

1 Jason Schultz (SBN 212600)  
2 *jason@eff.org*  
3 ELECTRONIC FRONTIER FOUNDATION  
4 454 Shotwell Street  
5 San Francisco, CA 94110  
6 Telephone: (415) 436-9333 x112  
7 Facsimile: (415) 436-9993

**ORIGINAL  
FILED**

MAY - 8 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

5 Marcia Hofmann (*pro hac vice* pending)  
6 *marcia@eff.org*  
7 ELECTRONIC FRONTIER FOUNDATION  
8 1875 Connecticut Ave. NW  
9 Suite 650  
10 Washington, DC 20009  
11 Telephone: (202) 797-9009 x12  
12 Facsimile: (202) 707-9066

**E-filing**

13 Attorneys for Plaintiff  
14 JOHN DOE A/K/A BRIAN SAPIENT

**BZ**

11 **UNITED STATES DISTRICT COURT**

12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 JOHN DOE A/K/A BRIAN SAPIENT, )  
14 Plaintiff, )  
15 v. )  
16 URI GELLER A/K/A URI GELLER FREUD )  
17 and )  
18 EXPLOROLOGIST LTD., )  
19 Defendants. )  
20

C 07  
Civil Action No. 2478

**2478**

**COMPLAINT**

(Jury Trial Demanded)

21 1. This is a civil action seeking injunctive relief and damages for misrepresentation of  
22 copyright claims under the Digital Millennium Copyright Act ("DMCA"), as well as declaratory  
23 relief.

24 2. This case arises out of a baseless legal threat of copyright infringement made by the  
25 Defendants against Plaintiff. The threat resulted in the removal of a video Plaintiff posted to the  
26 popular Internet media website YouTube, as well as the suspension of Plaintiff's YouTube  
27 account.  
28



1           12.     Sapient is a member of the Rational Response Squad, which describes itself as “an  
2 activist network that seeks to help the world overcome irrationality.” The Rational Response  
3 Squad’s activities include, *inter alia*, posting videos debunking what it maintains are irrational  
4 beliefs and theories on a popular website on the Internet known as “YouTube,” located at  
5 <http://www.youtube.com>. YouTube is a video-sharing website where millions of Internet users  
6 post videos and make them available to others for viewing. These videos range from traditional  
7 home videos of personal events, to news reports, to advertisements and television programs.  
8 Sapient and the Rational Response Squad rely on YouTube to reach thousands of audience  
9 members and promote their activist messages and campaigns online.

10           13.     On November 15, 2006, Sapient uploaded a portion of the NOVA program “Secrets  
11 of the Psychics” (hereafter “NOVA Video”) from his computer to YouTube. The video was  
12 available at the Internet address <<http://www.youtube.com/watch?v=M9w7jHYriFo>>.

13           14.     The NOVA Video depicted, *inter alia*, the magician James Randi challenging the  
14 performance techniques of Geller, a well-known performer who claims to have psychic abilities.  
15 The video included clips from various Geller performances, such as one from the “The Tonight  
16 Show With Johnny Carson” in which Geller was unable to demonstrate his supernatural powers in  
17 front of a live studio audience. Upon information and belief, only three seconds of the content of  
18 the NOVA Video is subject to a copyright owned by Geller or Explorologist Ltd. Those three  
19 seconds show Dr. C. J. Hughes describing the alleged accomplishments of Geller at a public event.  
20 The validity of those accomplishments is then the subject of the rest of the video and the subject  
21 which Randi subsequently challenges.

22           15.     On information and belief, on March 23, 2007, an agent of Explorologist Ltd. and  
23 Geller demanded that YouTube take down the NOVA Video pursuant to the DMCA, 17 U.S.C. §  
24 512. By authorizing the demand, Geller and Explorologist Ltd. attested under penalty of perjury that  
25 they owned or were authorized to act on behalf of the owner of an exclusive copyright that had  
26 been infringed by the video, and that the notice of infringement they sent was accurate. See Exhibit  
27 A & B.

28           16.     On March 23, 2007, YouTube sent Sapient an email informing him that it had

1 removed his video in response to a third-party claim of copyright infringement from Explorologist  
2 Ltd. A true and correct copy of this email is attached hereto as Exhibit C.

3 17. As a result of Defendants' copyright infringement notice, Sapient's YouTube  
4 account was suspended. Sapient quickly responded by submitting a counter-notification of non-  
5 infringement to YouTube under the DMCA on March 27, 2007. However, as a result of  
6 Defendant's conduct, Sapient's account and all of his videos (including, but not limited to, the  
7 NOVA Video) remained unavailable for more than two weeks.

8 **COUNT I: 17 U.S.C. 512(F) MISREPRESENTATION**

9 18. Sapient repeats and incorporates herein by reference the allegations in the preceding  
10 paragraphs.

11 19. Upon information and belief, the NOVA Video does not infringe any copyright  
12 owned by Defendants.

13 20. Upon information and belief, Defendants knew or should have known if they acted  
14 with reasonable care or diligence that the NOVA Video did not infringe any of their copyrights on  
15 the date they sent their DMCA complaint to YouTube. Upon information and belief, Defendants  
16 did not act with reasonable care or diligence before sending their DMCA complaint to YouTube.

17 21. Defendants would have had no substantial doubt, had they been acting in good faith,  
18 that the NOVA Video did not infringe any of their copyrights on the date they sent their DMCA  
19 complaint to YouTube. Upon information and belief, Defendants were not acting in good faith  
20 while sending their DMCA complaint to YouTube.

21 22. Accordingly, Defendants violated 17 U.S.C. § 512(f) by knowingly materially  
22 misrepresenting under DMCA § 512 that the NOVA Video infringed their copyright.

23 23. As a direct and proximate result of Defendants' actions, Sapient has suffered  
24 substantial and irreparable injury. Such injury includes, but is not limited to, the financial and  
25 personal expenses associated with responding to Defendants' complaint to YouTube and harm to  
26 Sapient's free speech rights under the First Amendment.

27 **COUNT II: DECLARATORY RELIEF OF NON-INFRINGEMENT**

28 24. Sapient repeats and incorporates herein by reference the allegations in the preceding

1 paragraphs.

2 25. There is a real and actual controversy between Sapiient and Defendants regarding  
3 whether the NOVA Video constitutes infringement of a copyright lawfully owned by Defendants.

4 26. Sapiient contends that, consistent with the Copyright Act of the United States of  
5 America, including those laws prohibiting direct, contributory or vicarious infringement, laws  
6 protecting fair use and the First Amendment to the United States Constitution, and judicial  
7 decisions construing such laws, doctrines, and provisions, publication of the NOVA video was and  
8 is lawful.

9 27. Wherefore, Sapiient requests that the Court determine and adjudge that each and  
10 every one of the above-stated propositions states the law applicable to the facts involved in this  
11 action.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, the Plaintiff prays for judgment as follows:

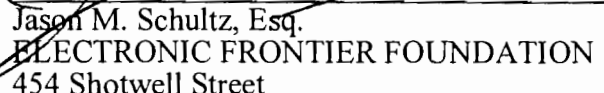
- 14 A. A declaratory judgment that the NOVA Video posted by Plaintiff does not infringe  
15 any copyright owned by Defendants;
- 16 B. Injunctive relief restraining Defendants, their agents, servants, employees,  
17 successors and assigns, and all others in concert and privity with them, from  
18 bringing any lawsuit or threat against Plaintiff for copyright infringement in  
19 connection with the NOVA Video, including but not limited to its publication,  
20 distribution, performance, display, licensing, or the ability to host it online or link to  
21 it from any website;
- 22 C. Damages according to proof;
- 23 D. Attorneys fees pursuant to 17 U.S.C. § 512(f), other portions of the Copyright Act  
24 including Section 505, on a Private Attorney General basis, or otherwise as allowed  
25 by law;
- 26 E. Plaintiff's costs and disbursements; and
- 27 F. Such other and further relief as the Court shall find just and proper.

28 Plaintiff hereby requests a jury trial for all issues triable by jury including, but not limited to, those

1 issues and claims set forth in any amended complaint or consolidated action.

2  
3 DATED: May 8, 2007

4 By

  
Jason M. Schultz, Esq.  
ELECTRONIC FRONTIER FOUNDATION  
454 Shotwell Street  
San Francisco, CA 94110  
Telephone: (415) 436-9333 x112  
Facsimile: (415) 436-9993

5  
6  
7  
8 Marcia Hofmann (*pro hac vice* pending)  
9 ELECTRONIC FRONTIER FOUNDATION  
10 1875 Connecticut Ave. NW  
11 Suite 650  
12 Washington, DC 20009  
13 Telephone: (202) 797-9009 x12  
14 Facsimile: (202) 707-9066

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Attorneys for Plaintiff  
JOHN DOE A/K/A BRIAN SAPIENT





Notice of Claimed Copyright Infringement

YouTube, Inc.  
Attn: YouTube CMT Program  
1000 Cherry Ave. Second Floor  
San Bruno, CA 94066  
Fax: 650.872.8513

Date 28/12/06

Dear YouTube:

I, the undersigned, state UNDER PENALTY OF PERJURY that:

- I am the owner, or an agent authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- I have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- This notification is accurate.

My contact information is below (\* = required information)

Name of IP Owner\* URI Geller  
 Name and Title\* URI Geller  
 Company Explorologist LTD  
 Address\* Sonning Court Sonning BERKS RG4 6UR UK  
 City, State and ZIP\* Sonning  
 Email Address (to correspond with YouTube) URI@URIGELLER.COM  
 Telephone\* +44 1189696766  
 Fax +44 1189699439

In addition to the undersigned, the following persons have the proper authority to sign future Notices of Claimed Infringement on behalf of the IP Owner:

Name <u>Shimshon (Shipi) SHTRANG</u>	Email <u>Shipi@URIGELLER.COM</u>
Name _____	Email _____
Name _____	Email _____

Truthfully,

Uri Geller  
Authorized Signature

URI Geller  
Print Name



**EXHIBIT B**

----- Original Message -----

Subject: Content Verification Program - Videos flagged by orolp1x1e  
Date: Fri, 23 Mar 2007 10:29:30 -0700 (PDT)  
From: YouTube Service <service@youtube.com>, orolp1x1e <uri@urigeller.com>  
To: uri@urigeller.com, Copyright Bulk <copyright@youtube.com>

YouTube | Broadcast Yourself™

The following videos have been flagged as infringing by orolp1x1e (the content owner) and need to be reviewed for deletion:

<http://www.youtube.com/watch?v=M9w7jHYriFo&search=uri%20geller>  
< <http://www.youtube.com/watch?v=M9w7jHYriFo&search=uri%20geller>>  
[http://www.youtube.com/watch?v=K\\_MkxI6ubaA&search=uri%20geller](http://www.youtube.com/watch?v=K_MkxI6ubaA&search=uri%20geller)  
<[http://www.youtube.com/watch?v=K\\_MkxI6ubaA&search=uri%20geller](http://www.youtube.com/watch?v=K_MkxI6ubaA&search=uri%20geller)>  
<http://www.youtube.com/watch?v=WmG4G6sdGoQ&search=uri%20geller>  
<<http://www.youtube.com/watch?v=WmG4G6sdGoQ&search=uri%20geller>>  
<http://www.youtube.com/watch?v=eg2oY-OWcy4&search=uri%20geller>  
< <http://www.youtube.com/watch?v=eg2oY-OWcy4&search=uri%20geller>>  
<http://www.youtube.com/watch?v=jBQD2uunYYY&search=uri%20geller>  
<<http://www.youtube.com/watch?v=jBQD2uunYYY&search=uri%20geller>>

If you are the content owner, you are receiving this email as verification that we have received your deletion requests.

Copyright © 2007 YouTube, Inc.

EXHIBIT C

----- Original Message -----

**From:** DMCA Notice

**To:** RationalResponse

**Sent:** Friday, March 23, 2007 2:46 PM

**Subject:** Video Removed: Copyright Infringement

## YouTube | Broadcast Yourself™

Dear Member:

This is to notify you that we have removed or disabled access to the following material as a result of a third-party notification by Explorologist LTD claiming that this material is infringing:

**James Randi exposes Uri Geller and Peter Popoff:** <http://www.youtube.com/watch?v=M9w7jHYriFo>

**Please Note:** Repeat incidents of copyright infringement will result in the deletion of your account and all videos uploaded to that account. In order to avoid future strikes against your account, please delete any videos to which you do not own the rights, and refrain from uploading additional videos that infringe on the copyrights of others. For more information about YouTube's copyright policy, please read the [Copyright Tips](#) guide.

If you elect to send us a counter notice, please go to our [Help Center](#) to access the instructions.

Please note that under Section 512(f) of the Copyright Act, any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

Sincerely,  
YouTube, Inc.

Copyright © 2007 YouTube, Inc.