Exhibit A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----------x

STUART FRANKEL,

Plaintiff,

v.

LYONS PARTNERSHIP L.P.,

Defendant.

----------x

JUDGE STANTON

COMPLAINT

Case No. 06 CV 6413

Jury Trial Demanded

Plaintiff Stuart Frankel ("Dr. Frankel"), by and through his attorneys Akin Gump Strauss Hauer & Feld LLP and Fred von Lohmann, Jason Schultz & Corynne McSherry, hereby alleges for his Complaint against Defendant Lyons Partnership, L.P. ("Lyons"), as follows:

PRELIMINARY STATEMENT

1. This is an action for Declaratory Judgment, arising from unfounded allegations and legal threats Lyons repeatedly made against Dr. Frankel in connection with his noncommercial website parody of the television show, *Barney and Friends*, and its star, Barney, the fictional purple dinosaur. Lyons' allegations and legal threats constitute an interference with Dr. Frankel's First Amendment-protected right to free expression. He therefore seeks a declaration that his parody qualifies as a fair use and does not infringe any protected copyright or trademark interest owned or controlled by Lyons.

PARTIES

2. Plaintiff Stuart Frankel is an individual residing in New York, New York. He maintains a personal website at <http://www.dustyfeet.com>.

3. Defendant Lyons Partnership, L.P., is a Texas limited partnership, with its headquarters in Allen, Texas.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 17 U.S.C. §§ 1331 and 1338(a), as this action arises under the copyright and trademark laws of the United States.

5. Lyons has sufficient contacts with this district generally and, in particular, with the events herein alleged, that Lyons is subject to the exercise of jurisdiction of this Court over its person and that venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

6. Dr. Frankel maintains a personal website titled "Stuart Frankel's very small webpage," available at <http://www.dustyfeet.com>. Prior to November 2001, his site was also available at <http://www.asan.com/users/gecko/>.

7. Dr. Frankel's website serves as his personal homepage where he posts information and content that he finds interesting. Content on the website includes information on building a clavichord, a collection of Javanese culinary recipes by a Javanese musician, and Dr. Frankel's dissertation in the Department of Music at New York University, titled *Phonology, Verse Metrics, And Music.*

8. Dr. Frankel's website is entirely noncommercial in nature.

9. Dr. Frankel's website includes a web page, located at <http://www.dustyfeet.com/evil/enemy.html>, that pokes fun at the children's television show, *Barney and Friends*, and specifically at its main character, Barney, a fictional purple dinosaur. See Exhibit 1 This parody humorously suggests that Barney lives a secret "double life," with the character's friendly, public persona serving to conceal the dinosaur's true evil nature. In order to further illustrate this parodical message, the web page includes contrasting images of Barney: one image as the character appears on *Barney and Friends*, and another, entitled "What Barney Looks Like After the Show," featuring the character with horns, sharp teeth, a pentagram, and the number "666" emblazoned on his chest.

10. On February 11, 2002, Dr. Frankel received an email message from Matthew W. Carlin, legal counsel to Lyons, alleging that the parody web page violated Lyons' legal rights. See Exhibit 2 In the message, Mr. Carlin characterized Lyons as "owners of the children's character Barney, the purple dinosaur." The email message further alleged that Dr. Frankel's website "uses copyrighted Lyon's Partnership materials," and "insist[ed] that [Dr. Frankel] remove these copyrighted Barney materials." The email message expressly stated that Dr. Frankel's parody was "unlawful (pursuant to 17 U.S.C. § 501(a) and other laws)," and further mentioned that Lyons might "pursue legal remedies or contact your Internet Service Provider ('ISP') and inform it of your unlawful use of copyrighted materials (which is presumably a violation of your ISP's terms of service)."

11. On February 21, 2002, Dr. Frankel received a second email message from Mr. Carlin. See Exhibit 3 The message repeated the allegations contained in the February 11, 2002 message and further stated, "THIS IS YOUR SECOND NOTICE. We must hear from you by March 4, 2002. Your response must provide written assurances by that [sic] you have ceased and desisted from reproducing, distributing, performing by means of digital audio transmission, or displaying the copyrighted character Barney."

12. On March 1, 2002, Dr. Frankel responded by letter to Mr. Carlin through counsel. See Exhibit 4. The letter clearly informed Mr. Carlin that Dr. Frankel's parody of Barney constitutes a fair use, is entirely lawful, and that Lyons' contrary allegations were without legal foundation.

13. On October 11, 2005, Dr. Frankel received another "cease and desist" letter from Mr. Carlin, nearly identical to those received in February 2002. See Exhibit 5. The letter does not acknowledge the March 1, 2002 letter sent by Dr. Frankel's counsel. The letter states that Lyons is "the owners of the exclusive right to use the copyrighted children's dinosaur character Barney® as well as the federally registered and famous trademark and service mark Barney." The letter goes on to threaten legal action against Dr. Frankel, as well as threatening to interfere

with Dr. Frankel's contractual relationship with the Internet Service Provider hosting his website, stating that "Lyons Partnership would prefer not to have to pursue legal remedies or contact your Internet Service Provider ('ISP') and inform it of your unlawful use of copyrighted materials (which is presumably a violation of your ISP's terms of service). To avoid this, please provide us with written assurances by October 18, 2005, that these materials have been removed. If we do not receive a response, we will be forced to take other measures to have the content removed."

14. On October 14, 2005, Dr. Frankel again responded through counsel to Mr. Carlin. See Exhibit 6 (without attachment). The letter pointed out again that Dr. Frankel was represented by counsel, reminded Mr. Carlin of "the clear legal prohibition against direct communications to represented parties," and requested that "in the future [Mr. Carlin] abide by the clear ethical rules preventing direct contact to represented parties and direct all future correspondence on this topic to [counsel]." The letter also reiterated that Dr. Frankel's website does not violate any intellectual property rights asserted by Lyons.

15. On June 2, 2006, Mr. Carlin sent a *fourth* harassing communication directly to Dr. Frankel regarding his Barney parody web page. See Exhibit 7. The letter did not acknowledge Dr. Frankel's prior responses and was substantially identical to the prior messages, alleging infringement of Lyons' intellectual property rights and demanding that all Barney images be "immediately removed." Once again, Lyons threatened to "pursue legal remedies or contact your Internet Service Provider ('ISP') and inform it of your unlawful use of copyrighted materials."

16. In none of the communications directed at Dr. Frankel has Lyons responded to (or even acknowledged) any of Dr. Frankel's arguments rebutting Lyons' intellectual property claims. Nevertheless, each of Lyons' messages threaten imminent legal action against Dr. Frankel.

17. In addition, Lyons' messages threaten interference with Dr. Frankel's relationship with his ISP, threats that could lead to the removal of Dr. Frankel's website from the Internet. Accordingly, Lyons' threats jeopardize Dr. Frankel's free expression rights, as well as his

commercial relationship with his ISP.

18. Lyons has a history of aggressively enforcing its intellectual property rights in court, including claims against individuals and for parodies.

19. In 1998, Lyons had brought more then 77 lawsuits in 20 states based on its intellectual property claims.

20. In 1999, it sued additional commercial entities and individuals under copyright and trademark laws for the use of Barney costumes, and in 2002 it sued Pamela Holmes, an individual costume performer.

21. Lyons has also gone so far as to sue an individual performing as a sports mascot, "The Famous Chicken," over a parodical comedy sketch used in the mascot's performances. *Lyons Partnership v. Giannoulas,* 179 F.3d 384 (5th Cir. 1999).

22. Lyons has also issued legal threats to other parodies published on the Internet, several of which have succeeded in intimidating parodists into removing their works from circulation.

23. The relief sought in this action would finally resolve this matter by determining the rights of the parties with respect to Dr. Frankel's website, relieving the anxiety created in Dr. Frankel about the lawfulness of his creative expression.

COUNT 1: DECLARATORY RELIEF

24. Plaintiff repeats and incorporates herein by reference the allegations in paragraphs 1-23 as if set forth fully herein.

25. Dr. Frankel maintains, and intends to continue making available, his parody of Barney on the web page located at <http://www.dustyfeet.com/evil/enemy.html>.

26. The materials available at <http://www.dustyfeet.com/evil/enemy.html> and their publication via Dr. Frankel's website constitute fair use and do not infringe any copyright interests owned or controlled by Lyons.

27. The materials available at <http://www.dustyfeet.com/evil/enemy.html> and their publication via Dr. Frankel's website do not infringe any trademark or service mark interests owned or controlled by Lyons, nor violate any provisions of the Lanham Act.

28. The "cease and desist" messages sent to Dr. Frankel were intended to create, did create, and continue to create in Dr. Frankel a reasonable apprehension that he will be sued by Lyons if he does not comply with Lyons' demands.

29. There is a real and actual controversy between Dr. Frankel and Lyons over whether Dr. Frankel's use of the images constitutes infringement of Lyons' copyrights or trademarks.

30. Dr. Frankel seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 for the purpose of determining and adjudicating questions of actual controversy between the parties.

DEMAND FOR JURY TRIAL

31. Dr. Frankel requests a jury trial for all issues triable by jury including, but not limited to those issues and claims set forth in any amended complaint or consolidated action.

PRAYER FOR RELIEF

WHEREFORE, Dr. Frankel requests that the Court enter judgment in his favor and against Lyons on his Complaint as follows:

1. Declaring that Dr. Frankel is not liable for infringing any copyright interest owned or controlled by Lyons;

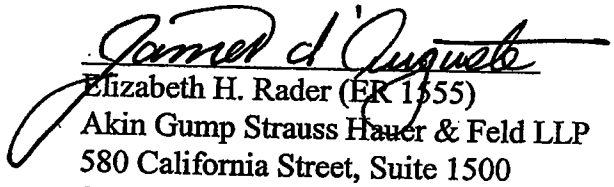
2. Declaring that Dr. Frankel is not liable for infringing any trademark or service mark interest owned or controlled by Lyons;

3. Awarding Dr. Frankel his costs incurred in this action, together with reasonable attorneys' fees pursuant to statute; and

4. Granting such other and further relief as the Court shall find just and proper.

Dated: August 23, 2006

Respectfully submitted,



Elizabeth H. Rader (ER 1555)
Akin Gump Strauss Hauer & Feld LLP
580 California Street, Suite 1500
San Francisco, CA 94104
(415) 765-9500
(415) 765-9501 (fax)

James E. d'Auguste (JD 7373)
James P. Chou (JC 2629)
Akin Gump Strauss Hauer & Feld LLP
590 Madison Avenue
New York, NY 10022
(212) 872-1000
(212) 872-1002 (fax)

Attorneys for Plaintiff Stuart Frankel

Fred von Lohmann
Jason Schultz
Corynne McSherry
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110
bankston@eff.org
(415) 436-9333
(415) 436-9993 (fax)

EXHIBIT 1

This is the Enemy:

The Enemy is not a purple dinosaur. The Enemy drains the life forces from the unwary, leaving behind lifeless husks. The Enemy is concerned with selling itself. It has turned PBS into a Merchandise Mart, and cleverly insinuated its cheesy products into the most treacly web sites (note the lower right-hand corner of this one).

It is known by many names. Some call it Satan. Some call it The Antichrist, although the site which promulgates this truth is mysteriously shrinking, and many of the links devoted to fighting the Enemy are mysteriously no longer valid. Candid pictures of the Enemy, without its familiar disguise, can be found here. (The image at the bottom of this page was taken from there.)

Many are participating in this noble struggle. The best source of background information is here. The Jihad To Destroy Barney has some useful things, but is principally a role-playing game: the kitschification of a noble cause, perhaps indicative of Enemy activity. For a morale-boosting exercise, go here. Many tasty tips for preparing the Enemy can be found in the Barney Cookbook, here. Sound and movie files and a couple of excellent pictures can be found here.

The way home lies through the Enemy
The Enemy is dangerous!
Do not take it lightly!

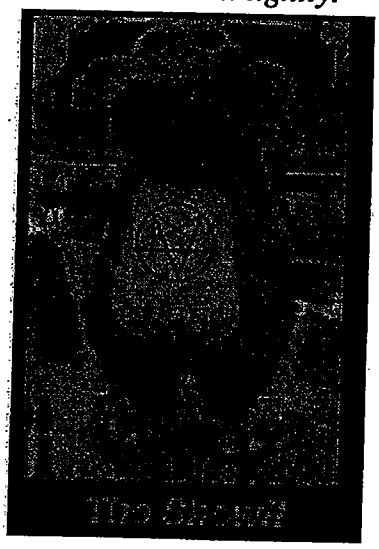


EXHIBIT 2

February 11, 2002

BY E-MAIL: gecko@dustyfeet.com

Re: Copyrighted Barney Images on Your Website

Dear Sir or Madam:

This firm is counsel to Lyons Partnership, L.P. (?Lyons Partnership?), the owners of the children?s character Barney® the purple dinosaur.

It has come to the attention of Lyons Partnership that you are operating a website found at www.asan.com/users/gecko/enemy.html. Your website uses copyrighted Lyon?s Partnership materials and describes the use and threat of violence towards Barney. We are writing to insist that you remove these copyrighted Barney materials.

The images you are using of Barney are the intellectual property of Lyons Partnership. It is unlawful (pursuant to 17 U.S.C. § 501(a) and other laws) to use this property without the permission of Lyons Partnership. These materials must be immediately removed. Lyons Partnership would prefer not to have to pursue legal remedies or contact your Internet Service Provider (?ISP?) and inform it of your unlawful use of copyrighted materials (which is presumably a violation of your ISP?s terms of service). To avoid this, please provide us with written assurances by February 21, 2002, that these materials have been removed. If we do not receive a response, we will be forced to take other measures to have the content removed.

Please contact the undersigned if you require additional information.

Sincerely,

GIBNEY, ANTHONY & FLAHERTY, LLP

By: _____/s/_____
Matthew W. Carlin

EXHIBIT 3

February 21, 2002

BY ELECTRONIC MAIL
Gecko@dustyfeet.com

Re: Unauthorized Use of Intellectual Property

Dear Sir or Madam:

As you are aware, this firm is counsel to Lyons Partnership, L.P. ("Lyons Partnership"), the owners of the exclusive right to use the copyrighted children's dinosaur character Barney®.

We previously notified you of our client's objection to your website http://www.asan.com/users/gecko/enemy.html on the basis that it incorporates copyrighted images without permission from Lyons Partnership.

Lyons Partnership maintains its objection to your use of our copyrighted images as set forth in our February 11, 2002 letter.

THIS IS YOUR SECOND NOTICE. We must hear from you by March 4, 2002. Your response must provide written assurances by that you have ceased and desisted from reproducing, distributing, performing by means of digital audio transmission, or displaying the copyrighted character Barney.

Your immediate response is imperative to avoid legal action.

Sincerely,

GIBNEY, ANTHONY & FLAHERTY, LLP

By: _____
Matthew Carlin

Cc: Angelo E. Mazza, Esq.

EXHIBIT 4

Electronic Frontier Foundation

March 1, 2002

VIA: E-MAIL, FACSIMILE and REGULAR MAIL

Matthew Carlin
Gibney, Anthony & Flaherty, LLP
665 Fifth Avenue
New York, New York 10022
Telephone: 212.688.5151
Fax: 212.688.8315

Re: Another Copyright Infringement Claim based upon Barney Parody

Dear Mr. Carlin,

As you may recall, I am the Legal Director for the Electronic Frontier Foundation (EFF). As you also may recall from my last letter to you on July 9, 2001, the EFF is the leading online civil liberties organization in the world. For the past twelve years we have worked to ensure that constitutional and human rights, including the First Amendment rights of Americans, are respected online.

I last wrote to you in July, 2001 because you sent a letter to the EFF making baseless threats of copyright infringement and trademark infringement based upon the existence of a parody of Barney on the EFF website. In clear and unequivocal language, I explained to you that parody was protected expression under the First Amendment and a recognized exception to both copyright and trademark law. I also pointed out that making baseless legal threats was a breach of your ethical duties as a licensed attorney in the State of New York. I advised you to immediately cease making these threats. You failed to respond to my letter.

I write now because it seems that you also did not heed my advice. You are continuing to make unfounded legal threats to legitimate Internet speakers who parody Barney. EFF represents Dr. Stuart Frankel, who has received two threatening e-mails based upon a website that you identify as www.asan.com/users/gecko/enemy.html. The first e-mail was sent on February 11, 2001 and a second sent on February 21, 2002. For reasons unrelated to your threatening letter, Dr. Frankel's website has moved from the URL you mentioned to http://www.speakeasy.org/~gecko/evil/parasite.html.

454 Shotwell Street, San Francisco, CA 94110 USA
+1 415 436 9333 (v) +1 415 436 9993 (f)

First, as was the case with the EFF website, Dr. Frankel's website has no commercial purpose and is a blatant parody of Barney. It is clear and presents no likelihood that anyone would confuse it with the original character.

As you did when you baselessly threatened EFF, your letter to Dr. Frankel first claims that his website "describes the use and threat of violence toward Barney." And as was the case for the EFF website, a "threat of violence" against an imaginary character is plainly not the correct standard for legal liability under copyright law. To the contrary, such statements bolster the argument that Dr. Frankel's website is a parody:

> The fact that plaintiff views the song as 'attacking' the wholesome image of its product bolsters defendants' arguments that this song involves a parody, therefore raising First Amendment concerns. *See Dr. Seuss Enterprises, L.P., v. Penguin Books USA, Inc.*, 109 F.3d 1394 at 1400 (observing that parody is a form of social and literary criticism" implicating free speech interests under the First Amendment).

Mattel, Inc. v. MCA Records, Inc. 28 F. Supp. 2d 1120, 1141 (CD.Cal. 1998) (song "Barbie Girl" is a parody).

Next, you note that Dr. Frankel's website uses "images of Barney" and claim that "[I]t is unlawful (pursuant to 17 U.S.C. § 501(a) and other laws) to use this property without the permission of Lyons Partnership."

Of course as a licensed attorney practicing intellectual property law in the State of New York, you should be aware that this statement is misleading at best, if not flatly false. Using copyrighted images as part of a parody is, and has long been, completely lawful under the doctrine of fair use and requires no permission from Lyons Partnership.

As I did in July, let me once again reacquaint you with the standards for fair use parody under 17 U.S.C. §107 as interpreted by the Supreme Court in *Campbell v. Acuff-Rose Publishing Publishing,* 510 U.S. 569 (1994). The case concerned a parody of the Roy Orbison song "Oh Pretty Woman," done by a rap group, 2 Live Crew. Because 2 Live Crew had used Mr. Orbison's song in order to lampoon Mr. Orbison and his genre of music, the Supreme Court found the use to fall within the bounds of the fair use doctrine. Here, Dr. Frankel's website uses the juxtaposition of two images of Barney in order to criticize Barney. At the top of the website is a "normal" picture of Barney and at the bottom is an "after the show," picture that

has been altered to make Barney look mildly satanic.

The Supreme Court's four-part analysis in the *Campbell* case is directly applicable here.

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes.

The Supreme Court held that the *Campbell* parody was protected despite the fact that it was a commercial recording. Here, the use of the Barney images is noncommercial, making our case even stronger than that in *Campbell*. As you will recall from my last letter, the Supreme Court confirmed that the "character" of the use does not include judicial second guessing about the tastefulness of the use: "Whether . . . parody is in good taste or bad does not and should not matter to fair use." *Campbell* at 582.

(2) the nature of the copyrighted work;

The fact that an image of Barney, like "Oh Pretty Woman" in the *Campbell* case, falls within the heart of copyrighted expression "is not much help in this case, or ever likely to help much in separating the fair use sheep from the infringing goats in a parody case, since parodies almost invariably copy publicly known, expressive works." *Campbell* at 586.

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;

Here, two photos of Barney have been used: one showing him normally and the second "after the show." Again, the Supreme Court has clarified:

> Parody's humor, or in any event its comment, necessarily springs from recognizable allusion to its object through distorted imitation. Its art lies in the tension between a known original and its parodic twin. When parody takes aim at a particular original work, the parody must be able to "conjure up" at least enough of that original to make the object of its critical wit recognizable. *See*, e.g., *Elsmere Music*, 623 F.2d, at 253, n. 1; *Fisher v. Dees*, 794 F.2d, at 438-439.

Campbell at 588. Here, the parody similarly "conjures up" enough of the original

to be understood as a parody. Since the text of the website does not mention Barney by name, it is the juxtaposition of the two photos that make the parodic point.

(4) the effect of the use upon the potential market for or value of the copyrighted work.

It seems highly unlikely that you will be able to prove even a small effect on the market for Barney products based upon this parody. But even if you could, the fact that a parody might hurt the market for the work is immaterial for purposes of fair use analysis of parodies:

> [W]e do not, of course, suggest that a parody may not harm the market at all, but when a lethal parody, like a scathing theater review, kills demand for the original, it does not produce a harm cognizable under the Copyright Act. Because "parody may quite legitimately aim at garroting the original, destroying it commercially as well as artistically," B. Kaplan, An Unhurried View of Copyright 69 (1967), the role of the courts is to distinguish between "[b]iting criticism [that merely] suppresses demand [and] copyright infringement[, which] usurps it." *Fisher v. Dees*, 794 F.2d, at 438.

Campbell at 592. It seems highly unlikely that you could prove that this parody "usurps" any demand for images of Barney.

* * *

Thus, as they were when you threatened the EFF directly, your claims are baseless and a misuse of your copyrights. We once again urge you to cease threatening noncommercial hosts of parodical material. Should you continue, or should you carry out your threat to send this baseless threat to Dr. Frankel's ISP, we will investigate bringing affirmative claims against you for, among others, copyright misuse and intentional interference with contractual relations.

As I mentioned in my first letter to you, EFF, along with several other prominent law schools, has launched the Chilling Effects project at www.chillingeffects.org in order to try to give Internet users information about their rights under law so that they will not be cowed into silencing themselves based upon baseless threats such as yours. You will find both your letter to EFF and your letter to Dr. Frankel there. We hope that we will not have to add

additional letters from you or other representatives of Lyons Partnership to that website.

Finally, we would like to once again remind you that New York State Code of Professional Responsibility DR 7-102 [§1200.33] and Federal Rule of Civil Procedure 11 provide for sanctions for litigation undertaken without support in existing law or sufficient evidentiary support.

Please do not hesitate to contact me with any further questions or concerns.

Sincerely,

ELECTRONIC FRONTIER FOUNDATION

Cindy A. Cohn
Legal Director

cc: Dr. Stuart Frankel
file

EXHIBIT 5

Gibney,
Anthony &
Flaherty, LLP
Attorneys at Law

665 Fifth Avenue
New York, NY 10022-5305
212.688.5151
212.688.8315 fax
www.gibney.com

Matthew W. Carlin
212.705.9806 direct
mwcarlin@gibney.com

October 11, 2005

BY E-MAIL: gecko@dustyfeet.com
AND FIRST CLASS MAIL
Stuart Frankel
141 East 3rd #8B
New York, NY 10009

Re: Unauthorized Use of Intellectual Property

Dear Mr. Frankel:

This firm is counsel to Lyons Partnership, L.P. ("Lyons Partnership"), the owners of the exclusive right to use the copyrighted children's dinosaur character Barney® as well as the federally registered and famous trademark and service mark Barney.

It has come to the attention of Lyons Partnership that you are operating a web site found at URL: **www.dustyfreet.com/evil/enemy.html**. Your web site contains copyrighted Barney images.

The materials you are using are the intellectual property of Lyons Partnership. It is unlawful (pursuant to 17 U.S.C. § 501(a) and other laws) to use this property without the permission of Lyons Partnership. These materials must be immediately removed. Lyons Partnership would prefer not to have to pursue legal remedies or contact your Internet Service Provider ("ISP") and inform it of your unlawful use of copyrighted materials (which is presumably a violation of your ISP's terms of service). To avoid this, please provide us with written assurances by **October 18, 2005**, that these materials have been removed. If we do not receive a response, we will be forced to take other measures to have the content removed.

Please contact the undersigned if you require additional information.

Sincerely,

GIBNEY, ANTHONY & FLAHERTY, LLP

By: Matthew W. Carlin

S:\Internet Group\01426-Lyons Group\Barney\c&d\Website Letters\dustyfeet.10.06.05.doc

EXHIBIT 6

Electronic Frontier Foundation
Protecting Rights and Promoting Freedom on the Electronic Frontier

October 14, 2005

Via Email, Facsimile to (212) 688- 8315
and U.S. Mail

Matthew Carlin
Gibney, Anthony & Flaherty, LLP
665 Fifth Avenue
New York, New York 10022

RE: Barney Parody

Dear Mr. Carlin:

As you may recall, I am the Legal Director for the Electronic Frontier Foundation (EFF). As I informed you in March, 2002, EFF represents Dr. Stuart Frankel with regard to claims made by you and your clients against him for a parody of Barney that he has published. I understand from my client that, despite the clear legal prohibition against direct communications to represented parties, on October 11, 2005, you sent another cease and desist notice to Mr. Frankel for *the same webpage* that you threatened in 2002, now hosted at: <http://dustyfeet.com/evil/enemy.html>.

Mr. Carlin, I am greatly saddened and surprised at your renewed harassment of Dr. Frankel. The webpage is unequivocally protected parody under both the First Amendment and the settled law of fair use of copyrighted works. Since the webpage has not materially changed since I last wrote you, I refer you to my letter of March 1, 2002, for the requisite legal analysis. I enclose a copy of that letter for your convenience. I do note that in your October 11, 2005, letter you omit your facially ridiculous claim that a "threat of violence" against an imaginary character somehow created legal liability for Dr. Frankel.

You have, however, renewed your threat to make a claim of copyright infringement to Dr. Frankel's internet service provider. I must strongly caution you against taking this step. Making a false claim of copyright infringement to Dr. Frankel's service provider would subject you to liability under 17 U.S.C. §512(f), which provides:

> Any person who knowingly materially misrepresents [to a service provider] . . . that material or activity is infringing shall be liable for any damages, including costs and attorneys fees, incurred by the alleged infringer . . . who is injured by such misrepresentation, as the result of the service provider relying upon such

454 Shotwell Street · San Francisco, CA 94110 USA
+1 415 436 9333 +1 415 436 9993 www.eff.org info@eff.org

> misrepresentation in removing or disabling access to the material or the activity claimed to be infringing. . . .

Please consider this letter formal notice that any such claim would be a material misrepresentation to Mr. Frankel's service provider.

It may interest you to know that in a somewhat similar situation in 2004, EFF successfully obtained a published decision granting summary judgment under 17 U.S.C. § 512(f) against a company that materially misrepresented that a webpage engaging in fair use of copyrighted works was infringing. That case subsequently settled for $125,000 payment by the company to EFF and its clients. The case is *Online Policy Group v. Diebold*, 337 F.Supp.2d 1195 (N.D. Cal. 2004). You can read more about that case here:

> EFF Wins in Diebold Copyright Abuse Case
> http://www.eff.org/news/archives/2004_09.php#001961
>
> Diebold Coughs Up Cash in Copyright Case
> http://www.eff.org/news/archives/2004_10.php#002009

In short, your claims against Dr. Frankel are unfounded and improper. Should you make them to Dr. Frankel's internet service provider, he intends to take appropriate action to protect himself and in that event EFF will look forward to extending the caselaw supporting 17 U.S.C. § 512(f) penalties against those who make material misrepresentations of copyright infringement. Finally, in the future please abide by the clear ethical rules preventing direct contact to represented parties and direct all future correspondence on this topic to me.

Sincerely,

ELECTRONIC FRONTIER FOUNDATION

Cindy A. Cohn
Legal Director

cc: Dr. Stuart Frankel

EXHIBIT 7

Gibney, Anthony & Flaherty, LLP
Attorneys at Law

665 Fifth Avenue
New York, NY 10022-5305
212.688.5151
212.688.8315 fax
www.gibney.com

Matthew W. Carlin
212.705.9806 direct
mwcarlin@gibney.com

June 2, 2006

BY E-MAIL: gecko@dustyfeet.com
Stuart Frankel
141 East 3rd Street, Apt. 8B
New York, NY 10009

Re: Unauthorized Use of Intellectual Property

Dear Mr. Frankel:

This firm is counsel to Lyons Partnership, L.P. ("Lyons Partnership"), the owners of the exclusive right to use the copyrighted children's dinosaur character Barney® as well as the federally registered and famous trademark and service mark Barney.

It has come to the attention of Lyons Partnership that you are operating a web site found at URL: **www.dustyfeet.com/evil/enemy.html**. Your web site contains copyrighted Barney images.

The materials you are using are the intellectual property of Lyons Partnership. It is unlawful (pursuant to 17 U.S.C. § 501(a) and other laws) to use this property without the permission of Lyons Partnership. These materials must be immediately removed. Lyons Partnership would prefer not to have to pursue legal remedies or contact your Internet Service Provider ("ISP") and inform it of your unlawful use of copyrighted materials (which is presumably a violation of your ISP's terms of service). To avoid this, please provide us with written assurances by **June 9, 2006,** that these materials have been removed. If we do not receive a response, we will be forced to take other measures to have the content removed.

Please contact the undersigned if you require additional information.

Sincerely,

GIBNEY, ANTHONY & FLAHERTY, LLP

By: _____
Matthew W. Carlin

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