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Public Works for a Better Government

August 22, 2015

Mr. Lance Kavanaugh
Director, Legal
YouTube, Inc.
901 Cherry Avenue
San Bruno, CA 94066

Dear Lance:

At 10:46 AM Pacific Time on Friday, I received a Copyright Takedown Notification for a video I had posted (see Attachment 1). The takedown was issued by the WGBH Educational Foundation and it was for the video "Energy - The American Experience." You can see this video in the following locations:

https://www.youtube.com/watch?v=_FZnwFcHonk
<https://archive.org/details/gov.ntis.ava06181vnb1>

The video is a 1976 production by the Department of Energy's Energy Research and Development Administration. After looking over the video carefully, I determined that there is no WGBH involvement whatsoever in this government film.

Once I received the copyright takedown notification, I had to go through "**copyright school**" before being able to gain access to my account on YouTube. This involved a learning module, followed by an exam, which I passed. I promptly filed a **counter-notification with YouTube**. As a result of the copyright strike, my account was penalized for 6 months with reduced functionality.

Meanwhile, I tried to reach out to WGBH using email and social media. None of their senior management posts any contact information, and those people I do know at WGBH had vacation messages set on their email. At 11:48 AM I reached out to you, and at 2:18 PM, I received a notification from YouTube indicating the video had been temporarily restored because "the complaint lacks one or more **legally-required elements of a copyright takedown notice**, so we asked the requesting party to provide additional information to complete their notice." Thank you for doing that.

Meanwhile, I finally reached the WGBH legal department. Susan L. Kantrowitz, General Counsel, wrote to me that "It is highly unusual for Amex to be in a title and not be one of our shows" and they would "address it on Monday." Eric Brass, Corporate Counsel, wrote that "the take down request very well may have been an error, but given that it is late on a Friday afternoon in August, I may not be able to get back to you (or YouTube) until Monday." He then wrote me back and indicated that while perhaps my YouTube account was important, this "particular film" was

certainly not. I spoke to him on the phone and he repeated that no harm had been done, but and that after he completed his investigation he would, "follow up with something in writing that might be helpful for you if a question arises down the road about the take down."

I want to stress that the timing of this takedown was not mine, it was instigated by WGBH and it was done deliberately as a formal legal action. Mr. Brass seemed quite peeved that I was upset, even though I was just minding my own business on the Internet when some hooligans from Boston came over and smacked me for no reason at all, then left for a weekend at the Cape.

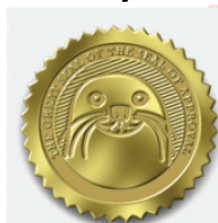
The process of creating a copyright strike is not a casual one. WGBH had to go through several screens to identify the video, fill out their contact information, and checked numerous boxes indicating that they understood this was the beginning of a legal process, then signed a statement indicating that all statements were true and that they were in fact the true and correct owners of that film or portions of that film. In order to respond to that legal accusation, I had to go through a similar process of swearing under oath and accepting a court's jurisdiction for my counter-claim.

I believe that incorrectly posting a video that is under copyright is in fact worthy of a copyright strike. However, I think the opposite of that should be true. WGBH committed a copyright foul and should be prohibited from having the capability to take another user's films down for a six-month period. If they commit 3 copyright fouls, their account should be revoked. WGBH personnel should be required to go to copyright school so that they fully understand their responsibilities under the law.

Given the blithe and uncaring attitude of WGBH legal staff, they should also be required to undergo copyright school. Their blase attitude was not impressive, and I can just imagine the reaction of WGBH if somebody had improperly taken down one of their media properties would not have been nearly so casual.

Thank you again for your quick action restoring my video on a temporary basis. I do hope that you are able to get WGBH to either justify their allegations or quickly move to remove the copyright strike against my account.

Sincerely,



Digitally signed by Carl
Malamud
DN: cn=Carl Malamud,
o=Public.Resource.Org,
ou,
email=carl@media.org,
c=US
Date: 2015.08.22
09:37:45 -07'00'

Carl Malamud
President & Founder
Public.Resource.Org

From: YouTube no_reply@youtube.com

Subject: [Copyright takedown notice] Your video has been taken down from YouTube: Energy - The American Experience

Date: August 21, 2015 at 10:46 AM

To: PublicResourceOrg publicresourceo-0767@pages.plusgoogle.com



Hi PublicResourceOrg:

Due to a copyright takedown notice that we received, we had to take down your video from YouTube:

Video title: Energy - The American Experience

Video url: http://www.youtube.com/watch?v=_FZnwFcHonk

Takedown issued by: WGBH Educational Foundation

This means that your video can no longer be played on YouTube, and you may have lost access to some features of YouTube.

You received a copyright strike

You now have 1 copyright strike. Getting multiple copyright strikes can lead to the termination of your account and the removal of all your videos. To avoid that from happening, please don't upload videos that contain copyrighted content that you aren't allowed to use.

Why this can happen

- One or more of your videos contained copyrighted content.
- Copyright owners can choose to take down videos that contain their content.

[View details](#)

What to do next

- If you believe you're not at fault, you can try to appeal this takedown by submitting a [counter notification](#). Keep in mind that there may be severe legal consequences for submitting a counter notification with false information.
- You can also contact the party that removed your video and ask them to [retract](#) their takedown.

[Help center](#) • [Email options](#)

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