

19 September 2017

Via Email Only
<nwells@legendslaw.com>

Nicholas D. Wells
Legends Law Group, PLLC
330 N. Main St.
Kaysville, Utah 84037

Re: MormonLeaks™ | Copyright Infringement

Dear Mr. Wells:

This law firm has the privilege of serving as counsel to MormonLeaks™, and our client has asked us to respond to your DMCA notice of July 26, 2017. You sent this DMCA notice to remove previously unpublished documents authored by Bruce R. McConkie, a member of the Quorum of the Twelve Apostles of the LDS Church from 1972 to 1985. Mr. McConkie authored several doctrinal books for the LDS Church during his life.

The documents to which your DMCA notice refer primarily consist of the unpublished text of and notes for speeches Mr. McConkie delivered or planned to but did not deliver. They also include Mr. McConkie's personal thoughts on global events relevant to the LDS Church, and unpublished manuscripts of religious writings. These documents contain discussions by Mr. McConkie of LDS doctrine, the status of the LDS Church, and what its goals and message should be in modern times.

My client obtained these documents lawfully. Upon obtaining them, my client determined that they were newsworthy, and had a right to distribute them in its capacity as a journalistic resource devoted to discussing facts about the LDS Church.

It is our position that your takedown notice was a misuse of the DMCA. Thus, my client has grounds to bring a claim against your clients under 17 U.S.C. § 512(f). However, my client is prepared to forego this claim if your clients are willing to be reasonable.

I am sure you are aware that the purpose of copyright law is to incentivize the creation of original works of authorship. It is not a tool for censorship. Mr. McConkie's writings are not works of religious fiction; they are his thoughts on LDS doctrine and the LDS church. He wrote these speeches for the purpose of delivering them publicly and educating people in religious doctrine. My client thus has a very strong claim of fair use in publishing these writings. While some may disagree on whether these writings reveal anything new about LDS doctrine, there is no question that additional writing about religious doctrine by a prominent member of the LDS Church is a matter of significant public interest.

Aside from the dubiousness of any copyright claim here, I am not sure why the heirs of Mr. McConkie would not want these writings published. They contain thoughtful discussions of the LDS Church and its doctrine, and attacks the idea of a lazy gospel that only requires people to confess their sins to find salvation, without needing to put in any effort to be a good person. He writes about a faith that requires people to make the world a better place, rather than going through the motions and just making sure to check off some procedural boxes before dying. This is an inspiring view of LDS teachings, and anyone interested in the Church would be well served in reading it. The documents also contain discussion of doctrine that the LDS Church has abandoned, such as racial restrictions on membership in the Church, but these unpublished works make Mr. McConkie look no worse than his published writings do.

Mr. McConkie also writes of the dangers of the nuclear arms race, and how the proliferation of armed conflicts around the world goes against the teachings of Jesus Christ. In a time of regular threats of nuclear war from North Korea, this message is just as relevant today as it was during the Cold War, when Mr. McConkie wrote about it.

If the heirs of Mr. McConkie feel that these writings represent an outdated view of LDS doctrine or are somehow inconsistent with his other religious writings, then that is all the more reason for the public to have access to them. Readers can compare Mr. McConkie's previously unpublished thoughts on the LDS Church with both his previous writings and the current LDS doctrine, and see which makes more sense to them. In any case, the public at large is better served by publication of these writings; their censorship does not help anyone.

Even assuming *arguendo* my client did not have a right to disseminate these documents, your clients are not serving their interests by sending a letter demanding their removal. The documents have been, and will continue to be, disseminated worldwide. Demanding their censorship only causes their further reproduction and redistribution. Nothing your clients do will stop this from happening. If anything, the only way to mitigate the spread of these documents would be to not draw any further attention to them by your clients withdrawing their request.

You may recall that something similar happened in March of this year when the LDS Church attempted to remove an internal Powerpoint presentation created by the Church from my client's web site regarding Church strategy. All this demand did was bring further attention to it, such that national publications like the Washington Post wrote about the dispute.¹

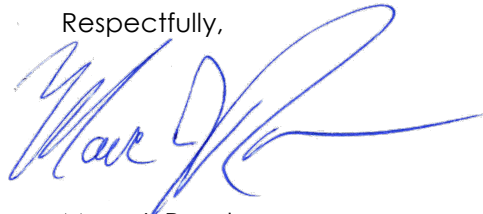
¹ See, e.g., Michael Allison Chandler, "Mormonleaks website squares off with Mormon Church, posts leaked 'Enemies List,'" THE WASHINGTON POST (March 17, 2017) (available at: https://www.washingtonpost.com/news/acts-of-faith/wp/2017/03/17/mormonleaks-website-squares-off-with-mormon-church-posts-leaked-enemies-list/?utm_term=.11bc81672a14).

If you disagree, and it is still your intention to press this matter, I request that you think it through a little beyond the initial complaint. If you do seek to file a copyright infringement claim against my client, you will find that we will bring a vigorous fair use defense. All of the documents at issue will become a matter of public record. They will be examined, dissected, and discussed by the public at large. Further, these documents will become a far more important story than they were previously. In fact, those who found the story of minor interest will now find the attempt at censorship even more interesting.

Your clients' attempts at censorship have failed. They will fail in increasingly spectacular ways the more your clients push this issue.

At this point, my client is willing to let bygones be bygones. If your clients are willing to step back from the brink, and to cease efforts to censor this material, my client is willing to refrain from bringing a claim under 17 U.S.C. § 512(f).

Respectfully,

A handwritten signature in blue ink, appearing to read "Marc J. Randazza", with a long horizontal flourish extending to the right.

Marc J. Randazza

cc: Client (via separate email)