



BET Networks > Famous Music > MTV Networks > Paramount Pictures

Michael D. Fricklas  
Executive Vice President  
General Counsel and Secretary

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Ann Brick  
Staff Attorney  
Nicole Ozer  
Technology and Civil Liberties Policy Director  
American Civil Liberties Union Foundation of Northern California  
39 Drumm Street  
San Francisco, CA 94111

Dear Ms. Brick and Ms. Ozer:

Thank you for your letter of earlier today and for the opportunity to respond to your concerns. There is much misinformation circulating and we appreciate the opportunity to explain what we've done.

In fact, at substantial cost, every one of the over 100,000 clips was identified through filtering followed by a review of each clip by a member of our team to ensure that the content was Viacom's and was infringing. For the purpose of this takedown, we took a very conservative approach and gave clear direction to all viewers of clips that they include only those that constitute clear infringements. Nearly all of these were taken 100% from our networks and motion pictures without the additional of any new creative material. There are many, many clips that use material from our shows and movies that have not been removed because it is possible that there could be a fair use claim and we did not have the resources to do the analysis. I do not have the precise numbers, but it is estimated that over a million clips were viewed in the process of preparing for the takedown. To see a few of the clips we did not take down, search on "Jon Stewart" or "South Park" and see the clips that remain.

We are very familiar with the doctrines of parody, political commentary and criticism and the way they relate to the use of copyrighted material. In fact, Viacom relies upon the law in these areas regularly. Watch nearly any episode of South Park, The Daily Show with Jon Stewart or the Colbert Report and you will see how our artists draw from copyrighted works in legitimate ways for legitimate purposes. We believe strongly in the first amendment and have worked closely with the ACLU in the area on many occasions.

It is true that some identification errors were made, but we understand those errors to be under .1% of the total number of takedowns and therefore an even smaller percentage of the number of clips reviewed. We have asked YouTube to reinstate every erroneous message as soon as we become aware of it. We wish these errors didn't occur, but as you can see we were confronted with a truly Herculean task in demanding the removal of our copyrighted works.

Regrettably, YouTube has allowed itself to be turned not only into a forum for illegal consumption and sharing of copyrighted material, but it has decided to capture for itself the revenue from advertising to users while they watch and upload. We are insisting that YouTube respect the rights of authors, composers, singers, actors, producers and distributors of creative works by refusing to allow its website to be used for this behavior and by insisting that it apply reasonable efforts to weed out apparently copyrighted material. We believe YouTube can't hide behind the "we don't know it's there" defense – YouTube already weeds out other material that it deems offensive, such as content with nudity or hate speech. In fact, you may be aware that YouTube recently admitted that it can filter, but that it will implement filtering only for content owners who agree to do a business deal. This "if you don't sell it, we'll take it" approach clearly exposes YouTube's inability to assert the DMCA defense as YouTube has admitted that it has the ability to control its site and the right to do so, but refuses unless it is paid. It is a shame that we have had to incur the substantial expense to protect the rights of Viacom and our artists while YouTube irresponsibly benefits from the business model it has created.

Again, thanks for the opportunity to respond. If you have any further questions please do not hesitate to call Mark Morril at 212-258-7775, Michelena Hallie at 212-258- 6849 or me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael D. Fricklas". The signature is fluid and cursive, with the first name being the most prominent.

Michael D. Fricklas