

# THE LAW OFFICE OF LILA BAILEY

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April 25, 2016

Jeremy Banks (via Email: [Notices@ifpi.org](mailto:Notices@ifpi.org))  
Director, Anti-Piracy  
IFPI  
7 Air Street  
London  
W1B 5AD  
United Kingdom

*Re: DMCA Notice (REF: C16725669)*

Dear Mr. Banks,

I am writing on behalf of my client, Derek Slater, in regards to the referenced takedown notice you sent under the Digital Millennium Copyright Act (DMCA) regarding his blog, A Copyfighter's Musings, and removal of the file "04VariousArtistsOneBigHolid.mp3."

By sending this notice, you have knowingly materially misrepresented that this content is infringing in violation of 17 U.S.C. § 512(f), resulting in personal harm and financial expense to my client. As a courtesy to you and without prejudice to any further action we may take, I am writing to inquire whether you wish to withdraw your takedown notice.

The file referenced in your takedown notice is My Morning Jacket's "One Big Holiday," which was distributed with authorization from the copyright holder under a Creative Commons Non-Commercial Sampling Plus license<sup>1</sup> in *WIRED Magazine*, November 2004.<sup>2</sup>

This edition of the magazine was widely distributed to the public and promoted by the recording industry itself. Hilary Rosen, former chair and CEO of the Recording Industry Association of America (RIAA), wrote in that issue that "I've come to love Creative Commons" and encouraged "the industry ... to embrace Creative Commons as an agile partner providing tools for new ways to do business."<sup>3</sup>

Even the most basic investigation would have indicated that Mr. Slater's use is lawful and consistent with the Creative Commons license granted by the copyright owner. Under the United States Copyright Act, rightsholders are required to consider whether a use is lawful before issuing a takedown notice,<sup>4</sup> and that requirement was plainly not followed here. This notice reflects an unfortunate pattern by IFPI, sending bogus takedown notices without any investigation into the rights status of the claimed works.<sup>5</sup>

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<sup>1</sup> <https://creativecommons.org/licenses/nc-sampling+/1.0/>

<sup>2</sup> <http://www.wired.com/2004/11/sample/>; <https://creativecommons.org/wired/>

<sup>3</sup> <http://www.wired.com/2004/11/larry/>

<sup>4</sup> See *Lenz v. Universal Music Corp.*, 801 F.3d 1126 (9th Cir. 2015)

<sup>5</sup> See e.g. <https://www.techdirt.com/articles/20140924/18042528632/revealed-how-to-get-ifpi-to-issue-bogus-dmca-takedowns-just-about-anything-with-no-questions-asked-no-review.shtml>

I invite you to retract this takedown notice within 7 days of receipt of this message.

Sincerely,



Lila Bailey