Twitter blocks Trump 2020 video over Dark Knight Rises music

Warner Brothers

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A request from Warner Brothers Pictures has forced the takedown of a fan-created Trump 2020 video that the president tweeted out on Tuesday afternoon. On Wednesday morning, Trump’s tweet showed the message “this video is not available in your location.” Then the tweet disappeared altogether.

Warner Brothers objected to the video because it used music by Hans Zimmer from the 2012 film *The Dark Knight Rises*. “The use of Warner Bros.’ score from ‘The Dark Knight Rises’ in the campaign video was unauthorized,” a Warner Brothers spokesperson told NBC News.

Versions of the video have been percolating among online Donald Trump supporters for several years. Slate’s Aaron Mak did some sleuthing and discovered an earlier version created by visual effects artist Brandon Kachel.

Kachel’s version was published just after Trump’s 2016 election victory to celebrate his win over Hillary Clinton. It used music from *Inception*—which like *The Dark Knight Rises* was directed by Christopher Nolan and scored by Hans Zimmer. You can view Kachel’s version of the video here and an interview with Kachel here.

Other people substantially modified Kachel's version, adding footage from Trump's presidency, including scenes of Trump meeting with North Korean dictator Kim Jong Un and swapping in the *Dark Knight* score. Trump apparently spotted this new video and decided to feature it on his own Twitter feed.

Both videos contained the tagline "First they ignore you. Then they laugh at you. Then they call you racist."

Trump is more comfortable with social media than any of his predecessors, and he has a history of tweeting out fan-submitted content without much vetting by his staff.

Trump could have a solid fair use case

Copyright law makes it easy for a copyright holder like Warner Brothers to request the takedown of copyrighted material. And online platforms like Twitter and YouTube almost always comply with such requests. But the law also gives the person who uploaded a video the opportunity to file a counter-notice claiming that the material doesn't actually violate copyright law—in which case platforms are supposed to reinstate the video.

James Grimmelmann, a legal scholar at Cornell Law School, tells Ars that Trump could have a solid fair use case here.

Multiple factors weigh in favor of a fair use finding, Grimmelman said. For starters, the music is used in a transformative way—to make a political point rather than as entertainment in a movie.

Trump's use was non-commercial, which is more likely to be fair than a commercial use. Indeed, Grimmelmann noted, copyright law is particularly favorable to fair use in the context of a political campaign.

Last month, for example, we covered a lawsuit a photographer filed against the Republican National Committee over the use of a photograph she took of Democratic US House candidate Rob Quist. The photographer was a Quist supporter and didn't appreciate her photo being used to criticize her favorite candidate. But the judge rejected her lawsuit, ruling that fair use allowed the Republicans to use the image.

Still, the rules of fair use are not always clear, and this isn't a well-settled area of law. One reason for that: it simply isn't common for a high-profile politician to tweet out fan-created content that hasn't been thoroughly vetted by campaign staff.

One exception came in 2012, when the campaign of Mitt Romney published a video that included a clip of Barack Obama singing Al Green's "Let's Stay Together." The video was hit by a takedown request from BMG music. Again, the fair use argument seemed strong, but as far as we can tell, Romney never challenged BMG's takedown.

The question now is whether Trump will fight back. After all, Trump relishes picking fights with media companies, and he might actually win this one. If he does challenge the Warner Brothers takedown, he could set an important fair use precedent in the process.

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