

2025 WL 35245

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United States District Court, D. Massachusetts.

CHANNEL 781 NEWS, Plaintiff,

v.

WALTHAM COMMUNITY ACCESS
CORPORATION, Defendant.

Civil Action No. 24-cv-11927-PBS

I

Signed January 6, 2025

Synopsis

Background: News organization that posted excerpts of city council meetings on social media channel brought action under Digital Millennium Copyright Act (DMCA) against community access corporation that posted full meeting recordings online, alleging corporation knowingly misrepresented that news organization's videos were infringing when it sent takedown notices to social media site. Corporation moved to dismiss for failure to state a claim.

Holdings: The District Court, [Patti B. Saris](#), J., held that:

organization plausibly pled that its use of excerpts was fair use, and

organization adequately pled misrepresentation claim under DMCA.

Motion denied.

Procedural Posture(s): Motion to Dismiss for Failure to State a Claim.

Attorneys and Law Firms

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[Jeffrey Jackson Pyle](#), [Sarah L. Doelger](#), Prince Lobel Tye LLP, Boston, MA, for Defendant.

ORDER

[Saris](#), United States District Judge

*1 Plaintiff Channel 781 News (“Channel 781”) operates a YouTube channel with videos of news about the City of Waltham, Massachusetts. Some of these videos are clips of meetings of the Waltham City Council that Channel 781 excerpts from recordings of the full meetings posted online by Defendant Waltham Community Access Corporation (“WCAC”). In September 2023, WCAC sent multiple takedown notices to YouTube claiming that Channel 781's videos amounted to copyright infringement. YouTube temporarily removed the videos and disabled Channel 781's channel. Contending that its videos constituted fair use, Channel 781 sued WCAC under [17 U.S.C. § 512\(f\)](#) for knowingly and materially misrepresenting in its takedown notices that Channel 781's videos were infringing. WCAC now moves to dismiss under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#). See [Conformis, Inc. v. Aetna, Inc.](#), 58 F.4th 517, 527-28 (1st Cir. 2023) (describing [Rule 12\(b\)\(6\)](#) standard).

WCAC argues that Channel 781 has not plausibly pled that its videos were fair use and, thus, that WCAC misrepresented that the videos were infringing. See [Monsarrat v. Newman](#), 28 F.4th 314, 321 (1st Cir. 2022) (describing fair use and relevant factors). I disagree. Channel 781 alleges 1) that WCAC's recordings are factual records of the meetings with little creative expression, see [id.](#) at 323 (“The scope of fair use is narrower when works ‘fall closer to the creative end of the copyright spectrum than the informational or factual end’” (quoting [Soc’y of the Holy Transfiguration Monastery, Inc. v. Gregory](#), 689 F.3d 29, 62 (1st Cir. 2012))); 2) that Channel 781's videos are short clips from WCAC's recordings that reflect editorial judgments about newsworthy segments, see [17 U.S.C. § 107](#) (listing “news reporting” as a purpose that typically constitutes fair use); [Núñez v. Caribbean Int’l News Corp.](#), 235 F.3d 18, 24 (1st Cir. 2000) (asking if the amount of copying “is consistent with or more than necessary to further ‘the purpose and character of the use’ ” (quoting [Castle Rock Ent., Inc. v. Carol Publ’g Grp.](#), 150 F.3d 132, 144 (2d Cir. 1998))); and 3) that neither WCAC

nor Channel 781 operates for profit or makes money directly from the works at issue, see [Google LLC v. Oracle Am., Inc.](#), 593 U.S. 1, 32, 141 S.Ct. 1183, 209 L.Ed.2d 311 (2021) (“[A] finding that copying was not commercial in nature tips the scales in favor of fair use.”). Without taking a firm position on Channel 781's claim of fair use at this stage, the Court concludes that it is at least plausible.

Alternatively, WCAC contends that Channel 781 has failed to plausibly allege a knowing misrepresentation actionable under 17 U.S.C. § 512(f). A copyright holder “faces liability if it knowingly misrepresented in the takedown notification that it had formed a good faith belief the video was not authorized by the law, i.e., did not constitute fair use.” [Lenz v. Universal Music Corp.](#), 815 F.3d 1145, 1154 (9th Cir. 2016). Channel 781 alleges that before sending the takedown notices, WCAC stated that it would take action against those using its “content to score political points” or “encourage residents to hate.” Dkt. 1 ¶ 28. In later discussions between the parties, Channel 781 explained why it believed its videos constituted fair use. See [id.](#) ¶¶ 29-30, 35. WCAC responded that “any use of the

clips by Channel 781 required permission” and that Channel 781's videos “would be more acceptable to WCAC if Channel 781 used them only to report facts, but not to express opinions or further an agenda.” [Id.](#) ¶¶ 31-32 (emphasis added). These allegations support a reasonable inference that WCAC sent the takedown notices based on factors other than a good faith belief that Channel 781's videos were not fair use and that WCAC knew it was doing so. See [Lenz](#), 815 F.3d at 1154 (explaining that if a copyright holder fails to “consider fair use before sending a takedown notification, it is liable for damages under § 512(f)”). Channel 781 has adequately pled a misrepresentation claim under § 512(f).

*2 Accordingly, the Court **DENIES** WCAC's motion to dismiss (Dkt. 16).

SO ORDERED.

All Citations

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