UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 26-3260

Caption [use short title]

Rapid Relief Team (RRT) Ltd.

v.

Cheryl Bawtinheimer

Motion for: motion pursuant to Circuit Rule 27.1(d) for injunction pending appeal pursuant to Fed. R. App. P. 8(a)(2)

Set forth below precise, complete statement of relief sought:

An order directing RRT, pending appeal, to withdraw its DMCA notices against the Fourth Video, returning the parties to the last peaceable uncontested status that preceded this controversy.

Alternatively, she asks the Court to expedite this appeal.

MOVING PARTY: Cheryl Bawtinheimer **OPPOSING PARTY:** Rapid Relief Team (RRT) Ltd.

☐ Plaintiff ■ Defendant

■ Appellant/Petitioner ☐ Appellee/Respondent

MOVING ATTORNEY: Marc J. Randazza **OPPOSING ATTORNEY:** Michael Graif

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Court- Judge/ Agency appealed from: Southern District of New York - Hon. Gregory H. Woods

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
■ Yes ☐ No (explain):

Opposing counsel's position on motion:
☐ Unopposed ■ Opposed ☐ Don't Know

Does opposing counsel intend to file a response:
■ Yes ☐ No ☐ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? ■ Yes ☐ No

Has this relief been previously sought in this court? ☐ Yes ■ No

Requested return date and explanation of emergency: as soon as possible. an injunction pending appeal is necessary due to ongoing loss of first amendment rights and harm to the intended audience and community.

Is the oral argument on motion requested? ■ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has the appeal argument date been set? ☐ Yes ■ No If yes, enter date:

Signature of Moving Attorney:

/s/ Marc J. Randazza **Date:** 11/13/2026 Service : ■ Electronic ☐ Other [Attach proof of service]

26-3260

In the

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

RAPID RELIEF TEAM (RRT) LTD.,

Plaintiff and Counterclaim-Defendant-Appellee,

v.

CHERYL BAWTINHEIMER,

Defendant and Counterclaim-Plaintiff-Appellant,

v.

BROWN RUDNICK LLP AND MICHAEL GRAIF

Counterclaim-Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York
No. 1:26-cv-07423-GHW
The Honorable Gregory H. Woods

APPELLANT'S MOTION FOR INJUNCTION PENDING APPEAL

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APPELLANT'S MOTION FOR INJUNCTION PENDING APPEAL

Appellant Cheryl Bawtinheimer moves under Fed. R. App. P. 8(a)(2) for an injunction pending appeal compelling Appellee Rapid Relief Team ("RRT") to withdraw its DMCA takedown notices directed at "Chapter 2 part 1 Rapid Relief Team – Why disaster relief?" (ECF No. 26-21)[1] ("Fourth Video") to return to the *status quo ante*. Appellees will oppose.

1.0 INTRODUCTION

Cheryl Bawtinheimer grew up in a cult now known as the Plymouth Brethren Christian Church ("PBCC").[2] A PBCC elder sexually abused her when she was a child. ECF No. 27-3 ¶¶ 4–5. She spent her life trying to escape from the PBCC. After her escape, she started the Get-a-Life Podcast ("GAL") on YouTube. *Id.* ¶ 6. The podcast's purpose is to create a community to aid those who leave the PBCC and to warn the public about the PBCC's practices. *Id.* ¶ 7.

The "Rapid Relief Team" is an organization PBCC established that provides disaster relief. ECF No. 7 ¶ 2. Bawtinheimer believes that it does more than that –it serves to whitewash the PBCC's reputation and to launder its nonprofit status. Bawtinheimer produced a series of videos criticizing the RRT and what she and other former members of PBCC find hypocritical about it and its parent organization.

[1] All "ECF No." references in this Motion are to district court docket entries.
[2] Formerly known as the Exclusive Brethren.

RRT wanted to censor Bawtinheimer, so RRT sent DMCA notices to YouTube over five of the videos. RRT claimed that any time the videos displayed RRT's cartoon bird logo ("RRT Logo"), this constituted copyright infringement. Transcript of November 5, 2026, hearing on motion for preliminary injunction ("Hr'g Tr."), ECF No. 109 (attached as **Exhibit 1**), at 7:4–12:2.

This motion is about the Fourth Video in Bawtinheimer's series. The title alone ("Rapid Relief Team - Why Disaster Relief?") previews that this is commentary about RRT. The video compares RRT to the disaster-relief arm the Church of Scientology built as a public relations exercise. Bawtinheimer talks about Scientology's strategy and then segues to RRT, showing its website with the RRT Logo displayed, for six seconds. RRT used that six-second shot as a pretext to send a DMCA takedown. It did the same for four other videos. In response, YouTube removed all five videos and penalized Bawtinheimer's YouTube channel with a strike for each, jeopardizing her entire platform use.

The district court agreed with Bawtinheimer on nearly every issue in her motion for a preliminary injunction to restore the five videos. It ordered RRT to withdraw its takedown notices for the other four videos RRT targeted. ECF No. 107 (attached as **Exhibit 2**). But it allowed the Fourth Video to remain censored because the District Court erred in holding that transformativeness was not clear enough.

Hr'g Tr. at 27:1–9, 33:4–14. The district court denied Bawtinheimer's request for an injunction pending appeal. ECF No. 113 (attached as **Exhibit 3**).

What made it "closer" was the district court's error in focusing only on what the narrator said during the six seconds the logo was on screen, rather than on the ten minutes of commentary around it, or the greater context of the series itself. A question that razor close is, almost by definition, a *serious question* going to the merits. In light of every other injunction and fair use factor weighing in Bawtinheimer's favor, that serious question is sufficient to warrant an injunction pending appeal. The Court should *watch the videos*[3]; it will become apparent that this could be nothing other than fair use.

2.0 RELIEF REQUESTED

Bawtinheimer requests an order directing RRT, pending appeal, to withdraw its DMCA notices against the Fourth Video, returning the parties to the last peaceable uncontested status that preceded this controversy. Alternatively, she asks the Court to expedite this appeal.

[3] Although the Fourth Video is the only one at issue here, the fact that the videos are part of a series is important. The court need not watch the two-hour video, but the others are only a few minutes long. The Panel should watch them.

3.0 FACTUAL AND PROCEDURAL BACKGROUND

3.1 The PBCC and its Charity, RRT

The PBCC is a wealthy cult with strong central control over its members' lives. ECF No. 26 ¶ 1. Members who leave the cult, whether voluntarily or through excommunication, do not just lose their religion. They are shunned and regarded as dead by spouses, parents, children, and friends. *See* ECF Nos. 26-1 & 26-2. These people are marooned, outcasts from everyone they ever knew, desperate for help.

Some "leavers" speak out but suffer retaliation. The PBCC has a history of trying to censor such critics with abusive litigation, including copyright lawsuits. *Bible & Gospel Trust v. Wyman*, 354 F. Supp. 2d 1025 (D. Minn. 2005). That case resulted in the defendant surrendering under financial pressure, and transferring his criticism websites to the cult and agreeing never again to publish about them.[4] ECF No. 26-25. Later, the PBCC's publishing arm sued a retired Scottish academic for copyright infringement after he published short extracts and quotes from the cult's internal sermons and teachings as part of criticism about the cult. ECF No. 26-27. The PBCC has been conditioned to believe that it can shut down criticism with unsupportable copyright claims because history shows that its bullying works.

[4] Fee awards for defendants under 17 U.S.C. § 505 are uncertain, thus defendants in this situation are presented with the choice of surrendering their free speech rights or facing financial ruin.

Relevant to the RRT, the PBCC's character came to the attention of the UK's charity regulator. In 2012, the Charity Commission refused to register a PBCC trust as a charity because the PBCC had not shown a sufficient public benefit. ECF No. 26-14 ¶¶ 5–6. In 2014, it found "elements of detriment and harm" in the PBCC's practices, including its treatment of those who leave and children within the cult. *Id.* ¶¶ 91–96. In finally registering the trust, the Commission credited the PBCC's engagement with the wider community, "including through disaster relief." *Id.* ¶ 78. That was RRT's doing. Bawtinheimer and other former members of the PBCC contend that RRT only exists to whitewash the PBCC's reputation and to put a cute and helpful face on an otherwise darker organization. The RRT Logo is a cartoon kookaburra bird it uses on its on its public relations materials. ECF No. 31 at 6, 8; ECF No. 7 ¶¶ 4, 12. It is the symbol of RRT and how one identifies it.

3.2 Get a Life ("GAL") and Its Series on RRT

PBCC escapees rely on the GAL podcast. ECF No. 36-2 ¶¶ 8, 17–19; ECF Nos. 36-3, 36-9. The district court credited that evidence, finding that many former members "rely on the podcast as a resource." Hr'g Tr. at 34:2–6.

The Fourth Video is one of five in an integrated series of ten video stories about RRT's branding, slogans, and public image. ECF No. 112-1; ECF No. 26 ¶¶ 34–57. The Fourth Video is all about comparing the better-known disaster relief campaigns by Scientology and how the PBCC uses their same playbook.

3.3 The Fourth Video

The Fourth Video is 590 seconds long, and discusses RRT's focus on highly visible disaster relief to rehabilitate the PBCC's image, "similar to charity organizations created by the Church of Scientology." Hr'g Tr. at 10:15–22; ECF Nos. 26 ¶ 54; 112-1. The narration of the video is as follows:

> *Why does the Plymouth Brethren Christian Church run a disaster relief charity? And why would they lie so egregiously about its accomplishments? To understand that, let's take a diversion and look at the history of another highly controversial church and its disaster relief charity, the Church of Scientology and its volunteer ministers disaster response team.*

ECF No. 26-21. After spending 4 minutes on Scientology and its disaster relief arm, *id.*, the speaker states at 04:40—just before the RRT website appears for 6 seconds:

> *Let's do a quick summary of the tactics used by the Scientologists over the years to gain their valuable tax-free charitable status. One, they rebranded Scientology as a Christian church. Two, they intensively lobbied politicians. Three, they stalked and harassed IRS officials. And four, finally, they set up a highly visible disaster relief charity to give the impression that the Church of Scientology operates for the public benefit rather than being a private club or business.*

Id. Then the speaker states the following while the alleged infringement occurs:

"So how does this connect with the Plymouth Brethren Christian Church and its Rapid Relief Team?"



The speaker spends the rest of the video (about 4.5 minutes) explaining what led the PBCC to set up RRT and critiquing it for using the same tactics as Scientology. *Id.*

3.4 The Takedown Campaign

RRT's Jan. 28, 2026, notice claims that showing the RRT Logo for *six seconds*, in the Fourth Video, while it transitions to discussing RRT's mission, is "copyright infringement." It shows the RRT website, where the logo appears above the words "Compassion in action–supporting communities in need." ECF Nos. 26 ¶ 52-53; 112-1; 31 at 9–10.

YouTube removed the video in response to the DMCA notice (ECF No. 31 at 10), placed a strike on the GAL channel (ECF No. 36-6), and will not reinstate the video unless the DMCA notice is withdrawn. The Fourth Video was removed from the "Rapid Relief Team – Exposed" channel, which carried two strikes (both from the RRT censorship campaign). ECF No. 31 at 10; Hr'g Tr. at 13:11–14. If an account receives three strikes within 90 days, the "account, along with any associated channels, is subject to termination." ECF No. 36-5.

3.5 Proceedings in the District Court

RRT sued Bawtinheimer for copyright infringement. She asserted counterclaims for a declaration of fair use and for relief under 17 U.S.C. § 512(f), and sought a preliminary injunction. ECF Nos. 26, 27. The District Court partially granted and partially denied Bawtinheimer's motion for a preliminary injunction on

November 5, 2026. It ordered RRT to withdraw its DMCA notices as to four of the videos. Hr'g Tr. at 37:18–38:4. As to the Fourth Video, it found the question "closer," describing the six-second display of the RRT Logo as "more akin to 'an illustrative aid.'" *Id.* at 27:1–9, 33:8–14. It then denied a motion for injunction pending appeal. ECF Nos. 112, 113.

4.0 ARGUMENT

4.1 An Injunction Pending Appeal is Proper

The requested relief concerns only the Fourth Video; Bawtinheimer prevailed as to the other four videos. However, the sole denial leaves the series ineffective with a gap in it where the Fourth Video once sat. That video deserves to be published.

Fed. R. App. P. 8(a)(2) authorizes an injunction pending appeal. This Circuit considers: (1) whether the movant will suffer irreparable injury absent the relief; (2) whether another party will suffer substantial injury if it is granted; (3) whether the movant has demonstrated "a substantial possibility, although less than a likelihood, of success" on appeal; and (4) the public interests that may be affected. *Hirschfeld v. Bd. of Elections*, 984 F.2d 35, 39 (2d Cir. 1993). The factors operate on a sliding scale: "more of one factor excuses less of the other." *In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007) (citation omitted); *Thapa v. Gonzales*, 460 F.3d 323, 335 (2d Cir. 2006) ("*some* possibility of success" may suffice where

the balance of hardships tips decidedly). We are here only on the third *Hirschfeld* factor, substantial possibility.

The district court treated its preliminary injunction ruling as making relief pending appeal "highly unlikely." ECF No. 113. That conclusion is not foregone. This Court reviews a district court's legal rulings *de novo* and its ultimate denial of a preliminary injunction for abuse of discretion. *See N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc*., 883 F.3d 32, 36 (2d Cir. 2018). The merits showing required is diminished where the other factors are stronger. *In re World Trade Ctr.*, 503 F.3d at 170. The district court found that irreparable harm, the balance of equities, and the public interest all strongly favor Bawtinheimer. ECF No. 113; Hr'g Tr. at 36:16–37:17. With the scale tipped that far, a substantial *possibility* of success on the merits is enough to warrant injunctive relief, and the district court's own description of the Fourth Video as a "closer question" on the issue of transformativeness establishes the existence of a substantial possibility of success.

4.2 The Relief Sought is *Prohibitory*

Although an order to withdraw DMCA notices compels action, this does not make it a *mandatory injunction.* "[T]he proposed injunction's effect on the status quo drives the standard," and the *status quo* is "the last actual, peaceable uncontested status which preceded the pending controversy." *N. Am. Soccer League, LLC v. U.S. Soccer Fed'n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018) (quoting *Mastrio v. Sebelius*, 768

F.3d 116, 120 (2d Cir. 2014) (per curiam)). Here, the *status quo* was the Fourth Video being uncensored. ECF Nos. 27-1; 31 at 10. Withdrawing the DMCA notice returns the parties to the last actual, peaceable uncontested status.

Decisions within this Circuit support the conclusion that the relief sought is a prohibitory injunction. "Preserving the status quo is not confined to ordering the parties to do nothing: it may require parties to take action[.]" *Mastrio*, 768 F.3d at 120–21. And "[w]here a defendant has altered the status quo, exposing a plaintiff to irreparable harm, the prohibitory standard properly applies, and may require that the defendant take action to restore the status quo pending a decision on the merits." *Williamson v. Maciol*, 839 F. App'x 633, 635 (2d Cir. 2021) (summary order). In *Biosafe-One, Inc. v. Hawks*, an injunction compelling a web host to restore a non-infringing website was "necessary to return defendants to the position they occupied before plaintiffs filed the DMCA notices." 524 F. Supp. 2d 452, 468–69 (S.D.N.Y. 2007). *Rag & Bone Holdings, LLC v. Miramar Brands Grp., Inc.*, ordered a party to issue a remedial notice of non-interference in a trademark matter due to "serious questions on the merits of Plaintiffs' declaratory judgment claim," *i.e.*, the prohibitory standard. 2025 U.S. Dist. LEXIS 249922, at *2–5 (S.D.N.Y. Dec. 3, 2025). *Mastrio* itself treated an order restoring terminated Medicare home-health benefits as preserving the *status quo*. 768 F.3d at 120–21. Withdrawing a DMCA

notice to remove a block on publication is less of a burden on the enjoined party than all the efforts, bells, and whistles that come with restoring health coverage.

There is thus at least a "substantial possibility" that this Court will agree that an injunction requiring the withdrawal of an abusive DMCA notice is a prohibitory injunction compelling restoration of the last peaceable uncontested status.

4.3 Substantial Possibility of Meeting the Prohibitory Standard

Under the prohibitory standard, Bawtinheimer needs to show only a likelihood of success, or sufficiently serious questions going to the merits with a balance of hardships tipping in her favor. *Citigroup Glob. Mkts. Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010); *Consumers Union of U.S., Inc. v. Gen. Signal Corp.*, 724 F.2d 1044, 1048 (2d Cir. 1983).

The District Court already found a significant likelihood of irreparable harm and that the balance of equities and public interest tip *decidedly* in Bawtinheimer's favor. *See* Hr'g Tr. at 33:15–37:17. There is a substantial possibility that this Court will disagree with that "close call" on fair use. Moreover, Bawtinheimer disagrees that the call is close call; a fair use is apparent from the context beyond just the six seconds of the video, as the Court will see when watching. It is even more apparent in the context of the full series, which is in the record.

4.4 There is a Substantial Possibility of Success

If the heightened mandatory injunction standard correctly applies (it should not), there is *still* a substantial possibility that this Court will find a "clear or substantial likelihood of success." *Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 34–35 (2d Cir. 1995).

The district court found the second fair use factor under 17 U.S.C. § 107 (nature of the work) neutral and that the third (amount and substantiality) and fourth (effect on the market) factors *strongly* favor fair use for every one of the five videos that RRT attacked, including this Fourth Video. The district court said, as to the first factor (purpose and character of the use) that there was a "closer question" when it comes to transformativeness. Hr'g Tr. at 27:1–9, 33:4–14. The district court's analysis as to the Fourth Video was erroneously narrow, as its reasoning seemed to be limited to only considering what was said during the precise six seconds RRT's website was shown, without any surrounding context. That is not how fair use works. Fair use is a mixed question of law and fact, *Blanch v. Koons*, 467 F.3d 244, 250 (2d Cir. 2006), and no deference is required to be paid to a legal error.

4.5 Factor One: Criticism

RRT argued that both parties use the RRT Logo "to identify RRT." ECF No. 31 at 19–20. True. That is the *mechanism* of Bawtinheimer's use, not its *purpose*. The RRT Logo was made to identify RRT to the public and to attract support. The

Fourth Video uses it nominatively and as the subject of criticism and commentary about RRT. "[I]t is transformative to take a photograph initially used to simply identify someone or show them in a positive light and use it in a critical manner." *Yang v. Mic Network, Inc.*, 405 F. Supp. 3d 537, 544–45 (S.D.N.Y. 2019) (collecting cases), *aff'd*, 2022 U.S. App. LEXIS 8195 (2d Cir. Mar. 29, 2022). A logo identifies an organization the same way a headshot identifies a person.

Fair use includes uses "to critique, or otherwise *comment on*, the original, or *its author*." *Romanova v. Amilus Inc.*, 138 F.4th 104, 119 (2d Cir. 2025) (emphasis added). The law "imposes no requirement that a work comment on the original or its author in order to be considered transformative," and reproduction is fair where the altered purpose is "evidenced by *surrounding commentary or criticism*." *Otto v. Hearst Commc'ns, Inc.*, 345 F. Supp. 3d 412, 427 (S.D.N.Y. 2018) (citations omitted) (emphasis added). The law does not say that the commentary or criticism must be during, and only during, the six seconds the logo appears on screen. A use is transformative when it "serves to illustrate criticism, commentary, or a news story about that work." *Level 12 Prods., LLC v. Mediaite, LLC*, 812 F. Supp. 3d 363, 370 (S.D.N.Y. 2025) (quoting *Barcroft Media, Ltd. v. Coed Media Grp., LLC*, 297 F. Supp. 3d 339, 352 (S.D.N.Y. 2017)). Fair use is found where a screenshot of or excerpt from the subject is the vehicle of the criticism. *Shaykhoun v. Daily Mail*, 2026 U.S. Dist. LEXIS 40950, at *15–17 (S.D.N.Y. Feb. 26, 2026); *Clark v. Transp.*

Alternatives, Inc., 2019 U.S. Dist. LEXIS 46274, at *7–12 (S.D.N.Y. Mar. 18, 2019) (cropped screenshot reproducing a news photograph in full, used to criticize the article, was fair use); *In re DMCA Section 512(h) Subpoena to YouTube (Google, Inc.)*, 581 F. Supp. 3d 509, 520 (S.D.N.Y. 2022) ("physical changes are not required for a new use to be transformative"); *NXIVM Corp. v. Ross Inst.,* 364 F.3d 471, 477–78, 482–83 (2d Cir. 2004) (affirming denial of injunction sought against critics who quoted the organization's own materials, even assuming bad faith).

The district court's sole concern was that, during the six seconds where the RRT Logo is displayed, the narrator was introducing the video's comparison of Scientology's charitable organizations to RRT without specifically criticizing RRT's marketing materials, such that the screenshot looked more like "an illustrative aid" than criticism. Hr'g Tr. at 27:1–9. That is a very novel narrowing construction of fair use analysis that can not stand. The video's message comparing RRT to Scientology *is the commentary and criticism*. The speaker had just listed the four tactics Scientology used to win tax-free status, ending with "a highly visible disaster relief charity to give the impression that the Church of Scientology operates for the public benefit." The narrator then shows the PBCC's disaster relief charity's website and discusses how Scientology's tactics compare with the PBCC's disaster relief charity. The next four and a half minutes then complete the comparison.

The entire video, *and the series it is part of*, criticizes RRT as a front used to whitewash the PBCC's image, complete with a cute cartoon bird. ECF No. 26 ¶ 54. A new rule that the criticism must occur at the precise moment a logo is on screen, and only then, makes fair use dependent on a court substituting its editorial judgment for that of the author of the video. Courts should not "take a position on the editorial decisions made by Defendant." *Otto*, 345 F. Supp. 3d at 431.

The district court's position, if not reversed, means that a food critic comparing Burger King and McDonald's hamburgers, showing the golden arches for six seconds, then saying "now let's compare this to McDonald's," McDonald's would have a "close call" if it sued for copyright infringement. Comparative advertising and comparative *journalism* can not survive in this Circuit if this is not reversed. The Fourth Video is comparative journalism, and the denial was wrong.

Of course, just as those six seconds cannot be judged in isolation from the rest of the Fourth Video, the Fourth Video itself should not be judged separate and apart from Bawtinheimer's complete series on RRT. The critical character of a video is "apparent from the broader context of [Movant's] YouTube Channel," *In re DMCA Section 512(h) Subpoena*, 581 F. Supp. 3d at 520. The district court read the display of the RRT Logo in the first video as a critique of RRT's branding because "[t]he logo is the branding." Hr'g Tr. at 38:20–21. The same logo, on the same homepage,

under the same slogan, does not lose that meaning when it appears in another installment of the same series.

4.6 Factor Two: The Nature of the Copyrighted Work

The district court found this factor neutral because the RRT Logo is creative but published. Hr'g Tr. at 27:24–28:18. While its creativity is a matter of debate, given that it is clip art, this factor is not important here. Whatever its creativity, this factor carries little weight. In any event, this factor "is rarely found to be determinative," *Otto*, 345 F. Supp. 3d at 430, and is of limited usefulness in transformative use cases. This favors Bawtinheimer or is (at worst) neutral.

4.7 Factor Three: Amount and Substantiality

The third factor asks "whether the quantity and value of the materials used are reasonable in relation to the purpose of the copying." *Richardson v. Townsquare Media, Inc.*, 174 F.4th 299, 309 (2d Cir. 2026); *Kelley v. Morning Bee, Inc.*, 2023 U.S. Dist. LEXIS 171734, at *44 (S.D.N.Y. Sep. 26, 2023). The district court held that this factor "weighs in favor of fair use with respect to all of the videos at issue here." The logo "appears for only 6 to 20 seconds in four of the five videos." Hr'g Tr. at 28:22–23, 30:5–13.

RRT complains that the entire logo was shown, but what was Bawtinheimer to do? Show half? "[U]sing a protected work in entirety constitutes fair use when the purpose of the use requires it." *Otto*, 345 F. Supp. 3d at 431 (citing *Bill Graham*

Archives v. Dorling Kindersley Ltd., 448 F.3d 605, 613 (2d Cir. 2006)); *see also Swatch Grp. Mgmt. Servs. Ltd. v. Bloomberg L.P.*, 756 F.3d 73, 90 (2d Cir. 2014) (copying "the entirety of a work is sometimes necessary to make a fair use"). A logo is an indivisible item; a cropped logo would not make any sense. *Bouchat v. Baltimore Ravens Ltd. P'ship*, 737 F.3d 932, 943–44 (4th Cir. 2013) (complete Baltimore Ravens team logo); *Clark*, 2019 U.S. Dist. LEXIS 46274, at *12 (entire photograph reasonable because defendant "had to use the Photograph itself").

RRT itself describes the uses at issue as "a small fraction of each video, in some cases less than one percent of runtime." ECF No. 31 at 7. The RRT Logo is on RRT's website. Showing a screenshot of the website is a permissible use. Because RRT's entire website is copyrighted, RRT's reasoning would require every journalist to blur every screenshot of every website while criticizing its owner. This neuters commentary altogether. If that were not the case, all a company would need to do in order to ensure that it cannot be criticized would be to use its logo as a visible watermark on everything it produces. Criminals who do not want to be photographed leaving the courthouse no longer need to shield their faces; they need only wear t-shirts with original artwork on them, and then they can censor the news broadcast showing them. That cannot be the law.

4.8 Factor Four: The Use Does Not Usurp the Market

The fourth factor asks whether the use "usurps the market for the first by offering a competing substitute," not whether it harms the owner by "devaluing it through parody or criticism." *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 11 F.4th 26, 48 (2d Cir. 2021), *aff'd*, 598 U.S. 508 (2023); *Bill Graham*, 448 F.3d at 614–15 ("a copyright holder cannot prevent others from entering fair use markets"). This is the most important factor, and the district court held that, as to all five videos, it "weighs strongly in favor of fair use because the challenged uses do not offer a competing substitute for the copyrighted work." Hr'g Tr. at 31:13–15.

A rights holder "has no right to demand that users take a license unless the use that would be made is one that would otherwise infringe." *Kelley*, 2023 U.S. Dist. LEXIS 171734, at *47 (quoting *Fox News Network, LLC v. TVEyes, Inc.*, 883 F.3d 169, 180 (2d Cir. 2018)). The only harm RRT claimed is fewer donations "by appearing in connection with GAL's continued criticism of RRT." ECF No. 31-6 at 3. If true, then that is harm from *criticism*, not piracy of a copyrighted work. This is what *Romanova* described: an owner whose interest "is not to exploit the value of the copyright through public dissemination, but to suppress the revelation of matters of public importance that are displeasing to the rights holder." 138 F.4th at 117 n.9.

There is no secondary market for this logo. RRT never licensed the logo. Hr'g Tr. at 37:7–12. A television report on this lawsuit displayed the logo five separate

times. ECF No. 36-7. Journalists may freely show the logo to report on RRT. There is no licensing market for showing it to criticize RRT, as Bawtinheimer does.

Every factor favors fair use. There is a strong likelihood that Bawtinheimer will succeed on her claim for a declaration of non-infringement as to this video.

4.9 The Harm is Irreparable; No Judgment Can Undo It

The Fourth Video is currently censored, ECF No. 26-19 at 2, and the YouTube strike remains in effect. ECF No. 36-6; ECF No. 36-5 at 2–4. But the censorship is the glaring harm that must be remedied. An audience that does not hear the speech now will not have its lack of knowledge restored by a judgment later. *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114–15 (2d Cir. 2005). And the loss of a platform account, and the goodwill built in it, is irreparable harm. *Sound Around Inc. v. Shenzhen Keenray Innovations Ltd.*, 2022 U.S. Dist. LEXIS 227247, at *6–9 (E.D.N.Y. Dec. 18, 2022); *Rag & Bone*, 2025 U.S. Dist. LEXIS 249922, at *4–5; *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004); *Biosafe-One*, 524 F. Supp. 2d at 468. The audience for this speech, including people who have left the PBCC, cannot be restored by a later judgment. ECF No. 36-2 ¶¶ 8, 15–19.

Bawtinheimer made "the strong showing of irreparable harm required for mandatory preliminary injunctive relief." Hr'g Tr. at 36:20–22. That harm is "the continuing loss of her ability to communicate the information in those videos to her intended audience," which "[a]n eventual judgment in her favor cannot restore," and

"[t]he existing copyright strikes provide additional support for a finding of irreparable harm." *Id.* at 33:25–34:2, 34:6–8, 35:9–10.

4.10 The Balance of Hardships and Public Interest Favor Relief

The district court found "[t]he balance of equities and the public interest also favor an injunction," noting that RRT "presented no evidence that the organization receives any licensing fee for the use of the work" and "[t]he public interest in protecting the lawful criticism and commentary further favors an injunction." Hr'g Tr. at 37:6–7, 37:11–12, 37:15–17. RRT will lose nothing by the Fourth Video being reinstated. What *could* it lose in the context of the harms addressed by copyright law? This is a ten-minute video discussing RRT, in which its website flashes on camera for *six seconds* while Bawtinheimer's commentary compares RRT to Scientology. There is nothing on RRT's side of the scale. That alone would allow this injunction to issue even if the likelihood of success were weaker than it is. *In re World Trade Ctr.*, 503 F.3d at 170; *Thapa*, 460 F.3d at 335.

Relief will not deprive RRT of any remedy awaiting it if it ultimately wins. If RRT prevails, it can seek injunctive relief and damages, and it can always send a new notice, after which YouTube will take the video down again. The district court's order says as much about the four other videos. Hr'g Tr. at 38:4–8.

"The public's interest in free expression . . . is significant and is distinct from the parties' speech interests." *Salinger v. Colting*, 607 F.3d 68, 82 (2d Cir. 2010);

see Triangle Publ'ns, Inc. v. Knight-Ridder Newspapers, Inc., 626 F.2d 1171, 1178 (5th Cir. 1980). Someone deciding whether to join the PBCC, or how to leave it, needs the information in the Fourth Video *now*, not after trial.

The only open question as to the Fourth Video is whether "the connection between the copyrighted work and the accompanying criticism" is clear enough. Hr'g Tr. at 33:9–11. Every other factor the district court weighed is neutral or favors relief, and under the sliding scale, that lowers the showing required on the one question that remains. *In re World Trade Ctr.*, 503 F.3d at 170.

5.0 CONCLUSION

Bawtinheimer asks for an injunction pending appeal compelling RRT to withdraw its DMCA notices directed at the Fourth Video, restoring the status quo that existed before RRT's notice, or, in the alternative, to expedite this appeal.

Dated: November 13, 2026.

Respectfully submitted,

RANDAZZA LEGAL GROUP, PLLC

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify that:

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 5,154 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionately spaced typeface using Microsoft Word Times New Roman 14-point font.

Date: November 13, 2026.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza
Marc J. Randazza

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: November 13, 2026.

RANDAZZA LEGAL GROUP, PLLC

/s/ Marc J. Randazza
Marc J. Randazza

INDEX OF EXHIBITS

Exhibit	Date	Document
1	November 5, 2026	Transcript of Preliminary Injunction Hearing (ECF No. 109)
2	November 5, 2026	Order on Motion for Preliminary Injunction (ECF No. 107)
3	November 11, 2026	Order Denying Motion for Injunction Pending Appeal (ECF No. 113)

Exhibit 1

November 5, 2026 Hearing Transcript
(ECF No. 109)

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U.S. District Court

Southern District of New York

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Case Number:	1:26-cv-07423-GHW
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Document Number:	109

Docket Text:
TRANSCRIPT of Proceedings re: CONFERENCE held on 11/5/2026 before Judge Gregory H. Woods. Court Reporter/Transcriber: Stefannie Hotaling, (212) 805-0336. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/30/2026. Redacted Transcript Deadline set for 12/10/2026. Release of Transcript Restriction set for 2/8/2027..(Moya, Goretti)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

RAPID RELIEF TEAM (RRT) LTD.,

Plaintiff,

v. 26 Civ. 7423 (GHW)

CHERYL BAWTINHEIMER,

Defendant.

Conference

----------x

New York, N.Y.
November 5, 2026
1:00 p.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

BROWN RUDNICK LLP
Attorneys for Plaintiff
BY: MICHAEL R. GRAIF
KATHERINE DEARING

RANDAZZA LEGAL GROUP, PLLC
Attorneys for Defendant
BY: MARC JOHN RANDAZZA
JAY MARSHALL WOLMAN
ALEX JAMES SHEPARD

(Case called)

THE COURT: I'll begin by taking appearances from the parties. If there's more than one lawyer on the line for either side, I'd like the principal spokesperson to identify him or herself and the members of their team other than having each lawyer introduce themselves individually. Let me start with counsel for plaintiff. Who's on the line for plaintiff?

MR. GRAIF: Hi, your Honor. This is Michael Graif for plaintiff Rapid Relief Team and counterclaim defendants, Brown Rudnick and myself. And with me on the line is Katherine Dearing.

THE COURT: Good. Thank you very much. Is counsel for defendant on the line?

MR. RANDAZZA: Yes, Judge Woods. This is Mark Randazza, I will be speaking for Ms. Bawtinheimer. Observing are my colleagues, Jay Wolman and Alex Shepard.

THE COURT: Thank you. Let me begin with a few brief comments about the rules that the parties and anyone else who may have dialed into this conference must follow. First, I'll just remind everyone that this is a public proceeding. Any member of the public or press may dial into this conference to listen to it. So please keep that possibility in mind. Second, please state your name each time that you speak. You should state your name each time that you speak regardless of whether you've spoken previously. That will help our court

reporter do her job.

Third, keep your phones on mute at all times unless you are intentionally speaking to me or to the representative of a party. So any person who may have dialed into this conference must affirmatively mute their phones and keep their phones in the mute function unless and until they are speaking to the Court or a representative of a party. Fourth, please comply with instructions from our court reporter that will help the court reporter do her job.

And finally, I am ordering that there be no recording or rebroadcasting of all or any portion of this conference. Again, I reiterate, there may be no recording or rebroadcasting of all or any portion of this conference. As I just noted, there is a court reporter that's transcribing these proceedings. That can be obtained from the court reporter. That is the appropriate record of the proceedings today. Recordings are not permitted.

Good. So before we proceed, counsel for each of the parties, let me just make sure that each of you understand the instruction that I've just provided. Counsel for plaintiff?

MR. GRAIF: Yes, I do, your Honor. Michael Graif.

THE COURT: Thank you. Counsel for defendant.

MR. RANDAZZA: Mark Randazza. Yes, I understand, your Honor.

THE COURT: Good. Thank you. So with that, first,

let me apologize for the late start. I appreciate the parties' indulgence. I had a criminal matter scheduled at noon that we thought would be a short status conference that turned into instead a guilty plea and related proceedings. So it just took more time than we had planned. I appreciate your indulgence as did the parties to that criminal proceeding appreciate it, the fact that we were able to complete that work. So thank you very much. I apologize again for the delay.

So counsel, we are here to talk about the application for a preliminary injunction injunctive relief that has been made by the defendant. I've reviewed all of the materials that have been submitted to the Court in connection with this application. When I say the Court, I mean me and the court in California. So I've seen all of those materials. I'm going -- I have a couple of brief questions, but I believe I have a view regarding the parties' positions based on your written submissions to the Court. Let me ask a couple of brief introductory questions, and then I will ask if there's anything that either party wishes to add to your written submissions in connection with your application for preliminary injunctive relief.

But first, I want to hear from each of the parties to confirm that there is no other evidence that either party wishes to present to the Court in connection with this application. Counsel for plaintiff, is there any additional

evidence that you wish to present to the Court?

MR. GRAIF: This is Michael Graif, your Honor. No. There is not in connection with this motion.

THE COURT: Thank you. Counsel for defendant.

MR. RANDAZZA: Mark Randazza. No, your Honor. Thank you.

THE COURT: Good. Thank you very much. So I've reviewed the factual record that the parties have presented to the Court. I do not understand there to be factual disputes that the parties wish for the Court to resolve in the record here in order to resolve this motion. The facts seem to be largely not in dispute.

Let me turn to each of the parties in turn. I'll start with counsel for plaintiff -- I'm sorry. I'll start with counsel for defendant, the movant. Counsel, is there anything that you wish to add to your written submissions in connection with this application?

MR. RANDAZZA: No, your Honor. I'm happy to answer any questions, but I think we've presented it thoroughly.

THE COURT: Good. Thank you very much. Counsel for plaintiff.

MR. GRAIF: This is Michael Graif, your Honor. There's nothing I wish to add, but there are some points I wish to emphasize. So I'm not sure how -- just directly answering your Honor's question, the answer would be no.

THE COURT: Good. Thank you. Fine. So I think that I -- thank you. Good. So I've read the parties' submissions. I believe that I'm ready to rule on the application -- let -- I just invite you to place your phones on mute as I do so. And bear with me for just a moment.

Good. So I've reviewed the materials submitted in connection with defendant and counterclaim plaintiff Cheryl Bawtinheimer's motion for preliminary injunction at Dkt. No. 7 ("FAC"); Dkt. No. 26 ("Counterclaim"); Dkt. No. 27 ("Motion"); Dkt. No. 31 ("Opposition"); Dkt. No. 36 ("Reply"); Dkt. No. 39 ("Objections to reply"); Dkt. No. 98 (Defendant's Supplemental Briefing"); Dkt. No. 104 ("Plaintiff's Supplemental Briefing"); Dkt. No. 105 ("Graif Declaration"). I'm prepared to rule on it. Ms. Bawtinheimer's motion for a preliminary injunction is granted in part.

I, Background; A, Facts. Plaintiff and counterclaim defendant Rapid Relief Team (RRT) Ltd. ("RRT") is a charitable organization founded in 2013 by Plymouth Brethren Christian Church (the "PBCC"). FAC Paragraph 2. RRT describes itself as a "global charitable relief organization offering compassionate support to communities impacted by national disasters and humanitarian crisis." *Id.* RRT uses a stylized bird logo known as the "RRT Cookie Bird" or "Cookie the Kookaburra" (the "Copyrighted work") on its website and on a variety of goods including promotional materials. *Id.* Paragraphs 1, 12, 16.

RRT alleges that the copyrighted work was created in 2019 and that it acquired the copyright by assignment on September 9, 2025. *Id.* paragraphs 3-4, 14.

Ms. Bawtinheimer is a former member of the PBCC. Dkt. No. 27-3 paragraph 4. After leaving PBCC, Ms. Bawtinheimer started the "Get-A-Life Podcast" on YouTube with other former members. *Id.* paragraph 6. She created the podcast "To show solidarity with other former PBCC members," "to try and create a community that can act as a support network for those on who leave," and "to comment upon the PBCC to warn the public about this organization." *Id.* paragraph 7. Ms. Bawtinheimer publishes videos on two YouTube channels, "Get-A-Life podcast," and "Rapid Relief Team - Exposed." Dkt. No. 36-2 paragraph 10. Some of those videos criticize RRT and its relationship with PBCC. Counterclaim paragraphs 37, 42, 49, 50, 56-57.

This dispute concerns five videos that display RRT's copyrighted work, some of the videos were posted on both of Ms. Bawtinheimer's YouTube channels. Dkt. No. 31 at 4-5. The first video titled "Lindy expresses her concern regarding the Plymouth Brethren Christian Church's RRT charity," is approximately five minutes long. Dkt. No. 27 at 6-7; Dkt. No. 26-15. The video features Lindy Jacomb, a former member of the PBCC. Ms. Jacomb explains that former members "find it so upsetting to see the Rapid Relief Team's activities and particularly their branding and promotional material" because

"so much of what the Rapid Relief Team say that their values and activities are just seems to be in such direct contradiction to what we have experienced."

At approximately 0:52 seconds, the video displays a screenshot of RRT's website featuring the copyrighted work above the words "Community | Compassion | Support" and the statement "Compassion in action - supporting communities in need." The image is on screen for approximately 15 seconds. Dkt. No. 27 at 7. While the image is displayed, Ms. Jacomb states: "For example, when I click on the Rapid Relief Team's website, I see that a core tagline is 'Compassion in action,' and their core values are 'Community' 'Compassion,' and 'Support.'" She contrasts these statements with what she describes as the "profound trauma of being excommunicated" from the PBCC and the resulting separation from her family and community. Later in the video, she asks RRT, "How is it that you can give out branded water bottle and soap to strangers yet we former members from your church community, are left branded with trauma?"

The second video titled "Rapid Relief Team: Hypocrisy and families divided at Christmas," is approximately three and a half minutes long. Dkt. No. 27 at 7-8; Dkt. No. 26-16. The speaker, identified as "Jacky," begins by stating that "there are many Rapid Relief Team posts that upset me due to their complete hypocrisy," but that "one that stands out is a post

made one Christmastime promoting that the Rapid Relief Team bring families together." At approximately 0:18 seconds, the video displays an RRT promotional image with the text "Bringing families together for the holiday season." The image includes the copyrighted work wearing a Santa hat and holding an RRT branded food box against the background of a blue building at the beach. The image is displayed on screen for approximately 17 seconds. Dkt. No. 27 at 7-8. Jacky states that this post "cut to my heart so much" and explains that "the PBCC do anything but bring families together" and that "my own family has been divided for over 40 years due to the doctrine of separation the Plymouth Brethren Christian Church practice."

Addressing RRT and the PBCC, Jacky states: "So please, until this culture changes, do not claim your charitable arm brings families together at Christmas." She concludes by urging the organization's leaders to permit members to maintain relationships with family members who have left the Church, so that RRT may "claim with no hypocrisy that they really do bring families together for Christmas."

The third video titled "Get A Life Ep. 144 Rapid Relief Team's Branded Trauma: Ex-members Speak Out," is approximately two hours and 13 minutes long. Dkt. No. 27 at 8-9; Dkt. No. 26-20. The video incorporates the first two videos described above in their entirety. It also displays several other images featuring the copyrighted work, including

photographs of RRT tents, a trailer, and a van bearing the copyrighted work and screenshots of RRT's website that contain the copyrighted work. The discussion challenges RRT's promotional statements and questions whether it's professed commitment to helping people in need is consistent with the treatment of current and former PBCC members.

The fourth video titled "Chapter 2 part 1 Rapid Relief Team - Why disaster relief?" is approximately ten minutes long. Dkt. No. 27; Dkt. No. 26-21. At approximately 5:20, the video displays a screenshot of RRT's website featuring the copyrighted bird above the statements "Community | Compassion | Support" and "Compassion in action - supporting communities in need." The image is displayed for approximately six seconds. Dkt. No. 27 at 9-10.

According to Ms. Bawtinheimer, the video "discusses how RRT is focus on disaster relief as a method of providing highly visible 'charity' to rehabilitate the PBCC's public image." Dkt. No. 27 at 10. The video begins by describing the Church of Scientology's disaster relief team, response team and displays the screenshot containing the copyrighted work as the speaker states, "So how does this connect with the Plymouth Brethren Christian Church and its Rapid Relief Team?"

The fifth video, titled "Get A Life Ep. 145 Rapid Relief Team: Where's the compassion? - with guest Damian Hastie" is approximately 101 minutes long. Dkt. No. 27 at

11-12; Dkt. No. 26-22; Dkt. No. 31 at 5. At approximately 1:33:41, the video displays the same RRT promotional image with the text "Bringing families together for the holiday season" that was also shown in the second and third videos. The image is displayed for approximately seven seconds. The image appears in a segment of the video where a former PBCC member is discussing how excommunication from the church divides families. Referencing the promotional image, the speaker states, "Seeing the RRT shamelessly claiming to bring families together at Christmastime, that really bites. I've got grandchildren living very close to me who I've never seen, never been sent a photo despite my requests. Not even criminals are treated like this by their families."

Later in the video, the same screenshot of RRT's website from the other videos is displayed on screen but with an image of a lantern superimposed over it illuminating words including "Front group," "Cult," and "Tax scheme." This image appears at 1:39:12 for approximately 12 seconds. While the image is displayed, the speaker states "If you're looking for more information about the Rapid Relief Team or the Plymouth Brethren Christian Church, visit truthaboutrrt.com." The speaker lists other resources and then concludes the video stating, "We, as ex-members, are demanding that the RRT and the PBCC clean up their own backyard before presenting this façade. Charity work is needed everywhere in this world, but what we

don't need more of are charities taking advantage of good people to cover up who they really are."

On October 28, 2025, Katy-Jade Church, an attorney at Brown Rudnick LLP representing RRT submitted copyright removal requests to YouTube concerning the first two videos. Dkt. No. 31-7 paragraphs 1, 4. The requests invoked the Digital Millennium Copyright Act, (the "DMCA"), 17 U.S.C. Section 512(c)(3), and identified the videos' displays of RRT's copyrighted work as the allegedly infringing content. FAC paragraphs 21, 23. YouTube removed the videos on December 5 and December 12, 2025 respectively. *Id.* Ms. Bawtinheimer submitted counter-notifications disputing the claimed infringement, and YouTube initially reinstated the videos. Dkt. No. 36-2 paragraph 2.

After RRT filed this action, Ms. Church informed YouTube that litigation concerning the videos was pending. Dkt. No. 31-7 paragraph 7. On January 10, 2026, YouTube again removed the two videos. Dkt. No. 27-1 at 6-8. Mr. Graif, another Brown Rudnick attorney representing RRT, submitted additional copyright removal requests on January 28 and January 30, 2026. Dkt. No. 31-5 paragraphs 5-6. Those requests related to three additional videos as well as uploads of certain videos on Ms. Bawtinheimer's other YouTube channel. *Id.* YouTube removed the identified videos in response to RRT's requests. Dkt. No. 27-1 at 9-12.

The removal notices also affected Ms. Bawtinheimer's standing with YouTube. In its emails notifying Ms. Bawtinheimer that the videos had been removed, YouTube stated: "This means that your video can no longer be viewed on YouTube." Dkt. No. 27-1 at 2, 4, 7, 10, 12. The emails also advised her that she had received a "copyright strike" and warned: "If you get multiple copyright strikes, we'll have to terminate your channel." *Id.* Under YouTube's published policies, a channel that receives three copyright strikes within 90 days is subject to termination. Dkt. No. 36-5 at 2.

In April 2026, Ms. Bawtinheimer reported that her "Get-A-Life Podcast" channel had one copyright strike and that her "Rapid Relief Team - Exposed" channel had two. Dkt. No. 36-2 paragraph 11. She reported the same strike counts in her October 2026 supplemental submission. Dkt. No. 98 at 10. YouTube's published guidance addresses how strikes are handled when a copyright claimant files suit after receiving a counter-notification. It states that YouTube may remove content again upon receiving evidence of litigation and that in those circumstances "copyright strikes won't be applied while legal action is ongoing but may be reassessed after a court decision has been issued." Dkt. No. 105-1 at 2. The guidance also states that "while legal action is pending, the content at issue will not be reinstated to YouTube" although YouTube "may resolve associated copyright strikes while keeping content

removed from the site." *Id.* at 3.

Ms. Bawtinheimer states that the removal of her videos caused a small loss of advertising revenue, amounting to "tens of dollars," but that the more significant harm is her inability to share the removed videos with her audience. Dkt. No. 27-3 paragraph 17-19. She also maintains that the strikes threaten her ability to continue operating her YouTube channels. Dkt. No. 36-2 paragraphs 11-14. Ms. Bawtinheimer explains that uploading replacement videos would not restore the original videos' URLs, existing links from other websites, view counts, or comments. *Id.* paragraph 15-16.

B, procedural history. RRT filed this action against Ms. Bawtinheimer in the Northern District of California on December 19, 2025. Dkt. No. 1. On January 30, 2026, RRT filed the FAC, asserting a single claim for copyright infringement under 17 U.S.C. Section 501 based on Ms. Bawtinheimer's alleged unauthorized use of the copyrighted work in her YouTube videos. FAC paragraphs 5, 38-43. On April 3, 2026, Ms. Bawtinheimer answered the FAC and asserted two counterclaims. Her first counterclaim brought against RRT, Brown Rudnick, and Ms. Church and Mr. Graif (not including Ms. Church, the "Counterclaim defendants") alleges that they violated 17 U.S.C. Section 512(f) by knowingly misrepresenting in the removal requests that her use of the copyrighted work infringed RRT's copyright. Counterclaim paragraph 70-86. Her second counterclaim seeks a

declaration that her use of the copyrighted work constitutes fair use under 17 U.S.C. Section 107 *Id.* paragraphs 87-95.

On April 4, 2026, Ms. Bawtinheimer moved for a preliminary injunction. She asked the Court to require counterclaim defendants to withdraw the removal requests submitted to YouTube, prohibit further DMCA notices concerning the videos and other allegedly non-infringing uses of the copyrighted work, and require counterclaim defendants to obtain the Court's approval before submitting additional notices concerning her videos. RRT and Brown Rudnick opposed the motion on April 20, 2026, and Ms. Bawtinheimer replied on April 27, 2026.

Separately, RRT and Brown Rudnick moved to dismiss Ms. Bawtinheimer's Section 512(f) counterclaim under Rule 12(b)(6). Dkt. No. 33. Ms. Church and Mr. Graif moved to dismiss that counterclaim under Rules 12(b)(2) and 12(b)(6). Dkt. No. 65. Judge John S. Tigar heard argument on the preliminary injunction motion and the motion to dismiss on June 18, 2026, but did not issue a final ruling on either motion before the case was transferred. Dkt. No. 96 at 2.

After the parties raised questions concerning personal jurisdiction in California, they stipulated to transfer the entire action, including the pending motions to this district. Dkt. No. 81 at 2-4. The action was transferred to this district on August 31, 2026. Dkt. No. 85. Following an

October 8, 2026 status conference, the Court authorized limited supplemental briefing on the pending motions to address relevant Second Circuit precedent and permitted additional evidence on the preliminary injunction motion only concerning YouTube's treatment of copyright strikes while litigation is pending. Dkt. No. 97. Ms. Bawtinheimer submitted her supplemental brief on October 22, 2026. On October 23, 2026, she voluntarily withdrew her claims against Ms. Church without prejudice. Dkt. No. 102. RRT, Brown Rudnick, and Mr. Graif submitted their supplemental opposition to the preliminary injunction motion on October 29, 2026, together with additional evidence concerning YouTube's policies.

In her supplemental briefing, Ms. Bawtinheimer specifies that she seeks withdrawal of the notices relating to the five videos at issue, a prohibition on further notices concerning videos that display the copyrighted work in the course of commentary about RRT or PBCC, and an order requiring the counterclaim defendants to seek relief from the Court before pursuing other alleged infringement. Dkt. No. 98 at 15. She also requests in the alternative that the Court consolidate the preliminary injunction hearing with a trial on the merits of her fair use claim or provide notice of possible summary judgment on that claim. *Id.* at 17-18.

II, Legal Standard. The legal standards governing preliminary injunctions and temporary restraining orders in the

Second Circuit are the same. *Local 1814, International Longshoremen's Association v. New York Shipping Association*, 965 F.2d 1224, 1228-29 (2d Cir. 1992); *AFA Dispensing Group B.V. v. Anheuser-Busch, Inc.*, 740 F. Supp 2d 465, 471 (S.D.N.Y. 2010). A preliminary injunction "is an extraordinary and drastic remedy, one that should not be granted unless the movant by a clear showing carries the burden of persuasion." *Grand River Enter. Six Nations Limited v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007)(per curiam)(internal quotation marks omitted).

A plaintiff seeking a preliminary injunction to preserve the status quo "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interests." *Gazzola v. Hochul*, 88 F.4th 186, 194 (2d Cir 2023)(quoting *Winter v. Nat. Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). "Plaintiffs need not demonstrate a likelihood of success on the merits of every claim - rather they need only 'show a likelihood of success on the merits of at least one of [their] claims.'" *725 Eatery Corp. v. City of New York*, 408 F. Supp 3d 424, 459 (S.D.N.Y. 2019)(quoting *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 618 (S.D.N.Y. 2018)).

"'The standard for obtaining preliminary injunctive relief is higher, however, where the movant seeks to modify the

status quo by virtue of a mandatory preliminary injunction' or 'where the injunction being sought will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits.'" *Cumulus Media New Holdings Inc. v. Nielsen Co. (US), LLC*, 182 F.4th 108, 124 (2d. Cir. 2026)(quoting *A.H. ex rel. Hester v. French*, 985 F.3d 165, 176 & n.39 (2d. Cir. 2021). "The higher standard requires plaintiffs 'show a clear or substantial likelihood of success on the merits and make a strong showing of irreparable harm.'" *Id.* (quoting *New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 650 (2d. Cir. 2015).

"A party seeking a preliminary injunction must demonstrate that absent such relief, it 'will suffer an injury that is neither remote nor speculative, but actual and imminent and one that cannot be remedied if a court waits until the end of trial to resolve the harm.'" *Reyes v. City of New York*, 141 F.4th 55, 67 (2d. Cir. 2025)(quoting *JTH Tax, LLC v. Agnant*, 62 F.4th 658, 672 (2d. Cir. 2023)). "A showing of irreparable harm is 'the single most important prerequisite for the issuance of a preliminary injunction,' and for the issuance of a mandatory preliminary injunction, the showing must be 'strong.'" *Cumulus Media New Holdings Inc.*, 182 F.4th at 135 (quoting *Daileader v. Certain Underwriters at Lloyds Lond. Syndicate 1861*, 96 F.4th 351, 358 (2d. Cir. 2024)).

But a plaintiff need show only "a threat of irreparable harm, not that irreparable harm already [has] occurred." *Mullins v. City of New York*, F.3d 47, 55 (2d Cir. 2010)(emphasis omitted). "Where there is an adequate remedy at law, such as an award of money damages, injunctions are unavailable except in extraordinary circumstances." *Moore v. Consol. Edison Co. of New York*, 409 F.3d 506, 510 (2d Cir. 2005).

Ms. Bawtinheimer seeks two forms of preliminary injunctive relief. First, she requests an order requiring counterclaim defendants to withdraw all DMCA takedown notices submitted to YouTube regarding her videos. Dkt. No. 27 at 1. Because that relief would alter the status quo by requiring defendants to take affirmative action to withdraw the takedown notices, it constitutes a mandatory injunction subject to the heightened standard. Second, Ms. Bawtinheimer seeks to prohibit counterclaim defendants from submitting further DMCA takedown notices regarding the videos at issue here "or any other clearly non-infringing videos" without first seeking approval from the Court. Dkt. No. 27 at 1. The Court declines to enjoin counterclaim defendants from submitting DMCA takedown notices in response to "clearly non-infringing videos" because it amounts to an "obey the law" injunction that is not favored in this circuit. *See, e.g., S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 240, (2d Cir. 2001).

III, Discussion; A, Likelihood of Success on the Merits; 1, DMCA Misrepresentation. Ms. Bawtinheimer has not established a likelihood of success on the merits of her Section 512(f) claim. The DMCA "governs the means by which copyright holders can notify online service providers that their sites host or provide access to allegedly infringing material." *Hosseinzadeh v. Klein*, 276 F.Supp 3d 34, 43 (S.D.N.Y. 2017). The DMCA requires that such notices often referred to as "takedown notices" include a "statement that the complaining party has 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." 17 U.S.C. 512(c)(3)(A)(v). Under Section 512(f) of the DMCA, "any person who knowingly material misrepresents" that "material or activity is infringing" is "liable for any damages incurred...by the alleged infringe...who is injured by such misrepresentation as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing." 17 U.S.C. Section 512(f).

"It is a complete defense to a claim under Section 512(f) that the party issuing a takedown notice had a subjective good faith belief that the use in question was 'not authorized.'" *Stern v. Lavender*, 319 F. Supp 3d 650, 683 (S.D.N.Y. 2018), "even if that belief is ultimately mistaken."

Hosseinzadeh, F. Supp 3d at 44 (citing *Lenz v. Universal Music Corp.*, 815 F.3d 1145, 1153, (9th Cir. 2016)). To establish liability under Section 512(f), a copyright holder "must have actual knowledge that it is making a misrepresentation of fact." *National Academy of Television Arts & Sciences, Inc. v. Multimedia Sys. Design, Inc.*, 551 F.Supp 3d 408, 432 (S.D.N.Y. 2021)(citing *Cabell v. Zimmerman* 2010 WL 996007 at *4 (S.D.N.Y. Mar. 12, 2010)(emphasis added)). "Negligence is not the standard for liability under Section 512(f)." *Id.* at 433. (quoting *Cabell*, 2010 WL 996007 at *4). A copyright holder "must consider fair use before sending a takedown notification." *See Shaffer v. Kavarnos*, 2025 WL 2299173, at *2 (S.D.N.Y. Aug. 7, 2025)(discussing *Lenz*, 815 F.3d at 1154). "Section 512(f) establishes a high bar to liability - without direct evidence that establishes the state of mind of the party issuing the takedown notice at the time of issuance, a successful plaintiff will likely have to stack inference upon inference derived from circumstantial evidence to reach a preponderance as to defendant's state of mind." *Id.*

Here, RRT submitted declarations from Mr. Graif and Ms. Church stating that they "considered whether the identified use was fair use and formed a good-faith belief that the identified use was copyright infringement" before submitting the takedown requests. Dkt. No. 31-5 paragraph 8; Dkt. No. 31-7 paragraph 6. Ms. Bawtinheimer has not presented evidence

to establish a likelihood that those statements were false. Instead, she argues that attorneys should be "charged with some degree of constructive knowledge of fair use" and that experienced copyright lawyers "should be held to a different standard of knowledge and 'consideration.'" Dkt. No. 27 at 19; Dkt. No. 36 at 9.

But Section 512(f) requires actual knowledge of misrepresentation, not constructive knowledge. See *National Acad.*, 551 F.Supp 3d at 432-33. The attorneys' experience does not without more establish that they lacked a subjective good faith belief that Ms. Bawtinheimer's use was infringing. Because Ms. Bawtinheimer has not presented sufficient evidence that counterclaim defendants knowingly misrepresented that her videos infringed the copyrighted work, she has not established a likelihood of success on the merits of her Section 512(f) claim.

2, Fair Use. Ms. Bawtinheimer has demonstrated a clear or substantial likelihood of success in establishing fair use for the first, second, third, and fifth videos. Under the Copyright Act, "The fair use of a copyrighted work...for purposes such as criticism, comment, or news reporting...is not an infringement of copyright." 17 U.S.C. Section 107. Fair use "thus excuses what might otherwise be considered infringing behavior, allowing courts to avoid rigid application of the Copyright Act when it would stifle the very creativity the Act

is meant to promote." *Hachette Book Group., Inc. v. Internet Archive*, 115 F.4th 163, 179 (2d Cir. 2024)(internal quotation marks omitted). Courts consider four nonexclusive statutory factors in assessing fair use: 1, "the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes"; 2, "the nature of the copyrighted work"; 3, "the amount and substantiality of the portion used in relation to the copyrighted work as a whole"; and 4, "the effect of the use upon the potential market for or value of the copyrighted work." 17 U.S.C. Section 1077.

"While courts typically discuss each factor individually, they must 'all...be explored and the results weighed together in light of the purposes of copyright.'" *Richardson v. Townsquare Media, Inc.*, 174 F.4th 299, 306 (2d Cir. 2026)(quoting *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 578, (1994)). "The determination of fair use is 'is an open-ended and context-sensitive inquiry.'" *Id.* (quoting *Cariou v. Prince*, 714 F.3d 694, 705 (2d Cir. 2013)). "Since fair use is an affirmative defense to a claim of infringement, the burden of proof is on its proponent." *Romanova v. Amilus Inc.*, 138 F.4th 104, 110 (2d Cir. 2025)(quoting *Infinity Broad. Corp. v. Kirkwood,* 150 F.3d 104, 107 (2d Cir. 1998)).

A, the purpose and character of use. The first fair use factor weighs heavily in favor of fair use as to the uses

of the copyrighted image that I have described in the first, second, third, and fifth videos. The first factor considers "the purpose and character of the use, including whether such use is of a commercial nature or is for a nonprofit educational purposes." 17 U.S.C. Section 107(1). "In assessing this factor, 'courts consider two sub-factors: (i) the extent to which the secondary use is transformative and (ii), whether the secondary use is commercial in nature.'" *Richardson*, 174 F.4th at 306 (quoting *Hachette*, 115 F.4th at 179).

In assessing the first factor, courts "focus chiefly on the degree to which the use is transformative." *Santos v. Kimmel*, 154 F.4th 30, 34 (2d Cir. 2025)(quoting *Andy Warhol Found. for Visual Arts, Inc. v. Goldsmith*, 11 F.4th 26, 37 (2d Cir. 2021)). "A secondary use is 'transformative' where it does not 'merely supplant the original,' but 'instead adds something new, with a further purpose or different character altering the original with new expression, meaning or message.'" *Richardson*, 174 F.4th at 306 (quoting *Hachette*, 115 F.4th at 179). "We typically frame the inquiry in terms of 'substitution': a secondary use will not be transformative where it merely offers a substitute for the original work. Instead, a use may be transformative where it was made for and objectively realizes a purpose distinct from that of the original work." *Id.* (quoting *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 598 U.S. 508, 528, 545, (2023)).

"In addition, that new purpose must supply a sufficient 'justification for copying,' such as providing a 'critique or commentary on the original' or supplying 'information to the public about the copied work' that is not otherwise available." *Id.* at 306-07 (quoting *Romanova v. Amilus Inc.*, 138 F.4th 104, 115 (2d Cir. 2025)); *see also Authors Guild v. Google Inc.*, 804 F.3d 202, 215 (2d Cir. 2015) ("Among the best recognized justifications for copying from another's work is to provide comment on it or criticism of it"). "Critique or commentary on the original (or its author) are [not] the only uses that will furnish a justification." *Romanova*, 138 F.4th at 115. "As 'most copying has some further purpose' and 'many secondary works at something new,' the inquiry will not always be 'clear-cut.' We therefore assess transformativeness as a 'matter of degree' and weigh it 'against other considerations like commercialism.'" *Richardson*, 174 F.4th at 307 (quoting *Warhol*, 598 U.S. at 525, 528-29).

The first factor weighs in favor of fair use as to the first, second, third, and fifth videos because the videos reproduce RRT's promotional materials, which contain the copyrighted work for the purpose of criticizing the representations made in those materials. The first video displays a screenshot of RRT's website while Ms. Jacomb discusses the statements that appear alongside the copyrighted work. She identifies RRT's tagline "Compassion in action" and

its stated values of "community," "compassion," and "support," and contrasts those representations with her experiences of excommunication and family separation within the PBCC. The second video and fifth video display an RRT promotional image bearing the statement "Bringing families together for the holiday season," while the speakers identify that post as an example of RRT's alleged hypocrisy and explain why its message is inconsistent with the PBCC's practices that they allege separate families. In both videos, the speakers reproduce RRT's promotional materials to identify the representations they are criticizing. The copying therefore serves a purpose beyond merely displaying the copyrighted work or identifying RRT. The third video incorporates the first two videos in their entirety, including the passages discussed above.

The fifth video also makes the critical purpose especially apparent by placing an image of RRT's website, including the copyrighted work and the statement "Compassion in action - supporting communities in need," alongside words reflecting the speakers' criticisms, including "Front Group," "Cult," "Tax scheme," and "Deception." The juxtaposition directly challenges the promotional message appearing alongside the copyrighted work. These uses communicate criticism of RRT's public representations rather than merely reproducing its promotional imagery for the same purpose for which RRT published it.

The fourth video presents a closer question. That video displays a screenshot of RRT's website containing the copyrighted work for approximately six seconds while the speaker transitions from discussing the Church of Scientology to RRT. Here, the copyrighted work is more akin to "an illustrative aid (in which case the copying served little transformative function)." See *Richardson* 174 F.4th at 307. Therefore, this factor weighs against a finding of fair use as to the fourth video.

Finally, the videos have a commercial component. Ms. Bawtinheimer acknowledges that the removal of the videos resulted in lost monetization revenue, although she characterizes the amount as minimal, totaling tens of dollars. Dkt. No. 27 at 12. RRT argues that the videos' monetization weighs against fair use. Dkt. No. 31 at 20. That consideration weighs against Ms. Bawtinheimer, but it does not outweigh the videos' critical purposes. The record does not suggest that the copyrighted work was reproduced to exploit its commercial or artistic value. Rather, the copying served the videos' criticism of RRT's promotional representations and brand and any commercial gain from the reproduction appears attenuated. Accordingly, the first factor favors fair use, most strongly for the first, second, third, and fifth videos.

B, the nature of the copyrighted work. The second factor is neutral on balance. The second factor considers "the

nature of the copyrighted work," 17 U.S.C. Section 107(2), "in recognition of the fact that 'some works are closer to the core of intended copyright production than others.'" *Richardson*, 174 F.4th at 308 (quoting *Campbell*, 510 U.S. at 586). "We ask whether the copyrighted work is more 'expressive' or 'factual' as fair use is more likely to be found where the work is 'factual or informational.'" *Id.* (quoting *Warhol*, 11 F.4th at 45).

"We also ask whether the copyrighted work has been previously published because 'the scope of fair use involving unpublished works' is far more limited." *Id.* (quoting *Warhol* 11 F.4th at 45). "This factor plays a minimal role in the fair use assessment." *Id.* Because the copyrighted work is created and published, this factor does not weigh strongly in either party's favor. In any case, this circuit has noted that the second factor does not carry much weight in the fair use analysis and is "rarely found to be determinative." *On Davis v. The Gap, Inc.*, 246 F.3d 152, 175 (2d Cir. 2001).

C, the amount and substantiality of use. The third factor, "whether 'the quantity and value of the materials used are reasonable in relation to the purpose of the copying,'" weighs in favor of fair use with respect to all of the videos at issue here. *Richardson*, 174 F.4th at 309 (quoting *Warhol*, 11 F.4th at 46). "Generally, a finding of fair use is more likely when 'small amounts, or less important passages of the

work are copied than when the copying is extensive or encompasses the most important parts of the original.'" *Id.* (quoting *Hachette*, 115 F.4th at 187 (alteration adopted)). "But the inquiry remains context specific and a fair use defense may be available even where a secondary work uses the entirety of the original." *Id.*

As the Second Circuit has explained: "Consideration of the third factor...'has both a quantitative and a qualitative component.' The factor favors copyright holders where the portion used by the alleged infringer is a significant percentage of the copyrighted work or where the portion used is 'essentially the heart of' the copyrighted work. Courts have also considered 'whether the quantity of the material used was reasonable in relation to the purpose of the copying.'" *NXIVM Corp. v. Ross Institute*, 364 F.3d 471, 480 (2d Cir. 2004)(citations omitted).

"The more of a copyrighted work that is taken the less likely the use is to be fair." *Infinity Broad. Corp. v. Kirkwood*, 150 F.3d 104, 109 (2d Cir. 1998). Where "the portion used was minimal and the use was so brief and indistinct," the third fair use factor may "tip...decisively against the plaintiff." *Ringgold v. Black Entertainment Television, Inc.*, 126 F.3d 70, 75 (2d Cir. 1997).

The third factor favors fair use. Although Ms. Bawtinheimer reproduces the copyrighted bird in its

entirety, she generally does so as part of RRT's own promotional materials to criticize the representations made in those materials. Reproducing the images as they appeared to the public including the copyrighted bird is reasonable in relation to that purpose. The copyrighted work appears for only 6 to 20 seconds in four of the five videos. See Dkt. No. 31 at 4-5. Although the copyrighted work appears in over seven minutes in aggregate in the third video, including in excerpts from the other videos and additional RRT promotional materials, the aggregate duration does not establish that the amount copied was unreasonable in relation to the criticism. Accordingly, the third factor favors a finding of fair use with respect to the uses of the copyrighted images in all of the videos.

D, the effect on potential market for the copyrighted work. The fourth factor considers "the effect of the use upon the potential market for or value of the copyrighted work." 17 U.S.C. Section 107(4). The Second Circuit has "repeatedly recognized this factor as the most important." *Richardson*, 174 F.4th at 310. In assessing the fourth factor, "we ask not whether the second work would damage the market for the first (by, for example, devaluing it through parody or criticism), but whether it usurps the market for the first by offering a competing substitute." *Santos*, 154 F.4th at 35 (quoting *Hachette*, 115 F.4th at 189). "In doing so, we weigh 'not only

the market harm caused by the particular actions of the alleged infringer, but also the market harm that would result from unrestricted and widespread conduct of the same sort.'" *Richardson*, 174 F.4th at 310 (quoting *Hachette*, 115 F.4th at 189. "This factor subsumes much of the content of the other factors, whose force lies in evidencing the market effect of the use. 'The greater the likelihood that the secondary work might serve as an effectively competing substitute for the original.'" *Id.* (quoting *Hachette*, 115 F.4th at 187-88). "And, as relevant to the first factor, the more transformative a secondary use is, the less likely it is to serve as a mere substitute for the original." *Id.*

The fourth factor weighs strongly in favor of fair use because the challenged uses do not offer a competing substitute for the copyrighted work. RRT uses the copyrighted work to promote its charitable activities and identify its organization on its website, merchandise, and other materials. Ms. Bawtinheimer's videos use images containing the copyrighted work to criticize RRT's promotional representations and the activities of the PBCC. The videos do not offer viewers a substitute for the logo in its original promotional or commercial contexts. Indeed, their critical purpose makes them unlikely substitutes for RRT's authorized uses.

RRT relies on *Romanova v. Amilus Inc.*, 138 F.4th 104 (2d Cir. 2025), which recognized market harm where the

defendant reproduced a copyrighted photograph in a manner that diminished the likelihood that others would pay to license it. But the defendant in *Romanova* republished a professional photograph to illustrate an article about pet photography, a use that competed with the photographer's market for licensing the photograph to publications. The uses here serve the distinct purpose of criticizing RRT's own promotional representations. They do not similarly supply the market with an alternative source of the copyrighted work for promotional use.

Finally, RRT argues that displaying its logo in connection with criticism of the PBCC harms the logo's commercial value by creating negative associations among potential donors, partners, and licensees. Dkt. No. 104 at 5. But the fourth factor distinguishes harm resulting from criticism from harm resulting from market substitution. See *Santos*, 154 F.4th at 35 ("We ask not whether the second work would damage the market for the first (by, for example, devaluing it through parody or criticism) but whether it usurps the market for the first by offering a competing substitute"). Any diminution in RRT's reputation or public support resulting from the video's criticism, does not establish that the videos compete with the copyrighted work. Nor would widespread uses of the same sort reproducing RRT's promotional representations as reasonably necessary to criticize them displace the market

for authorized promotional or commercial uses of the logo. Accordingly, the fourth factor weighs strongly in favor of Ms. Bawtinheimer.

Weighing the four factors together, the Court concludes that Ms. Bawtinheimer has demonstrated a clear or substantial likelihood of success in establishing fair use for the first, second, third, and fourth videos. The first and fourth factors weigh strongly in her favor and the remaining factors do not alter that conclusion. The fourth video presents a closer question because the connection between the copyrighted work and the accompanying criticism is less clear. Accordingly, Ms. Bawtinheimer has not demonstrated that the substantial likelihood of success required for a mandatory preliminary injunction with respect to that video.

B, irreparable harm. Ms. Bawtinheimer has made a strong showing that she will suffer irreparable harm absent preliminary relief. RRT's DMCA takedown notices caused YouTube to remove videos in which Ms. Bawtinheimer criticized RRT and the PBCC. Although YouTube reinstated one copy of one challenged video, several videos remain unavailable. YouTube's policies provide that removed content will not be reinstated while related copyright litigation is pending. Dkt. No. 105-1 at 3. The resulting harm is not principally the loss of advertising revenue, which Ms. Bawtinheimer acknowledges was minimal. Dkt. No. 27-3 paragraph 17. It is the continuing

loss of her ability to communicate the information in those videos to her intended audience. Ms. Bawtinheimer explains that she created the Get-A-Life podcast to provide information about the PBCC and support to former members, many of whom rely on the podcast as a resource. Dkt. No. 36-2 paragraph 6-9, 17-19; see also Dkt. No. 36-9. An eventual judgment in her favor cannot restore the opportunity to reach those viewers while the videos were unavailable.

The removal of the videos also threatens injuries to Ms. Bawtinheimer's established audience and goodwill that cannot readily be measured in monetary terms. The original videos had accumulated views, comments, and links from other websites, none of which would be preserved by uploading new copies. Dkt. No. 36-2 paragraphs 13-16. The Second Circuit has recognized that injuries to goodwill and relationships that cannot readily be quantified may constitute irreparable harm. *See Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 404 (2d Cir. 2004).

RRT's arguments do not undermine this showing. RRT emphasizes that Ms. Bawtinheimer has continued publishing other videos and that it offered to permit her to repost the challenged videos if she removed or blurred the copyrighted work. Dkt. No. 31 at 10-12; Dkt. No. 104 at 10. But the availability of other videos does not remedy the removal of the particular videos at issue. Nor would uploading edited copies

restore their original URLs, views, comments, and links. Dkt. No. 36-2 paragraphs 15-16. Ms. Bawtinheimer has also submitted evidence that the takedowns prevent her from editing the removed videos through YouTube. Dkt. No. 72 at 2-3. And because the Court has found a substantial likelihood that her uses of the copyrighted work constitute fair use, her refusal to remove the material does not render the resulting harm self-inflicted.

The existing copyright strikes provide additional support for a finding of irreparable harm. Ms. Bawtinheimer has submitted evidence that one of her YouTube channels has one copyright strike and the other has two. Dkt. No. 98-2 paragraphs 4-5 & Exhibit A. YouTube's policies provide that channels accumulating three copyright strikes are subject to termination. Dkt. No. 36-5 at 2-23. Ms. Bawtinheimer also attests that RRT submitted additional notices after YouTube reinstated certain videos and that she has since censored herself when discussing RRT for fear of further takedowns. Dkt. No. 98-2 paragraph 6-9. RRT responds that it has not submitted additional notices since filing its amended complaint and that the possibility of a future strike is speculative. Dkt. No. 104 at 12-13. Although the Court cannot conclude that termination of either channel is imminent, it need not do so. The existing strikes and evidence of self-censorship reinforce the ongoing injury caused by the removal of the videos.

Finally, Ms. Bawtinheimer's delay in seeking injunctive relief does not defeat her showing of irreparable harm. RRT observes that she waited approximately 118 days after the first takedown notice to move for a preliminary injunction. Dkt. No. 31 at 14. Although delay can undermine a claim of irreparable harm, it is not dispositive where the movant provides a reasonable explanation. *See Weight Watchers International, Inc. v. Luigino's, Inc.*, 423 F.3d 137, 144-45 (2d Cir. 2005). Ms. Bawtinheimer explains that she resided outside the United States, could not afford legal representation, and encountered substantial difficulty securing counsel. Dkt. No. 36-2 paragraphs 22-23. She moved for preliminary relief shortly after obtaining counsel and has continued pursuing that relief throughout this litigation. The passage of time does not eliminate the continuing injury.

Because Ms. Bawtinheimer has demonstrated that the challenged takedowns continue to prevent dissemination of her videos and threaten injuries to her established audience that cannot be adequately remedied by monetary damages, the Court conclude that see she has made the strong showing of irreparable harm required for mandatory preliminary injunctive relief.

C, balance of equities and public interest. Ms. Bawtinheimer must also demonstrate that "the balance of equities tips in [her] favor" and that "an injunction is in the

public interest." *Winter*, 555 U.S. at 20. In assessing these factors, courts must "balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief," as well as "the public consequences in employing the extraordinary remedy of injunction." *Id.* The balance of equities and the public interest also favor an injunction. RRT has not demonstrated that the restoration of Ms. Bawtinheimer's videos would cause it economic harm, in particular, although the organization argues that its logo's licensing value may be diminished by defendant's use, it presented no evidence that the organization receives any licensing fee for the use of the work. By contrast, the continued removal of those videos limits Ms. Bawtinheimer's ability to disseminate her criticism of RRT and earn advertising revenue, however modest. The public interest in protecting the lawful criticism and commentary further favors an injunction.

IV, Conclusion. Because Ms. Bawtinheimer has demonstrated a clear or substantial likelihood of success on the merits as to the first, second, third, and fifth videos, and made a strong showing of irreparable harm and established that the balance of equities and public interest favor relief, her motion for a preliminary injunction is granted in part. RRT will be ordered by no later than November 6, 2026, to withdraw -- actually, I'll give you a little more time than

that. Make that November 9, 2026 -- to withdraw all DMCA takedown notices submitted to YouTube concerning the first, second, third, and fifth videos, and to file proof of the withdrawal within three days. Nothing in this order precludes RRT from submitting renewed takedown notices or seeking damages as a result of the videos' use of the copyrighted image should the Court ultimately determine that the videos infringe RRT's copyright.

Good. So thank you very much, counsel, for indulging me as I read through my analysis. I know the parties were interested in having a prompt ruling on this issue following its transfer to this court, which I have done promptly following your supplemental briefing. I just wanted to highlight a couple of things.

First off, I encourage everybody who's litigating this case to watch the videos. Arguments were made to the Court that all that these videos do is use the copyrighted work to describe RRT. But the very first video contains a statement by the speaker talking about her concerns regarding RRT's branding. The logo is the branding. She literally says that that is what she's talking about, a critique of the brand, a critique of their use of this copyrighted image to describe themselves. So I strongly encourage everybody who is working on this case, to the extent that you have not, to look at the videos in their entirety and to associate the use of the images

with the words that are being used at the time that they are displayed. Let's look at the first two for example. I've laid out the facts with respect to them, but I note that their use is expressly linked to a critique of RRT's branding. I just wanted to emphasize that.

The second thing that I wanted to highlight is that although I have not found that the defendant has made a sufficient showing or mandatory relief with respect to one of the videos, that is -- I just want to emphasize that I don't believe they've made the showing required for the mandatory injunction, which as I outlined is a higher standard. I'll look forward to considering all of these issues in more depth as we get into it. I'm denying the defendant's application to condense this litigation into a single trial. These are issues that should be litigated through summary judgment. And I look forward to seeing the parties' discussions of these issues, and we'll evaluate my views based on the evidence presented to me and your respective arguments. And my decision here is one for provisional relief in this procedural context, and I will consider all of the issues in the context of summary judgment motion practice.

The last thing that I want to say is that I have commented here on Section -- on the defendant's counterclaim under 512(f) in the context of ruling on the preliminary injunction application, I expect to very shortly issue a

decision regarding the motion to dismiss that counterclaim. And I will alert you to that. Expect that in short order.

So I think that's all that I have. I'll issue a short order later today that refers to the transcript of today's proceeding for the rationale, for my decision. I again thank you for your indulgence as I took up a criminal matter that caused our late start today. I will issue a separate order both regarding the motion to dismiss and regarding next steps in the case, which I understand will be setting a schedule for discovery, and we'll get the litigation started.

Very good. Anything else from any party before we adjourn? First counsel for plaintiff.

MR. GRAIF: Michael Graif. No, your Honor.

THE COURT: Thank you. Counsel for defendant.

MR. RANDAZZA: Yes, your Honor. On the fourth video, we would like to request an injunction pending appeal under Rule 62(d) on the basis that while the merits may be close, we think it's a serious question. It's six seconds of RRT's own home page shown during a comparison of its charity to Scientology's, which we think that is the golden arches in a news broadcast talking about murder joints. And YouTube removed all six minutes for it.

The harm is high. And no judgment can undo that harm. And I think the label of it as a mandatory injunction might be one that I'd ask your Honor to reconsider. Your Honor held in

Prisoners' Legal Services that the status quo is -- I'm quoting -- "the last actual piece-able uncontested status which preceded the pending controversy." And that in a number of intellectual property cases that we've cited in our briefing, *Rag & Bone Holdings*, *Sound Around v. Shenzhen Keenray*, there were restraints on further takedown demands based on similar facts. But we're not asking for that part to be the injunction pending appeal. Only the lack of restoration of the fourth video.

THE COURT: Thank you. If you want to make a written application to the Court for that, you should feel free. I'm not going to grant it on the basis of your oral argument here. So this oral application is denied. If you want to make a written application to the Court over this issue and bring the question to the Court of Appeals, you're welcome to do so.

There we have it. So I'll issue my order later today. Is there anything else, counsel for defendant?

MR. RANDAZZA: Is this -- your Honor, are you going to also issue this as a written ruling or just a transcript ruling?

THE COURT: I just said that, counsel, right? I just said that I would issue a written order referring the parties to the transcript of today's proceeding as the basis for the opinion. Is there anything else I can say to make that more clear?

MR. RANDAZZA: Okay. Thank you.

THE COURT: Thank you.

MR. RANDAZZA: No, there's not.

THE COURT: Anything else, counsel for defendant?

Very good. Thank you all very much. This proceeding is adjourned.

(Adjourned)

Exhibit 2

Order on Motion for Preliminary Injunction
(ECF No. 107)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 11/5/2026

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAPID RELIEF TEAM (RRT) LIMITED, Plaintiff,	:	1:26-cv-7423-GHW
-v-	:	ORDER
CHERYL BAWTINHEIMER, Defendant.	:	

GREGORY H. WOODS, United States District Judge:

On November 5, 2026, the Court held a hearing with respect to Defendant's motion for a preliminary injunction. For the reasons stated on the record during the hearing, Defendant's motion is granted in part. The basis for the Court's ruling is set forth in the transcript of the November 5, 2026 hearing.

Plaintiff is ordered, by no later than November 9, 2026, to withdraw all DMCA takedown notices submitted to YouTube concerning the following four videos: "Lindy expresses her concern regarding the Plymouth Brethren Christian Church's RRT charity," "Rapid Relief Team: Hypocrisy & Families Divided at Christmas," "Get A Life Ep. 144 Rapid Relief Team's Branded Trauma: Ex-members Speak Out," and "Get A Life Ep. 145 Rapid Relief Team: Where's the compassion?- With guest Damian Hastie." Plaintiff is ordered to file proof of the withdrawal by no later than November 12, 2026. The Clerk of Court is directed to terminate the motion pending at Dkt. No. 29.

SO ORDERED.

Dated: November 5, 2026
New York, New York

GREGORY H. WOODS
United States District Judge

Exhibit 3

Order Denying Injunction Pending Appeal
(ECF No. 113)

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U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered on 11/11/2026 at 10:02 AM EST and filed on 11/11/2026

Case Name:	Rapid Relief Team (RRT) Limited v. Cheryl Bawtinheimer
Case Number:	1:26-cv-07423-GHW
Filer:	
Document Number:	113(No document attached)

Docket Text:

ORDER denying [112] Motion. Defendant moves for an injunction pending appeal requiring Plaintiff to withdraw its DMCA takedown notices concerning the Fourth Video. Dkt. No. 112. The Court understands that Defendant has presented this motion because she plans to apply for an injunction before the Second Circuit pending the interlocutory appeal, and Fed. R. App. P. 8(a)(1) directs Plaintiffs to do so first before the district court. "Courts consider four factors in determining whether to grant a stay: '(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.'" Frey v. Nigrelli, No. 21 CV 05334, 2023 WL 2929389, at *2 (S.D.N.Y. Apr. 13, 2023) (quoting Nw. Nat. Ins. Co. v. Insco, Ltd., 866 F. Supp. 2d 214, 21718 (S.D.N.Y. 2011) (citing Nken v. Holder, 556 U.S. 418, 434 (2009))). "The standard for staying a judgment pending appeal 'resembles the test for issuance of a preliminary injunction.'" Id. at *3 (quoting N.Y. Life Ins. Co. v. Singh, No. 14CV5726, 2017 WL 10187669, at *1 (E.D.N.Y. July 13, 2017)). "When a district court has denied a motion for a preliminary injunction that would change the status quo pending a decision on the merits, it is highly unlikely that it will then grant that same injunction pending appeal of the denial." Columbus Ale House, Inc. v. Cuomo, No. 20-CV-4291, 2020 WL 6507326, at *1 n.1 (E.D.N.Y. Nov. 5, 2020). Defendant largely reiterates arguments the Court considered in denying preliminary relief as to the Fourth Video. Although the Court previously found that irreparable harm, the balance of equities, and the public interest favor Defendant, Defendant has not made a sufficiently strong showing of likelihood of success on appeal to warrant the requested injunction. Therefore, the application is denied. (HEREBY ORDERED by Judge Gregory H. Woods)(Text Only Order)

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