



BET Networks > Famous Music > MTV Networks > Paramount Pictures

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Dear Fred, Larry and others:

This morning we received your complaint alleging that Viacom sent to YouTube a notice asking for the removal of a clip called "Stop the Falsiness." Your complaint is the first information we have received about this clip.

We have reviewed our takedown notices, and have found no record of a takedown notice with respect to this clip. We maintain careful records of all of our takedown notices, so any takedown notice most likely did not come from us.

As you know, we believe YouTube is not entitled to the defense from copyright infringement provided under Section 512 of the Copyright Act. However, because YouTube believes that the Section 512 defense applies and has established a procedure that purports to comply with that section, we have sent over 160,000 takedown notices in accord with the Section 512 requirements. If YouTube followed the law, your client would have been informed by YouTube of the notification and of its right to send a

counternotice under Section 512(g). I have attached a copy of the provision. We have received no such counternotice.

Since we don't have the clip, we can't evaluate it. However we found a clip by that name on a site called falsiness.org and reviewed it. Assuming that the clip you referenced is the clip on the site, I can inform you that Viacom has no problem with your client's continued use of it on its website or on YouTube. If YouTube is informing you that we have notified them to take it down, we can confirm that it should go back up. I will send a copy of this letter to YouTube so that they are aware of this.

We would suggest that compliance with the DMCA process or, at least, a communication directly to us about the clip to ascertain our position would have been less wasteful of scarce judicial resources. Fred and Larry, both know how to find us and you should feel free to contact me in the event you should have serious concerns about clips that may have been taken down.

Since our response would appear to eliminate any controversy regarding the matters set forth in your complaint, I trust that you will promptly notify us that your lawsuit has been withdrawn.

Very truly yours,

A handwritten signature in black ink, appearing to be "Fred" or "Larry", written in a cursive style.

cc: YouTube, Inc.

Appendix

Text of 17 U.S.C. Section 512(g)

. . . .

(g) REPLACEMENT OF REMOVED OR DISABLED MATERIAL AND LIMITATION ON OTHER LIABILITY. -

(1) NO LIABILITY FOR TAKING DOWN GENERALLY. - Subject to paragraph (2), a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

(2) EXCEPTION. - Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under subsection (c)(1)(C), unless the service provider -

(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

(B) upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

(3) CONTENTS OF COUNTER NOTIFICATION. - To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:

(A) A physical or electronic signature of the subscriber.

(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district

in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

(4) LIMITATION ON OTHER LIABILITY. - A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).