

Fox Interactive Media  
8391 Beverly Blvd., #349  
Los Angeles, CA 90048  
December 20, 2008

January 5, 2008

**RE: Mistaken Removal**

Dear Fox Interactive Media;

Please find attached to this letter a list of material removed by you pursuant to 17 U.S.C. Section 512. I have a good faith belief that this material was removed or disabled in error as a result of mistake or misidentification of the material. I declare that this is true and accurate under penalty of perjury under the laws of the United States of America.

For the purposes of this matter, I consent to the jurisdiction of the Federal District Court for the judicial district in which I reside. I also consent to service of process by the person providing notification under Section 512(c)(1)(C) or that person's agent. However, by this letter, I do not waive any other rights, including the ability to pursue an action for the removal or disabling of access to this material, if wrongful.

Having complied with the requirements of Section 512(g)(3), I remind you that you must now replace the blocked or removed material and cease disabling access to it within fourteen business days of your receipt of this notice. Please notify me when this has been done.

I appreciate your prompt attention to this matter. If you have any questions about this notice, please do not hesitate to contact me.

Sincerely,

Joshua Kalven

jkalven@gmail.com  
PHONE NUMBER  
Progressive Illinois, LLC  
STREET ADDRESS  
Chicago, IL 60654

Enclosure

January 5, 2008

**Materials mistakenly removed from YouTube (account "ProgressIllinois") on December XX, 2008**

**Beavers On Back-Door Pay Raises** (11/18/08)

<http://www.youtube.com/watch?v=cHVDFZDHCq8>

**Axelrod: Obama Talked To Blagojevich About Senate Seat** (11/23/08)

<http://www.youtube.com/watch?v=konL35ur0Bo>

**Axelrod: "Our Job Is To Come In ... With Guns Blazing"** (11/23/08)

[http://www.youtube.com/watch?v=fSBB7I\\_5iHQ](http://www.youtube.com/watch?v=fSBB7I_5iHQ)

**To whom it may concern,**

I am the editor and publisher of ProgressIllinois.com, which since March 2008 has covered Illinois and Chicago politics with the help of YouTube's services. In fact, we have uploaded over 25 original videos to the site during our nine months in operation.

We are responsible YouTube users who utilize the site as a journalistic tool. We are not teenagers attempting to pirate material unlawfully. We have a deep respect for media, freedom of speech, and the process of democracy.

On November 18, we were informed that a video we clipped and uploaded from a Fox Chicago newscast that day had been removed due to a copyright infringement claim by Fox Television Stations, Inc. The notice surprised us for three reasons:

- 1) In the preceding months, we had posted dozens of similar clips from Fox Chicago's programming – many of them longer in length than the November 18 clip – but had never once received an infringement claim.
- 2) The clip included only 26 seconds of footage from a full-length report and therefore seemed well within Fair Use guidelines. Furthermore, it included a title frame that clearly credited Fox Chicago as the source.
- 3) Our intention in uploading the video was not to criticize that specific report or Fox Chicago in general. Rather, we used the clip in the context of a blog post that followed-up on the original segment, in which Fox Chicago reporter Dane Placko exposed Cook Co. commissioners' abuse of a \$14,000 annual expense account. That original post can be found here:

<http://progressillinois.com/2008/11/18/pulling-cook-co-perks>

We published the above post a week after the Fox segment aired and added original reporting on what plans – if any – the county board had to address the issues exposed by Placko. The post included a prominent link to the FoxChicago.com article that accompanied Placko's report. (At the time, the station had not posted a video of this particular segment to their website.)

Due to the circumstances detailed above and our resulting bewilderment, we did not contest the removal of the video at the time. In fact, over the next three weeks, we continued to upload additional brief clips from Fox Chicago broadcasts without incident.

On December 10, 2008, however, YouTube notified us that two more videos had been removed due to infringement claims by Fox Television Stations. Both had been uploaded on November 23 and each consisted of a brief clip (1-2 min.) from a lengthy interview conducted with Obama advisor David Axelrod on *Fox Chicago Sunday* that same day. Below is the November 23 blog post which featured the two YouTube videos:

<http://progressillinois.com/2008/11/23/axelrod-on-fcs>

Of note: the December 10 infringement claims coincided with Jake Tapper's use of one our *Fox Chicago Sunday* videos on the ABC News website:

<http://blogs.abcnews.com/politicalpunch/2008/12/questions-arise.html>

It appears that once Fox discovered the news value in the brief clip (which we had uploaded over two weeks earlier), they posted that same clip to their website (where no video of the Axelrod interview had previously been available):

[http://www.myfoxchicago.com/myfox/MyFox/pages/sidebar\\_video.jsp?contentId=8036854&version=1&locale=EN-US](http://www.myfoxchicago.com/myfox/MyFox/pages/sidebar_video.jsp?contentId=8036854&version=1&locale=EN-US)

As a result of repeated "violations," our YouTube account was suspended later on December 10. Our video library – which represents nine months work of work, including over 25 original videos – has been inaccessible ever since.

While we believe our use of the footage in question falls under "Fair Use" guidelines, if we had received a complaint directly from Fox Television asking us to remove the videos in question, we surely would have worked professionally with them to resolve the matter and come to some agreement over the use of their content.

But we weren't given that chance.

To reiterate, we are responsible YouTube users. We are members of the press and as a company that creates daily media content, we respect copyright law. Our hope is now to move towards a resolution with Fox Television and reinstate our YouTube privileges.

Sincerely,

Josh Kalven  
ProgressIllinois.com  
PHONE NUMBER  
jkalven@gmail.com