



December 23, 2015

Samantha Clemens
License Compliance Services, Inc.
605 Fifth Avenue South, Suite 400
Seattle, WA 98104

RE: Case No. 379786452

BY EMAIL: LCS@lcs.global

Dear Ms. Clemens:

I write in response to License Compliance Services, Inc.'s (LCS) emails of November 24, 2015 and December 3, 2015 regarding a thumbnail image that appeared on the website <http://uoah.org/>. The Electronic Frontier Foundation represents Robert Knox, who created and runs that website. In your messages, LCS demands that our client pay LCS for his use of an image of a kidney. LCS makes this demand even though our client's site made a clear fair use of the photograph under 17 U.S.C. § 107. Please be advised that our client will not comply with your demand, and has no obligation to do so.

Mr. Knox created The Universal Organization for the Advancement of Humanity (UOAH) and its website to highlight humanist causes such as global health and education. This website includes a news ticker where Mr. Knox collates links to news articles relevant to these topics. Each item includes a headline that links directly to the original article, a very brief summary written by Mr. Knox (usually less than ten words), and a thumbnail image from the original page. This is classic fair use. *See generally Kelly v. Arriba Soft Corp.*, 336 F.3d 811 (9th Cir. 2003).

The UOAH website collects news to highlight positive developments in human rights, education, and health. The site, which in addition to this information includes links to academic resources and non-profit organizations, serves as an educational resource for visitors. Its limited use of headlines and thumbnails to link to news articles serves the clear transformative purposes of education and commentary. *See Kelly*, 336 F.3d at 818-22 (use of thumbnail images in search engine fair use); *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605, 609-12 (2d Cir. 2006) (reproduction, at reduced-size, of posters in book was transformative). As such, the first statutory fair use factor—the nature of the use—strongly favors fair use.

The other fair use factors also strongly support Mr. Knox. The second factor—the nature of the copyrighted work—supports fair use because the photo had already been published and was being used primarily in a factual manner. *See, e.g., Katz v. Google Inc.*, 802 F.3d 1178, 1183 (11th Cir. 2015). The third factor—amount used—also favors Mr. Knox because the use of a thumbnail-sized image is no more than necessary to allow “users to recognize the image and decide whether to pursue more information about the

image or the originating web site.” *Kelly*, 336 F.3d at 821.

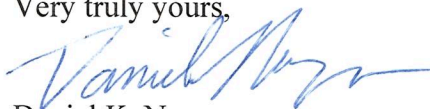
Finally, the fourth factor—market harm—strongly favors our client. The UOAH website is plainly not a substitute for the original news articles or photographs as it includes only the headline, a few words of summary, and a thumbnail image. It is well-settled that thumbnails do not serve as a substitute for photographic works. *See Kelly*, 336 F.3d at 821-22. Indeed, as the Ninth Circuit explained, a thumbnail paired with a link to a source page guides any interested visitors toward a licensed, full-size copy of the photograph. *See id.* at 821. Far from operating as a substitute for the original work, it actively promotes it.

LCS’s messages not only failed to rebut Mr. Knox’s claim of fair use but misstated the law. In LCS’s second email, you wrote that, to qualify as fair, a use must “meet *all* factors of Fair Use” (emphasis added). But, it is well-established that a party need not prevail on every factor to establish fair use. *See, e.g., Norse v. Henry Holt & Co.*, 847 F. Supp. 142, 145 (N.D. Cal. 1994). LCS also implied that our client’s use of the image could not qualify as fair use because it was not licensed. But it is well-settled that fair use does not require permission or any kind of license. *See Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 585 n.18 (1994). It is extremely disappointing that LCS would misstate the law when making monetary demands of individuals. We hope that this was not done with the intent to bully a person you expected to be unfamiliar with the law.

Although his use of the image was fair and no changes to the UOAH website were required, Mr. Knox has already removed the thumbnail image from his site. This change was made in a spirit of compromise and was not required by the law. LCS has nonetheless demanded that Mr. Knox pay for his prior fair use of the image. As explained above, Mr. Knox’s use of the image not an infringement under 17 U.S.C. § 107 and he owes you nothing.

We trust that LCS will respect our client’s right to free speech and will not trouble a court of law with this matter. If you wish to discuss Mr. Knox’s website further, you may contact me.

Very truly yours,



Daniel K. Nazer
Staff Attorney