

"Let's [Not] Go Crazy" with Copyright Takedown Notifications

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Stephanie Lenz posted a short home video on YouTube in February 2007 of her two young children dancing to a barely audible recording of the Prince song "Let's Go Crazy." In June of the same year, YouTube received a takedown notice from Universal Music Corp. The notice complied with the Digital Millennium Copyright Act (DMCA) and included the statement "[w]e have a good faith belief that the [use of 'Let's Go Crazy'] is not authorized by the copyright owner, its agent, or the law." After obtaining pro bono counsel, Stephanie Lenz filed a lawsuit the following month against Universal which claimed, *inter alia*, Universal violated the DMCA by misrepresenting that Lenz's use of a portion of Prince's song constituted copyright infringement. The DMCA requires that the copyright holder consider whether another's use of their copyrighted work is authorized by law or by the copyright owner's permission. The DMCA further provides that any person who knowingly materially misrepresents that material or activity is infringing, shall be liable for any damages, including costs and attorneys' fees, incurred as the result of the service provider relying upon such misrepresentation. Lenz argued that prior to sending the takedown notification, Universal did not first consider whether her use of the copyrighted song constituted fair use (i.e., whether her use was authorized under the law as contemplated by the DMCA). Universal argued that fair use is not a use authorized under the law, but rather is an affirmative defense to copyright infringement. On September 14, 2015, the Ninth Circuit affirmed the district court's denial of the parties' cross motions for summary judgment, affirming the district court's holding that copyright owners must consider fair use before issuing DMCA takedown notices. The holding in *Lenz v. Universal Music Corp.* sends a clear message to copyright owners regarding unauthorized uses of the copyright owner's work: **before sending a DMCA takedown notice, make a good faith determination that the unauthorized user does not have a valid fair use defense under the Copyright Act.** Interestingly, the Ninth Circuit stated that the "formation of a subjective good faith belief does not require investigation of the allegedly infringing content" and the court is "in no position to dispute the copyright holder's belief even if [the court] would have reached the opposite conclusion."

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