



GROSS BELSKY ALONSO LLP  
ATTORNEYS AT LAW

VIA EMAIL ([legal@carpathia.com](mailto:legal@carpathia.com) and [abuse@carpathia.com](mailto:abuse@carpathia.com))  
AND FEDERAL EXPRESS

July 1, 2011

Philip Hedlund  
Sr. Director Business Development  
Carpathia Hosting, Inc  
21000 Atlantic Blvd., Suite 500  
Dulles, VA 20166

**Re: Copyright Infringement and Violation of DCMA: fairfaxunderground.com**

Dear Mr. Hedlund:

We represent Black Rock City LLC, doing business as Burning Man, as well as individual photographers (collectively here, "Burning Man"), whose copyright-protected images (the "Copyrighted Images") are being published on the website fairfaxunderground.com, which is hosted by Carpathia Hosting, Inc. ("Carpathia"). Along with the photographers themselves, Burning Man holds a copyright in the images, as the terms of use agreed to by all entrants to the Burning Man event provide that if they take photographs at the event, they "assign to Burning Man a joint ownership in the copyright for images obtained at the event so that in the event any third party displays or disseminates any of my images in a manner not authorized by this agreement, Burning Man can enforce against the third party any restrictions concerning use of the images, and I appoint Burning Man as my attorney-in-fact to execute any documents necessary to effectuate such assignment."

Under the Digital Millenium Copyright Act ("DMCA"), 17 U.S.C. § 512(c), and online service provider ("OSP") who receives a valid DMCA takedown notice informing the OSP that there are copyright violations on a website hosted by the OSP is required to take down the website and images promptly, or else be liable for damages. Here, the copyright owners of the Copyrighted Images have clearly informed Carpathia that images on the fairfaxunderground.com website are being published without copyright-holder permission, in direct violation of the Digital Millenium Copyright Act ("DMCA"), 17 U.S.C. § 512(c). As the relevant OSP, Carpathia was appropriately notified of this violation on June 16, 2011, by Dan O'Day of Black Rock City LLC. *See Ex. A* attached hereto. Mr. O'Day apprised Carpathia of the violations of the DMCA and requested that the images be taken down. To date, only one image has been removed, and Carpathia has refused to take any further action, erroneously stating that the DMCA did not require takedown of these images.

Mr. Phillip Hedlund  
July 1, 2011  
Page 2

If the remaining images are not removed immediately, Carpathia will be liable under the DMCA, as discussed below. If no immediate action is taken, Burning Man will pursue its legal remedies against it.

Pursuant to the DMCA, an internet service provider such as Carpathia may claim immunity from prosecution under that Act for copyright infringement under certain circumstances, including *when it is not directly aware of the violations*. Once the OSP *receives notice of the violations*, however, the immunity ceases to exist and any failure to take down the infringing material becomes actionable. 17 U.S.C. § 512(c). Once an OSP has received notice of the violations, the OSP cannot evade responsibility simply by forwarding the DMCA notice to its client. Thus Carpathia's June 27, 2011 email advising Mr. O'Day that it had sent on forwarded the notice of DMCA violation to the website does not discharge Carpathia's obligations.

As noted above, Carpathia received notice of copyright infringing activity on June 16, 2011. In the two weeks since that notice, both Carpathia and its client have refused to remove the infringing images, and Carpathia has failed in its responsibility to take down the infringing website.

We write to advise you that if the above-referenced images are not taken down by July 6, 2011, Burning Man will have no choice but to take appropriate action against Carpathia under the DMCA, including seeking appropriate monetary and other sanctions.

Very truly yours,



Terry Gross

TG:jd

# **EXHIBIT A**

Date: June 16, 2011

Recipient Information

Carpathia Hosting, Inc.  
21000 Atlantic Boulevard, Suite 500 <x-msg://75/>  
Dulles, Virginia 20166 <x-msg://75/>  
Email: [abuse@carpathia.com](mailto:abuse@carpathia.com) <mailto:abuse@carpathia.com>  
(703) 840=3900

Sender Information

Black Rock City, LLC  
Attn: Andrea Grace, Communications  
PO Box 884688 <x-msg://75/>  
San Francisco, CA 94188 <x-msg://75/>  
Email: [andie@burningman.com](mailto:andie@burningman.com) <mailto:andie@burningman.com>  
(415) 865-3800 <tel:(415)%20865-3800>

Sent via E-Mail

DMCA Rules ([http://thomas.loc.gov/cgi-bin/query/z?c105:H.R.2281.ENR:](http://thomas.loc.gov/cgi-bin/query/z?c105:H.R.2281.ENR;))

Signature: Physical or Electronic signature of Authorized Person

Delivery: Mail, Fax or Email

To Whom It May Concern:

The following information is presented for the purposes of removing web content that allegedly infringes on our copyright per the Digital Millennium Copyright Act. We appreciate your enforcement of copyright law and support of our rights in this matter.

Be aware that if you ignore this notice, you (as a Provider covered by the Digital Millennium Copyright Act) forfeit the Act's immunity from monetary damages, which range from \$750 to \$30,000 per work infringed and up to \$150,000 per work for willful infringement. Attorney's fees and costs can also be recovered.

What you (the Provider) need to do now:

- 1) reply to the Complainant (Us) and /or the Authorized Agent thereof that this notification has been received, within 24 hours.
- 2) send your customer written notification, along with a copy of this notification, requesting removal of the infringing material and requiring confirmation of the removal be sent to you (the Provider) within 24 hours;
- 3) disable access to the infringing material or the customer's account if the customer fails to remove the infringing material and/or fails to inform you (the Provider) of the removal within 24 hours of notification;

4) send the Complainant (Us) and /or the Authorized Agent thereof notice of the customer's counter notification and your (the Provider) intent to re-enable access to the material or the account within 14 days of your (the Providers) receipt of any customer counter notification, assuming the counter notification meets the requirements of the DMCA Act.

Identification of Infringed Material: Photograph of copyrighted artwork.

Be aware that these are blatant and obvious examples and are not necessarily a complete list of all alleged violations. We require that all alleged copyright violations be removed from the website in question and the onus is on the infringer to locate and remove all alleged copyright violations of the complainant's intellectual property.

Be further aware that simply making a few changes (such as changing a name or rewording or reformatting some text) is not sufficient to remove the rights of the complainant. The alleged offending materials (or website) must be wholly removed.

Website: WWW.FAIRFAXUNDERGROUND.COM  
<<http://WWW.FAIRFAXUNDERGROUND.COM/>>

**Violation Description:**

Burning Man is a private event. Entry to the event is limited to participants that have purchased tickets through the Burning Man website or at limited resale outlets. Each ticket specifies the terms and conditions of attending the event. One of these terms and conditions limits the use of photographs taken at the event, and bans any commercial use of photographs without prior permission. By entering the event gate, a photographer agrees to these terms and conditions. Terms and conditions of entry are a legally binding agreement.

As part of the same terms and conditions, participants appoint Burning Man as their representative, acting on their behalf to protect their intellectual property and privacy rights.

FAIRFAXUNDERGROUND.COM <<http://FAIRFAXUNDERGROUND.COM/>> currently hosts photographic images taken at the Burning Man event. We request this DMCA action as the legally appointed representatives of the original photographer(s) copyrights.

The offending material may be found at:

<http://www.fairfaxunderground.com/forum/read/40/532295/532295.html#msg-532295>

<http://www.fairfaxunderground.com/forum/file.php?40,file=30859,filename=Sunflower-Girl.jpg>

However, the violations may not be limited to those pages. All offending material must be removed in order to comply with this DMCA request, regardless of whether it is specifically named in this request.

Copyright Owner Contact Information  
Black Rock City, LLC

Attn: Andrea Grace, Communications  
PO Box 884688 <x-msg://75/>  
San Francisco, CA 94188 <x-msg://75/>  
Email: [andie@burningman.com](mailto:andie@burningman.com) <mailto:andie@burningman.com>  
(415) 865-3800 <tel:(415)%20865-3800>

Copyright Infringers WhoIs Information:  
Registrant: Cary Weidemann  
4031 University Drive #419 <x-msg://75/>  
Fairfax, VA 22030 <x-msg://75/>  
(703) 592-6498 <tel:(703)%20592-6498>

Copyright Owners Statement:

I have a good faith belief that use of the copyrighted materials described above on the allegedly infringing web pages is not authorized by the copyright owner, its agent, or the law.

I swear, under penalty of perjury, that the information in the notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Signed on this day, the 16th day of June, 2011,

Andrea Grace

\*From: \*Phil Hedlund <[phedlund@carpathia.com](mailto:phedlund@carpathia.com)  
<<mailto:phedlund@carpathia.com>>>  
\*Date: \*June 29, 2011 07:05:57 MST  
\*To: \*Dan O'Day <[danoday@burningman.com](mailto:danoday@burningman.com) <<mailto:danoday@burningman.com>>>  
\*Cc: \*Chris White <[cwhite@carpathia.com](mailto:cwhite@carpathia.com)  
<<mailto:cwhite@carpathia.com>>>, Sean Walsh <[swalsh@carpathia.com](mailto:swalsh@carpathia.com)  
<<mailto:swalsh@carpathia.com>>>, legal <[legal@carpathia.com](mailto:legal@carpathia.com)  
<<mailto:legal@carpathia.com>>>  
\*Subject: \*\*Re: DMCA request - FAIRFAXUNDERGROUND.COM  
<<http://FAIRFAXUNDERGROUND.COM>>\*

Mr. O'Day,

You're understanding of the DMCA is incorrect. Please direct any further communications on this issue to [cary@fairfaxunderground.com](mailto:cary@fairfaxunderground.com) <<mailto:cary@fairfaxunderground.com>>

Regards,

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\*Philip Hedlund  
\*Sr. Director Business Development  
Carpathia Hosting, Inc  
21000 Atlantic Blvd., Suite 500\*  
\*Dulles, VA 20166  
(303) 523 9702 cell  
(703) 738 7073 fax  
[www.carpathia.com](http://www.carpathia.com) <<http://www.carpathia.com>>

From: Dan O'Day <[danoday@burningman.com](mailto:danoday@burningman.com) <<mailto:danoday@burningman.com>>>  
Date: Tue, 28 Jun 2011 15:24:36 -0700  
To: Sean Walsh <[swalsh@carpathia.com](mailto:swalsh@carpathia.com) <<mailto:swalsh@carpathia.com>>>, <[legal@carpathia.com](mailto:legal@carpathia.com) <<mailto:legal@carpathia.com>>>  
Cc: Chris White <[cwhite@carpathia.com](mailto:cwhite@carpathia.com) <<mailto:cwhite@carpathia.com>>>  
Subject: Re: DMCA request - FAIRFAXUNDERGROUND.COM  
<<http://FAIRFAXUNDERGROUND.COM>>

Sean,

I noticed that [FAIRFAXUNDERGROUND.COM](http://FAIRFAXUNDERGROUND.COM) <<http://FAIRFAXUNDERGROUND.COM>> removed one photograph today, and cited the DMCA as the reason. Please be aware that we represent the copyright on multiple photos on that

page; taking down a single photo does not comply with the request. All photos we represent must be removed per the original DMCA. As well, there are other photos on the following pages:

<http://www.fairfaxunderground.com/forum/read/40/599554.html>  
<http://www.fairfaxunderground.com/forum/read/40/298697/303906.html>  
(labeled "mutant vehicles at Burning Man")

One of these pages still contains multiple copies of the photograph FAIRFAXUNDERGROUND.COM <<http://FAIRFAXUNDERGROUND.COM/>> already removed from a different location of their website. Please note that it is the responsibility of the infringer to identify and remove infringing photographs. Unless FAIRFAXUNDERGROUND.COM <<http://FAIRFAXUNDERGROUND.COM/>> removes ALL infringing content, you are not in compliance with our DMCA request.

Thank you.

Dan O'Day  
[danoday@burningman.com](mailto:danoday@burningman.com) <<mailto:danoday@burningman.com>>

On 27 Jun 2011, at 15:17, Dan O'Day wrote:

Sean,

Thank you. While it is their responsibility to remove the content, it is Carpathia's responsibility under the DMCA to enforce that removal if necessary. If FAIRFAXUNDERGROUND.COM <<http://FAIRFAXUNDERGROUND.COM/>> has not removed the content in question within three days, Carpathia should disconnect FAIRFAXUNDERGROUND.COM <<http://FAIRFAXUNDERGROUND.COM/>> from the Internet until such time as the content is removed. I would appreciate your keeping me informed about the progress.

After speaking to Phil Hedland earlier today, I understand that many people complain about the tone of the content on FAIRFAXUNDERGROUND.COM <<http://FAIRFAXUNDERGROUND.COM/>>. Please don't confuse my request with those. I am strictly concerned about FAIRFAXUNDERGROUND.COM <<http://FAIRFAXUNDERGROUND.COM/>>'s violation of copyrights, not about their overall content. Our DMCA action only seeks to enforce copyrights we represent.

Dan O'Day  
[danoday@burningman.com](mailto:danoday@burningman.com) <<mailto:danoday@burningman.com>>

On 27 Jun 2011, at 14:49, Sean Walsh wrote:

Dan, we will forward this DMCA request to our customer. It is their responsibility to take the appropriate action related to the content you have noted.

Sean

--  
mobile.

Sean Walsh  
Director of Operations

Carpathia Hosting, Inc.  
21000 Atlantic Blvd., Suite 500



Dulles, VA 20166  
w: 703.652.5991 | m: 540.877.4540 | 24x7: 703.840.3900 Opt 2  
[www.carpathia.com](http://www.carpathia.com) <<http://www.carpathia.com/>>

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

\*From:\*Chris White [[cwhite@carpathia.com](mailto:cwhite@carpathia.com) <<mailto:cwhite@carpathia.com>>]  
\*Received:\*Monday, 27 Jun 2011, 17:13  
\*To:\*Dan O'Day [[danoday@burningman.com](mailto:danoday@burningman.com) <<mailto:danoday@burningman.com>>]  
\*Subject:\*RE: DMCA request -FAIRFAXUNDERGROUND.COM  
<<http://FAIRFAXUNDERGROUND.COM/>>

Dan,

As discussed on the phone, we are unable to do anything about content posted to [fairfaxunderground.com](http://fairfaxunderground.com) <<http://fairfaxunderground.com/>> and would suggest that you take the issue up with [fairfaxunderground.com](http://fairfaxunderground.com) <<http://fairfaxunderground.com/>> directly.

Chris White  
Technical Operations Team Lead  
M-F 0800-1700  
\*Carpathia Hosting, Inc.  
\*21000 Atlantic Blvd., Suite 500  
Dulles, VA 20166  
(Ops) 703-840-3900 Option 2  
(Direct) 703-652-5930  
[www.carpathiahosting.com](http://www.carpathiahosting.com) <<http://www.carpathiahosting.com/>>

This message is for the designated recipient only and may contain privileged, proprietary, or otherwise confidential information. If you have received it in error, please notify the sender immediately and delete the original. Any other use of the email by you is prohibited.

\*From:\*Dan O'Day [<mailto:dan@oday.net>] \*On Behalf Of\*Dan O'Day  
\*Sent:\*Monday, June 27, 2011 2:31 PM  
\*To:\*Chris White  
\*Subject:\*DMCA request -FAIRFAXUNDERGROUND.COM  
<<http://FAIRFAXUNDERGROUND.COM/>>  
\*Importance:\*High

Chris,

Thanks for taking the time to speak with me. You had mentioned that the person working this DMCA request was currently in a meeting, but was aware of the request. As you can see from the attached request, the DMCA gives Internet service providers a limited amount of time to act on copyright violations before they forfeit their immunity. The request has been in Carpathia's hands for eleven days without any action/resolution; this would seem to be an unreasonable amount of time to delay a DMCA action.

Black Rock City, LLC requests that Carpathia take action on this request by the end of business today.

Please have the person in charge of your DMCA requests contact me as quickly as possible to discuss. I can be reached at (415) 376-0200.

Dan O'Day  
[danoday@burningman.com](mailto:danoday@burningman.com) <<mailto:danoday@burningman.com>>

\*From:\*Andie Grace <[andie.grace@gmail.com](mailto:andie.grace@gmail.com)>

<<mailto:andie.grace@gmail.com>>>  
\*Date:\*June 16, 2011 2:02:01 PM PDT  
\*To:\*"abuse@carpathia.com <<mailto:abuse@carpathia.com>>"  
<[abuse@carpathia.com](mailto:abuse@carpathia.com) <<mailto:abuse@carpathia.com>>>  
\*Subject:\*\*DMCA request\*

----

Date: June 16, 2011

Recipient Information

Carpathia Hosting, Inc.  
21000 Atlantic Boulevard, Suite 500 <x-msg://75/>  
Dulles, Virginia 20166 <x-msg://75/>  
Email: [abuse@carpathia.com](mailto:abuse@carpathia.com) <<mailto:abuse@carpathia.com>>  
(703) 840=3900

Sender Information

Black Rock City, LLC  
Attn: Andrea Grace, Communications  
PO Box 884688 <x-msg://75/>  
San Francisco, CA 94188 <x-msg://75/>  
Email: [andie@burningman.com](mailto:andie@burningman.com) <<mailto:andie@burningman.com>>  
(415) 865-3800 <tel:(415)%20865-3800>

Sent via E-Mail

DMCA Rules (<http://thomas.loc.gov/cgi-bin/query/z?c105:H.R.2281.ENR:>)

Signature: Physical or Electronic signature of Authorized Person

Delivery:  
Mail, Fax or Email

To Whom It May Concern:

The following information is presented for the purposes of removing web content that allegedly infringes on our copyright per the Digital Millennium Copyright Act. We appreciate your enforcement of copyright law and support of our rights in this matter.

Be aware that if you ignore this notice, you (as a Provider covered by the Digital Millennium Copyright Act) forfeit the Act's immunity from monetary damages, which range from \$750 to \$30,000 per work infringed and up to \$150,000 per work for willful infringement. Attorney's fees and costs can also be recovered.

What you (the Provider) need to do now:

- 1) reply to the Complainant (Us) and /or the Authorized Agent thereof that this notification has been received, within 24 hours.
- 2) send your customer written notification, along with a copy of this notification, requesting removal of the infringing material and requiring confirmation of the removal be sent to you (the Provider) within 24 hours;
- 3) disable access to the infringing material or the customer's

account if  
the customer fails to remove the infringing material and/or fails  
to inform  
you (the Provider) of the removal within 24 hours of notification;

4) send the Complainant (Us) and /or the Authorized Agent thereof  
notice of  
the customer's counter notification and your (the Provider) intent to  
re-enable access to the material or the account within 14 days of  
your (the  
Providers) receipt of any customer counter notification, assuming the  
counter notification meets the requirements of the DMCA Act.

Identification of Infringed Material:  
Photograph of copyrighted artwork.

Be aware that these are blatant and obvious examples and are not  
necessarily  
a complete list of all alleged violations. We require that all alleged  
copyright violations be removed from the website in question and  
the onus is  
on the infringer to locate and remove all alleged copyright  
violations of  
the complainant's intellectual property.

Be further aware that simply making a few changes (such as changing  
a name  
or rewording or reformatting some text) is not sufficient to remove the  
rights of the complainant. The alleged offending materials (or  
website) must  
be wholly removed.

Website: [WWW.FAIRFAXUNDERGROUND.COM](http://WWW.FAIRFAXUNDERGROUND.COM) <<http://WWW.FAIRFAXUNDERGROUND.COM/>>

Violation Description:

Burning Man is a private event. Entry to the event is limited to  
participants  
that have purchased tickets through the Burning Man website or at  
limited resale  
outlets. Each ticket specifies the terms and conditions of  
attending the event.  
One of these terms and conditions limits the use of photographs  
taken at the  
event, and bans any commercial use of photographs without prior  
permission. By  
entering the event gate, a photographer agrees to these terms and  
conditions.  
Terms and conditions of entry are a legally binding agreement.

As part of the same terms and conditions, participants appoint  
Burning Man as their  
representative, acting on their behalf to protect their  
intellectual property  
and privacy rights.

FAIRFAXUNDERGROUND.COM <<http://FAIRFAXUNDERGROUND.COM/>> currently  
hosts photographic images taken at the Burning  
Man event. We request this DMCA action as the legally appointed  
representatives  
of the original photographer(s) copyrights.

The offending material may be found at:

<http://www.fairfaxunderground.com/forum/read/40/532295/532295.html#msg-532295>

<http://www.fairfaxunderground.com/forum/file.php?40,file=30859,filename=Sunflower-Girl.jpg>

However, the violations may not be limited to those pages. All offending material must be removed in order to comply with this DMCA request, regardless of whether it is specifically named in this request.

Copyright Owner Contact Information

Black Rock City, LLC

Attn: Andrea Grace, Communications

PO Box 884688 <x-msg://75/>

San Francisco, CA 94188 <x-msg://75/>

Email: [andie@burningman.com](mailto:andie@burningman.com) <mailto:andie@burningman.com>

(415) 865-3800 <tel:(415)%20865-3800>

Copyright Infringers WhoIs Information:

Registrant: Cary Weidemann

4031 University Drive #419 <x-msg://75/>

Fairfax, VA 22030 <x-msg://75/>

(703) 592-6498 <tel:(703)%20592-6498>

Copyright Owners Statement:

I have a good faith belief that use of the copyrighted materials described above on the allegedly infringing web pages is not authorized by the copyright owner, its agent, or the law.

I swear, under penalty of perjury, that the information in the notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Signed on this day, the 16th day of June, 2011,

Andrea Grace