

PHILIP G. CLARK
4296 West County 15th Street
Somerton, Arizona 85350

VIA EMAIL
(Return Receipt Requested)

October 3, 2016

Mr. Joseph G. Adams, Esq
SNELL & WILMER
440 East Van Buren Street
Phoenix, Arizona 85004

Re: Alleged Copyright and Trademark Infringement

Dear Mr. Adams:

This will serve to acknowledge receipt of your letter of September 27th via email.

While the very nature of your letter requires the loading-up of ominous legalese, we both know suggesting a violation of the Lanham Act is a real stretch.

With respect to the city's damages and my profits, the city would be hard pressed to identify any specific damages incurred and as to my profits resultant from the alleged damages, Cyber Mayor is a community informational and educational website and receives no fees for its operation and maintenance, much less profits.

You mention that the city has made numerous warnings. The first was in 2002. In 2008 a letter was served by a certified process server demanding an immediate cease or the city would seek relief by filing a lawsuit in Federal District Court. As you know the statute of limitations in the federal Copyright Act is three years for a civil offense and five years for criminal. After eight years it could be credibly argued the city has granted a de facto waiver.

Your disagreement with "fair use" is not surprising, after all, it is what you are being paid to do. What is surprising, however, is your reference to it as "so called" fair use, particularly in light of Stanford University Libraries providing the Stanford Copyright and Fair Use Center (your alma mater) that clearly acknowledges parody as a fair use. Further research at your alma mater's library uncovered what the entire Cyber Mayor team cannot thank you enough for because they consider it to be a veritable goldmine, a treasure trove of future possibilities for years to come. Without your "gentle" prodding it may never have been discovered and that is - the principle to "conjure up" the original (here).

Mr. Joseph G. Adams
October 3, 2016
Page 2

As you are aware the logo for the city of Yuma depicts the confluence of the Colorado and Gila Rivers, the two into one. As can be seen from Cyber Mayor's new base logo (here) there is one stream becoming two, representing the clean, pure water of truth becoming two streams of political and bureaucratic B.S. If you revisit the website you can see how this application has indeed opened a whole new realm of "1st Amendment" political expression. The current insert (of his Highness) can be replaced with any number of representations depending on the municipal matter at hand. We believe that the replacing of the original with the "conjuring up" of the original more than addresses the point of your letter and is well within the Fair Use Doctrine.

In conversations with some members of the council it is interesting to note that no one seems to be aware of your forewarning of possible litigation. That is strange since as can be seen from the attached excerpt from the city charter (here), the council "shall" have control of all litigation and may employ other attorneys to take charge of any litigation. To reciprocate your helpfulness and turn aside the possibility of any pro bono work on your part we would also point out that, per the city charter, it is the council, not staff, that may provide for payment of your services; yet, the council was not advised of staff's subjective action until after the date of your letter. The proverbial cart before the horse which unfortunately has become the norm with this administration.

As you know numerous municipalities across the country recognize the legitimacy of Fair Use, particularly as it relates to political parody and codify it in their charters, codes of ordinances and policy directives. As an example, the metropolitan area of Madison, Wisconsin (here) with a population five times greater than the city of Yuma has formally acknowledged Fair Use. The city of Yuma on the other hand would seek from the court a status as exceptional.

Finally, Mr. Adams, at its core is this about a copyright issue or a rogue ill-qualified city administrator attempting to soothe his bruised spurious sensibilities at the expense of the public treasury? I'm just guessing, but I suspect the court would frown upon such a brute abuse of authority and the use of a public office for the purpose of personal retribution.

We look forward to your favorable response to our actions taken.

Very truly yours,



Philip G. Clark, Former Mayor
City of Yuma

cc: City of Yuma
Four Attachments