



October 20, 2008

Louis J. Briskman
Executive Vice President & General Counsel, CBS Corp.

Randy J. Morell
Executive Vice President & General Counsel, Christian Broadcasting Network

Rita Tuzon
Executive Vice President & General Counsel, Fox Networks

Rick Cotton
Executive Vice President & General Counsel, NBC Universal

Dear Mr. Briskman, Mr. Morell, Ms. Tuzon, and Mr. Cotton:

The undersigned write today to express our concerns regarding copyright infringement notices, sent by your organizations to YouTube, that have targeted the political speech of the McCain-Palin and Obama-Biden campaigns. It is our sincere hope that, in the final days of this election season, you will stop sending DMCA takedown notices that target the use of short clips of news footage in election-related videos, whether posted by the presidential campaigns or by individual citizens expressing their views.

In an October 13, 2008 letter sent to YouTube, the McCain-Palin campaign identified the problem: “overreaching copyright claims have resulted in the removal of non-infringing campaign videos from YouTube, thus silencing political speech.” The campaign has identified CBS, CBN, and Fox as the copyright owners who have targeted its videos on YouTube. NBC has also publicly acknowledged sending DMCA takedown notices directed at a similar video posted on YouTube by the Obama-Biden campaign. These videos reportedly included only short clips (less than 10 seconds) of news footage as part of a video making a political point. As the McCain-Palin letter indicates, these kinds of uses, far from constituting copyright infringement, are paradigmatic examples of fair use. We understand your organizations’ desire to be seen as neutral, but given the extremely short nature of the news clips at issue and the context in which these clips appear, it is unlikely that anyone would believe that the use of the clips by a candidate means that your organizations are somehow supporting that candidate. The invocation of copyright law to remove these videos is particularly disappointing in light of the “UGC Principles” that NBC-Universal,

CBS, and Fox have endorsed, which specifically provide that “[w]hen sending notices and making claims of infringement, Copyright Owners should accommodate fair use.”¹

As we enter the final days of election season, we call on each of your organizations to stop sending DMCA notices that target election-related videos that use short clips of news footage. Not only are such notices contrary to the law, but they also threaten to silence an exciting new source of political expression. This question affects not just the presidential campaigns, but also individual Americans who use the Internet to speak out directly. This new form of expression, often built on quoting and remixing from news and other mainstream media sources, does not threaten the copyright interests of your organizations.

After the election season is over, “remix culture” will continue to flourish, and voters will continue to utilize news clips as part of their original videos on sites like YouTube. Many of the undersigned organizations have already identified steps that should be taken by both copyright owners and online service providers to protect fair use and free speech on user-generated content sites.² We look forward to joining with your organizations in an on-going dialogue about the proper balance between your legitimate copyright interests and the equally legitimate free speech interests of other creators online.

Sincerely,

Fred von Lohmann
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Electronic Frontier Foundation
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On behalf of:

ACLU

ACLU of Northern California

Anthony Falzone, Executive Director, Stanford Fair Use Project

Center for Social Media, School of Communication, American University

Citizen Media Law Project at Harvard’s Berkman Center

Electronic Frontier Foundation

Program for Information Justice & Intellectual Property, American University Law School

Public Knowledge

cc Trevor Potter, General Counsel, McCain-Palin 2008

Robert Bauer, General Counsel, Obama for America

¹ See [Principles for User Generated Content Services](#).

² See [Fair Use Principles for User Generated Content](#).