LENZ V. UNIVERSAL MUSIC CORP. AND THE POTENTIAL EFFECT OF FAIR USE ANALYSIS UNDER THE TAKEDOWN PROCEDURES OF § 512 OF THE DMCA

KATHLEEN O'DONNELL[1]

ABSTRACT

The notice and takedown/putback procedures in § 512 of the Digital Millennium Act fail to adequately protect the rights of individuals who post content on the internet. This iBrief examines the notice and takedown/putback procedures and Judge Fogel's decision in Lenz v. Universal Music Corp.*, which requires a copyright owner to conduct a fair use evaluation prior to issuing a takedown notice. This iBrief concludes such a requirement is an appropriate first step towards creating adequate protection for user-generated content on the Internet.*

INTRODUCTION

¶1 On August 20, 2008, the United States District Court for the Northern District of California denied a motion to dismiss for failure to state a claim in the action of *Lenz v. Universal Music Corp.*[2] Although the opinion is of limited precedential value—it was not scheduled for publication— the case has received substantial attention for its treatment of the fair use defense in the context of takedown notices under the Digital Millennium Copyright Act ("DMCA"). Deciding the question of first impression, the court concluded that a copyright owner must determine whether a particular use is protected under fair use, in order to proceed under § 512(c), which requires "a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law."[3] The court held that a failure to consider fair use prior to issuing the takedown notice was sufficient to constitute a cause of action for misrepresentation under § 512(f).[4] This paper argues that the fair use analysis imposed by the *Lenz* court provides for appropriate consideration under the notice and takedown/putback procedures under § 512 of the

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[1] J.D. candidate at Duke University School of Law. The author would like to thank Professor David Lange for his invaluable assistance.

[2] 572 F. Supp. 2d 1150, 1151 (N.D. Cal. 2008).

[3] *Id.* at 1154 (quoting 17 U.S.C. § 512(c)(3)(A)(v) (2008)) (internal quotation marks omitted).

[4] *Id.* at 1154–55.

DMCA, ensuring that the critical balance between a copyright owner's monopoly and the rights of the public is protected on the Internet.

I. FACTS

¶2 On February 8, 2007, Stephanie Lenz uploaded a video onto YouTube, a popular site hosting "user generated content."[5] The video showed her children dancing in the kitchen.[6] Playing in the background was the song "Let's Go Crazy" by Prince.[7] Lenz allegedly posted the video in order to share it with her family and friends.[8]

¶3 Universal, who owns the copyright to "Let's Go Crazy," sent a takedown notice to YouTube, as provided under Title II of the DMCA, codified at 17 U.S.C. § 512 (2000).[9] YouTube removed the video and sent Lenz an email informing her of the counter-notification procedures.[10] Lenz then sent YouTube a counter-notification, pursuant to U.S.C. § 512(g), arguing that her use constituted fair use.[11] YouTube re-posted the video.[12]

¶4 On July 24, 2007, Lenz filed suit against Universal for misrepresentation under U.S.C. § 512(f) and for tortious interference with her contract with YouTube.[13] She also filed for a declaratory judgment of non-infringement.[14] She argued that Universal sent the take-down notice because Prince requested that they do so, and not because they actually believed the use of the song in the video to be an infringing use of their copyright.[15] Prince has been outspoken in his belief that it is wrong for his music to be used in any user generated content site without his permission.[16]

¶5 In response, Universal filed a motion to dismiss, which was granted on April 8, 2008.[17] Lenz filed an amended complaint on April 18, 2008, only retaining her claim of misrepresentation. Universal again filed a motion to dismiss.[18]

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[5] *Id.* at 1152.
[6] *Id.* at 1151–52.
[7] Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150, 1152 (N.D. Cal. 2008).
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150, 1152 (N.D. Cal. 2008).
[13] *Id.* at 1153.
[14] *Id.*
[15] *Id.*
[16] *Id.* at 1152.
[17] Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150, 1152 (N.D. Cal. 2008).
[18] *Id.*

¶6 In order to grant Universal's motion to dismiss, the court would have had to find that Lenz's claim of misrepresentation was not grounded on an entitlement for relief, requiring that she show more than "labels and conclusions, and a formulaic recitation of the elements of a cause of action."[19] Both parties agreed Lenz used copyrighted material and that Universal owns the copyright to the material.[20] The question presented to the court was whether the good faith requirement of § 512(c)(3)(A)(v) required Universal to consider whether Lenz's use constituted fair use.[21]

II. DIGITAL MILLENNIUM COPYRIGHT ACT

¶7 The DMCA was signed into law on October 28, 1998. Congress sought to update copyright law "to make digital networks safe places to disseminate and exploit copyrighted materials."[22] The act is divided into five titles, detailing different aspects of digital copyright law.[23] Title I, implementing the World Intellectual Property Organization Copyright Treaty, provides protection for copyright owners and "creates the legal platform for launching the global digital on-line marketplace for copyrighted works."[24] Title II articulates the liability of Internet service providers (ISPs) for copyright infringements transmitted over their networks.[25] Title I and Title II work in tandem to "make available via the Internet the movies, music, software, and literary works that are the fruit of American creative genius," while limiting the liability faced by ISPs in order to ensure that "the efficiency of the Internet will continue to improve and that the variety and quality of services on the Internet will expand."[26]

III. ANALYSIS OF FAIR USE UNDER § 512

A. The Importance of Fair Use to Copyright Law

¶8 Fair use has long been considered a critical component of the monopoly protection provided by copyright. In *Campbell v. Acuff-Rose Music, Inc.*, the Supreme Court stated that, "from the infancy of copyright protection, some opportunity for fair use of copyrighted materials has been thought necessary to fulfill copyright's very purpose, 'to promote the

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[19] *Id.* (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted)).
[20] *Id.* at 1153–54.
[21] *Id.* at 1154.
[22] S. REP. NO. 105-190, at 2 (1998).
[23] *Id*. at 1–2.
[24] *Id*. at 2.
[25] *Id*.
[26] *Id*.

Progress of Science and useful Arts.'"[27] The fair use doctrine recognizes that most expression is not strictly original, but rather borrows from the wealth of literature and art that came before it.[28] Therefore, the monopoly granted by copyright is restricted to allow for "a limited privilege in those other than the owner of a copyright to use the copyrighted material in a reasonable manner without the owner's consent."[29] Through this limited right to use copyrighted material, fair use "encourages and allows the development of new ideas that build on earlier ones, thus providing a necessary counterbalance to the copyright law's goal of protecting creators' work product."[30] In this way, fair use preserves and fosters the same creativity that copyright law was created to encourage.[31]

B. Congressional Intent in Enacting the DMCA

¶9 The DMCA was enacted to help negotiate liability for copyright infringement over the Internet in a way that protected the rights of copyright holders while preserving the ability of ISPs to function and grow without crippling liability. The Senate Report states that Title II of the DMCA was enacted to "[preserve] strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements [while] . . . provid[ing] greater certainty to service providers concerning legal exposure for infringements that may occur in the course of their activities."[32] Title II establishes a balance between the public's interest in protecting ISPs from liability and providing protection for copyright owners. Central to this balance is the notice and takedown/putback process, which allows copyright holders to stop infringing uses of their copyrighted materials on the Internet while creating immunity for ISPs if they follow the prescribed steps for removing the infringing material.

¶10 Section 512(c) deals with limitation of liability for "information residing on systems or networks at the direction of users."[33] Congress stated that they were "acutely concerned" about providing "appropriate procedural protections to ensure that material is not disabled without proper justification."[34]

¶11 Congress attempted to protect the rights of end-users through a balance of § 512(f) and § 512(g). Section 512(f) provides a cause of action

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[27] Campbell v. Acuff-Rose, 510 U.S. 569, 575 (1994) (quoting U.S. CONST. art. I, § 8, cl. 8).
[28] *Id.* at 575
[29] Fisher v. Dees, 794 F.2d 432, 435 (9th Cir. 1986).
[30] Perfect 10 v. Amazon.com, Inc., 487 F.3d 701, 719 (9th Cir. 2007).
[31] *See Campbell*, 510 U.S. at 577.
[32] S. REP. NO. 105-190, at 20 (1998).
[33] 17 U.S.C. § 512(c) (2008).
[34] S. REP. NO. 105-190, at 15 (1998).

to users where the copyright owner knowingly makes material misrepresentations during the notice and takedown/putback process.[35] This limited liability allows end-users to sue bad faith actors who knowingly misrepresent the infringing nature of a particular use.[36] Copyright owners also have a potential cause of action against users who make knowing and material misrepresentations as part of a putback request under § 512(g).[37] Congress stated that § 512(f) was designed to create liability for "knowingly false allegations to service providers in recognition that such misrepresentations are detrimental to rights holders, service providers, and Internet users."[38]

¶12 Congress also attempted to protect the rights of end users through the putback process articulated in § 512(g). Congress stated that § 512(g) was enacted "to address the concerns of several members of the Committee that the other provisions of this title established strong incentives for service providers to take down material, but insufficient protections for third parties whose material would be taken down."[39] Section 512(g) empowers users to request replacement of material believed, in good faith, to have been "removed or disabled as a result of mistake or misidentification of the material . . . ."[40]

C. Problems with the Protection Provided to End-Users Under the DMCA

1. The Skewed Protection of the Notice and Takedown/Putback Requirements

¶13 Congress stated that the combination of § 512(g)'s putback procedures with § 512 (f)'s liability for knowing misrepresentation provides the proper balance for "the need for rapid response to potential infringement with the end-users[']s legitimate interests in not having material removed without recourse."[41] However, the protection under § 512(f) and § 512(g)

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[35] 17 U.S.C § 512(f) (2008) ("[A]ny person who knowingly materially misrepresents under this section – that material or activity is infringing, or that material or activity was removed or disabled by mistake or misidentification, shall be liable . . .").
[36] *See* Rossi v. Motion Picture Ass'n of Am., Inc., 391 F.3d, 1000, 1005 (9th Cir. 2004) (stating that Congress's intent was that the statute "protect potential violators from subjectively improper actions by copyright owners" (emphasis omitted)).
[37] 17 U.S.C. § 512(f)(2) (2008).
[38] S. REP. NO. 105-190, at 35.
[39] *Id.*
[40] 17 U.S.C. § 512(g)(3) (2008).
[41] S. REP. NO. 105-190, at 15 (1998).

grants the benefit of doubt to the copyright holder in a way that significantly impairs fair use on the Internet.

¶14 The way the notice and takedown/putback procedures are currently set-up drastically disadvantages end-users.[42] When an ISP receives a takedown notice, they are "incentivized to immediately take down the content without any investigation because such take down provides a safe harbor from ISP liability to the copyright holder."[43] As long as they comply with a counter-takedown notice, the ISP has further disincentive to investigate the takedown notice because § 512(g) immunizes the ISP from liability to the end-user.[44]

¶15 When the copyright holder sends the takedown notice, the ISP must take down the material, "expeditiously," and does not need to contact the user first.[45] In contrast, when a user files a counter-notification, the ISP cannot repost the material for 10 days, and must first alert the copyright holder.[46] The ISP can only repost and maintain their insulation from liability under § 512 if the copyright holder does not respond to the counter-notice.[47] If the copyright holder decides to file suit, however, the ISP is required to not repost.[48]

¶16 All presumptions in the notice and takedown/putback procedure favor the copyright holder.[49] The statutory scheme grants even greater protection to a copyright owner than the owner would have at trial. In court, a copyright owner would have to prove that the material is infringing their copyright.[50] Conversely, under the DMCA the user's material is "assumed illegal on the bare say-so of the copyright holder."[51]

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[42] *See* Malla Pollack, *Rebalancing Section 512 to Protect Fair Users from Herds of Mice-Trampling Elephants, or A Little Due Process Is Not Such a Dangerous Thing*, 22 SANTA CLARA COMPUTER & HIGH TECH. L.J. 547, 560–61 (2006) (arguing notice and takedown/putback procedures of § 512 should be replaced by a statutory digital fair use right, supported by a notice and takedown procedure that protects the rights of fair users).

[43] *Id.* at 560.

[44] *See id*. at 560–61.

[45] *Id.* at 561 (quoting U.S.C. § 512(g)(2)(c) (2008)).

[46] Pollack, *supra* note 42, at 561.

[47] *Id*.

[48] *Id.*

[49] *Id.* ("[The user's] material is assumed illegal on the bare say-so of the copyright holder. That core requirement of due process, an independent decision maker is curiously absent. The copyright holder can block reposting merely by filing suit; no judicial decision is needed.").

[50] *See id*.

[51] *Id.*

¶17 In a 2006 survey of the notice and takedown/putback process, the results show that the concerns for the rights of end-users are not merely academic.[52] The survey demonstrates that there is an exceptionally low incidence of counter-notices in proportion to the number of takedown notices.[53]

2. The Failure of § 512(f) to Provide Adequate Protection Against Misuse of § 512(c) Against End-Users

¶18 An additional failure of the user protection under § 512 is the difficulty of obtaining a remedy against those who are misusing the notice and takedown process. The previously mentioned 2006 survey of the process noted that the "data [shows] the process [is] commonly being used for other purposes: to create leverage in a competitive marketplace, to protect rights not given by copyright (or perhaps any other law), and to stifle criticism, commentary and fair use."[54] Despite the prevalence of potential misuse of the takedown process, it is difficult for a user to obtain relief under § 512(f).

¶19 In *Rossi v. Motion Picture Ass'n of America Inc.*, the Ninth Circuit determined that the good faith requirement in § 512(c)(3)(A)(v) is to be evaluated according to a subjective standard.[55] The Ninth Circuit noted that federal statutes encompassing "good faith" beliefs are traditionally interpreted to require a subjective good faith belief in order to satisfy the requirement.[56] Although no federal circuit had yet decided whether § 512(c)'s good faith requirement required subjective belief, other cases had previously established that "the objective reasonableness standard is distinct from the subjective good faith standard and that Congress understands this distinction."[57] The fact that Congress did not include an objectively reasonable standard means it intended to have the good faith requirement

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[52] *See generally* Jenifer Urban & Laura Quilter, *Efficient Process or 'Chilling Effects'? Takedown Notices Under Section 512 of the Digital Millennium Act*, 22 SANTA CLARA COMPUTER & HIGH TECH. L.J. 621 (2006).

[53] *See id.* at 679–80 (discussing how survey evidence revealed very little evidence of counter-notices, however, the results might be skewed by the fact that most take-down notices surveyed were search index notices)

[54] *Id.* at 687.

[55] Rossi v. Motion Picture Ass'n of Am., Inc., 391 F.3d, 1000, 1004 (9th Cir. 2004) ("[I]nterpretive case law and the statutory structure of § 512(c) support the conclusion that the 'good faith belief' requirement in § 512 (c)(3)(A)(v) encompasses a subjective, rather than objective, standard.").

[56] *Id.*

[57] *Id.*

determined according to a subjective standard.[58] The Ninth Circuit noted that the statutory structure also supports inferring a subjective standard for the good faith requirement. Section 512(f) of the DMCA imposes liability on copyright owners only if their misrepresentations under § 512 amount to knowing misrepresentations.[59] Thus, there is only liability under § 512(f) if there is a "demonstration of some actual knowledge of misrepresentation on the part of the copyright owner."[60] The Ninth Circuit concluded that the "actual knowledge" requirement of § 512(f) combined with the "good faith" belief of § 512(c)(3)(A)(v) illuminates Congress' intent that § 512 only protect "potential violators from the *subjectively* improper actions by copyright owners."[61] The subjective bad faith standard imposed by *Rossi* makes it exceedingly difficult for an end-user to succeed in a claim for misrepresentation against a copyright holder.

¶20 The combination of the unbalanced protection provided by the notice and takedown/putback requirements with the high judicial bar to remedies against copyright holders who misuse the procedure illuminates the failure of the DMCA to adequately protect end-users.[62]

IV. HOLDING

¶21 Lenz brought suit against Universal under 17 U.S.C. § 512(f), which creates liability for copyright owners who "knowingly materially misrepresent" that the material or activity that they requested to be removed was actually infringing.[63] Because both parties agreed that Lenz used copyrighted material and that Universal owned the rights to the copyright,[64] Universal's statement that the video was infringing would only have been a misrepresentation if it believed that the use was not fair. In order to determine whether Universal is liable under § 512(f), the court first needed

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[58] *Id.* The court notes that "where Congress uses terms that have accumulated meaning under the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms." *Id.* at 1004 n.4 (citing Neder v. United States, 527 U.S. 1, 21 (1999)).

[59] 17 U.S.C. § 512(f) (2008) ("[A]ny person who knowingly materially misrepresents under this section that material or activity is infringing or that material or activity was removed or disabled by mistake or misidentification shall be liable . . .")

[60] *Rossi*, 391 F.3d at 1105.

[61] *Id*.

[62] *See* Urban & Quilter, *supra* note 52, at 688 ("[T]he ex ante takedown in the [§] 512(c) context, combined with the lack of counternotice use and other procedural defects, is the feature of the system [of copyright protection established under § 512] that strikes the greatest blow to due process and fairness.").

[63] 17 U.S.C. § 512(f)(1) (2008).

[64] Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150, 1153–54 (N.D. Cal. 2008).

to decide whether 17 U.S.C. § 512(c)(3)(A)(v) "requires a copyright owner to consider the fair use doctrine in formulating a good faith belief that use of material in the manner complained of is not authorized by the copyright owner, its agent, or the law."[65]

¶22 The court stated that a use is authorized by law if it is "one permitted by law or not contrary to law."[66] Even if fair use constitutes an excused infringement, "the fact remains that fair use is a lawful use of a copyright." Because fair use is a lawful use, a copyright owner must consider whether the contested use qualifies as a fair use before it is able to issue a good faith statement of belief that the use is not authorized by law.[67] Furthermore, failure to consider fair use before stating that the use is infringing is sufficient to allege a misrepresentation under § 512(f) of the DMCA.[68]

¶23 Universal argued that a fair use consideration upsets the balance of the DMCA takedown procedure because investigating fair use would delay or unduly burden the copyright owner's ability to rapidly issue a take-down notice.[69] While acknowledging Universal's concerns, the court decided Universal overstated the impact of a fair use determination.[70] Universal argued that it will be difficult for a copyright owner to predict whether a court would agree with their determination of fair use, and thus they would be less willing to issue takedown notices.[71] The *Lenz* court responded by pointing out that the copyright owner's determination of fair use merely has to meet the subjective standard of good faith established for the misrepresentation action under § 512(f).[72] The court also dismissed Universal's argument that the fact-intensive nature of a fair use inquiry would unreasonably burden a copyright owner's ability to rapidly respond to infringements.[73] The court noted that the Copyright Act establishes the four factors that copyright holders should consider when judging fair use. Considering the four factor analysis, the court concluded that, while some uses might require more complicated evaluations, in general, "a consideration of fair use prior to issuing a takedown notice will not be so

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[65] *Id.* at 1154 (quoting 17 U.S.C. § 512(c)(3)(A)(v) (internal quotations omitted)).
[66] *Id.* at 1154.
[67] *Id.*
[68] *Id.* at 1154–55.
[69] Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150, 1155 (N.D. Cal. 2008).
[70] *Id.*
[71] *See id.*
[72] *Id.* ("The 'good faith belief' requirement in § 512(c)(3)(A)(v) encompasses a subjective, rather than objective, standard." (quoting Rossi v. Motion Picture Ass'n of Am., Inc., 391 F.3d, 1000, 1004 (9th Cir. 2004))).
[73] *Id.* at 1155.

complicated as to jeopardize a copyright owner's ability to respond rapidly to potential infringements."[74] Furthermore, the fair use investigation only has to be part of the initial review, which, under *Rossi*, does not require a "full investigation to verify the accuracy of a claim of infringement," further weakening Universal's argument that the fair use investigation would deprive them of their ability to rapidly issue takedown notices.[75]

¶24 The court also stated that the existence of § 512(f) requires an investigation of fair use under the good faith belief in § 512(c)(3)(A)(v). The *Lenz* court asserted that to exclude a fair use consideration from the good faith requirement would effectively render § 512(f) "superfluous" because it would make copyright owners "immune from liability by virtue of ownership alone."[76]

¶25 Having decided that a copyright owner must consider fair use under § 512 (c)(3)(A)(v) before issuing a takedown notice, the court then held that Lenz's claims were sufficient, at least for the pleading stage, and denied Universal's motion to dismiss.[77] However, the court noted that it had "considerable doubt that Lenz will be able to prove that Universal acted with the subjective bad faith required by *Rossi*," and suggested that summary judgment might be appropriate after discovery, even if Lenz was able to state a sufficient cause of action at the pleading stage. [78]

¶26 The court held that requiring a consideration of fair use before issuing a takedown notice was consistent with the purpose of the statute because it strikes the proper balance between "ensur[ing] that the efficiency of the Internet will continue to improve and that the variety and quality of services on the Internet will expand without compromising the movies, music, software and literary works that are the fruit of American creative genius."[79]

CONCLUSION

¶27 In *Reno v. ACLU*, the Supreme Court stated that the Internet is a "major platform of speech."[80] The importance of the Internet as a forum for speech has increased in the time since the Court's opinion. In light of the

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[74] Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150, 1155 (N.D. Cal. 2008).
[75] *Id.* at 1155–56 (emphasis omitted).
[76] *See id.* at 1156.
[77] *Id.*
[78] *Id*.
[79] Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150, 1156 (N.D. Cal. 2008). (citing S. REP. NO. 105-190, at 2 (1998)) (internal quotation marks omitted).
[80] *Id.* at 682 (citing Reno v. ACLU, 521 U.S. 844 (1997)).

skewed protection afforded by the DMCA,[81] the *Lenz* court's decision that copyright holders are required to consider fair use before issuing a takedown notice is supported by the equitable concerns posed by the DMCA.

¶28 The fair use consideration imposed by *Lenz* is limited. As Universal argued, it is difficult to predict whether a particular use will be considered fair. However, *Lenz* is not imposing liability on copyright owners who were unable to accurately predict whether a court would decide that a particular use was fair. The standard for liability under § 512(f) is still subjective bad faith. Therefore, the fair use requirement only creates liability in situations where "an alleged infringer uses copyrighted material in a manner that unequivocally qualifies as fair use, and in addition there is evidence that the copyright owner deliberately has invoked the DMCA not to protect its copyright but to prevent such use."[82] Even those situations would still pose a high bar before a user could recover. The facts in *Lenz* are exactly the type of situation where the fair use requirement would come into play. The court describes how

> Lenz alleges that Universal is a sophisticated corporation familiar with copyright actions, and that rather than acting in good faith, Universal acted solely to satisfy Prince. Lenz alleges that Prince has been outspoken on matters of copyright infringement on the Internet and has threatened multiple suits against internet service providers to protect his music. Lenz also alleges that Universal acted to promote Prince's personal agenda and that its actions "ha[ve] noting to do with any particular [YouTube] video that uses his songs."[83]

Despite that this is exactly the type of situation where the court imagines fair use protecting the interests of Internet users, the court stated that it "has considerable doubt that Lenz will be able to prove that Universal acted with the subjective bad faith required by *Rossi*."[84] The fair use requirement would not open the copyright holders to unmanageable liability. The user still has a significant hurdle to prove that the copyright holder acted in subjective bad faith when it determined that the use was not protected under fair use.

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[81] *See* Urban & Quilter, *supra* note 52, at 682 ("Removal of speech from the Internet, with very little or no process, is a strong remedy for allegations of infringement, especially where there are so few resources available to the targeted speaker.").
[82] Lenz v. Universal Music Corp., 572 F. Supp. 2d 1150, 1155 n.5 (N.D. Cal. 2008).
[83] *Id.* at 1156 (citations omitted).
[84] *Id.*

¶29 The Supreme Court has stated that "the sole interest of the United States and the primary object in conferring the [copyright] monopoly lie in the general benefits derived by the public from the labor of authors."[85] Fair use is a critical element to preserving the benefit to the public that justifies the monopoly granted to a copyright holder. The fair use requirement established by *Lenz* attempts to extend this balance to the notice and takedown/putback procedures of the DMCA, ensuring that copyright is limited to its intended scope within the domain of the Internet, where the concerns of creativity and free speech are exceptionally prevalent.

[85] Sony v. Universal Studios, Inc., 464 U.S. 417, 432 (1984) (quoting Fox Film Corp. v. Doyal, 286 U.S. 123, 127 (1932)).