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9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN JOSE DIVISION**

13 STEPHANIE LENZ,)	No. C 07-03783-JF
)	
14 Plaintiff,)	SECOND AMENDED COMPLAINT
)	
15 v.)	(Jury Trial Demanded)
)	
16 UNIVERSAL MUSIC CORP., UNIVERSAL)	
17 MUSIC PUBLISHING, INC.,)	
)	
18 and)	
)	
19 UNIVERSAL MUSIC PUBLISHING GROUP,)	
)	
20 Defendants.)	

21
 22 1. This is a civil action seeking injunctive relief and damages for misrepresentation of
 23 copyright claims under the Digital Millennium Copyright Act (“DMCA”).

24 2. This case arises from an improper assertion of copyright infringement against a
 25 mother who made a short home video recording of her children playing and dancing, which she
 26 shared with her family and friends via the popular Internet video website YouTube. The
 27 infringement claim successfully compelled YouTube to remove Plaintiff’s original video from
 28 public access.

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PARTIES

3. Plaintiff Stephanie Lenz (“Lenz”) is an individual residing in Gallitzin, Pennsylvania.

4. On information and belief, Defendants Universal Music Corp., Universal Music Publishing, Inc. and Universal Music Publishing Group (collectively, “Universal” or “Defendants”) are business entities and/or corporations that each maintain a principal place of business in Los Angeles, California.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this claim pursuant to the Copyright Act (17 U.S.C. §§ 101 et seq.), 28 U.S.C. §§ 1331 and 1338.

6. On information and belief, Defendants are subject to the general and specific jurisdiction of this Court.

VENUE AND INTRADISTRICT ASSIGNMENT

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

8. Assignment to the San Jose division is proper pursuant to Local Rule 3-2(c) and (d) because a substantial portion of the events giving rise to this action occurred in this district and division.

FACTUAL ALLEGATIONS

9. YouTube is a video-sharing website where millions of Internet users post videos to make them available to others for viewing. These videos range from traditional home recordings of personal events to news reports, advertisements, and television programs. YouTube’s website is available at the web address www.youtube.com. Its corporate headquarters is located in San Bruno, California.

10. On information and belief, Defendants are music publishing companies. On information and belief, Defendants own and/or administer the copyrights in musical compositions owned or controlled by the artist Prince Rogers Nelson, professionally known as “Prince,” including the song “Let’s Go Crazy.”

1 11. Plaintiff Stephanie Lenz is a mother, wife, writer and editor. She and her husband
2 have two children, Zoe and Holden.

3 12. On or about February 7, 2007, Lenz's children were playing in the family's kitchen
4 when Holden (then 13 months old) began dancing to the Prince song "Let's Go Crazy," which was
5 playing in the background on the Lenz family CD player. Zoe and Holden had recently heard
6 Prince perform on television during the Super Bowl halftime show. Lenz used her digital camera
7 to create a 29-second video recording of the children's activities, which consisted primarily of
8 Holden's dance performance. Lenz later transferred the recording onto her computer and saved it
9 as a video computer file (hereafter "Holden Dance Video").

10 13. The video bears all the hallmarks of a family home movie—it is somewhat blurry,
11 the sound quality is poor, it was filmed with an ordinary digital video camera, and it focuses on
12 documenting Holden's "dance moves" against a background of normal household activity,
13 commotion and laughter.

14 14. Due to the noise and commotion made by the children, the song "Let's go Crazy"
15 can only be heard in the background for approximately 20 seconds of the 29-second video and even
16 then not all that clearly. The portion of the song used is near the song's end and includes only a
17 few words of the lyrics.

18 15. On information and belief, the snippet of "Let's Go Crazy" that plays in the
19 background (not dubbed as a soundtrack) of the Holden Video could not substitute for the original
20 Prince song in any conceivable market. This is due, in part, to the abbreviated nature of the use of
21 the work, the low audio quality of the ordinary digital video camera Ms. Lenz used, the household
22 noises, laughter and talking of Ms. Lenz that partially obscure the music, and the sounds made by
23 the toys that Holden and his sister are pushing around the kitchen during the video.

24 16. Holden was just learning to walk when Lenz made the video. Lenz thought her
25 friends and family, particularly her mother in California, would enjoy seeing Holden's new ability
26 to dance as well. Lenz's mother has difficulty downloading email files but knows how to access
27 the YouTube website.

28 17. Therefore, on or about February 8, 2007, Lenz uploaded the Holden Dance Video

1 from her computer to the YouTube website for her family and friends to enjoy. The video was
2 publicly available at the Internet address <<http://www.youtube.com/watch?v=N1KfJHFWlhQ>>.

3 18. Thus, the purpose and character of the video was for Ms. Lenz to amuse her family
4 and friends with her young child's nascent dancing ability. This was non-commercial and
5 transformative, as it made a use of the work that was distinct and separate from its original context
6 and added additional creative elements, such as Holden's dancing. Moreover, the amount of the
7 song taken was approximately 20 seconds of a 3 1/2 minute song – the necessary background of
8 the almost equally brief video—and the content of the Holden Dance Video did not and could not
9 substitute for the original song or inflict any harm to the market for the original song.

10 19. On information and belief, Defendants are sophisticated music industry companies,
11 have extensive experience with copyright law, and employ staff who are familiar with the Digital
12 Millennium Copyright Act (including the Section 512 “good faith” requirements and the obligation
13 to submit Section 512 notices under penalty of perjury), as well as the principles and application of
14 the fair use doctrine.

15 20. On information and belief, between February and June 2007, Defendants, and/or
16 their representatives, viewed the Holden Dance Video and decided to issue a DMCA takedown
17 notice despite their knowledge that the use of the Prince song in the video was a non-infringing fair
18 use.

19 21. On June 4, 2007, Defendants, through their representative, demanded that YouTube
20 remove the Holden Dance Video from the YouTube website because the video allegedly infringed
21 a copyright owned or administered by Defendants. By authorizing the demand, Defendants
22 affirmed under penalty of perjury that the notice of infringement was accurate and that they were
23 authorized to make the infringement claim arising from the Prince song “Let's Go Crazy.” See
24 Notice of Copyright Infringement, attached hereto as Ex. A.

25 22. On information and belief, Defendants sent this notice to copyright@youtube.com.
26 Section 8 of YouTube's Terms of Use expressly states that “only DMCA notices should go to the
27 Copyright Agent [with the email address ‘copyright@youtube.com’.]” See YouTube Terms of
28 Use, downloaded on April 17, 2008, from <http://www.youtube.com/t/terms> and attached hereto as

1 Ex. B. On information and belief, the relevant portions of this webpage have not been
2 substantively modified since June 4, 2007.

3 23. The notice precisely tracked the language specified for a notice of claimed
4 infringement under Section 512(c)(3) of the DMCA.

5 24. On information and belief, YouTube treated the demand as a request for takedown
6 pursuant to the Section 512(c)(3) of the DMCA.

7 25. On June 5, 2007, YouTube sent Lenz an email notifying her that it had removed the
8 Holden Dance Video pursuant to Universal's notification that the material infringed their
9 copyright. The email warned Lenz that repeated incidents of copyright infringement could lead to
10 the deletion of her YouTube account and all videos uploaded to the account. See Notice of Video
11 Removal, attached hereto as Ex. C.

12 26. The email advised Lenz that she was entitled to submit a counter-notice, and
13 directed her to webpages that explained the procedures for a counter-notice pursuant to Section
14 512(g) of the DMCA. Id. See also "Help Center: How do I file a counter notice?" downloaded on
15 April 17, 2008, from <http://www.google.com/support/youtube/bin/answer.py?answer+59826> and
16 attached hereto as Ex. D. On information and belief, the relevant portions of this webpage have not
17 been substantively modified since June 4, 2007.

18 27. On June 27, 2007, Lenz sent YouTube a counter-notice, pursuant to Section 512(g)
19 of the DMCA, demanding that her video be reposted because it did not infringe Universal's
20 copyright in any way. Following that counter-notice, YouTube restored the video. Regardless, the
21 Holden Dance Video remained unavailable on YouTube for more than six weeks.

22 28. On information and belief, on or around September 13, 2007, Prince issued a
23 statement threatening to sue several Internet service providers for copyright infringement as part of
24 an effort to "to reclaim his art on the internet." See M. Collett-White, "Prince to Sue YouTube,
25 eBay Over Music Use," Reuters, Sept. 13, 2007, downloaded on April 16, 2008, from
26 <http://www.reuters.com/article/internetNew/idUSL1364328420070914?feedtype=RSS&feedName>
27 [_InternetNews&rpc=22&sp=true](http://www.reuters.com/article/internetNew/idUSL1364328420070914?feedtype=RSS&feedName), and attached hereto as Ex. E. On information and belief, the
28 relevant portions of this webpage have not been substantively modified since September 13, 2007.

1 contents of the Holden Dance Video and that it did not infringe any Universal copyrights on the
2 date they sent YouTube the takedown notice regarding the Holden Dance Video. With this actual
3 subjective knowledge, Defendants acted in bad faith when they sent the takedown notice,
4 knowingly and materially misrepresenting that they had concluded that the video was infringing.

5 36. In the alternative, Defendants should have known, if they had acted with reasonable
6 care or diligence, or would have no substantial doubt had they been acting in good faith, that the
7 Holden Dance Video did not infringe any Universal copyrights on the date they sent YouTube their
8 complaint under the DMCA.

9 37. Defendants violated 17 U.S.C. § 512(f) by knowingly materially misrepresenting
10 that Holden Dance Video infringed Universal's copyright.

11 38. As a direct and proximate result of Defendants' actions, Plaintiff has been injured
12 substantially and irreparably. Such injury includes, but is not limited to, the financial and personal
13 expenses associated with responding to the claim of infringement and harm to her free speech
14 rights under the First Amendment. Because Universal's notice was intimidating, Ms. Lenz is now
15 fearful that someone might construe some portion of a new home video to infringe a copyright. As
16 a result, she has not posted a single video on YouTube since she received the takedown notice.

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18 **PRAYER FOR RELIEF**

19 WHEREFORE, the Plaintiff prays for judgment as follows:

- 20 1. Injunctive relief restraining Defendants, their agents, servants, employees,
21 successors and assigns, and all others in concert and privity with Defendants, from
22 bringing any lawsuit or threat against Plaintiff for copyright infringement in
23 connection with the Holden Dance Video, including, but not limited to, the video's
24 publication, distribution, performance, display, licensing, or the ability to host it
25 online or link to it from any website;
- 26 2. Damages according to proof;
- 27 3. Attorneys fees pursuant to 17 U.S.C. § 512(f), other portions of the Copyright Act
28 including Section 505, on a Private Attorney General basis, or otherwise as allowed

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by law;

4. Plaintiff's costs and disbursements; and

5. Such other and further relief as the Court shall find just and proper.

Plaintiff hereby requests a jury trial for all issues triable by jury including, but not limited to, those issues and claims set forth in any amended complaint or consolidated action.

DATED: April 18, 2008

By _____ /s/
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