



November 3, 2020

**VIA EMAIL**

Jacque Carter  
Office of the President  
Doane University  
Chab Weyers Education & Hixson Lied Art Building  
1014 Boswell Ave.  
Crete, NE 68333  
presidentoffice@doane.edu

**Re: False DMCA Notice Against KeepDoaneEducated.net**

Dear Dr. Carter:

The Electronic Frontier Foundation represents Professor Timothy Hill, owner of the website KeepDoaneEducated.net. Professor Hill created his website to inform the Doane University community about proposed program cuts at the university and to encourage concerned community members to write to Doane's board of trustees before it votes on the administration's proposal.

Last week, Doane submitted a notice of copyright infringement under the Digital Millennium Copyright Act (DMCA) to Wix, the hosting provider for KeepDoaneEducated.net.<sup>1</sup> DMCA takedown notices should be lodged only when a copyright owner has a good faith belief that the challenged material infringes their copyrighted works. Far from meeting this standard, Doane's DMCA notice did not even identify any material on the website in which Doane owns copyrights—but it nonetheless led to the takedown of Professor Hill's entire website in the critical final days before the trustees' November 9 vote. We demand that Doane withdraw its claim immediately.

Doane's deficient DMCA notice (attached) identifies Doane's alleged copyrighted works only as "Photograph on homepage" and "logo." Neither alleged work provides a legitimate basis for Doane's notice. First, all photographs that appeared on KeepDoaneEducated.net, including the photograph on the homepage, were taken by a third party at Professor Hill's request specifically for use on the website. Doane has no grounds for asserting ownership of that image. Second, no Doane logo appeared

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<sup>1</sup> A university spokesperson confirmed to a reporter for the student publication *Doaneline* that the university administration had sent the DMCA notice.

[http://doaneline.com/news/article\\_737ea94e-1be0-11eb-ac9d-43e98755e69d.html](http://doaneline.com/news/article_737ea94e-1be0-11eb-ac9d-43e98755e69d.html)

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anywhere on Professor Hill's website, let alone at the URL Doane's notice identified. To the extent this was meant to refer to Professor Hill's use of the word "Doane" to refer to the university, an entity name is not a copyrightable work; this likewise cannot support Doane's claim of copyright infringement.

Based on these fundamental flaws and the surrounding circumstances, it appears that Doane's takedown notice was motivated not by genuine concern for any copyright interest, but rather by a desire to shut down criticism and prevent effective opposition to your proposed program cuts in the days leading up to the November 9 vote. Our inference of bad faith is further supported by Doane's failure to include even an attempt to substantiate the claims in its notice: the fields prompting Doane to provide links to online copies of Doane's claimed works, links to copyright registrations, and relevant documents or screenshots were simply left blank.

Doane's abuse of the DMCA process must cease immediately. In particular, Doane must notify Wix no later than Wednesday, November 4, that Doane withdraws its DMCA notice and requests restoration of Professor Hill's website. You are on notice that your claim of copyright infringement lacks any legitimate basis and that you can be held liable for any damages, including attorneys' fees and costs, that result from misuse of DMCA procedures to shut down lawful speech. 17 U.S.C. § 512(f). Professor Hill reserves the right to pursue these and other available legal remedies against you.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Gagliano".

Cara Gagliano  
Staff Attorney  
Electronic Frontier Foundation

Attachment

----- Forwarded message -----

From: **Wix Support** <[notifications@wixanswers.com](mailto:notifications@wixanswers.com)>

Date: Tue, Oct 27, 2020 at 2:44 AM

Subject: Wix: In regards to your Wix site [keepdoaneeducated.net](http://keepdoaneeducated.net)

To:

---Please reply above this line---



Hi,

This is to inform you that Wix received the following copyright note related to your Wix site [keepdoaneeducated.net](http://keepdoaneeducated.net). In accordance with the DMCA procedure, we temporarily disconnected your site from Wix services.

Kindly review the complaint and remove the copyrighted content. Let us know when this is done and we'll be happy to reinstate the service.

If you believe the complaint was sent in error, please [submit a DMCA counter-notification](#).

In the counter notification, you must include the following:

1. Your physical or electronic signature.

2. Clear identification of the content that was removed or to which access has been disabled and the Internet location (URL) of this content prior to its removal.

3. A statement, under penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material.

4. Your name, physical address, and telephone number.

5. A statement that you consent to the jurisdiction of the judicial district in which Wix.com acts, and that you will accept service of process from the person who provided the infringement notification.

Note that any person who knowingly, materially misrepresents that material or activity is committing infringement and may be subject to liability.

Note that your counter notification together with your contact info will be forwarded to the complainant.

### **Complaint**

Identify and describe your copyrighted work:

Photograph on homepage, logo

Please provide a link to online presentation of copyrighted work (if available):

Please provide a link (URL) leading to your copyright registration (if applicable):

Please provide a link (URL) to the precise location of the allegedly infringing content on a Wix hosted website:

<https://www.keepdoaneeducated.net/>

Attach any document you consider relevant to your claim, such as official documents, screenshots, etc:

Dated: Mon Oct 26 2020 05:00:00 GMT+0000 (Coordinated Universal Time)

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Awaiting your reply,

Daniel - Wix Customer Care

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To add additional comments, reply to this email or click [here](#) to view your ticket page. Ticket number: 279767781

For more information go to [Wix Help Center](#)

500 Terry A Francois Blvd San Francisco, CA 94158



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