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July 23, 2004

VIA FACSIMILE & REGULAR MAIL

Kenneth B. Hertz, Esq.
Goldring Hertz & Lichtenstein, LLP
450 North Roxbury Drive, 8th Floor
Beverly Hills, California 90210-4222

Re: Jib Jab Media/Unauthorized Use of "This Land Is Your Land"

Dear Ken:

We are litigation counsel for Ludlow Music, Inc. ("Ludlow"). We have reviewed your letter to our client dated July 21, 2004.

As you are aware, Ludlow is the exclusive copyright owner of the classic folk song "This Land Is Your Land" written by the well-known folk artist Woody Guthrie (the "Infringed Composition"). We are informed that Jib Jab Media, Inc. ("Jib Jab") created and widely broadcast via the internet a derivative version of the Infringed Composition synchronized with animated short movie (the "Unauthorized Movie"), and that the authors of that material, Gregg and Evan Spiridillis, recently appeared on various nationally televised programs to promote it. Ludlow did not authorize or consent to the creation of the Unauthorized Movie. As such, your clients' conduct constitutes a blatant and willful copyright infringement which has caused, and continues to cause, our client substantial injury.

There is no dispute that the Unauthorized Movie is a derivative work that copies the words and music of the Infringed Composition. In particular, Jib Jab copied the entire melody, harmony, rhythm and structure of the Mr. Guthrie's song, as well as the well-known lyrics "This land is your land, this land is my land" and "From California to the New York Island." There is also no dispute that Jib Jab did not have a license to copy this material. Instead, Jib Jab attempts to hide behind the purported defense that the Unauthorized Movie constitutes a parody. Make no mistake, while the Unauthorized Movie may be a humorous comment on the current presidential campaign, it does not meet the legal requirements for a parody of the Infringed Composition.

Sonnenschein
SONNENSCHN NATH & ROSENTHAL LLP

Ken Hertz, Esq.
July 23, 2004
Page 2

The Purpose and Character of the Use is Not a Parody

Jib Jab's movie does not constitute a parody because it does not offer any satirical comment on the Infringed Composition. Instead, the Unauthorized Movie impermissibly uses Mr. Guthrie's song as a convenient vehicle to comment on something else: the partisan politics of the current presidential campaign.

Under well-settled copyright law, a work is considered a parody only if the author specifically targets the underlying copyrighted work for humorous criticism or commentary. See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994); *Abilene Music, Inc. v. Sony Music Entertainment, Inc.*, 2003 WL 21415311 at *6 (S.D.N.Y., June 18, 2003). Courts have consistently rejected attempts to use copyrighted material merely as an ironic or satirical device to comment on the world at large. See, e.g., *MCA, Inc. v. Wilson*, 425 F. Supp. 443 (S.D.N.Y. 1976) (rejecting a fair use defense based upon parody where "[d]efendants may have sought to parody life, or more particularly sexual mores and taboos, but it does not appear that they attempted to comment ludicrously upon [the copied work]"); *Walt Disney Productions v. Mature Pictures Corp.*, 389 F. Supp. 1397-98 (S.D.N.Y. 1975) (rejecting a fair use defense based upon parody, holding that "[w]hile defendants may have been seeking . . . to parody life, they did not parody the Mickey Mouse March but sought only to improperly use the copyrighted material").

Mr. Guthrie's musical composition is an iconic portrait of the beauty of the American landscape and the disenfranchisement of the underclass. As both a populist anthem and an ironic metaphor, "This Land Belongs to You and Me" contrasts a view of the "sparkling sands of her diamond deserts" and the sun shining on "wheat fields waving" with the city's working class in the "shadow of the steeple near the relief office" who grumble and wonder if such natural treasures embody their own experience with this country. The Unauthorized Movie does not comment on those themes. Instead, Jib Jab merely uses Mr. Guthrie's lyrics and music as a convenient vehicle to caricature the partisan climate of the current presidential campaign. Although the combination of Mr. Guthrie's music with Jib Jab's script and animation is very funny, the caricaturing of the candidates' sound-byte attacks on each other does not transform the work into a parody of Mr. Guthrie's work.

The Unauthorized Movie Copies Excessive Copyrighted Material

A fair use defense is also unavailable to Jib Jab because the Unauthorized Movie copies an excessive amount of the Infringed Composition. A parody may not copy the original work verbatim; rather, it may use enough to "conjure up" the original as a target for the satire. See *Campbell*, 510 U.S. at 588. For that reason, courts have only permitted parodies of musical compositions that significantly modify the original music. See, e.g., *Campbell*, 510 U.S. at 589 (finding that Defendant "not only copied the bass riff and repeated it, but also produced otherwise distinctive sounds, interposing "scrapers" noise, overlaying the music with solos in different keys, and altering the drum beat"). For example, in *Abilene*, the Southern District of



Ken Hertz, Esq.
July 23, 2004
Page 3

New York specifically relied upon the fact that "after the three-line quotation [of the song's title], the song never returns to the music or lyrics" of the original song, *What a Wonderful World*, which makes "clear that the song itself is a target of parodic criticism, and that the creators of [the parody] are not merely using the original song as an ironic or satirical device to comment on what they view as a less than wonderful world." 2003 WL 21415311 at *6; *see also MCA*, 425 F. Supp. at 454 (holding that Defendant was liable for copyright infringement because, *inter alia*, it appropriated an "unfairly excessive" amount of the lyrics and music of the original composition").

Here, far from merely "conjuring up" the Infringed Composition by the use of its title phrase, the Unauthorized Movie includes a literal and complete musical rendition of the song. In addition to quoting two complete lyrical passages, Jib Jab appropriates the identical melody, harmony, rhythm and structure of the original song. Jib Jab also uses a traditional arrangement of the song, failing to add any distinctive elements that might set it apart from the original. Not surprisingly, we have found no copyright infringement case that sanctions such a taking of an entire musical score based upon a purported fair use defense. Where, as here, the overriding purpose and character of Jib Jab's work clearly is not to parody the original work, such an extensive taking cannot be justified. *See, e.g., Campbell*, 510 U.S. at 588.

The Unauthorized Movie Negatively Impacts the Market

The Unauthorized Movie has had, and will continue to have, a significant negative impact on the market for the Infringed Composition and any derivative works. The copyright law does not permit an appropriation of a copyrighted work for parody if that appropriation substantially impacts on the market for either the original work or any other derivative works. *See, e.g., Campbell*, 510 U.S. at 590; *Aibilene*, 2003 WL 21415311, at *7. Courts have also recognized that, [w]here a work goes beyond simply parody and also transposes the original work into a new genre . . . it could have an effect on potential markets for derivative works that recreate the work in the new genre without parodying it." *Aibilene*, 2003 WL 21415311, at *7.

Jib Jab has completely saturated the internet and television media with its unauthorized derivative version of the Infringed Composition. Indeed, we are informed that millions of viewers have already seen the work. As a result, Ludlow will lose substantial amounts of publishing income. Among derivative uses of the song licensed by Ludlow have been adaptations of the lyrics by licensees. As a result of Jib Jab's activity, this market has been substantially compromised, especially in the genre of animation film.

Sonnenschein
SONNENSCHN NATH & ROSENTHAL LLP

Ken Hertz, Esq.
July 23, 2004
Page 4

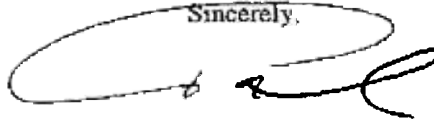
Conclusion

Based on the foregoing, we reject Jib Jab's purported fair use defense. Needless to say, we also reject your suggestion that an enforcement of Ludlow's rights in this matter would be "objectively unreasonable" or would otherwise risk your client's legal fees and costs. To the contrary, we strongly suggest that your client review the relevant law surrounding this matter before continuing the exploitation of the Unauthorized Movie.

We therefore demand that Jib Jab immediately remove the Unauthorized Movie from all associated web-sites, and cease and desist from exploiting the work in any way. We further demand an accounting for all income received from the exploitation of the Unauthorized Movie. In the event that we do not receive written confirmation by July 30, 2004 that Jib Jab will comply with the foregoing, we may conclude that all steps short of litigation are exhausted.

The foregoing does not constitute an exhaustive statement of the facts in this matter and the demands made herein shall not waive or prejudice any rights or remedies that our clients may have in connection with the subject matter hereof, all of which are hereby expressly reserved.

Sincerely,



Paul V. LiCalsi

cc: Fred Goldring, Esq.