

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NEW YORK UNIVERSITY,

Plaintiff,

– against –

JESSE FLORES d/b/a ATHEISTS EXPOSED; and  
YOUTUBE, INC.

Defendants.

Index No. \_\_\_\_\_  
ECF Case \_\_\_\_\_

**COMPLAINT**

New York University, by its attorney, Terrance J. Nolan, General Counsel, for its complaint against defendants Jesse Flores, doing business as Atheists Exposed, and YouTube, Inc., alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C §§ 1331 & 1338(a) because it involves a claim for infringement of copyright under Title 17 of the United States Code.

2. The Southern District of New York is the proper venue for this action because Defendants have committed the infringing acts in question in, *inter alia*, New York, New York, and venue is proper pursuant to 28 U.S.C. §§ 1391 (b) & 1400(a).

**PARTIES**

3. New York University (“NYU”) is a New York education corporation organized and operating under the laws of the state of New York, with an address at Bobst Library, 11<sup>th</sup> Floor, 70 Washington Square South, New York New York 10012.

4. Defendant YouTube, Inc. (“YouTube”) is a global digital media publishing company with offices at 75 9<sup>th</sup> Avenue, New York, NY 10011.

5. Defendant Jesse Flores, t/d/b/a Atheists Exposed (“Flores” or “Atheists Exposed”), has published video files in the State of New York, and has an address at 4330 Forest Ranch Way, Oceanside CA, 92057.

### **COUNT I - INFRINGEMENT OF COPYRIGHT**

6. Exposed Atheists and YouTube (collectively “Defendants”) have published a video at the URL contained in Appendix A to this Complaint (the “Work”). NYU is the copyright owner of exclusive rights under United States copyright law in and to the Work. Neither of the Defendants has any valid license, authorization, permission or consent to use or publish or distribute the Work, nor does the Defendant’s use of the Work fall into fair use or any other limitations on exclusive rights of copyright. The foregoing acts have been willful, intentional, and purposeful, and constitute direct infringement of NYU’s exclusive rights in the Work in violation of 17 U.S.C. § 106.

7. On or about May 3, 2016, in response to a takedown request directed to the Work pursuant to the Digital Media Copyright Act (“DMCA”), 17 U.S.C. § 512(c)(3), Defendants Flores and Exposed Atheists filed a “counter-notice” directed to the Work pursuant to § 512(g)(3) of the DMCA, which counter-notice is attached as Appendix A.

8. Plaintiff has reached out to Defendant Flores in an effort to amicably resolve this matter by urging him to remove the Work from YouTube and refrain from further publication thereof, based upon Plaintiff’s copyright ownership rights and other considerations.

9. Defendant Flores has refused to agree to withdraw his DMCA counter-notice referenced above.

10. Defendant YouTube asserts that its publishing activities regarding the Work fall within the “safe harbor” provisions of 17 U.S.C. § 512(c). As a result, YouTube asserts it is required by § 512 (g)(2)(B) to “replace” or republish the Work within 14 days of the date of the counter-notice.

**WHEREFORE**, Plaintiff prays for the following relief:

- a) that Defendant(s) be restrained and enjoined from any further use, publication, or distribution of the Work;
- b) for an award of money damages in such amount as may be permitted by law, including the maximum damages allowable under 17 U.S.C. § 504.
- c) for a permanent injunction prohibiting each Defendant from any further use, publication or distribution of the Work, in any media form or nature of any kind;
- d) for an award of attorney’s fees and costs of this action;
- e) and any other equitable or legal relief that the Court may deem appropriate.

Dated: New York, New York  
May 11, 2016

New York University  
Office of General Counsel  
Terrance J. Nolan, Esq., General Counsel


By:         /s          
Jeffrey Metzler  
Associate General Counsel  
70 Washington Square South  
New York, New York 10012  
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Of Counsel: Mark Righter  
Eric Rasmussen

# Appendix A

## Re: [3-1129000011671] New Copyright Counter-Notification

Yesterday at 23:56



We received the attached counter notification in response to a complaint you filed with us.

We're providing you with the counter notification and await evidence (in not more than 10 business days) that you've filed an action seeking a court order against the counter notifier to restrain the allegedly infringing activity. Such evidence should be submitted by replying to this email. If we don't receive notice from you, we may reinstate the material to YouTube.

If you have any questions, please contact [copyright@youtube.com](mailto:copyright@youtube.com)

Counter-Notification as follows:

Videos included in counter-notification:

- <http://www.youtube.com/watch?v=NJ9WQ4x8QSM>

Display name of uploader: exposedatheists

I was given permission to upload this from the admin. support from the Veritas Forum. They have the rights to this video.

I swear, under penalty of perjury, that I have a good faith belief the material was removed due to a mistake or misidentification of the material to be removed or disabled.

I consent to the jurisdiction of the Federal District Court for the district in which my address is located, or if my address is outside of the United States, the judicial district in which YouTube is located, and will accept service of process from the claimant.

Jesse Flores  
4330 Forest Ranch Way  
Oceanside, CA 92057 US  
[exposedatheists-9198@pages.plusgoogle.com](mailto:exposedatheists-9198@pages.plusgoogle.com)  
[REDACTED]