

October 21, 2008

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Dear Mr. Potter and Mr. Bauer:

We are writing in the hope that your campaigns will be willing, once the immediate exigencies of the campaign season have passed, to help shine a light on the extent to which overaggressive copyright claims may have stifled political expression during this campaign cycle.

Mr. Potter recently wrote a letter to YouTube on behalf of the McCain-Palin campaign noting that “overreaching copyright claims have resulted in the removal of non-infringing campaign videos from YouTube, thus silencing political speech.” The letter asserted that videos making lawful “fair use” of short (less than ten second) clips of broadcast footage have been subject to takedown notices from copyright holders under the Digital Millennium Copyright Act (DMCA). The letter did not, however, provide details of individual instances.

We understand that both of you are in the final days of a heated campaign and have many pressing concerns, making it impractical to focus much attention on this issue in the next few weeks. We are writing today to suggest that once the election has passed, however, each of your respective campaigns should make the effort to disclose the details of any incidents it encountered regarding takedown notices that ignored fair use. The public would benefit from a full accounting of such incidents, including which media companies issued such requests, how often, and in response to what kinds of videos.

The main responsibility for the problem identified in the McCain-Palin campaign’s letter lies with those parties that submit inappropriate takedown notices in the first place. It is understandable, while perhaps unfortunate, that content hosting sites like YouTube would be reluctant to take on the legal risk of second-guessing such notices once they have been submitted. Discouraging inappropriate takedown requests is therefore crucial.

Public disclosure by your campaigns of incidents of inappropriate takedown requests would enable commentators and critics to analyze and document the scope of the

problem and to shame those entities that have most egregiously sought to suppress fair use. Wrongful takedown requests should have consequences, and public exposure is one way to help ensure that they do. In addition, disclosure could help promote public understanding of the role of fair use in civic discourse.

Nothing about this issue is partisan. Both Presidential campaigns, as well as political candidates at all levels of government, are making extensive and increasing use of the Internet to distribute advocacy material. So are numerous individuals and groups who have viewpoints they wish to express. The practical ability of all of these parties to engage in fair use in connection with such political speech must be protected.

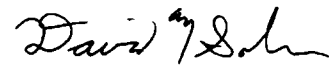
We urge you, following the election, to ensure public exposure of any incidents the campaigns experienced or are otherwise aware of in which overly aggressive copyright claims interfered with lawful political speech and fair use.

Thank you.

Sincerely,



Leslie Harris
President / CEO



David Sohn
Senior Policy Counsel