



VIA EMAIL, FACSIMILE AND U.S. MAIL

Michael D Fricklas
Executive Vice President and General Counsel
Viacom, Inc.
1515 Broadway
New York, NY 10036

Re YouTube Take-Down Notices

Dear Mr Fricklas:

We are writing to express the concerns of the ACLU of Northern California regarding Viacom's recent action in sending over 100,000 take-down notices to YouTube last Friday. While we recognize and support Viacom's right to protect the integrity of its copyrighted material, the enforcement of that right cannot come at the expense of the rights of YouTube users whose video clips do not violate the copyright laws.

YouTube is an important and vibrant forum for creativity and commentary on the Internet. Much of the work on YouTube is entirely original. But other work, like so much in the world of art, politics, criticism, and social commentary, makes its point through reference to or incorporation of the words or pictures of others. The fair use doctrine is the means by which the Constitution and the laws of copyright accommodate that process.

Based on recent press reports, it appears that at least some video clips that made no use of material copyrighted by Viacom have nevertheless been swept up in the YouTube take-down notices. In addition, we do not know what process, if any, Viacom used to determine whether the use of any material from Viacom programs falls within fair use doctrine.

Parody, political commentary, and criticism, like news reporting, all go to the heart of expression protected by the First Amendment and the fair use doctrine. Whether a particular video clip comes within the protection of the fair use doctrine is a determination that can only be made on a case by case basis. For these reasons, it is imperative that copyright holders, including Viacom, conduct a careful review of material believed to be infringing prior to sending out DMCA take-down notices. That review should include, at a minimum, (1) a review of the material by a human being to ensure that the potentially infringing material is actually using the copyright holder's work without authorization; and (2) a reasonable fair use analysis for each potentially infringing work to ensure that works that legitimately use copyrighted material are not swept in by any take-down notices.

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The public discussion generated by Viacom's take-down notices to YouTube would be benefited greatly by further information from Viacom regarding the steps that it took prior to issuing the take-down notices. Specifically, please advise us if Viacom did in fact have a human being review each of the allegedly infringing video clips and if a fair use analysis was conducted. To the extent Viacom did not do so, we urge Viacom to take a more measured approach in the future in its efforts to protect its copyrights, one that takes into account the constitutional rights of Internet speakers and the important First Amendment values embodied in the fair use doctrine.

We look forward to hearing from you. Thank you for your attention to this important matter.

Very truly yours,



Ann Brick
Staff Attorney



Nicole Ozer
Technology and Civil Liberties
Policy Director