

The Washington Post

October 19, 2007 Friday

Standing Up To Takedown Notices; Web Users Turn the Tables on Copyright Holders

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On a chilly February day, Stephanie Lenz decided to show her family and friends what her bouncing baby boy could do. She plopped 13-month-old Holden, then learning to walk, on the floor, cranked up Prince's song "Let's Go Crazy" and whipped out the digital camera.

In the 29-second YouTube video that resulted, Holden smiles and bobs up and down to the music. According to Universal Music Publishing Group, he also helps his mom commit a federal crime: copyright infringement.

In June, Universal, which owns the rights to Prince's song, sent a notice to YouTube requesting the video be taken down but did not take action against Lenz. On the contrary, Lenz sued Universal for abusing copyright law.

"The idea that putting a little video of your kid up on YouTube can mean you have to go to court, and maybe declare bankruptcy and lose your house, is just wrong," Lenz said. "I don't like being made to feel afraid, and I don't like being bullied."

Universal did not return calls seeking comment on Lenz's case.

Companies have been pursuing copyright violations for decades, but technology -- and the proliferation of online venues like YouTube that allow self-publishing -- has created opportunities both for infringement and for ways to identify alleged violations.

With more self-publishing sites comes a boom in "takedown notices," warnings that the material is infringing a copyright and needs to be removed.

YouTube, which has been sued by many parties for hosting videos alleged to violate copyright, this week started using a filter to try to identify such content before copyright holders notice it. A group of other content holders, including NBC Universal and Microsoft, yesterday announced standards for how companies should deal with material that people post online.

But recently -- in part because of backlash among users and advocacy groups who say copyright holders are abusing the law and wrongfully taking down content -- the challenges to these copyright claims also appear to be increasing.

"These companies are trying to shoot a mouse with an elephant gun," said Gigi Sohn, director of Public Knowledge, a public-policy think tank that focuses on intellectual property. "They like to accuse their customers, the music fans and TV fans out there, of not respecting the law, but I don't think they respect the law."

Copyright holders say they are trying to legitimately protect their property and that takedown notices issued for noninfringing material are usually because of mistakes and not malevolence.

"These companies are sending out 100,000 takedown notices, so of course once in a while there's going to be a fly caught in the ointment," said Douglas Lichtman, a UCLA law professor who advises Viacom on copyright matters. "Everyone's trying to be careful, though. They don't want the PR backlash that comes when they make a mistake."

Copyright exemptions for fair use generally depend on whether the allegedly infringing product is "transformative" in nature -- that is, using copyrighted material for some new, creative purpose is considered okay. One such purpose, protected by law, is comment or parody. Still, some say accusations of copyright violations are sometimes just attempts to squash criticism.

Michelle Malkin, a popular blogger, said this was the case when her video criticizing rapper Akon for misogyny was removed from YouTube after a complaint from Universal Music Group.

"It was entirely obvious that trying to wipe off criticism from YouTube is what their claim was all about," Malkin said. She sent YouTube a counternotice; Universal Music backed down, and the video went back up.

Universal Music did not return calls seeking comment on Malkin's video.

A takedown notice issued for a video debunking Uri Geller, a self-described paranormalist, has also provoked censorship claims.

Geller, who has an NBC series beginning next week, became a household name in the 1970s for saying he could bend spoons with his mind. The YouTube video in question features several seconds of footage that Geller's brother-in-law filmed and that Geller says was used without permission. He ardently disputes that his copyright claim is meant to squelch free speech.

"I've been controversial all my life, and more controversy means more publicity for me," Geller said. "They can say whatever they want to about me . . . I just want them to edit out the part of the clip that they stole from us."

Other alleged infringers claim that copyright holders abuse the law because of overly zealous creative control.

Ric Silver, the choreographer of the Electric Slide, says he spent three years contacting 17,000 Web sites about what he says is their "incorrect portrayal" of the famous line dance. Silver also told YouTube to take down a number of videos showing the dance, including one clip of a concert filmed by Kyle Machulis.

Machulis sued Silver for copyright abuse. As part of the settlement, Silver agreed to allow the video to be reposted with a tagline crediting him for the choreography, but he now says he's waiting for paperwork from the Library of Congress that will allow him to open new lawsuits over clips like Machulis's.

"I can't go to every wedding and bar mitzvah in the country, so this is all I can do to make sure people learn it right," Silver said.

YouTube isn't the only hosting site on which copyright law is sometimes allegedly abused. EBay has been the setting of many of these infringement claims, too, but generally over the "first sale doctrine" -- a portion of copyright law regarding legal resale of licensed goods -- rather than fair use.

Take, for example, Karen Dudnikov and Michael Meadors. They run a mom-and-pop eBay store out of rural Colorado, 10 miles from the nearest power line. When they opened, Dudnikov began sewing pillows, potholders and other items out of fabric with licensed images of cartoon characters and other trademarked or copyrighted images. Soon they found their auctions were being taken down because of infringement allegations.

To date they've taken 15 corporate heavyweights to court -- including Disney Enterprises, Major League Baseball and M&M/Mars -- and gotten them all to back down. Facing off against these legal powerhouses, they represented themselves.

"They think we are just some country bumpkins they can push around," Meadors said. "This is our livelihood, and we stick up for ourselves."

Embroidered in their 16th lawsuit over a Betty Boop fabric, the couple has accepted outside legal help for the first time, from Public Citizen. On the fabric, the cartoon character is wearing a dress that closely resembles a design by artist and fashion designer ErtÅ©. SevenArts, the British company that owns the rights to ErtÅ©'s designs, told eBay through a U.S. associate to remove the auction for copyright violation.

"One of the most famous ErtÅ© designs has been used as a costume on this fabric, and we had to defend it," said Ray Perman, managing director of SevenArts. "We have contracts with various licensees, and we are obliged under the terms of those contracts to do this."