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VIA E-MAIL AND FIRST CLASS MAIL

David H. Kramer, Esq.
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Re: Global Music Rights Demands that YouTube Cease Infringement of Copyrights

Dear Mr. Kramer:

You have sent two letters in response to the demands of our client, Global Music Rights (“Global”) that YouTube cease and desist from the public performance of compositions controlled by Global as specifically detailed in Global’s notices embodied in my letters of November 14, 2014 and November 17, 2014 (the “Notices”). Your responses acknowledged that YouTube has failed to cease from the public performance of the Songs, as defined in the Notices. Rather than acknowledging that YouTube has information reasonably sufficient and excellent technology to identify each infringing use and disable same, your letters improperly attempt to deflect blame and grossly misstate YouTube’s legal obligations and liability for copyright infringement.

Without providing a shred of documentation, you blithely proffer that YouTube can ignore the Notices because it operates under blanket licenses from performing rights organizations other than Global. However, you refuse to provide the details of any such license agreements, presumably because no such agreements exist for YouTube’s present uses of the Songs in any service, but certainly with respect to its recently added Music Key service. But perhaps all you’re saying is that YouTube will immediately refrain from further public performance of the Songs upon presentation of the documents evidencing Global’s exclusive right to license the Songs for public performance. If that is the case, please let me know immediately. In such case, we will provide Global’s contracts with the Composers (redacted of financial information irrelevant to your review, of course), with the expectation that YouTube will immediately cease and desist from further performance of the Songs upon receipt of same.

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I doubt that YouTube is committing to remove the Songs upon the delivery of such evidence. Accordingly, I will address the other errors set forth in your letters.

You claim that YouTube has “immunity from copyright infringement liability pursuant to the safe harbors” under the terms of 17 U.S.C. § 512, citing as support for your position the District Court decision in *Viacom v. YouTube* (2nd Cir. 2012). Somewhat embarrassingly, you failed to note that the District Court case you cited for that proposition was superseded and overturned, in part, by the subsequent appellate decision reported as 676 F.3rd 19 (2012). Had you noted the appellate decision, you would have been compelled to note that if YouTube still qualifies as a service provider, it cannot benefit from the safe harbors if it continues to display infringing activities with actual knowledge of that activity or awareness of facts or circumstances from which specific infringing activity is apparent.

Global has provided YouTube with precisely that specific, detailed information identifying the continuing infringements committed by YouTube by publicly performing the Songs. Since YouTube’s business model tracks the public performance of each and every song on its system, for purposes of monetizing same and payment of a share of profits to YouTube’s partners utilizing those songs, it defies credibility for YouTube to argue it needs more information to know which of its broadcasts are infringing Global’s Songs. You also err in claiming that Section 512(c) requires Global to provide the specific locations on the YouTube service where the infringing videos reside; no such requirement exists within the Act or in any 9th Circuit or other appellate case interpreting the Act.

You also misstate the safe harbor provisions of Section 512(c) by failing to note that YouTube, even if it qualifies as a service provider, must meet each of the following three conditions: (1) YouTube has no knowledge of the infringement or awareness of facts or circumstances making the infringement apparent and once it acquires knowledge or awareness acts expeditiously to remove infringing content; (2) does not receive financial benefit directly attributable to the infringement activity in cases where YouTube has the right and ability to control activity; and (3) YouTube responds expeditiously to a DMCA takedown notice. Your misguided focus on the minutia of subsection (c) ignores YouTube’s failure to comply with the other two conditions to any safe harbor protection.

Finally, and perhaps most importantly, YouTube no longer functions as the type of service provider entitled to any safe harbor under 512(c), a provision that applies to storage at the direction of third parties. It is clear that YouTube has well exceeded the role of a storage system. YouTube’s business model has placed YouTube in the position of a direct distributor of the videos it broadcasts. This is particularly so with respect to YouTube’s Music Key service, where it requires a paid subscription from viewers and has entered into an income sharing arrangement with the users posting the videos.

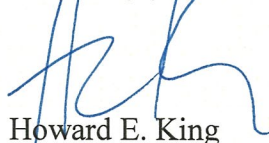
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In summary, the Notices written on behalf of Global contained specific descriptions, by Song and Composer (as defined in the Notices), of the Songs whose public performance rights are controlled by Global and which are being broadcast by YouTube without any license in place, from Global or any other performing rights organization. Therefore, YouTube's failure to remove the subject videos and monitor its site to prevent reposting or new postings of videos containing of videos containing the Songs renders YouTube a copyright infringer and subjects YouTube to damages and other remedies provided by the U.S. Copyright Act.

In order to remedy any technicalities you claim might otherwise exist, I declare under penalty of perjury that I am authorized to act on behalf of Global as to the exclusive rights that are infringed as set forth in the Notices.

Nothing contained herein shall be deemed an admission of any fact or a waiver of any rights.

Very truly yours,



Howard E. King
of King, Holmes, Paterno & Berliner, LLP

HEK:dw

cc: Copyright@youtube.com
Global Music Rights
Peter T. Paterno, Esq.