

Complicit in Censorship? Amazon and the Suppression of Online Expression in Ecuador

Introduction

[T]he November 1st shutdown was the consequence of a series of undue takedown notices sent to 4Pelagatos under the Digital Millennium Copyright Act (“DMCA”) on behalf of the Government of Ecuador (“The Government”) under former President Correa.

On November 1, 2016, José Hernández, Martín Pallares, Roberto Aguilar, and Gabriel González (also known as “*Crudo Ecuador*”), the journalists behind the Ecuadorean digital media website 4pelagatos.com based in Quito, Ecuador, realized that their political news and satire website “4Pelagatos” had been shut down.¹ Immediately, they reached out to the website host, Amazon Web Services. Amazon informed them that the shutdown was related to 4Pelagatos’ nonresponse to copyright infringement notices sent on October 13th and 14th. However, 4Pelagatos was not able to locate the October 13th and 14th notices; this was due in large part to the fact that the November 1st shutdown was the consequence of a series of undue takedown notices sent to 4Pelagatos under the Digital Millennium Copyright Act (“DMCA”) on behalf of the Government of Ecuador (“The Government”) under former President Correa.²



The Correa administration’s campaign to silence 4Pelagatos using the DMCA had generated a number of unfortunate consequences. 4Pelagatos is one of Ecuador’s top digital media sites for political news, commentary, and satire. It had been an outspoken critic of the government under former President Rafael Correa, as well as of the former President himself. For this reason, the Correa administration had repeatedly targeted 4Pelagatos through various means, seeking to suppress opposition voices in flagrant

¹ See Appendix 1 (p. 17) for November 1st Letter from 4Pelagatos to Amazon.

² Lenin Moreno was elected as the new President of Ecuador on April 4, 2017, succeeding Rafael Correa.

violation of the rights to free speech and expression under Ecuador, U.S., and international law. Enforcement of the DMCA for alleged violations of the government's copyrights is one of those means. The takedown of the 4Pelagatos website on November 1st was evidence that the Correa administration was succeeding.

A consequence of the Correa administration's DMCA strategy was that Amazon could have become an unwitting partner in the administration's campaign to silence criticism by enforcing the government's DMCA complaints against 4Pelagatos (and other government critics) without due consideration, as it did on November 1st. This is because the Correa administration did not in good faith take into account fair use considerations when it engaged in the systematic practice of lodging DMCA complaints against 4Pelagatos (or other free speech advocates). Thus, when Amazon fails to recognize the demonstrable pattern of abuse of DMCA notice and takedown procedures by the Ecuadorean authorities, as in the case of 4Pelagatos, it runs the risk of becoming the government's accomplice in the suppression of protected free speech.

A one-day shutdown of 4Pelagatos may not appear to be a significant interference with free speech. But imagine if Amazon were shut down for a day. The impact on both Amazon as the provider of online content and its audience would be deeply felt. Moreover, the effects of the 4Pelagatos shut-down were felt beyond just its duration. The Correa administration had succeeded in sending its message to opposition journalists and their readers: one way or another, we will shut you down. Finally, it was clear that the practices that resulted in the one-day shutdown, if unchecked, could well lead to further, longer, and even permanent shutdowns of 4Pelagatos and other critical websites in the future. It was a shot across the bow for all opposition journalists and online critics of the Ecuadorean government.

Because of the takedown, 4Pelagatos chose to stop using Amazon to host its website. It transferred its business to another service, where it would not be subject to the abuse of legal procedures under the DMCA. This report provides greater context for that decision, taken in response to the former President Correa's campaign to suppress political speech online. When it comes to the abuse of DMCA procedures against 4Pelagatos and other online journalists critical of the Ecuadorean government, Amazon can, and should, do better.³ The information and recommendations provided in this report are designed to contribute to that end.⁴

³ "Jeff Bezos Makes It Clear Where He Stands on Freedom of Speech," *Fortune* (June 1, 2016), <http://fortune.com/2016/06/01/jeff-bezos-free-speech/> [<https://perma.cc/Z3V5-65TR>].

⁴ Amazon was sent an advance draft of this report before publication, and was given the opportunity to comment on or add to the contents of the report. Amazon's response is discussed below.

This report begins by summarizing information about the shutdown of the 4Pelagatos' website, the most egregious example of the DMCA abuses it suffered in 2016. The report then examines the broader context within which the Correa administration's campaign of persecution against 4Pelagatos using the DMCA procedures took place. What emerges is a clear pattern of government harassment aimed at unlawfully silencing 4Pelagatos' legitimate political speech. Next, the report analyzes these patterns in light of the DMCA and related case law, to demonstrate why the Correa administration's actions ran counter to the statutory and other legal protections afforded subscribers under that regime. Finally, the report offers a number of recommendations for how Amazon could reduce its exposure to claims of complicity with the anti-democratic regime of former President Correa and similar regimes based on best practices in the technology sector.

In 2016, 4Pelagatos received multiple DMCA takedown requests initiated by the Correa administration, each containing scores of links, many of them repeated.

Amazon's November 1st Shutdown of 4pelagatos.com

The 4Pelagatos website, 4pelagatos.com, was rendered inaccessible from November 1, 2016 to November 2, 2016. After discovering that the site was shut down, 4Pelagatos reported the issue to Amazon. Amazon replied that the issue was related to 4Pelagatos' nonresponse to DMCA takedown notices sent on October 13th and 14th, 2016. Amazon's communication asked it to respond to the notices in order for Amazon to restore the site. In the email, Amazon's representative stated that this issue was being marked as resolved. 4Pelagatos sent a letter to Amazon on November 1st, the same day the website was taken down. In the letter, it referenced the longstanding government persecution to which the website was subjected. The letter described how overwhelmed 4Pelagatos felt as a result of the multiple takedown notices it had received, and requested that the site be restored in the face of the Correa administration's repeated abuse of the DMCA.⁵

Due in large part to the repeated takedown notices 4Pelagatos had received from Amazon, each of which contained dozens of individual links, and also in part to takedown notices the Correa administration sent through other platforms, it was unable to locate the October 13th and 14th notices to which Amazon claimed 4Pelagatos had not responded. 4Pelagatos had already complained to Amazon about the multiple takedown notices with high numbers of offending links it was receiving. In 2016, 4Pelagatos received multiple DMCA takedown requests initiated by the Correa administration, each containing scores of links, many of them repeated. For example, one notice dated February 18, 2016 contained 27 individual links⁶ and another from July 21, 2016 contained 69 individual links.⁷ All 27 of the links contained in the February notice, to which 4Pelagatos had responded affirming that the material did not violate copyrights, were repeated in the July notice. There were also 19 duplicated links within the July notice itself.

⁵ See Appendix 1 (p. 17) for November 1st Letter from 4Pelagatos to Amazon.

⁶ See Appendix 3 (p. 23) for 4Pelagatos Response to the February 18, 2016 Amazon Takedown Notice.

⁷ See Appendix 4 (p. 26) for the July 22, 2016 Amazon Takedown Notice.

Overall in 2016, 4Pelagatos received at least 86 unique links in various notices. But it also received notices containing scores and scores of duplicates of link found in prior notices. Further, as noted, 4Pelagatos received notices with dozens of links that were duplicates of others found within the same notice. One link was even repeated in a third notice after 4Pelagatos had sent Amazon two counter-notices affirming that the linked image does not violate copyrights. Not surprisingly, 4Pelagatos complained bitterly about the repeated abuse by the Correa administration of US law and company good faith to shut the website down.⁸

On November 2nd, 4Pelagatos received another email from Amazon.⁹ The message informed 4Pelagatos that, apparently in response to the website's November 1st letter, the Amazon EC2 Abuse Report [51518616935] did not yield results because they "were unable to identify the customer responsible for the reported activity."¹⁰ The email then requested "additional information in order to identify the responsible customer."¹¹ Because 4Pelagatos did not file a separate abuse report, it appears that this refers to its complaints regarding government persecution in the aforementioned letter. In any case, Amazon put the 4Pelagatos website back online on November 2, 2016.¹²

The Correa Administration's Abuse of DMCA Procedures

This Part first summarizes the Correa administration's practice since January 2016 of invoking the DMCA to suppress the media and free speech rights exercised on the 4Pelagatos website.¹³ Assuming the government is the appropriate copyright holder in most cases, this Part then analyzes a number of representative examples of the targeted content at issue to show how and why it is clearly fair use under prevailing standards.

Background

4Pelagatos attracted the government's negative attention because its website was an outspoken critic of former Ecuadorean President Correa and his policies. Indeed, since

⁸ See "Correa Barriga 4pelagatos esta de vuelta," 4Pelagatos (Nov. 2, 2016), <http://4pelagatos.com/2016/11/02/correa-barriga-4pelagatos-esta-de-vuelta/> [<https://perma.cc/X77J-TRZE>].

⁹ See Appendix 2 (p. 22) for November 2nd Email from Amazon to 4Pelagatos.

¹⁰ *Id.*

¹¹ *Id.*

¹² See "Correa Barriga 4pelagatos está de vuelta," *supra* note 8. In this article, 4Pelagatos announced its site's restoration and criticized SECOM for suppressing free speech. *See id.*

¹³ The Correa administration's abusive practice actually began in 2012, predating our starting point. See Sutton, Maira "State Censorship by Copyright? Spanish Firm Abuses DMCA to Silence Critics of Ecuador's Government," Electronic Frontier Foundation (May 15, 2014), <https://www.eff.org/deeplinks/2014/05/state-censorship-copyright-spanish-firm-abuses-DMCA> [<https://perma.cc/MW7G-AAN6>].

4pelagatos.com was founded in January 2016, the *Secretaría Nacional de Comunicaciones* (SECOM) and other government actors have regularly submitted copyright complaints against it.¹⁴ These complaints typically alleged that content on Amazon’s servers violated the government’s rights under the DMCA and Ecuadorean Intellectual Property Law. This is because the government had registered as its intellectual property all “photos and videos of Correa and his government.”¹⁵ The content at issue was published on the 4Pelagatos website, which considers such images to be public property and fair use. Due to the repeated take down notifications it received at the Correa administration’s behest, 4Pelagatos felt overwhelmed and complained that it could no longer count them.¹⁶ These repeated and unfounded notices led 4Pelagatos to affirm that the Correa administration was actively oppressing its free speech.¹⁷

Although 4Pelagatos is the focus of our analysis, it is not the only victim of this abusive practice.¹⁸ The Correa administration routinely served DMCA takedown notices upon media sources publishing material with images or video of government officials or events.¹⁹ This was especially true when the content involved former President Correa himself.²⁰ Freedom House’s *2016 Freedom on the Net Report* addresses Ecuador and confirms that for years the Correa administration had used DMCA takedown procedures “to censor online content” through the suppression of “tweets, images, blog posts, and videos.”²¹ Although websites are sometimes able to eventually restore their content using the responsive procedures under the DMCA, “the process can be too burdensome for those citizens who just want their voices to be heard.”²² That is precisely the case for

¹⁴ See “Correa Barriga 4pelagatos esta de vuelta,” *supra* note 8; see also DMCA, *infra* note 26.

¹⁵ “Correa Barriga 4pelagatos está de vuelta,” *supra* note 8.

¹⁶ See “Correa Barriga 4pelagatos está de vuelta,” *supra* note 8.

¹⁷ See “la SECOM quiere que Rafael Correa se calle,” 4Pelagatos (May 6, 2016), <http://4pelagatos.com/2016/05/06/la-secom-quiere-que-rafael-correa-se-calle/> [<https://perma.cc/A4BM-VPXH>].

¹⁸ For example, after publishing the photo of a check connected to an article about police corruption, *LaRepublica* was shut down for four hours as a result of a DMCA takedown notice received from the Correa administration. See “Ares Rights logra bloquear la republica durante cuatro horas,” *LaRepublica* (May 29, 2014), <http://www.larepublica.ec/blog/politica/2014/05/29/ares-rights-logra-bloquear-larepublica-durante-cuatro-horas/> [<https://perma.cc/C9B5-GALK>]; see also Mike Masnick, “Company Hired By Ecuador Uses Bogus Copyright Claims to Censor Website of Ecuadorean Newspaper,” *TechDirt* (June 2, 2014), <https://www.techdirt.com/articles/20140531/06163927422/company-hired-ecuador-uses-bogus-copyright-claims-to-censor-website-Ecuadorean-newspaper.shtml> [<https://perma.cc/2QCX-3G2U>].

¹⁹ Sutton, *supra* note 13.

²⁰ Ellerbeck, Alexandra, “How US Copyright Law is Being Used to Takedown Correa’s Critics in Ecuador,” Committee to Protect Journalist (Jan. 21, 2016), <https://cpj.org/blog/2016/01/how-us-copyright-law-is-being-used-to-take-down-co.php> [<https://perma.cc/X8P8-P2UF>].

²¹ “Ecuador: Country Profile,” Freedom on the Net 2016 Report, footnote 48 and accompanying text, available at <https://freedomhouse.org/report/freedom-net/2016/ecuador> [<https://perma.cc/N25Q-LTWG>]. Freedom House labels Ecuador’s net freedom status as being only, “Partly Free” and reports that the use of copyright infringement notices (DMCA) is a key development over the last year in Ecuador’s efforts to restrict net freedom. *Id.*

²² Vivanco, José Miguel, “Censorship in Ecuador Has Made It to the Internet,” Human Rights Watch (Dec. 14, 2015), <https://www.hrw.org/news/2014/12/15/censorship-ecuador-has-made-it>

4Pelagatos. Ultimately, the Correa administration’s abuse of the DMCA must be understood as a part of its broader strategy to suppress free press through multiple mediums. Freedom House’s 2016 *Freedom of the Press Report* on Ecuador states that, “official censorship has...increased, particularly online, as a number of critical journalists have moved to internet-based outlets in recent years.” Labeling Ecuador’s Press “Not Free,” the report makes specific reference to the exploitation of copyright law as part of this campaign.²³

Another example from 4Pelagatos’ experience is SECOM’s repeated targeting of the same content, even after it has already been deemed not to infringe. On repeated occasions, SECOM has submitted complaints to Amazon seeking to remove certain images despite previous successful counter notices sent by 4Pelagatos in relation to those images, which resulted in Amazon either restoring the targeted content after a brief takedown, or never taking it down at all.²⁴ For instance, SECOM submitted a takedown request (AWS case number 10542937184) on July 22, 2016 targeting, among others, a link to an image of former President Correa from February 14, 2016.²⁵ 4Pelagatos responded to the complaint by submitting a counter notice, and all the images targeted in the notice, including the image of Correa from February 14, 2016, remained posted to 4pelagatos.com, as SECOM did not file a suit based on copyright infringement.²⁶ However, in October 2016, SECOM filed a subsequent takedown notice with Amazon (AWS case number 11330488723-1) including the same link to the same image of Correa.²⁷ In addition, the July 22, 2016 takedown request (AWS case number 10542937184) also cited images that SECOM had erroneously identified in a February 2016 complaint (AWS case number 14178904740-1) as infringing on its copyright.²⁸ Regarding this February 2016 complaint, 4Pelagatos sent a timely counter notice claiming fair use of the images. As a result, the images remained on the website and SECOM did not file a suit at the time.

These examples are indicative of a broader trend. In a study, conducted by University of California, Berkeley School of Law and The American Assembly at Columbia University, investigators examined a data-set of six months’ worth of DMCA takedown requests,

internet [<https://perma.cc/RT7U-48RY>].

²³ “Ecuador: Country Profile,” Freedom on the Press 2016 Report, *available at* <https://freedomhouse.org/report/freedom-press/2016/ecuador>, *archived at* <https://perma.cc/T3QV-A2ZY>.

²⁴ *See* “Correa Barriga 4pelagatos está de vuelta,” *supra* note 8.

²⁵ *Available at* <http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-14-a-las-9.16.52-a.m..png>, *archived at* <https://perma.cc/W4KA-YK5F>.

²⁶ Under the DMCA, if the copyright owner wishes to continue pursuing the allegedly infringing conduct after receipt of an effective counter notice and keep the content offline, the copyright owner must pursue a judicial resolution. Digital Millennium Copyright Act, 17 U.S.C. § 512(g)(2)(C).

²⁷ *See supra* note 25.

²⁸ *See* Appendix 4 (p. 26) for the July 22, 2016 Amazon Takedown Notice.

108,331,663 in total, from the Lumen Database.²⁹ Of those takedown requests, 28.4% “had characteristics that raised clear questions about their validity[.]”³⁰ Overall, 19.5% of requests “raised questions about compliance with the [DMCA] requirements,” 6.6% had “potential fair use defenses,” 2.3% targeted “subject matter inappropriate for a DMCA takedown,” and a remaining few had other issues bringing their validity into question.³¹ Accordingly, 30.1 million requests would have benefitted from human review.³² The study further found that the vast majority of these questionable requests were sent by sophisticated complainants with knowledge of the applicable law.³³

In response to a consultation regarding their DMCA complaint review practices, Amazon representatives reported that despite the elevated numbers involved, all such complaints are subject to “human review” at some stage in the process prior to issuing a notification to the allegedly offending user.³⁴ They further clarified that they screen for reiterated requests that were previously responded to through counter-notices and not acted upon, or otherwise deemed to be unfounded. As a rule, Amazon representatives affirm, these repeated complaints are not transmitted to the users; however, as in the case of 4Pelagatos, such reiterated requests for takedown may in fact be re-transmitted as part of a notification which bundles new allegedly offending links with those already deemed or treated as not doing so. In those cases, which Amazon recognizes, users will purportedly not be penalized or sanctioned on the basis of the repeated requests.

Types of Targeted Content

This section now turns to analyzing prominent examples of DMCA abuse against 4Pelagatos by the Correa administration. There are two categories of content that are targeted by the vast majority of the takedown notices 4Pelagatos received from the government. These are: (1) *Crudo Ecuador* memes that use humor to critique the policies and personal attributes of the former Ecuadorean President Correa, other government officials, and various government agencies; and (2) unedited pictures that 4Pelagatos uses to provide visual context to the website’s articles. Below are examples from both categories extracted from actual DMCA takedown notices received with a brief explanation of their content and purpose. After describing the targeted content, this section analyzes it under the DMCA and prevailing jurisprudence to explain why the content patently meets fair use standards.

²⁹ Jennifer Urban, Joe Karaganis, Brianna Schofield, *Notice and Takedown in Everyday Practice*, University of California Berkeley School of Law, 82, (Version 2, Mar. 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2755628, archived at <https://perma.cc/5PL7-NA3X>.

³⁰ *Id.* at 88.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 116.

³⁴ Interview with Amazon representatives, March 29, 2017.

The first category of targeted content is the *Crudo Ecuador* memes that satirically lambast former President Correa and his administration, such as the one shown below to the right, entitled *La afiliación obligatoria*.



Image 1

The *Crudo Ecuador* meme displayed in Image 1 is exemplary of the content Gabriel Gonzalez creates because, here, he has taken one or more photos and transformed the original images with photo editing, creative captioning, and other means of communicating humor and satire to critique these government officials. In the first image (at the top of the meme), former President Correa speaks to a man while sitting on a panel. In the second photo (at the bottom of the meme), former President Correa holds a young child upside down during a school visit.

The image is then transformed in a number of ways. First, the top image has speech bubbles added in which the man suggests to former President Correa that students should be forced to join an unidentified group. In his own speech bubble, former President Correa acknowledges this as a good idea. In the bottom image, former President Correa is demanding 20.5% of the lunch money of the child he holds upside down. Images of individual dollar bills have been added to the photo, falling from the child's pocket. Finally, the top and bottom caption read together that membership is now compulsory for all. As a result, the meme uses the images to critique the Correa administration's social security policies. Critics point out that contributions to social security have increased under the Correa administration.³⁵ *Crudo Ecuador* is implying that not even school children are safe from rising payment requirements.



Image 2

The second category of targeted content is the unedited pictures that contextualize the events and stories in which 4Pelagatos attack the policy standpoints and actions of the Correa administration. In one example, 4Pelagatos criticized former President Correa for the misleading information he provided the Ecuadorean public about the state of the Ecuadorean economy. To do so, 4Pelagatos reused the photograph displayed in Image 2 depicting former President Correa raising two thumbs up at his weekly Saturday address, known as "Sabatina," and placed it in the context of an article wherein 4Pelagatos discussed the alternate reality in which it believes former President Correa resides because of his distorted views on the actual situation in Ecuador.³⁶ This theme of re-contextualization continued in another such article. 4Pelagatos reused the photograph displayed in Image 3 depicting former President Correa raising a glass to a popular



Image 3

³⁵ Orozco, Mónica, "El IESS aumenta el aporte del afiliado" *El Comercio* (n.d.), <http://www.elcomercio.com/actualidad/negocios/iess-aumenta-aporte-del-afiliado.html> [https://perma.cc/V96G-RSZR].

³⁶ "El reino de la realidad," 4Pelagatos (Jan. 23, 2016), <http://4pelagatos.com/2016/01/23/sabatina-459-el-reino-de-la-realidad-paralela/> [https://perma.cc/RL4Z-42VB]. Link for image targeted for removal: <http://4pelagatos.com/wp-content/uploads/2016/01/sabatina-459-23-ene.16.jpg> [https://perma.cc/UL5W-RUJS].

musician and actor, which 4Pelagatos used to criticize the president's association with the actor as simply a thinly-veiled attempt to gain popularity, which, in 4Pelagatos' view, he does not deserve.³⁷

Analysis of DMCA Abuses by the Correa Administration

The memes and unedited pictures described above are exemplary of the content on 4pelagatos.com that the Correa administration had alleged violated its copyrights and that the Correa administration had targeted with DMCA takedown notices. However, those images do not infringe on any copyrights because they are examples of fair use protected under 17 U.S.C. § 107.³⁸ The images are not only used for purposes authorized in the fair use statute for criticism, comment, and news reporting. Their online republication is also protected according to the four statutory factors for determining fair use. As a result, the Ecuadorean government had been abusing the DMCA by submitting takedown notices to remove memes and unedited pictures used to contextualize critiques because their use is, in fact, authorized by the law.³⁹

The creation of satirical memes by *Crudo Ecuador* exemplifies fair use under the four fair use factors.⁴⁰ 17 U.S.C. § 107 sets out these four factors that a court must weigh together in considering a fair use claim.⁴¹ Relevant case law has determined when these factors weigh in favor of fair use. First, the “purpose and character of the use” factor weighs in favor of fair use when the new work is transformative.⁴² It is a stronger claim for fair use if the transformative work is also used for a non-commercial purpose.⁴³ However, a highly transformative work can be used for commercial purposes and still weigh in favor of fair use.⁴⁴ Second, the “nature of the copyrighted work” factor weighs in favor of fair use where the copyrighted work is non-creative and published.⁴⁵ Third,

³⁷ “De las sabatinas solo queda el cocolon,” 4Pelagatos (Feb. 13, 2016), <https://4pelagatos.com/2016/02/13/de-las-sabatinas-solo-queda-el-cocolon/> [<https://perma.cc/C2T5-MUE4>]. Link for image targeted for removal: <http://4pelagatos.com/wp-content/uploads/2016/02/correa-bose.jpeg> [<https://perma.cc/T5BZ-2W9E>].

³⁸ 17 U.S.C. § 107.

³⁹ *Lenz v. Universal Music Corp.*, 815 F.3d 1145, 1151-52 (9th Cir. 2015) (holding that the DMCA “unambiguously contemplates fair use [of copyrighted material] as a use authorized by the law”).

⁴⁰ *See Blanch v. Koons*, 467 F.3d 244, 246-48 (2d Cir. 2006) (finding fair use where an artist copied part of a copyrighted picture, altered its appearance, and added it as part of an artistic new work).

⁴¹ “(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. § 107, *supra* note 38.

⁴² *See Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994).

⁴³ *Id.* at 584-85.

⁴⁴ *Id.*

⁴⁵ *See Blanch*, 467 F.3d at 256.

the “amount of use” factor weighs in favor of fair use if the quantity and quality of the material used in the new work is reasonable in relation to the purpose for which the original work was copied.⁴⁶ Fourth, the “effect of the use” factor weighs in favor of fair use where the new work has not usurped the market for the original or derivative work.⁴⁷

There is no question the memes meet the standard for fair use under the four factors test. First, the memes transform copyrighted images to further *Crudo Ecuador*’s non-commercial, critical commentary. In this way, the objective, which is dissent, clearly differs from that of the original photographer whose pictures are used to rally support for the Correa administration’s policies. Second, the original pictures used to create the memes are factual published works. Third, the memes only use a sufficient amount of the original pictures to further the critical purpose of the memes and otherwise alter the pictures with speech bubbles, captions, and other graphics. Fourth, there is no evidence that there was a market for the original Correa administration pictures or for the memes, and even if there was, the memes would not usurp the market for the copyrighted pictures because they would serve completely different markets. As a result, the four factor fair use test weighs in favor of these memes satisfying fair use and not infringing on any copyright.

Like the memes, the particular use of unedited copyrighted pictures by 4Pelagatos to criticize the subject of the pictures also constitutes fair use under the statutory four factor test.⁴⁸ First, the unedited pictures of Correa and other government officials, added to 4Pelagatos’ articles to provide context, are used for a transformative and non-commercial purpose. That is, they are taken out of their original setting where they are typically used to promote the Ecuadorean president and his policies, and instead used to enhance critical commentaries by way of the non-commercial 4Pelagatos website. Second, the original pictures are also non-creative, informative published works taken of Correa administration officials while they are going about their normal duties. Third, neither the Correa administration nor 4Pelagatos had any then or future plans to sell rights to these pictures. Therefore, 4Pelagatos’ new use is not effecting the non-existent market for the former government pictures. Finally, even though 4Pelagatos is using the entire unedited pictures rather than only a part of the pictures, this one factor does not outweigh the other three because these standard press photos are void of unique stylings, which makes using them in their entirety a relative non-issue. Therefore, all four factors either favor fair use

⁴⁶ See *Campbell*, 510 U.S. at 586.

⁴⁷ See *Blanch*, 467 F.3d at 258.

⁴⁸ See *Katz v. Chevaldina*, No. 12-22211-CIV, 2014 WL 2815496 at *5-10 (S.D. Fla. June 17, 2014) (finding fair use where a blogger made repeated use of an unedited copyrighted image of a copyright owner in her blogs that criticized the copyright owner and his business dealings); see also *Dhillon v. Does 1-10*, No. C 13-01465 SI, 2014 WL 722592, at *4-6 (N.D. Cal. Feb. 25, 2014) (finding fair use where a group of bloggers used an unedited copyrighted image of the copyright owner in their blog that criticized the copyright owners and her politics).

or are fair use neutral, making the overall weight of the use of the unedited pictures authorized by law.

[T]he DMCA is not meant to allow a copyright owner to repeatedly harass those using its images under fair use by sending complaints directed at the same images over and over.

In addition to 4Pelagatos making fair use of the former government images, there is reason to believe that SECOM was violating the DMCA by submitting takedown notices in bad faith. Under *Lenz v. Universal Music Corporation*, a copyright owner is required to consider whether the use of his or her copyrighted work is actually infringing or if it qualifies as a non-infringing fair use.⁴⁹ Failure to do this evaluation constitutes a failure to meet the DMCA's subjective good faith belief standard that the material for which a copyright owner is submitting a takedown notice does actually infringe on the owner's copyright.⁵⁰

If SECOM still believed that 4Pelagatos was infringing on SECOM's copyright even after receiving 4Pelagatos' counter notice, it did not have the right under the DMCA to continue to submit takedown notices about the same allegedly infringing content. That is, the DMCA is not meant to allow a copyright owner to repeatedly harass those using its images under fair use by sending complaints directed at the same images over and over. Its regular practice of doing so suggests that SECOM was willfully ignoring the fact that 4Pelagatos was using the images for fair use purposes. This practice corroborates the claim that SECOM filed numerous takedown notices against 4Pelagatos in bad faith. This claim is further reinforced when viewed in context. The Correa administration's efforts to suppress free speech, curtail free press, and otherwise silence political dissent are well-documented.⁵¹ It should not, therefore, have received the benefit of the doubt that it was a good faith actor under these instances.

Conclusion

SECOM, by submitting repeated bad faith complaints of copyright infringement against the 4Pelagatos website through the Amazon Web Services' abuse reporting system, suppressed 4Pelagatos' freedom of speech and freedom of the press. When Amazon processed these complaints, including but not limited to disabling access to 4Pelagatos' website from November 1st to 2nd, it may have become complicit in the Correa administration's attempts to suppress any and all political opposition or criticism to its authority. The question now becomes: what can Amazon do to avoid further facilitating DMCA abuses in this manner?

⁴⁹ *Lenz*, *supra* note 39, at 1148, 1153.

⁵⁰ *Id.* at 1154 (holding that civil liability against copyright owners is available if they either "ignore[] or neglect[]" their duty to consider fair use or they state that the use is not authorized by the law despite subjectively knowing that the use is covered by fair use).

⁵¹ *See supra* notes 20-23 and accompanying text.

Recommendations to Amazon

Based on the foregoing, the following are recommendations intended to help Amazon avoid the pitfalls of facilitating further DMCA abuse by the Ecuadorean government. First and foremost, it is imperative that Amazon adopt measures to ensure that its DMCA review procedures better take into account the Ecuadorean political context and the government's track record of abusing those procedures to suppress legitimate political speech by the press and critics of the regime. We found it encouraging to learn that the complaint review procedure at Amazon includes a level of "human review," especially because automated systems can have a hard time identifying and "weeding out overly aggressive or bad faith senders"⁵² like SECOM and other government agents. But, using human review in sensitive circumstances like those prevailing in Ecuador is pointless if it does not provide a meaningful, contextualized evaluation of good faith and fair use in relation to suspect requests from government authorities known for systematically suppressing free speech to silence their critics.

A recent report by University of California, Berkeley School of Law and The American Assembly at Columbia University on contemporary DMCA practices suggests, *inter alia*, the following additional measures to prevent and curtail abuses:⁵³

- Develop mechanisms for automated notice processing systems where these are employed to flag questionable notices and escalate questionable notices for human review;
- Conduct automated review and human checks of notices submitted by "trusted" senders and remove senders with elevated rejection rates from trusted sender programs;
- Ensure that trusted sender systems still require formal DMCA notices, identification of the infringed work, indicia of good faith, and notification to the target of the takedown request;
- Invest in informational resources that senders can consult before deciding to send notices, and that targets can access before responding to them.

To assist with addressing the kind of situation Amazon is facing in Ecuador, a number of Internet companies have pledged to take steps to protect freedom of expression and privacy rights online by joining the Global Network Initiative (GNI) and adhering to the

⁵² See Urban, *Notice and Takedown in Everyday Practice*, *supra* note 29 at 5, 136, 138.

⁵³ *Id.* at 136, 139.

GNI Principles.⁵⁴ This entails, among other things, making good faith efforts to implement recommended best practices with respect to government requests for content restriction.⁵⁵ ICT company participants in GNI include Google, Microsoft, Yahoo!, Facebook, and LinkedIn; these companies are joined as members of the organization by representatives from academia, civil society, and the investors.⁵⁶

Amazon should consider joining GNI. The procedures for doing so are listed on the GNI webpage.⁵⁷ In addition, whether Amazon chooses to join GNI, it can benefit from consulting GNI's Implementation Guidelines for the Principles on Freedom of Expression and Privacy,⁵⁸ which are intended to assist companies facing issues like those Amazon faces in Ecuador to resolve them in line with international standards on freedom of expression and privacy. Google, for example, employs human review practices that specifically flag complaints made by government agencies and actors in order to conduct an informed human evaluation of whether the complaint is valid or constitutes an attempt to suppress free speech.⁵⁹ Other relevant GNI Guidelines that Amazon could consider include:⁶⁰

- Encouraging governments to be specific, transparent and consistent in the demands, laws, and regulations (“government restrictions”) that are issued to restrict freedom of expression online;
- Encouraging government counterparts to formulate demand that are consistent with international legal standards on freedom of expression, including engaging proactively with governments to reach a shared understanding of how government restrictions can be applied in a manner consistent with freedom of expression;

⁵⁴ Global Network Initiative, Principles, <http://globalnetworkinitiative.org/principles/index.php> (last visited March 15, 2017) [<https://perma.cc/XWW5-22JQ>].

⁵⁵ *Id.*

⁵⁶ Global Network Initiative, ICT Participants List, http://globalnetworkinitiative.org/participants/index.php?qt-gni_participants=1#qt-gni_participants (last visited March 15, 2017) [<https://perma.cc/UD2B-FPTH>]. GW Law School is an academic member of GNI. *Id.*

⁵⁷ Global Network Initiative, Membership Information, <http://globalnetworkinitiative.org/membershipinformation/index.php> (last visited March 15, 2017) [<https://perma.cc/H4FA-7F7P>].

⁵⁸ Global Network Initiative, “Implementation Guidelines for the Principles on Freedom of Expression and Privacy,” <http://globalnetworkinitiative.org/sites/default/files/Implementation-Guidelines-for-the-GNI-Principles.pdf> (last visited March 15, 2017) [<https://perma.cc/M968-654Q>].

⁵⁹ “Transparency Report - Government Requests to Remove Content,” Google, <https://www.google.com/transparencyreport/removals/government/> (last visited March 15, 2017) [<https://perma.cc/3CRA-UP4U>].

⁶⁰ GNI Implementation Guidelines, *supra* note 58, at 3-6.

- Interpreting government restrictions and demands narrowly so as to minimize the negative impact on freedom of expression rights;
- Seeking to operate in a transparent manner when required by a government to remove content or otherwise limit access to information and ideas;
- Maintaining a record of requests and demands for government restrictions to freedom of expression;
- Reporting publicly on the number of requests received from governments and the actions taken;
- Providing in-depth training for those corporate employees who are most likely to face freedom of expression challenges, especially in countries with proven track records of curtailing freedom of speech;
- Ensuring that the procedures related to specific government demands implicating users' freedom of expression are overseen and signed-off by an appropriate and sufficiently senior member of the company's management and are appropriately documented;
- Establishing a means of remediation when business practices that are inconsistent with freedom of expression are identified, including meaningful steps to ensure that such inconsistencies do not recur;
- Disclosing to users in a clear manner the company's policies and procedures for responding to government demands to remove or limit access to content or restrict communications;
- Informing clients of their DMCA abuse review policies, like those involving reiterated requests not acted upon or otherwise unfounded; and
- Giving clear, prominent, and timely notice to users when access to specific content has been removed or blocked by the participating company or when communications have been limited by the company due to government restrictions. Notice should include the reason for the action and state on whose authority the action was taken.

Finally, 4Pelagatos themselves offer the following recommendations based on their first-hand experience with Amazon during the difficult reference period covered by this Report:

- Acknowledge and be sensitive to the particular context of the country. Adopt client-facing measures to show that you are acting in accordance with that knowledge.
- Acknowledge and take into account users' explanations of good faith and fair use. Let them know that you have.
- Avoid using boilerplate messages and automated responses in customer relations where free speech and other fundamental rights are at stake.
- Do not send repeated notifications to take down links to content that has already been counter-noticed without response or otherwise previously demonstrated to be in bad faith or unfounded.
- Do not send notices containing multiple repeated links within the same notification and flag senders that do so.
- Report DMCA complaints and requests for online content removal with relevant details to the Lumen Database operated by the Berkman Klein Center for Internet and Society at Harvard University.⁶¹

4Pelagatos faced continued harassment in part because Amazon failed to recognize the Correa administration's demonstrable pattern of abuse of DMCA notice and takedown procedures. As a result, Amazon may have unwittingly facilitated that abuse. The above suggestions are not only useful to help Amazon avoid enabling government sponsored manipulation of the DMCA, but also for other web hosts that seek not to be complicit with governments attempting to suppress free speech.

⁶¹ Lumen, <https://www.lumendatabase.org/>

For More Information Contact:

Professor Arturo J. Carrillo
Director, International Human Rights Clinic
The George Washington University School of Law
acarrillo@law.gwu.edu



Professor Daniela Salazar
Vice Dean; Co-Director, Public Interest Law Clinic
School of Law
Universidad San Francisco de Quito
dsalazar@usfq.edu.ec



Professor Hugo Cahueñas Muñoz
Public Interest Law Clinic
School of Law
Universidad San Francisco de Quito
hcahuenas@usfq.edu.ec

Appendix 1: November 1st Letter from 4Pelagatos to Amazon

Quito, Ecuador, November 1th, 2016

Reference: Case Number Amazon EC2 Abuse

Dear Sirs or Madams:

AMAZON WEB SERVICES

This is maybe the sixth or seventh time we respond to a complain from the Secretaria de Comunicación, **SECOM**. **Unfortunately something went for some unknown reason and our site has been shut down by Amazon services.**

The **SECOM** or Ministry of Information or Ecuador is a public agency of the Presidency of the Republic of Ecuador. His secretary **Patricio Barriga in a ilegal attitude** claim to be the owner of the pictures and videos (listed below) where public officials, including the **President** of the Republic, appear.

All of these pictures belong to he people of Ecuador because they are public work and nobody can claim it's property. This claim from Mr. Barriga is a misappropriation of public assets that belong to the Ecuadorian society and we are serious in suing him in the next weeks.

4pelagatos is a digital news outlet that uses these images and public videos for strictly journalistic work and are published on 4pelagatos site.

Mr. Barriga has been claiming the ownership of the images in order to shut down our site because this is a space for free journalism in a country with severe problems related with freedom of speech.

This news outlet has said in the past and now reiterates its willingness to go to any Federal Court of the United States to discuss this matter, if the plaintiff want to take us there. It has not done so far because the complaint is unfounded.

After trying to get you to punish us for the alleged offense, (which we have not committed) this public agency now invokes the Ecuadorian Criminal Code to say that our journalistic criticism that points out the misappropriation of a public good it is a crime. We reject the accusation and believe that is not only a lie, but a clear case of abuse of power.

Mr. **Barriga** is a public official with salaries paid by Ecuadorian taxpayers. The photographs that have taken all of the pictures listed by Mr. Barriga are, as well, public officials payed by the Ecuadorian people. This is why they should know that all of this material es publici. They are also obliged to tolerate any kind of criticism from the press and the people of Ecuador.

Ecuador is a country with one of the worst media environments in the Americas. **Freedomhouse** qualifies the country as "not free" in its last report. Mr. **Correa** government has used defamation laws as a way to underscore freedom of press.

What has just happened is a clear evidence of the efforts that the Ecuadorian Government displays all the time in order to shut down critical and independent voices in this country press. It is very dissappointing that Amazon has not acknowlegd this despite all the letter that we have sent.

Below are listed the pictures or images that Mr. Barriga thinks he owns and that we are willing to demonstrate in any court of the world that they belong to the people of Ecuador.

We are ready to defend our position in any US Federal Court.

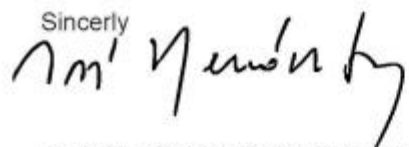
* Log Extract:
 <<<
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-14-a-las-9.16.52-a.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/04/Captura-de-pantalla-2016-04-01-a-las-3.44.26-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/04/sabatina-469-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-23-a-las-11.49.40-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-23-a-las-11.29.31-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/04/Captura-de-pantalla-2016-04-18-a-las-7.02.10-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/caso-secom-2.jpeg>
<http://4pelagatos.com/wp-content/uploads/2016/02/caso-secom-3.jpeg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-22.jpg>

<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-20-a-las-2.53.14-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/04/7A-2016-6.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/04/terremoto-17-abr.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-20-a-las-2.52.01-p.m.png>
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<http://4pelagatos.com/wp-content/uploads/2016/04/Captura-de-pantalla-2016-04-19-a-las-6.47.35-p.m.png>
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<http://4pelagatos.com/wp-content/uploads/2016/04/Captura-de-pantalla-2016-04-21-a-las-6.34.40-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/04/sabatina-el-globo-2012.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/04/Captura-de-pantalla-2016-04-24-a-las-11.48.52-a.m.png>
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<http://4pelagatos.com/wp-content/uploads/2016/01/playas-n%C3%B1o-kevin.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/playas-R%C3%A9sica-escalante.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/pedro-delgado-3.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/crudo17.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/crudo7-1.jpg>
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<http://4pelagatos.com/wp-content/uploads/2016/01/crudo7.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/correa-en-bicicleta.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/Pegaso-foto.png>
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<http://4pelagatos.com/wp-content/uploads/2015/10/correa2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/FullSizeRender-1.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/Captura-de-pantalla-2016-01-25-a-las-5.29.04-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Correa-Bruselas.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Correa-Bruselas-1.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-30-at-7.36.08-PM.png>
<http://4pelagatos.com/wp-content/uploads/2015/11/crudo.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/crudo6.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/Avn3546iOB2dMILBEJi-ND9cD6VbTyb0ey6CC8JuT.jpg>
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<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-2.15.51-AM.png>
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<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-2.15.51-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/correasabatina.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/be8b5f42dabec0735ec4874fbcc1de40.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/sabatina-461.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Yachay.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Screen-Shot-2016-02-08-at-4.45.52-PM.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Screen-Shot-2016-02-04-at-10.31.29-PM.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-1-copia.jpg>
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<http://4pelagatos.com/wp-content/uploads/2016/02/Aeropuertasantarosa.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/36314aad90a135218b5206b418b28c1c.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-08-a-las-7.20.25-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/dec0743744cfb3c19de15409a3610ad6.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/concentraci%C3%B3n-10-feb-16.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-11-a-las-5.58.29-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-5-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/correa-bose.jpeg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Movilidad-humana.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/correa-y-moreno.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-4-1.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-15-a-las-3.31.05-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Alexis-Mera-y-Correa.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/rafael-y-alexis.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/sabatina-462-min-ambiente.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-16-a-las-6.07.55-p.m.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/red-de-maestros-ijijapa.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/red-de-maestros-estadio-modelo.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/red-de-maestros-estadio-modelo-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/gabinete.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/tapa-flickr-presidencia.jpeg>

Sincerely


José Alberto Hernández Barbosa

Editor

593 983510561

Cumbayá-Quito-Ecuador

Appendix 2: November 2nd Email from Amazon to 4Pelagatos

From: Amazon EC2 Abuse <ec2-abuse@amazon.com>
Date: November 2, 2016 at 5:35:02 AM GMT-5
To: "mpallares@4pelagatos.com" <mpallares@4pelagatos.com>
Subject: Your Amazon EC2 Abuse Report [51518616935]
Reply-To: Amazon EC2 Abuse <ec2-abuse@amazon.com>



Hello,

Thank you for your abuse report. We were unable to identify the customer responsible for the reported activity. Due to the frequency with which AWS public IP addresses can change ownership, we will need additional information in order to identify the responsible customer(s).

***For security reasons, we do not open or accept attachments.

When replying, please provide plain-text logs of the abusive activity, including the following information, in the body of your email:

* Full e-mail header and HTML content of the spam message

For a faster response, please resubmit your report using the form at <https://aws.amazon.com/forms/report-abuse>

We look forward to hearing from you shortly.

Regards,
AWS Abuse

How can I contact a member of the Amazon EC2 abuse team?

Send an e-mail to ec2-abuse@amazon.com; remember to include your case number.

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Appendix 3: February 18th Response to Takedown Notice

Quito, Ecuador, February 18th, 2016.

Copyright Agent
Amazon.com Legal Department
Seattle, WA
United States of America

Reference: Case Number 14178904740-1

Dear Sirs,

Today we received a notification of an original copyright complaint, presented by Secretaria Nacional de Comunicación, SECOM. According to the complaint, some files on your servers violate their rights. Those files are pics published in the web page of our digital media "4 Pelagatos" (www.4pelagatos.com) that are supposedly property of SECOM, under D.M.C.A. and Ecuador Intellectual Property Law.

We must say that "4 Pelagatos" is a news webpage that belong to a group of journalists who produce and publish information and opinion, which is disseminated to a subscriber's database. We work on a base of citizen journalism, promoting freedom of expression of whoever wants to express their thoughts and opinions.

The images referred by SECOM, are used to illustrate contents of our news webpage. The images don't infringe any law, because they are used under "fair use" doctrine. As described on the Chilling Effects website, "*when a copyright holder sues a user of the work for infringement, the user may argue in defense that the use was not infringement but 'fair use.'* Under the fair use doctrine, it is not an infringement to use the copyrighted works of another in some circumstances, such as for commentary, criticism, news reporting or educational use." You must consider also that these specific purposes are highlighted in the law as particular types of uses which are strong examples of fair use, but they are by no means the only types of uses which are considered "fair use." It's important to mention that our work is non-profit, as all the contents uploaded at our website are freely accessible for everyone.

Based on this information we present a counter – notice.

1. The material claimed was not removed or disabled, as we are not infringing any copyright law. The images are available in the following links:

<http://4pelagatos.com/wp-content/uploads/2016/01/correasabatina.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/FullSizeRender-1.jpg>

<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-1.51.41-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-1.43.41-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-1.40.50-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/e84ddb700ae9ce425dd086e3677b233b.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-2.15.51-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-30-at-7.36.08-PM.png>
<http://4pelagatos.com/wp-content/uploads/2015/10/debate-correa.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-27-at-9.52.53-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/correa-en-bicicleta.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/sabatina-459-23-ene.16-1.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/sabatina-459-23-ene.16.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-14-a-las-9.16.52-a.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/02/sabatina-461.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Yachay.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Screen-Shot-2016-02-06-at-4.45.52-PM.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Screen-Shot-2016-02-04-at-10.31.29-PM.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/36314aad60a135218b52c6b418b28c1c.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-08-a-las-7.20.25-p.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/02/dec0743744cfb3c19de15409a3610ad6.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/concentraci%C3%B3n-10-feb.-16.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-5-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/correa-bose.jpeg>
<http://4pelagatos.com/wp-content/uploads/2016/02/correa-y-moreno.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-4-1.jpg>

2. Under penalty of perjury, I declare that we have fair used the material described. The images complaint, are used to illustrate information, or news reporting, based on public events where the Ecuadorian President and other public officers participate. All these events are usually replicated by all media in the country.

3. My name is José Hernández Barbosa, Publisher at 4 Pelagatos news web page. Our address is Andrade Marin 277 y Eloy Alfaro, Quito, Ecuador. Our telephone number is (593) 979731870

4. I expressly consent to the jurisdiction of any United States federal district court in which you may be found.

Please let us know if you need further information.

Kind regards,



Handwritten signature of José Hernández Barbosa in black ink, featuring a stylized 'J' and 'B'.

José Hernández Barbosa

Appendix 4: July 22, 2016 Notice from Amazon to 4Pelagatos

Nicolas Suarez <nicolas.suarezp@gmail.com>

Fwd: Your Amazon EC2 Abuse Report [10542937184]Isabel Samaniego <isabel.samaniegoc@gmail.com>
Para: Nicolas Suarez <nicolas.suarezp@gmail.com>

23 de septiembre de 2016, 17:54

----- Forwarded message -----

From: **Martin Pallares** <mpallares@4pelagatos.com>
Date: Tuesday, 20 September 2016
Subject: Fwd: Your Amazon EC2 Abuse Report [10542937184]
To: isabel.samaniegoc@gmail.com

----- Forwarded message -----

From: **'Amazon EC2 Abuse' via 4pelagatos** <4pelagatos@4pelagatos.com>
Date: 2016-07-22 13:29 GMT-05:00
Subject: Your Amazon EC2 Abuse Report [10542937184]
To: "4pelagatos@4pelagatos.com" <4pelagatos@4pelagatos.com>

Hello,

You have outstanding reports against your EC2 instance(s) and we are notifying you that we have investigated and observed abusive activity. We last contacted you about this on 07/21/16 and have not received a reply. Details of the implicated instance(s) are below:

Reported activity: DMCA

Instance ID: i-c1c86528

Please review these reports and respond with details of the action(s) you have taken to stop the abusive activity. If you do not consider the activity detailed in these reports to be abusive, please let us know why. The original reports are included at the end of this email for your convenience.

Please note that your reply is required within 24 hours. According to the terms of the AWS Customer Agreement (<http://aws.amazon.com/agreement/>), if your instances continue to violate AWS's Acceptable Use Policy (<http://aws.amazon.com/aup/>), we may take action against your resources or account to stop the abusive activity, including suspension or termination of your AWS account.

Please remember that you are responsible for ensuring that your instances and all applications are properly secured.

Regards,
AWS Abuse

Case Number: 10542937184

--Beginning of forwarded report(s)--

<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-14-a-las-9.16.52-a.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/01/sabatina-459-23-ene.16.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/sabatina-459-23-ene.16-1.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/pla-yas-ni%C3%B1o-kevin.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/pla-yas-j%C3%A9ssica-escalante.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/pedro-delgado-3.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/crudo17.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/crudo7-1.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/crudo7.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/correa-en-bicicleta.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/Pegaso-foto.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Pegaso-foto-1.png>

<http://4pelagatos.com/wp-content/uploads/2016/01/crudo13-1.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/crudo13.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-27-at-9.52.53-AM.png>
<http://4pelagatos.com/wp-content/uploads/2015/10/debate-correa.png>
<http://4pelagatos.com/wp-content/uploads/2015/10/correa2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/FullSizeRender-1.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/Captura-de-pantalla-2016-01-25-a-las-5.29.04-p.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Correa-Bruselas.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Correa-Bruselas-1.png>
<http://4pelagatos.com/wp-content/uploads/2015/11/crudo.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/crudo6.jpg>
http://4pelagatos.com/wp-content/uploads/2016/01/Avn3546rOB2dMLBEdLj_ND9cD6VbTyb0ey6CQ8JuT.jpg
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-1.51.41-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-1.43.41-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-1.40.50-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/e84ddb700ae9ce425dd086e3677b233b.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-31-at-2.15.51-AM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/Screen-Shot-2016-01-30-at-7.36.08-PM.png>
<http://4pelagatos.com/wp-content/uploads/2016/01/correasabatina.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/sabatina-461.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Yachay.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Screen-Shot-2016-02-06-at-4.45.52-PM.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Screen-Shot-2016-02-04-at-10.31.29-PM.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Aeropuertasantarosa.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/36314aad60a135218b52c6b418b28c1c.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-08-a-las-7.20.25-p.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/02/dec0743744cfb3c19de15409a3610ad6.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/concentraci%C3%B3n-10-feb.-16.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-11-a-las-5.58.29-p.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-5-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/correa-bose.jpeg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Movilidad-humana.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/correa-y-moreno.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-4-1.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-15-a-las-3.31.05-p.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Alexis-Mera-y-Correa.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/rafael-y-alexis.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/sabatina-461.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Yachay.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Screen-Shot-2016-02-06-at-4.45.52-PM.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Screen-Shot-2016-02-04-at-10.31.29-PM.png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Aeropuertasantarosa.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/36314aad60a135218b52c6b418b28c1c.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-08-a-las-7.20.25-p.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/02/dec0743744cfb3c19de15409a3610ad6.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/concentraci%C3%B3n-10-feb.-16.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-11-a-las-5.58.29-p.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-5-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/correa-bose.jpeg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Movilidad-humana.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/correa-y-moreno.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-2.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/FullSizeRender-4-1.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/Captura-de-pantalla-2016-02-15-a-las-3.31.05-p.m..png>
<http://4pelagatos.com/wp-content/uploads/2016/02/Alexis-Mera-y-Correa.jpg>
<http://4pelagatos.com/wp-content/uploads/2016/02/rafael-y-alexis.jpg>

Comments

=====

Dear Amazon.com

As SECRETARIA NACIONAL DE COMUNICACION or "SECOM", we notify of the existence of files on your servers that violate our rights, <http://www.comunicacion.gob.ec/>

a) A physical or electronic signature of the copyright owner or the person authorized to act on its behalf.

SECRETARIA NACIONAL DE COMUNICACION
 SECOM
 Patricio Eduardo Barriga Jaramillo.
<http://www.comunicacion.gob.ec/secretario/>

San Salvador E6-49 y Eloy Alfaro
 Quito
 Pichincha
 70516
 Ecuador
 593-2 393-9600
 copyright@secom.gob.ec

b) A description of the copyrighted work that you claim has been infringed:

Webmaster uses images made by "Secretaría Nacional de Comunicación"

Webmaster uses capture images from videos made and exclusive " Secretaría Nacional de Comunicación "

Webmaster uses Trademark "30S" IEPI-UIO-PI-SD-2011-9816-RE & IEPI-UIO-PI-SD-2011-9817-RE

Logos by "Secretaria Nacional de Comunicación"

It is produced the unauthorized distribution or republishing of material protected by copyright law.

It does not meet the minimum requirements for Fair use with the Intellectual Property Law of Ecuador.

c) A detailed description of the infringing material and information reasonably sufficient to permit us to locate the material on our service.

See URLs in Logs

d) Your contact information, including your address, telephone number and email address:

SECRETARIA NACIONAL DE COMUNICACION
 SECOM
 Patricio Eduardo Barriga Jaramillo.
<http://www.comunicacion.gob.ec/secretario/>
 San Salvador E6-49 y Eloy Alfaro
 Quito
 Pichincha
 70516
 Ecuador
 593-2 393-9600
 copyright@secom.gob.ec

e) I have a good faith belief that the disputed use of the material or activity is not authorized by us or the law. That we are the owners of the copyright or intellectual property and that the information provided in the notification is accurate.

f) I swear, under penalty of perjury, that the complainant is the copyright or intellectual property owner or is authorized to act on behalf of the copyright or intellectual property owner and that the information provided in the notice is accurate.

Should you have any further questions, please contact us at copyright@secom.gob.ec

Thank for you cooperation,

Best Regards,

SECRETARIA NACIONAL DE COMUNICACION
 Legal Dpto.

How can I contact a member of the Amazon EC2 abuse team or abuse reporter?

Reply this email with the original subject line.

Amazon Web Services

Amazon Web Services LLC is a subsidiary of Amazon.com, Inc. Amazon.com is a registered trademark of Amazon.com, Inc. This message produced and distributed by Amazon Web Services, LLC, 410 Terry Avenue North, Seattle, WA 98109-5210.

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 Has recibido este mensaje porque estás suscrito al grupo "4pelagatos" de Grupos de Google.
 Para anular la suscripción a este grupo y dejar de recibir sus mensajes, envía un correo electrónico a 4pelagatos+unsubscribe@4pelagatos.com.
 Para publicar en este grupo, envía un correo electrónico a 4pelagatos@4pelagatos.com.
 Para ver esta conversación en el sitio web, visita <https://groups.google.com/a/4pelagatos.com/d/msgid/4pelagatos/0100015613def6cf-14b3dbb2-ddf5-4569-ae1e-4cb515e90fd4-000000%40email.amazonses.com>.