

***ROSSI V. MOTION PICTURE ASSOCIATION OF AMERICA INC.***

*391 F.3d 1000 (9th Cir. 2004)*

The Ninth Circuit ruled that the requirement of “good faith belief” in copyright infringement, required to support a valid Digital Millennium Copyright Act (DMCA) takedown notice under 17 U.S.C. § 512, should be judged by a subjective standard.

The Motion Picture Association of America (MPAA) sent a takedown notice to Michael J. Rossi, owner and operator of a self-described “online magazine” website, pursuant to the notice and takedown provisions of § 512. Rossi’s website contained graphics from copyrighted movies and statements indicating that members could download full length movies from the site. After notification from his ISP that his site would be shut down, Rossi secured alternate hosting and sued the MPAA for, among other things, tortious interference with contractual relations and tortious interference with prospective economic advantage.

In order for a takedown notice to be valid under § 512, the sending party must affirm a good faith belief that the use of material in the manner complained of violates the rights of the copyright owner. The MPAA asserted that its takedown notice had been sent in good faith and complied with the requirements of the DMCA; therefore its conduct had not been illegal. Rossi urged the court to rule that subjective good faith should not be sufficient to satisfy the statute; rather, he argued, the court should adopt an objective standard based upon a reasonable inquiry. The district court granted summary judgment in favor of the MPAA applying a subjective standard for good faith and holding that no triable issue of fact was raised with respect to the MPAA’s good faith that Rossi was infringing copyrights.

The Ninth Circuit upheld the district court’s grant of summary judgment on this issue. While noting the lack of any cases on point, the Ninth Circuit reasoned that the statute’s good faith requirement encompassed a subjective rather than objective standard based on congressional intent and the general meaning of “good faith.”