

**Sal P. -
WordPress.com**

(Staff)

Hello,

It looks like Rhett Pardon is the author of the article infringed upon, and you're actually the subject of the article. Do you work for XBiz, and are you authorized to represent them in this way? Please remember that all information you furnish in connection with DMCA notices (including your authorization to act on behalf of the copyright holder) is submitted under penalty of perjury.

Thank you,

Sal P. | Community Guardian | WordPress.com

Posted on: 01 Feb 2016 07:03 PM

**Randazza Marc
John**

(mjr@randazza.com)

I may be the subject of the article, but I am also legal counsel to Xbiz. Rhett Pardon is a pen name for the author, but Adnet Media d/b/a Xbiz is the copyright owner.

I submit this information under penalty of perjury. If you would feel more comfortable with a declaration from the actual writer, I will get that for you.

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View my research on my SSRN Author page:
<http://ssrn.com/author=2451686>

Posted on: 01 Feb 2016 07:38 PM

**Randazza Marc
John**

(mjr@randazza.com)

Sal,

Do you want me to tell my client to have a different attorney provide you with a notice? Is there some reason that you would prefer not to comply?

I can understand the concern. So, I can gladly tell my client "They would prefer not to comply, since I'm in the article that this guy is pirating." I see no legal rationale for that, but I need to inform my client as to why I've had two emails with you, and yet you're still declining to comply.

If you doubt that I represent Xbiz, I can, I suppose get a letter from them attesting to that fact. I have attached a UDRP decision in which I represented them... although, admittedly, that is from 2012, and things change.

But, if I have to go back to my client and tell them "sorry, I can't get it done," I would like to tell them the reason that you refused to comply.

Posted on: 02 Feb 2016 05:00 PM

**Leroy -
WordPress.com**

(Staff)

Thanks for your reply. As you may know, the DMCA is frequently abused by complainants who are not authorized to act on behalf of a copyright holder, but nevertheless seek to remove certain materials from the internet on copyright grounds.

We're very vigilant about this issue, and carefully review notices submitted against the sites we host to ensure that they are submitted by authorized parties. We hope you understand our concern, and appreciate your providing additional information to confirm your authorization to act in this case.

We've reviewed your claim and, before taking action on it, would like to better understand your assessment of the copyright violation in this case – specifically with respect to fair use.

While the blog post you cite "Arbitrator: Marc Randazza must pay \$600K+ for 'clear and serious breaches of fiduciary duty' against his former client" (found here: <http://fightcopyrighttrolls.com/2015/07/09/marc-randazza-must-pay-600k-for-clear-and-serious-breaches-of-fiduciary-duty-against-his-former-client/>) does include an article from your client's website, it appears that the article was included for the purpose of commentary by the blogger. In particular, the article includes and makes reference to an earlier copy of your client's article (later revised on your client's website), and notes/comments on the deletion of two paragraphs from that article. At first glance, this seems like a colorable instance of fair use by the blogger; a copy of the earlier version of the article is essential to the blogger's commentary.

If fair use is applicable here, the blogger's use of your article in this context would not constitute infringement, regardless of authorization (or not) by the copyright holder. Did you consider this fair use defense when submitting your notice? Do you agree or disagree with this assessment? Would be interested to know your thoughts before proceeding further – particularly given your firm's experience defending small publishers against similar takedown requests (which we very much applaud!).

Regards,
Leroy
Community Guardian
Automattic | WordPress.com

Posted on: 02 Feb 2016 05:32 PM

**Randazza
Marc John**

(mjr@randazza.com)

I'm very grateful for your vigilance in promoting the values behind 512(f). I have a law review article on the subject coming out in a few months. Further, I am litigating a 512(f) case myself right now. <https://www.techdirt.com/articles/20160125/16553333416/pissed-consumer-gets-to-go-after-roca-labs-bogus-dmca-takedowns.shtml>

My client's position is that this infringes upon their copyright, and that it is not fair use.

However, if that is your position, I'll refer this to separate counsel, since it appears that the reason you're really not complying with the DMCA notice is that I'm both the lawyer and the subject of the article. I can see the fog that this set of facts could create.

Therefore, if you are not going to comply, I'd prefer to extricate myself from this situation so that there is not even the appearance of bias in the assessment of the relative merits of the fair use discussion.

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Posted on: 02 Feb 2016 05:48 PM

**Randazza
Marc John**

(mjr@randazza.com)

Leroy,

In addition, my client (and I) have seen nothing to suggest the facts that you're reporting in your email. The PDF itself is all that is of concern. I haven't clicked on the link you provided below, as I do not wish to give that site more traffic. However, I'll presume that what you are representing on his behalf is accurate — that he has taken the position that he needs the article online to prove some point.

Would he need the entire article published that way, so that it actually draws readers from my client's site? If there were screen captures on the blog, showing particular passages, that would likely be fair use. If there were large blocks of quotations, that would be the same. However, the wholesale republication of the work, in PDF form, drawing views from Xbiz.com, that does not appear to be fair use.

Remember, under 17 USC 107, one does not have wholesale license to take the entire work for commentary purposes — rather just what is necessary to achieve that purpose. There are other ways to do that here, which would not run afoul of my client's copyright.

Posted on: 02 Feb 2016 05:56 PM

**Randazza
Marc John**

(mjr@randazza.com)

Leroy,

So what's the verdict? Do you want to have a phone call about it? You can feel free to record it, if you announce that in advance. I just think that dealing with someone with just a first name, with multi-hour delays in between messages, is not constructive. I am open minded to you changing my mind about the 17 USC 107 issue. But, I'm still not seeing it.

I can, simultaneously, if you like, get my client on the line.

But, I want it to be clear that my client is not taking issue with the post itself. The only issue is the wholesale reproduction of the entire article, when seemingly, selected screen caps could probably accomplish what they want to accomplish.

Unless I'm again missing something.

Posted on: 02 Feb 2016 08:04 PM

**Randazza
Marc John**

(mjr@randazza.com)

Leroy,

Making this one easy. My client has authorized me to withdraw the DMCA request.

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Posted on: 03 Feb 2016 12:28 AM

**Janet J -
WordPress.com**

(Staff)

Hi there,

Thank you for letting us know. We will operate on the assumption that the correspondence from attorney Alex J. Shepard regarding the same request (sent 1st February 2016) is also withdrawn.

All the best.

Janet J | Community Guardian | WordPress.com

Posted on: 03 Feb 2016 05:40 AM

Marc Randazza

(mjr@randazza.com)

Yes, we have asked the client to allow us to withdraw, and to refer this to separate counsel. I do not want even *perceived* lack of neutrality in our advice.

You may hear from one of Xbiz' other lawyers on this matter, but not us.

Posted on: 05 Feb 2016 02:38 AM