

# FairUseTube Guide to YouTube Removals (Updated Nov 2012)

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Original located at <http://fairusetube.org/guide-to-youtube-removals>

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This guide describes the three primary ways in which videos are blocked or removed on YouTube and what to do to get your content restored. It is based in part on the Electronic Frontier Foundation's [Guide to YouTube Removals](#), which, while now outdated, is also an excellent resource on this subject.

This guide outlines the process for fighting YouTube removals in three steps:

1. [Determine why and how your video was removed.](#)
2. [If the video was blocked for copyright reasons, decide whether you think it qualifies as "fair use" or is otherwise non-infringing.](#)
3. [If you believe your video is fair use or you are otherwise authorized to use the content at issue, take the appropriate action to dispute the removal--either by disputing an automated content-identification or by filing a DMCA counter-notification.](#)

As always, please be aware that it is possible that a copyright owner could sue you at any point in this process, even if you take no action to contest the removal. This is somewhat more likely to happen if you draw attention to yourself by disputing the takedown or filing a counter-notice, and the costs of defending yourself in a copyright lawsuit can be considerable, even if you are ultimately found not liable. Therefore please think carefully about the possible consequences of any action you may take, and if you are in doubt about the legal status of your video, please consult a qualified attorney before taking any action.

That being said, according to the Electronic Frontier Foundation, no ordinary YouTube user has ever been sued by a major entertainment company because they contested a takedown notice. That's not to say it can't happen, especially with smaller more idiosyncratic copyright holders who may have a different agenda. Please keep this risk in mind.

## Step 1: Determine how and why your video was blocked

First you need to figure out how and why your video was blocked, which is important to know in deciding what to do about it. YouTube generally removes videos for one of three reasons:

1. **Community Guidelines Violation**
2. **Content ID Match**
3. **DMCA Takedown Notice/Copyright Strike**

### How to tell why a video was blocked:

1. The easiest way to tell why your video was blocked is often just to go to your [Video Manager](#) panel and click on the link to the video, which will then bring up an error message which will say

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why it was blocked. You may also have gotten an email from YouTube telling you why the video was blocked.

2. You should also check the [account status](#) section of your account settings. This page will say whether you are in "good standing" in three categories: **community guidelines**, **copyright strikes**, and **Content ID claims**. After three "strikes" under any of these categories, your account may be terminated (though I have been unable to verify if this is the case with Content ID strikes). Regular copyright strikes result from a DMCA takedown notice being sent against one of your videos. You can also be in "bad standing" from Content ID claims which result in a global block on a video rather than merely monetizing it or blocking it in a few specific countries. This may result in a 15 minute limit being imposed on the length of newly uploaded videos and the disabling of other features like unlisted videos and Creative Commons licenses--penalties which also result from DMCA copyright strikes.
3. Go to your [My Videos](#) panel and check under [Content ID Matches](#). This will be the main way to identify videos that were blocked by YouTube's automated filter rather than a DMCA notice.

### **What you can do about it:**

1. **Community Guidelines Violations** - Because YouTube is a private website run by a private corporation, they are not obligated to allow all forms of speech protected by the 1st Amendment, and can block any video which in their opinion violates the site's rules. Videos are usually removed for Community Guidelines violations when they are violent, pornographic, or "hate speech." This results in a "strike" on your account which is separate from copyright strikes. [According to YouTube](#), "The first strike on an account is considered a warning. If an account receives two strikes within a six month period, the ability to post new content to YouTube from that account is disabled for two weeks. If there are no further issues, full privileges are restored automatically after the two week period. If an account receives a third Community Guidelines strike within six months (before the first strike has expired) the account is terminated." While these types of removals are not the focus of this tutorial, there is an **appeal process** if you believe your video was removed in error. You can find more information about that process [here](#).
2. **Content ID Match** - YouTube's Content ID system automatically scans videos as they are uploaded for copyrighted material and blocks access to videos containing material which copyright owners have told YouTube to block. This system may either block access to a video entirely, or merely mute the audio (depending on whether there is a video or audio match), in which case the video will still be playable but with no sound. Alternatively, Content ID may "monetize" videos, in which case ads will play next to the video and the copyright owner will get a share of the ad revenue. Monetized videos are also often blocked from viewing on mobile devices and sometimes blocked from being embedded on other websites. Because this system blocks all uses of copyrighted content indiscriminately, there is a high chance it will block material that is in fact "fair use" under U.S. copyright law, and you can easily get your video restored by **disputing the content ID match**. The copyright claimant is then given the chance to "confirm" or "reinstate" their claim, which you can then appeal using a second dispute process. If the copyright claimant still disagrees with your dispute, they can then file a DMCA notice against your video, invoking the DMCA notice and counter-notice process described below.
3. **DMCA Takedown Notice/Copyright Strike** - This is where copyright owners have filed a formal demand with YouTube that your specific video be taken down because it infringes their copyright. While content ID matches are entirely automatic and are also restored automatically, if a video was blocked by a DMCA notice it (at least usually) means that an actual person has

looked at your video and decided it is infringing. Contesting these is thus somewhat more likely to result in a lawsuit if the copyright owner is really serious about keeping your video off YouTube. However as mentioned above, no regular YouTube user has ever been sued over a video. The process for getting a video restored that was blocked by this method is considerably more complicated, since you have to file a formal **DMCA Counter-notice**. The copyright owner then has 10-14 business days to notify YouTube that they intend to sue you to seek an injunction against your video; otherwise they will restore the video. Unless you file a counter-notice, DMCA notices result in a copyright strike on your account. While these usually expire after six months, if you get three copyright strikes within that time, your account will be terminated. As long as there is an active strike on your account, you may be unable to upload videos longer than 15 minutes, post unlisted or Creative Commons licensed videos, or appeal reinstated Content ID claims.

## Step 2: Decide if your video is fair use

If your video was blocked for copyright reasons, either by an automated Content ID match or by a DMCA notice, you will have to decide if your video falls under the "fair use" exception to copyright, or if you had some other kind of authorization to use copyright content (such as getting permission from the copyright holder).

As described on the [ChillingEffects](#) website, "when a copyright holder sues a user of the work for infringement, the user may argue in defense that the use was not infringement but 'fair use.' Under the fair use doctrine, it is not an infringement to use the copyrighted works of another in some circumstances, such as for commentary, criticism, news reporting, or educational use." These specific purposes are highlighted in the law as particular types of uses which are strong examples of fair use, but they are by no means the only types of uses which are considered "fair use." Whether something qualifies as fair use typically depends on a case-by-case judgment of the facts.

Fair use is codified at Section 107 of the Copyright Act, which gives a non-exclusive set of four factors courts will consider in deciding whether a use is fair or not. These factors are:

1. **the purpose and character of the use,**
2. **the nature of the copyrighted work,**
3. **the amount and substantiality of the portion used, and**
4. **the effect of the use on the potential market for or value of the copyrighted work.**

ChillingEffects gives a good [overview of the four factors](#), on which my summary below is based (*italics* indicate quotes from ChillingEffects).

### **FACTOR 1: THE PURPOSE AND CHARACTER OF THE USE**

*"This factor considers whether the use helps fulfill the intention of copyright law to stimulate creativity for the enrichment of the general public."*

This and factor four are probably the most important parts of the fair use test. The key to this prong of the test is whether the use is **(1) commercial or non-commercial**, and **(2) transformative rather than merely derivative**. Non-commercial use of copyrighted material is much more likely to be considered fair use than commercial use, since particularly in video there is an established market for licensing material for commercial use. However, this does not necessarily mean that a commercial use *cannot* be fair use, but the burden of proof will be higher.

The most important part of this prong is whether the new use is **transformative**, which means that it must somehow alter the original work either quantitatively or qualitatively. *"The more transformative the use, the more likely it is to be fair, whereas if defendant merely reproduces plaintiff's work without putting it to a transformative use, the less likely this use will be held to be fair."* Even if a use does not necessarily alter the original in substance, if it does something to add a new meaning or message to it, it is still likely to be considered transformative.

## **FACTOR 2: THE NATURE OF THE COPYRIGHTED WORK**

*"The more creative, and less purely factual, the copyrighted work, the stronger its protection. In order to prevent the private ownership of work that rightfully belongs in the public domain, facts and ideas are separate from copyright--only their particular expression or fixation merits such protection. Second, if a copyrighted work is unpublished, it will be harder to establish that defendant's use of it was fair."*

This is probably the least important part of the fair use test, and rarely makes the difference between a use being considered fair or not. Basically if your use of copyrighted material involves facts rather than creative works like movies or music, and if it involves published material rather than unpublished material, it is slightly more likely to be considered fair use. Note: Since the original creation of the Fair Use Doctrine, Congress has amended it to explicitly say, "The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors."

## **FACTOR 3: THE AMOUNT AND SUBSTANTIALITY OF THE PORTION DEFENDANT USED**

*"In general, the less of the copyrighted work that is used, the more likely the use will be considered fair. If, however, the defendant copied nearly all of, or the heart of, the copyrighted work, his or her use is less likely to be considered fair."*

This prong is closely related to whether your use is transformative or not, and is also very important. The key here is that in order to be fair use, you must use no more of the original copyrighted work than necessary for your purpose. Incorporating small amounts of copyrighted material into a larger presentation is much more likely to be considered fair use than something that makes use of the entire original. This prong not only looks at how much of the original you used *quantitatively*, but also *qualitatively*, and a use is less likely to be fair use if you used "the heart" of the original work.

However, even if you do use the entire original work, this prong can be outweighed by the first prong if your use is sufficiently transformative. A good example of this would be anime music videos and film mashups, which in my opinion qualify as fair use for the video portion because *quantitatively* they only use brief clips of much larger works, and for the music portion because even though they use entire copyrighted songs, the addition of the video footage *qualitatively* imparts a new message and is sufficiently transformative to outweigh the fact that the entire song is used.

## **FACTOR 4: THE EFFECT OF DEFENDANT'S USE ON THE POTENTIAL MARKET OF THE COPYRIGHTED WORK**

*"This factor is generally held to be the most important factor. This factor considers the effect that the defendant's use has on the copyright owner's ability to exploit his or her original work. The court will consider whether the use is a direct market substitute for the original work. The court may also consider whether harm to a potential market exists."*

This factor is key to the whole analysis, and considers whether the new use of copyrighted content directly competes with the original work. To decide this, ask yourself if your use of copyright content would be likely to serve as a substitute for the original. In the context of online video, could someone watch your video *instead of* buying the original work and still obtain the same value as from the original? If the answer to that question is yes, your video is likely not fair use. If it is no, that weighs significantly in favor of your video being considered fair use.

ChillingEffects also notes: *The burden of proof here rests on the defendant for commercial uses, but on the copyright owner for noncommercial uses. ... It is important to note that courts recognize that some market harm may come from fair uses such as parodies or negative reviews, but that such market harm does not militate against a finding of fair use.*" This means that in the context of a lawsuit, the copyright holder would have the burden to prove that your use *does* harm their market. This market harm must be shown to come from *direct competition* between your work and the original. It is not enough to say that your use criticizes the original and might make someone not want to buy it. That is still fair use.

## Deciding if your video is fair use

On YouTube, the key things to consider is if your video is **transformative** (i.e. you modified the source material in some way or did something to give it a different meaning or message), whether it is **noncommercial** (you aren't making money from it), and whether it **competes with the market for the original work** (i.e. someone could watch your video and get the same benefit as buying it). The [Center for Social Media](#) publishes an excellent *Code of Best Practices in Fair Use for Online Video*, which lists the following six uses as being probable fair use:

1. **Commenting on or critiquing of copyrighted material**
2. **Using copyright material for illustration or example**
3. **Capturing copyrighted material incidentally or accidentally**
4. **Reproducing, reposting, or quoting in order to memorialize, preserve, or rescue an experience, an event, or a cultural phenomenon**
5. **Copying, reposting, and recirculating a work or part of a work for purposes of launching a discussion**
6. **Quoting in order to recombine elements to make a new work that depends for its meaning on (often unlikely) relationships between the elements**

In addition to these things, here is a list of common types of videos on YouTube which *in my personal opinion* would likely be considered fair use (or at least should be under common sense logic and current online practice). Ultimately, though, it would depend on what arguments a court would be willing to accept, and the case for some is stronger than others.

1. **Anime music videos and film mashups**
  - The video portion of such videos is very likely fair use as they only use small, highly edited portions of the original video footage. The audio portion is less likely to be fair use as these videos typically use an entire song, yet is still arguably fair use because of the non-commercial, transformative use of the song, low probability of harm to the market for the original song, and the impossibility of the average amateur video creator to license the song.
2. **Parody videos (such as a political parody using satirical lyrics set to a copyrighted song)**
  - Note that courts have drawn a distinction between parody (which comments on the original work) and satire (which comments on an unrelated subject), and have held that parody is more likely to be fair use. However many satires are still likely to be fair use

based on their non-commercial, transformative nature, low possibility of harming the market for the original, and impossibility of licensing. Political parodies/satires are also likely to be protected against copyright claims by the higher first-amendment protection traditionally granted to political speech.

3. **Filming yourself singing a copyrighted song (lip-sync videos may be less likely to be fair use)**
  - This is questionably fair use since normally professional recording artists who perform cover recordings would be required to obtain a compulsory license and pay a fee set by statute to a performing rights organization in order to make a cover, and obtain a synchronization license from the record label to use it in any kind of video production. However, at least in my opinion, it is doubtful this requirement was meant to apply to amateur performers like teenagers singing copyrighted songs in their bedrooms, and such people arguably could not be expected to navigate the complexities of the licensing process, which would be incomprehensible to the average person simply seeking to post a video of themselves singing a song on YouTube. Accordingly, I think a valid case could be made for fair use.
4. **Movie reviews containing clips of copyrighted films**
  - This counts as commentary and criticism of the original film and is very likely fair use.
5. **Video game walkthroughs and tutorials with commentary**
  - Even though video games are copyrighted, it is now a widely accepted practice on YouTube to post walkthroughs and tutorials ("let's plays"). Both the player's original commentary and the fact that their gameplay creates a unique subjective experience with the game make the use transformative. As long as you include your own original commentary about the game and don't just post straight raw footage from the game, it is likely fair use. It is possible that even un-commented gameplay is still fair use, though this is less certain.
6. **Posting short news clips in order to comment on a current event**
  - This also falls under the commentary category of fair use, though there likely would need to be some original comment on the clip rather than just posting the straight unedited clip.
7. **Non-commercial podcasts and V-logs containing brief uses of copyrighted songs (especially for purposes of comment about the song)**
  - This is likely fair use because of the minimal nature of the use and non-commercial aspect. If the podcast or V-log is for profit it is less likely to be fair use.
8. **Home videos or documentary-type videos which capture copyrighted material in the background, such as a TV show playing on a TV or a song playing on the radio**
  - When copyrighted material is incidentally captured in the background of a video (for example, a baby dancing to a Prince song as in the case *Lenz v. Universal*) courts have held it to be fair use. This would also include things like home recordings of a school talent show or dance performance that happen to include performances of copyright songs.

Videos that are **NOT** likely to be fair use include:

1. **Posting unedited clips from movies and TV shows**
2. **Posting professionally produced music videos in their entirety**
3. **Using copyrighted music in the soundtrack to a commercial or some type of video which you stand to gain financial benefit from, which would likely infringe on the artist's synchronization right.**
4. **Posting so-called "lyrics videos"**
  - If your video is merely a copyrighted song with the text of the lyrics on the screen and maybe a few pictures of the artist or the album cover, this is likely not transformative

enough to be considered fair use, since you are not really adding anything new or changing the message of the original. These are also much more likely to serve as a substitute for the original, defeating a claim of fair use.

These things are only examples and are by no means a complete list of types of videos that may or may not be fair use. The most important thing to keep in mind is whether your video is **(1) non-commercial, (2) changes or alters the original work in some way, (3) uses no more of the work than necessary for your purpose** and **(4) does not harm the market or substitute for the original work**. With the last of these, it is important to keep in mind that even if you used an entire song to make an anime music video or film mashup for example, your video could actually have a *positive* effect on the market for the original song by serving as free advertising and motivating people to go out and buy the song.

Finally note that making money from a video does not necessarily preclude fair use, but it does reduce the chances of a video being found to be fair use. If the copyrighted material is highly factual and you are using it for news reporting or commentary, it may still be fair use to use it commercially, but a mashup that you make money from might not be. YouTube also has stricter rules for videos it allows to be monetized and generally requires you to prove that you have a license for the material, so claiming fair use may not be enough to satisfy YouTube that you have the right to use it.

## Step 3: Dispute the Copyright Notification

Once that you have determined that your video is in fact fair use, in order to get it restored you will need to dispute the copyright notice. This will be done differently depending on how your video was blocked.

### Disputing a Content ID Match

If your video was blocked by YouTube's automatic Content ID system, you will need to dispute the content identification. To do this, follow the following steps.

1. Go to your [Video Manager](#) page.
2. Click on [Copyright Notices](#) in the left side bar.
3. Find the video you wish to dispute, and click on the copyright status of the video, where it says something like, "**Video blocked in some countries,**" or "**Matched third party content.**" Note: As far as I know, the new "I acknowledge" button doesn't really do anything, so it doesn't matter if you click it or not.
4. Scroll down to the bottom of the page, and click the link that says "**I believe this copyright claim is not valid.**"
5. From the list of reasons, select "**My use of the content meets the legal requirements for fair use or fair dealing under applicable copyright laws**" (or whatever other option is more suited to your situation). If you believe the Content ID match is simply wrong and your video does not contain any copyrighted content or the particular claimant does not own the copyright to it, select the option that best expresses the reason for your dispute.
6. On the next page, check the box for "**I am sure...**" and click continue.
7. On the next page, type a brief explanation of why you think your video is fair use. When disputing content ID blocks on my anime music videos, I usually say something like, "**This video is fair use under U.S. copyright law because it is noncommercial and transformative in nature, uses no more of the original than necessary, and has no negative effect on the market for the original work.**"
8. **Type your full name** (your actual name not your YouTube username) into the signature box.

9. Check the box where it says you have a **good faith belief** that the material was disabled as a result of mistake or misidentification and click continue.
10. On the dispute summary page, click the **continue** button, and then click **ok** when it asks you to confirm.
11. Your video should then be automatically restored and should be viewable more or less immediately, though you may need to refresh the page a few times for it to work.

Go back to your **Video Manager** page and click on the video's copyright status again, and it should say that you disputed the claim, and it should give a date **one month** from the day your filed your dispute, by which the copyright holder must review your dispute and decide whether to release their claim or reinstate it.

If the copyright claimant reinstates their claim, your video will be re-blocked or monetized, depending on the policy set by the Content ID system. Until October 2012, this used to be the end of the line and the user was left without further recourse. Recently however, YouTube has implemented a new **appeals process**, under which you can file a second dispute against a reinstated claim and force the copyright claimant to either release the claim or resort to the DMCA notice and counter-notice process described below.

### **Appealing a Reinstated Content ID Claim (new as of October 2012)**

The appeals process is basically just a second dispute, telling the copyright claimant you are *really serious* that your video is not infringing their copyright. While it is yet another hoop to jump through to fight a false copyright claim, it is an improvement over the old system, which gave users essentially no recourse at this point.

1. If a disputed Content ID claim against a video has been reinstated by the copyright claimant, below the message on the Content ID match page saying the claim has been reinstated, there should be a link that says "**I want to appeal a reinstated claim.**" Click this link and go through the process, following the instructions on each page.
2. If you have not previously done so, you will be required to **verify** your YouTube account with a cell phone number capable of receiving text messages before you can proceed with the appeal. If you do not have a cell phone or your cell phone provider is not supported, you may need to buy a prepaid phone from a supported provider to use to verify your account. Once you enter your cell phone number, YouTube will send a verification code via text message to the phone, which you should then enter in the box provided to verify your account.
3. Once you have verified your account, you will be required to enter your **contact information** (note: this will be provided to the copyright claimant) and provide a more **detailed explanation** of why you believe your video is not infringing. If you originally disputed the Content ID claim by saying you have a license to use the content in your video, you will be asked to provide a link to a license contract or other documentation that you have permission to use the content, which you can cut and paste into the provided text box.
4. Check the acknowledgment at the bottom of the page, type your legal name as your signature, and click **Appeal** to submit your appeal.
5. It should now bring you back to the Content ID matches screen. Your video should be viewable again pending the copyright claimant's response to your appeal. As with the original Content ID dispute, they will now have one month to respond (though it will probably be sooner), this time by either **releasing their claim** or **filing a formal DMCA takedown notice**. If they do the latter, your video will be removed once more and there will be a copyright strike issued against your account, just as if the video had been blocked by a DMCA notice to begin with. While this may seem like a bad thing, the advantage of this (compared to the way things used to work) is that it

also gives you recourse to the DMCA counter-notice process, which is described below. If you still disagree with the copyright claim, you can file a DMCA counter-notice and have your video restored, in which case the copyright claimant will have to actually sue you in order to get the video removed permanently. See the next section of this tutorial for instructions on how to do that.

One final note about the new appeals process. YouTube has stated that this process will not necessarily be available for every video with a reinstated Content ID claim. You may not be able to appeal reinstated claims if you have outstanding DMCA copyright strikes on your account. Also, from what I have learned, the appeals process does not appear to be available for claims that were reinstated prior to fall of 2012. Assuming that you are otherwise in good copyright standing and the claim was reinstated after YouTube implemented the new policy, the appeals process should be available on all new reinstated claims.

For more information about the new appeals process, please see this [YouTube help page](#), YouTube's [blog post](#) about the changes, and [my blog post](#) giving my initial reaction to the new system.

## Filing a DMCA Counter-notice

A DMCA takedown notice is a [formal notice of copyright](#) infringement by a copyright owner. You should know if your video was taken down as a result of a DMCA takedown notice because you would have gotten an email from YouTube saying that there is now a "strike" against your account, which will also show up in your **Account Status** page. If this is the case, in order to get your video restored, you will have to file a formal [DMCA counter-notice](#) with YouTube.

There are two ways to submit a counter-notice. **(1)** The easiest and best way is to use **YouTube's webform for submitting counter-notices** (accessed via your Video Manager page). **(2)** You can also email your counter-notice to [copyright@youtube.com](mailto:copyright@youtube.com). If you choose to write a counter-notice yourself and submit it by email, ChillingEffects has an excellent [Counter-notice generator](#), which you can use to generate a counter-notice to email to YouTube.

### 1. Using YouTube's Counter-Notice Webform (Recommended Method)

The best method to submit counter-notices to YouTube is to use the handy webform YouTube has provided for this purpose.

1. Go to YouTube's counter-notice webform, which you can reach by going to your **Video Manager** page or your **Copyright Notices** page and clicking on the link next to the video that was taken down.
2. Fill in all the required information. This includes your YouTube screen name, your true legal name and true residential address (**note: this information will be sent to the copyright claimant**), the email address associated with your YouTube account, the URL of the removed video, and the required statements swearing that your counter-notice is not fraudulent and consenting to the jurisdiction of your local federal district court.
3. **Make sure to provide a justification for why you believe your video is fair use in the "message to YouTube" box.** If you do not provide YouTube with a justification stating why you are filing the counter-notice, YouTube will reject your counter-notice without even forwarding it to the copyright holder. **This message must be specific to your video.** A generic statement describing fair use in general will not suffice. You have to describe why YOUR VIDEO is fair use, or else YouTube will reject your counter-notice. A good basic fair use

rationale could be something like, *"This video is fair use under U.S. copyright law because it is (1) non-commercial, (2) transformative in nature, (3) uses no more of the original work than necessary for the video's purpose, and (4) does not compete with the original work and could have no negative affect on its market."*

4. Though not required, it is a good idea to include this same statement in the "message to the party that made the copyright claim" box, so they know your reasons for filing a counter-notice as well.
5. Type your first and last name at the end as your electronic signature and click submit.

## 2. Alternate Method: Write your own counter-notice

If you do not wish to use YouTube's webform or you are submitting a counter-notice to a website other than YouTube, you can email a counter-notice to the site's copyright compliance address (in the case of YouTube, [copyright@youtube.com](mailto:copyright@youtube.com)). The Digital Millennium Copyright Act (DMCA) requires that a counter-notice contain the following specific elements, which are described on YouTube's help page [here](#):

1. Identification of the **specific URLs of material that YouTube has removed** or to which YouTube has disabled access.
2. Your full **name, address, telephone number, and email address**, and the **username** of your YouTube account.
3. The statement: **"I consent to the jurisdiction of the Federal District Court for the district in which my address is located, or if my address is outside of the United States, the judicial district in which YouTube is located, and will accept service of process from the claimant."**
4. The statement: **"I swear, under penalty of perjury, that I have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled."**
5. Signature. A scanned physical signature or a valid electronic signature will be accepted.

**Note:** YouTube also requires a statement of the rationale behind your counter-notice, or else they will reject the counter-notice. In the case of a fair use claim, a statement like that above saying why your video is fair use should be sufficient. Your rationale must be specific to your video, and not merely a generalized statement about fair use. YouTube also requires that counter-notices sent by email use the following subject line: **"YouTube DMCA Counter-Notification."**

If you do wish to write your own counter-notice, a sample counter-notification may be found at: <http://www.chillingeffects.org/dmca/counter512.pdf>. (That link is actually another counter-notice generator, which you can use to create a counter-notice when you can then email to YouTube.)

## What Happens Next

Once you have submitted a counter-notification, the copyright owner has 10-14 business days to respond and notify YouTube that they plan to file a lawsuit seeking an injunction prohibiting you from posting your video (in most cases, highly unlikely). If they fail to do this within the allotted time (YouTube's policy says 10 days even though the law gives them up to 14), YouTube will restore your video. In my personal experience, this whole process takes about three weeks.

Please be aware that after you file a counter-notice, the only way the copyright owner can keep your video off YouTube is to sue you. While no regular YouTube user has yet been sued over a YouTube video, there is a possibility that filing a counter-notice could provoke them into filing a lawsuit. Please keep this risk in mind when deciding whether or not to file a counter-notice.

## Troubleshooting

- **I filed a DMCA counter-notice through YouTube's webform, and I never received any confirmation message. It has been several weeks and nothing has happened.**  
It seems that sometimes DMCA counter-notices submitted through YouTube's webform just get lost in the system. If this happens to you and you do not receive any kind of confirmation from YouTube within a few days, try submitting it again through the email method, by emailing all the same information in your counter-notice to [copyright@youtube.com](mailto:copyright@youtube.com), using the subject line, "YouTube DMCA Counter-Notification."
- **I filed a DMCA counter-notice, but it was rejected with a message saying "*Based on the information you have provided, it appears that you do not have the necessary rights to post the content on YouTube. Therefore, we regretfully cannot honor this counter-notification. It has not been forwarded to the original claimant, and we will not be able to restore your video.*"**  
In my experience, this message results from one of two things: either (1) you already deleted the video you are attempting to file a counter-notice on; or (2) you failed to fill out the "message to YouTube" box in the counter-notice form and include an explanation for why your video is not infringing. If the first is true, I'm afraid you're simply out of luck, as YouTube will not process counter-notices on videos you have already deleted yourself. **Never delete videos you plan to file a copyright dispute on!**

If the second is true, simply re-submit the counter-notice form, and include in the "message to YouTube" box a brief explanation for why your video is not infringing, *that is specific to YOUR video*. Generic statements about fair use are not sufficient. You have to explain why **YOUR VIDEO** specifically is fair use. For example, a statement like, "*This video qualifies as fair use under U.S. copyright law because it (1) makes transformative use of the content in question, adding new message and meaning to the original; (2) is non-commercial in nature; and (3) does not harm the market for the original*" should be sufficient.

## One final note

The DMCA requires copyright owners to certify that they have a "good faith belief" that the material in question is infringing when filing a DMCA takedown notice. If a copyright owner files a takedown notice against a video that is clearly fair use or otherwise obviously non-infringing, they could be liable for fraudulent misrepresentation of the video's copyright status under the DMCA. There is at least one legal precedent (the case *Lenz v. Universal* in California) where a judge has ruled that a copyright owner could be held liable for issuing a fraudulent takedown notice against a 30-second home video of a toddler dancing to a Prince song being played on the radio. While the final outcome of the case has yet to be determined, this raises the possibility that if your video is falsely taken down even though it was obviously fair use, you could sue the copyright owner for damages. Please consult your attorney if you would like to pursue this option.