Happy ending? Suit over Barney parody is settled

By Dawn C. Chmielewski, Times Staff Writer
November 29, 2006

Barney the purple dinosaur may sing about how much he loves you, but his corporate masters don't care much for Stuart Frankel.

Lyons Partnership sent four threatening letters to a New York musicologist and computer repair technician who created a parody website that suggests Barney's affable public persona masks a secret double life. An image on the site depicts what the cute and cuddly Barney might look like offstage — with horns, sharp teeth, a pentagram and the devilish number 666 emblazoned on his chest.

Lyons last week dropped its claims against Frankel after he fought back with the help of the Electronic Frontier Foundation. The technology advocacy group assisted Frankel in filing a lawsuit accusing Barney's creators of using its copyrights and trademarks to curb free speech.

"It's not much, but it's mine. They're acting like bullies. They're doing this to other people, I'm sure," Frankel said. "I just wanted to call them on it."

Legal experts say the case is an example of a growing assault on fair use rights. Fair use is the legal doctrine that allows copyrighted work to be used as part of a parody — so long as it's used for noncommercial purposes, its use is limited to conjuring up the subject of the satire and it doesn't replace the market for the original.

Mark A. Lemley, a professor at Stanford Law School, said the Digital Millennium Copyright Act of 1998 created a process by which copyright holders could demand that a work be removed from a website. The simple threat can intimidate those who can't afford to go to court to fight for their rights, he said. And it's often enough to prompt Internet providers to block access to a site to avoid potential liability.
Service providers "have, under the law, no incentive to weed out the lousy complaints from the good ones," Lemley said. "Their incentive is to take everything down."

Frankel said he created the site, at [http://www.dustyfeet.com/evil/enemy.html](http://www.dustyfeet.com/evil/enemy.html), as an exercise in Web coding. He received letters from Lyons on Feb. 11, 2002, and again 10 days later, claiming his use of the Barney pictures was unlawful and demanding the images be removed immediately or Lyons would pursue legal remedies and contact his Internet service provider.

Frankel contacted the Electronic Frontier Foundation, which wrote a letter to Lyons' attorney calling the threats "baseless and a misuse of your copyrights."

Frankel didn't hear anything until October 2005 and June 2006, when he received nearly identical notices from Lyons to remove images of the purple dinosaur from his website. The foundation filed suit on behalf of Frankel in August to end the legal threats. In its complaint, the advocacy group said Lyons had a history of aggressively enforcing its intellectual property rights and had filed more than 77 suits in 20 states since 1998.

An out-of-court settlement was reached Nov. 21. Under the terms of the agreement, Lyons agreed to pay Frankel $5,000 and promised not to sue or make threats against Frankel or his Internet service provider.

Neither Allen, Texas-based Lyons nor its attorney, Matthew W. Carlin, returned calls.

"Aside from the fact that this is a great story about Barney the purple dinosaur who sings 'I love you, you love me' and yet his lawyers are out there spreading anything but love, there's a bigger point out there," said Fred von Lohmann, attorney for the San Francisco-based Electronic Frontier Foundation. "For every case like this we find out about, there are hundreds, perhaps thousands, of situations that go unnoticed where free speech is chilled off the Internet."

*dawn.chmielewski@latimes.com*

---

**MORE NEWS**

- [Afghan woman embodies reform](http://www.latimes.com/business/la-fi-afghan-woman-embody-reform-20061129,0,1839260.story) | **PHOTOS**

What's the real beauty of "Southern California"? View reader photos at Your Scene.