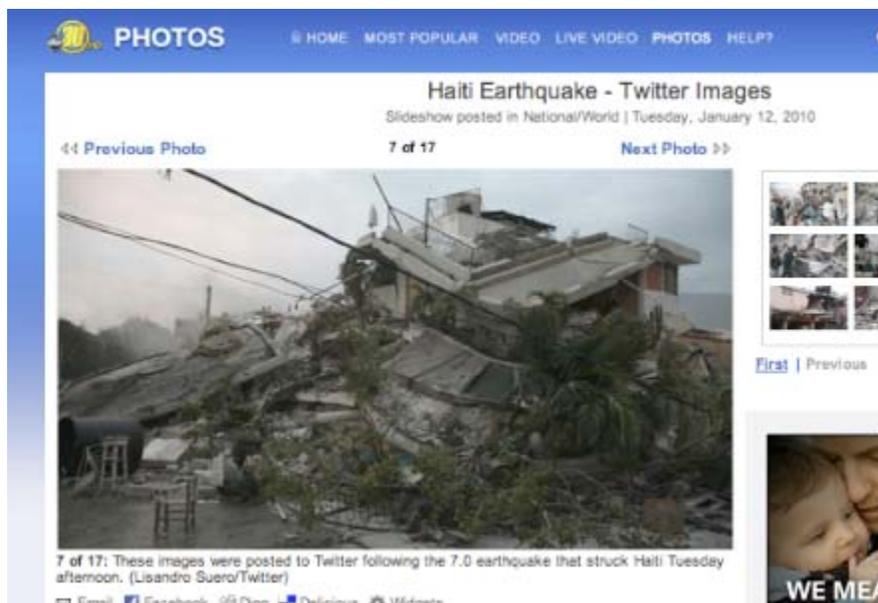


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Advertisement



203. As of April 17, 2010, Mr. Morel discovered six of the Iconic Images posted in an online photo gallery of KFSN, the ABC affiliate in Fresno (www.abclocal.go.com)



204. Upon information and belief, the Infringing Images have been deleted on April 19, on representation of ABC's in house counsel.

205. By the actions alleged above, ABC has infringed the Iconic Images, by using such images without Mr. Morel's consent and/or using pirated images from Lisandro Suero's Twitter page.

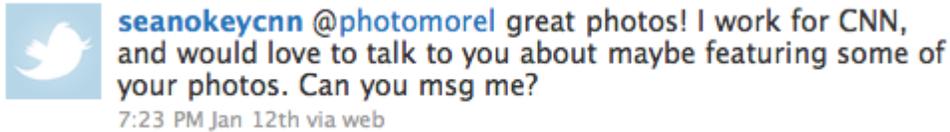
206. Daniel Morel is entitled to recover from ABC the damages, including attorney's fees, he has sustained and will continue to sustain, and any gains, profits and advantages obtained by ABC as a result of its acts of infringement alleged above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained, but will be established according to proof at trial. Mr. Morel is also entitled to recover statutory damages for willful infringement and reasonable attorney's fees. The reckless disregard exhibited by ABC in taking the Lisandro Suero images without investigation and continuing to display such images until April 19, 2010, constitutes willful infringement.

**TENTH COUNTERCLAIM
DIRECT COPYRIGHT INFRINGEMENT
(CNN)**

207. Mr. Morel repeats and realleges the allegations in paragraphs 1-206 set forth above.

208. Mr. Morel makes three different claims for copyright infringement against CNN.

209. At 7:23 p.m. on January 12, 2010 “seanokeycnn” tweeted to Mr. Morel:



210. On January 12, 2010 at 8:22 p.m., Katy Byron from the CNN International Desk e-mailed Mr. Morel, stating “I saw on Twitter that you have some photos from Haiti of the earthquake damage. Could you please send them to me? may we air these photos on CNN networks including CNN, CNN International, CNN Headline News, post them on CNN.com and distribute them to our affiliates? Would you like us to courtesy you for the photos by name? Can you tell me exactly where the photos were taken? And if you could tell me a little bit about yourself as well that would be helpful, also where you got the photos.”

211. At 8:27 p.m., Mr. Morel responded, “On thanks you pay lot of money for these Photos. I have everything.”

212. Seconds later, at 8:27:46 p.m., Katy Byron replied, “How many photos do you have? Can you call me to negotiate a price?”

213. On January 12, 2010 at 8:31 p.m., Mariano Castillo from the CNN Wire emailed Mr. Morel, stating “Excuse this e-mail if somebody from CNN has already reached out to you. I heard that you have photos from Haiti, and I wanted to make sure that someone here at CNN spoke to you about acquiring those images. I would also like to speak to you by phone or e-mail, if possible, for a story I am writing for CNN.”

214. On January 13, 2010 at 2:12 a.m., “brinisphereCNNphotoRT” tweeted to Mr. Morel:



brinisphere CNN photo RT @photomorel
<http://twitpic.com/xvj75> - Help Haiti #helphaiti
#haitiearthquake terremoto hait #Haiti yele #yele
2:12 AM Jan 13th via TwitBird iPhone in reply to photomorel

215. On January 13, at 1:20 p.m., Erin McLaughlin of CNN London, e-mailed Mr. Morel stating, “I hope you are well. CNN just interviewed Leah Gordon for CNN International segment. We referenced many of your pictures on twitter to talk about Haiti and her experiences there. I noticed that those pictures have since been removed from your twitter account. Do you know what happened to them? Would you be willing to send us the files for the interview block?”

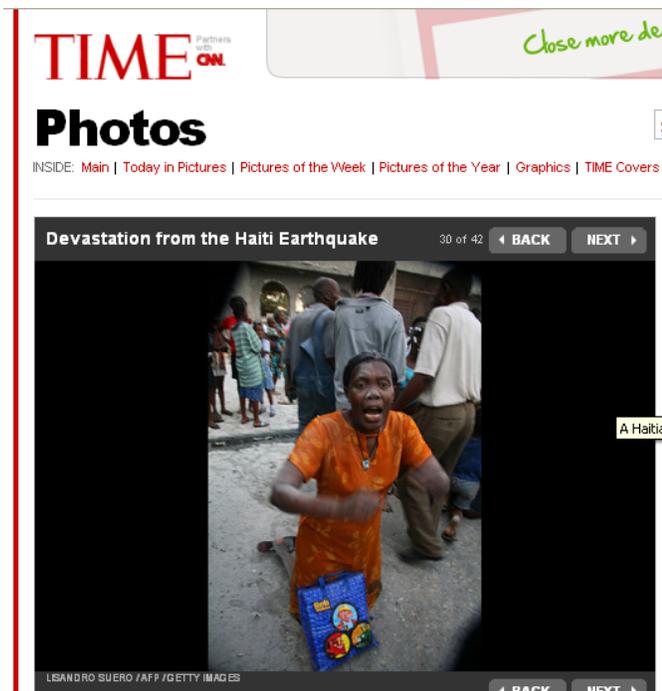
216. At 1:35 p.m. on January 13, 2010 Mr. Morel instructed Ms. McLaughlin to “please contact Corbis for any photo request.”

217. Mr. Morel intended to retain copyright in and credit to his images, at the same time he informed the world of the disaster and advertised his images for license.

On information and belief, it is in the nature of an unfolding disaster that early pictures tend to be more sensational and less about telling a story. Daniel Morel was interested in licensing his images if the price, terms and conditions were right. He was not interested in selling or licensing cheap. It was enough that he and the world were witness to what had happened and what was happening. Later, he would tell the full and complete story of the Haiti Earthquake and the impact on the history of Haiti through his documentary photography and film taken on the ground during the earthquake and thereafter.

218. Upon information and belief, CNN uploaded Daniel Morel's Iconic Images from Twitter and used them on its 24 hour cable news broadcasts from 5:45 p.m. on January 12, 2010.

219. Upon information and belief, CNN licensed images from Getty, which images currently appear on the Time, Inc. website, and in its photo gallery with misattribution, and on other websites.



220. Upon information and belief, CNN claims it had obtained a license from Corbis for some of the Iconic Images on January 13, 2010. Notwithstanding, said Iconic Images would not have been available on January 13 from Corbis. Notwithstanding also that although the invoice has a date of April 19, 2010, the in house counsel for CNN

claimed the invoice was a copy of an invoice that was actually dated January 13, 2010, calling into question the authenticity of said invoice.

221. No record of any licensing to CNN appeared on Mr. Morel's licensing statement and an e-mail from a Corbis employee to Mr. Morel's counsel confirmed on or above two weeks ago, that Corbis had issued no license to CNN.

RELIEF REQUESTED

WHEREFORE, Daniel Morel prays for relief as follows:

1. That the Complaint be dismissed with prejudice;
2. For a judgment that Counterclaim Defendants AFP, Getty, CBS, ABC, CNN, et. al, have knowingly and willfully infringed Mr. Morel's copyrights in the Iconic Images;
3. For a judgment that the Counterclaim Defendants AFP and Getty have contributorily infringed Mr. Morel's copyright in the Iconic Images;
4. That as the proximate result of AFP and Getty's contributory infringement, AFP and Getty's customers and subscribers have been induced to infringe and are vicarious infringers;
5. For a judgment that Counterclaim Defendants have (i) knowingly and willfully altered or removed the CMI associated with the Iconic Images, (ii) knowingly and willfully distributed works knowing that the CMI was removed or altered, and (iii)

knowingly and willfully produced and distributed false CMI, all with intent to induce, enable, facilitate or conceal their infringement of the Iconic Images;

6. For a judgment that Counterclaim Defendants AFP and Getty have knowingly and willfully converted Mr. Morel's ownership interests in the Iconic Images to their own use, depriving Mr. Morel of the legal rights and benefits incident to ownership thereof, with malice, oppression, and fraud, and in conscious disregard of Daniel Morel's rights;

7. For an order under 17 U.S.C. §§ 502(a) enjoining Counterclaim Defendants during the pendency of this action from directly or indirectly infringing any of the Iconic Images, as detailed in this Counterclaim and an order instructing Counterclaim Defendants to inform Google, Yahoo, Twitter and other social networking sites to remove the Infringing Iconic Images from their sites;

8. For an order under 17 U.S.C. §§ 503(a) and §1203(b)(2) enjoining Counterclaim Defendants, including their directors, officers, agents, servants, employees, and all other persons in active concert, privity, or participation with them, to turn over for impoundment, to remain in the custody of Mr. Morel's counsel during the pendency of this action, all copies, electronic and physical, in the Counterclaim Defendants' possession, custody, or control of any of the Iconic Images, including but not limited to computer disks, hard drives, servers, CDs, DVDs, and storage tapes, on which Counterclaim Defendants have stored such images;

9. For an order that during the pendency of this action that Counterclaim Defendants, including their directors, officers, agents, servants, employees, and all other persons in active concert, privity, or participation with them, are required to maintain records and are enjoined from disposing of records, relating to the acquisition, distribution, reproduction, licensing, sale or display of the Iconic Images;

10. For an order under 17 U.S.C. §§ 502(a) and 1203(b)(1) permanently enjoining Counterclaim Defendants, including their directors, officers, agents, servants, employees, and all other persons in active concert, privity or participation with them, from directly or indirectly infringing any of the Iconic Images;

11. For an award of Mr. Morel's actual damage and Counterclaim Defendants' profits in such amounts as may be found under 17 U.S.C. §§ 504(b) and §§1203(c)(2);

12. That the Court enter judgment for Mr. Morel against Counterclaim Defendants for Mr. Morel's actual damages according to proof, and for any profits attributable to infringement of Mr. Morel's intellectual property in accordance with proof;

13. Alternatively, at Mr. Morel's election, for statutory damages under 17 U.S.C. §§ 504(c) in an amount up to \$150,000 for each separate infringement of each Iconic Image, and under 17 U.S.C. § 1203(c)(3) in an amount up to \$25,000 per Iconic Image against AFP and Getty and each of the other Counterclaim Defendants the Court determines to have acted willfully or in reckless disregard of Mr. Morel's copyrights and

statutory damages for each non-willful infringement by Counterclaim Defendants determined by the Court for those Counterclaim Defendants whose acts were not willful.

14. An award against AFP/Getty of three times the greater of

(i) Mr. Morel's damages for the wrongful acts of AFP and Getty in an amount the Court deems appropriate, together with appropriate interest on such damages; or

(ii) AFP and Getty's profits in accordance with the accounting demanded in the preceding paragraph, pursuant to 15 U.S.C. §1117;

15. An award of Daniel Morel's costs and disbursements of this action, including reasonable attorney's fees pursuant to 17 U.S.C. §505 and 15 U.S.C. §1117;

16. For prejudgment interest and post-judgment interest; and

17. For further damages according to proof and for such other and further relief as the Court deems just and equitable.

Dated April 21, 2010

Respectfully submitted,

By: _____
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Attorney for Defendant/Counterclaim Plaintiff, Daniel Morel