Digital Millennium Copyright Act: A True and Illustrative DMCA Case Study

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Available at: https://works.bepress.com/raleigh-muns/42/
Digital Millennium Copyright Act (thing)

by fugitive

Mon Jun 10 2002 at 13:50:27

A True and Illustrative DMCA Case Study

This is an actual exchange of messages illustrating how the Digital Millenium Copyright Act can affect individuals. I wasn't even aware of the California Prison Industry Authority (and they have a Marketing Branch?!) until I inadvertently trod upon their collective ego. Note that this case may have been in violation of the DMCA since the offending web page was not automatically removed for 15 days as appears to be required. Missed in all of this was that the web page used to illustrate "ugliness" was doing so not in a design sense, but in a philosophical sense (i.e., slave labor and shoddy products produced by Amerikan prisoners). And, yes, I was called a liberian during this exchange.

Message sent From California Prison Industry Authority to Raleigh Muns on April 14, 2000

A couple years ago the California Prison Industry Authority took its first steps unto the internet. At the time we posted a temporary introductory page and a few related items. Your web site is currently using part of our former web page document in an offensive manner. We request that you remove this page from your web. The specific page is

www.umsl.edu/~muns/focus/ugly/pia.htm.

It appears that you have had this page on your site since 1997. About two years ago the California Prison Industry Authority completed its revised web site. This site has won a number of awards for its design and user friendliness. This is the image that we want presented to our customers and the public that we serve.

Please confirm when this page has been removed from your web site to galenbaker@pia.ca.gov. Your assistance in correcting this situation is appreciated.

Galen Baker, Assistant Chief
Marketing Services Branch
galenbaker@pia.ca.gov

Message sent From California Prison Industry Authority to Raleigh Muns on June 16, 2000

On April 14, 2000, I sent an e-mail message requesting that you remove references to the California Prison Industry Authority's former web page in your web page. A copy of this text is listed in italics at the end of this message. As of June 16, 2000, you have not responded or taken any action to remove the negative references.

You are using materials that are protected under copyright laws, including our logo and former web page, without permission. We request that you remove these negative and inappropriate references from your web pages.

Galen Baker, Assistant Chief
Marketing Services Branch
galenbaker@pia.ca.gov

Message sent From California Prison Industry Authority to DMCA Rep on June 16, 2000
(The DMCA requires ISP's -- i.e., a University in this case -- to designate a DMCA Representative.)
In April, 2000, the California Prison Industry Authority became aware that your University was using a copy of a former web page as an example of an ugly web page. As you are aware, all materials published on the web are in fact copyrighted. I have asked the responsible Librarian to remove this reference but two months later it is still being displayed and I have not received any response. Could you look into the matter and end this improper and offensive use of our logo and former web page?

To assist you, I have attached the text of the e-mails sent to Mr. Muns. This also includes the specific reference to the web page that Mr. Muns has used without permission. If you would like to discuss this matter, I can be reached by e-mail at galenbaker@pia.ca.gov or you may contact me on the telephone at (916) 358-1764.

Your assistance and attention to this matter is appreciated.

Galen Baker, Assistant Chief
Marketing Services Branch
galenbaker@pia.ca.gov

Message sent From Les Sapp to Jerry Siegel on June 16, 2000
(Les Sapp was the University of Missouri’s DMCA Representative; Jerry Siegel was UMSL’s head of computing.)

From: Sapp, Les
Sent: Friday, June 16, 2000 5:01 PM
To: Siegel, Jerrold
Subject: FW: Copyright violation

Jerry,
Could you check into this complaint?

Thanks,
Les...

Message sent From Jerry Siegel to Raleigh Muns on June 17, 2000

From: Siegel, Jerrold
Sent: Saturday, June 17, 2000 9:31 AM
To: Muns, Raleigh C.
Cc: Sapp, Les
Subject: FW: Copyright violation

Raleigh,

What's the issue?
Jerry

Message sent from Raleigh Muns to Jerry Siegel and California Prison Industry Authority on June 19, 2001

Jerry, there is no problem here with the California Prison Industry Authority. When the Marketing division of the California Prison Authority can interfere with one humble Missouri librarian's limited time to perform their primary teaching duties, it makes me wonder what the future holds. This is an example of why many of us were against the Digital Millenium Copyright Act (DMCA) which opens the portals for such harassment.
The California Prison Industry Authority people have no grounds to request that I remove the page in question. When they initially contacted me I decided not to respond at all as I considered this not worthy of an expenditure of my time (which unfortunately is happening now). They are referring to the inclusion of a single web page that I used in a presentation as part of an instruction session on the Internet I did in 1997 to UM-St. Louis faculty and staff called


Refer to:

http://www.umsl.edu/~muns/focus/

The document in question is listed under "The Ugly" at:

http://www.umsl.edu/~muns/focus/ugly/pia.htm

I consider the inclusion of this fully cited page as unambiguously under the guise of fair use and in the context of academic freedom and expect to be treated as befits my faculty status.

Please note the excerpt below my discussion of the specific points from 17 USC Sec. 107 which is the appropriate section of the United States Code addressing "fair use" of copyrighted materials.

Under factor 1 (purpose and character of use) my use was unambiguously for non-commercial and educational purposes.

Under factor 2 (nature of copyrighted work) I used a single publicly available document that millions of people were able to access at that time. This document was information promulgated by the PIA itself. It has no intrinsic value (as a photograph or work of fiction might) but was merely informational.

Under factor 3 (amount and substantiality) note that this is a single page of a much larger web site (the University of California itself practices the inclusion of single photographs of larger collections as part of fair use of a small portion of a large collection) hence I am utilizing only a small part of what is available (also, this is only one factor among several to be considered under the context of "fair use").

Under factor 4 (effect of use on potential market) I must note that the potential financial impact on the California Prison Industry Authority by my use of this web page for demonstration purposes in a teaching environment is unlikely to impact them financially.

I'm assuming they're contesting my use of their page under my label "The Ugly" which falls under my right to expression of critical opinion.

EXCERPT FROM 17 USC Sec. 107 Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include -

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work.

END OF EXCERPT 17 USC 107
(Then there was silence . . .)