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9
 10 Attorneys for Plaintiff
 STEPHANIE LENZ

11 **UNITED STATES DISTRICT COURT**
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN JOSE DIVISION**

14 STEPHANIE LENZ,
 15 Plaintiff,
 16 v.
 17 UNIVERSAL MUSIC CORP., UNIVERSAL
 18 MUSIC PUBLISHING, INC.,
 19 and
 20 UNIVERSAL MUSIC PUBLISHING GROUP,
 21 Defendants.

) No. C 07-03783-JF
)
) DECLARATION OF STEPHANIE LENZ IN
) SUPPORT OF OPPOSITION TO MOTION
) TO DISMISS AND SPECIAL MOTION TO
) STRIKE
)
) DATE: December 7, 2007
) TIME: 9:00 a.m.
) CTRM: 3 (Hon. Jeremy Fogel)

1 I, Stephanie Lenz, declare as follows:

2
3 1. I am the plaintiff in the above-captioned matter. I submit this declaration in support of
4 the attached Opposition to Defendants' Motion to Dismiss and Motion to Strike. The facts stated
5 here are known to me of my own personal knowledge, except where otherwise stated. If called
6 upon to testify thereto I could and would competently do so.

7 2. I am a mother, wife, writer and editor.

8 3. My husband and I have two children, Zoe (age 4) and Holden (now almost 2).

9 4. On or about February 7, 2007, my children were playing in the kitchen when Holden,
10 who was still learning to walk at the time, began dancing to a song by Prince, "Let's Go Crazy."

11 5. Zoe and Holden had recently heard the song on television during the Super Bowl
12 halftime show.

13 6. Using my digital camera, I created a 29-second video recording of the children's
14 activities, which consisted primarily of Holden dancing.

15 7. On or about February 8, 2007, I uploaded the Holden Video from my computer to the
16 YouTube website for my family and friends to enjoy, particularly my mother in California.

17 8. The video was publicly available at the Internet address
18 <<http://www.youtube.com/watch?v=N1KfJHFWlhQ>>.

19 9. When I opened my account with YouTube, pursuant to which I posted the Holden
20 Video and other videos, I explicitly agreed to the Terms of Use and privacy policy by clicking a
21 button with the words "Sign Up" next to a checked checkbox stating "I agree to the terms of use
22 and privacy policy." I did not retain a copy of that signup page, but to the best of my recollection it
23 was identical to the signup page as it currently appears on YouTube. A true and correct copy of
24 that "sign up" webpage, as it appeared on October 24, 2007, is attached hereto as Exhibit A. I
25 agreed to these contractual terms expressly in return for the hosting and playback services
26 YouTube offered.

27 10. On June 5, 2007, I received an email from YouTube notifying me that the video of
28 Holden dancing had been removed from YouTube site in response to a claim by Universal Music

1 Public Group that the video infringed Universal's copyrights. The notice warned me that repeated
2 incidents of copyright infringement could lead to the deletion of my account and all my videos. A
3 true and correct copy of that email is attached hereto as Exhibit B. Based on this notice, I thought
4 that I might be sued for copyright infringement for posting the video of my son.

5 11. In the days following my receipt of the notice, I posted a few statements on my blog
6 expressing my shock and anger at the accusation and mentioning my contact with my current
7 counsel.

8 12. On June 27, 2007, I sent YouTube a counter-notification disputing Universal's
9 infringement allegation and demanding that my video be reposted. A true and correct copy of that
10 email is attached hereto as Exhibit C.

11 13. On July 20, 2007, I received a notice from YouTube stating that the video had been
12 restored.

13 14. Since the video was restored, I have deleted a few comments about it posted on
14 YouTube, primarily where such comments made offensive personal remarks about Holden. I did
15 not delete any comments posted prior to June 3, 2007—indeed, only a single comment was posted
16 prior to that date.

17 15. As a result of Universal's allegation of infringement, I lost access to YouTube's
18 service for the Holden Video from June 5, 2007 until July 20, 2007.

19 16. I place a high value on my right to free speech and my use of YouTube to express
20 myself. The removal of the Holden video impinged on those rights.

21
22 I declare under penalty of perjury that the foregoing is true and correct and that this document was
23 executed in Gallitzin, Pennsylvania.

24
25 DATED: November 12, 2007

26
27 By  Stephanie Lenz

EXHIBIT A

[Sign Up](#) | [My Account](#) | [History](#) | [Help](#) | [Log In](#) | [Site](#)

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Categories

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Member Login

Already have a YouTube account? Login here.

YouTube Username:

YouTube Password:

[Forgot Username](#) | [Forgot Password](#)

[Login with your Google account](#) 

What Is YouTube?

YouTube is the home for video online:

- **Watch** millions of videos
- **Share favorites** with friends and family
- **Connect with other users** who share your interests
- **Upload your videos** to a worldwide audience

Sign up now to join the YouTube community!

Create Your YouTube Account

It's free and easy. Just fill out the account info below. (All fields required)

Account Type:

Email Address:

YouTube Username: [check](#)

Your username can only contain letters A-Z or numbers 0-9

Password:

Confirm Password:

Password Strength: None

Country:

Postal Code:

Required for US, UK & Canada Only

Gender: Male Female

Date of Birth: : :

Verification:

Enter the text in the image



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EXHIBIT B

From: **DMCA Notice** <no_reply@support.youtube.com>
Date: Jun 5, 2007 12:46 PM
Subject: Video Removed: Copyright Infringement
To: edenza <eden@piggyhawk.net>

Dear Member:

This is to notify you that we have removed or disabled access to the following material as a result of a third-party notification by Universal Music Publishing Group claiming that this material is infringing:

"Let's Go Crazy" #1: <http://www.youtube.com/watch?v=N1KfJHFWlhQ>

Please Note: Repeat incidents of copyright infringement will result in the deletion of your account and all videos uploaded to that account. In order to avoid future strikes against your account, please delete any videos to which you do not own the rights, and refrain from uploading additional videos that infringe on the copyrights of others. For more information about YouTube's copyright policy, please read the [Copyright Tips](#) guide.

If you elect to send us a counter notice, please go to our [Help Center](#) to access the instructions.

Please note that under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

Sincerely, YouTube, Inc.

Copyright © 2007 YouTube, Inc.

EXHIBIT C

From: Eden <edenza@gmail.com>
Subject: Counter-notice (June 27)
Date: Wed, 27 Jun 2007 11:25:38 -0400

<copyright@youtube.com>Dear Designated Agent:

On June 6, 2007, YouTube informed me by email that Universal Music Publishing Group ("UMPG") made a copyright notification under the Digital Millennium Copyright Act claiming that my video "'Let's Go Crazy' #1," located at <http://www.youtube.com/watch?v=N1KfJHFWlhQ>, infringes the company's copyright. Though I made a counter-notification in response to UMPG's claim on June 7, I have learned that UMPG considers my prior counter-notice defective. Please be advised that this counter-notice satisfies all of YouTube's counter-notification requirements. As such, I request that you repost my video within ten business days.

Under penalty of perjury, I affirm that I have a good faith belief that "'Let's Go Crazy' #1" was removed or disabled as a result of mistake or misidentification of the material removed or disabled.

My name, address, and telephone number are as follows:

Stephanie Lenz (YouTube username "edenza")
122 Shaft Rd
Gallitzin, PA 16641
(814) 602-5588

I consent to the jurisdiction of the federal district court for the judicial district in which the above address is located, and I will accept service of process from the person who provided notification under 17 U.S.C. § 512(c)(1)(C) or an agent of such person.

I request that you please acknowledge receipt of this counter-notification, and notify me when access to my video has been reinstated.

Sincerely,

Stephanie Lenz