

May 12, 2020

Dear Mr. Segercrantz,

Greenpeace Nordic recently received a notice from Facebook that a video we posted on our account had been blocked at your request. It appears you allege that the video infringes a copyright owned by your client, Fortum Oyj.

The video in question shows a speech that Fortum's CEO, Pekka Lundmark, gave to shareholders, but his words have been dubbed over with an "honest version" which, in a humorous manner, criticises Fortum's investment in the Datteln 4 power plant in Germany, the only coal-fired plant still to be opened in western Europe.

We fail to see how the video could in any way be construed as an infringement. The footage taken from Fortum is a simple recording of an event, which was posted online by the company. There is no element of independent and original creation that would qualify the footage as a work entitled to copyright protection.

Even supposing Greenpeace Nordic made use of a copyrighted work, several of the exceptions and limitations recognised in Article 5 of the EU Copyright Directive 2001 (Directive 2001/29/EC) are applicable, in particular the exceptions for "use for the purpose of caricature, parody or pastiche" and for "quotations for purposes such as criticism or review". These exceptions have been made mandatory under Article 17(7) of Directive 2019/790.

Moreover, the parody video constitutes an expression of an opinion with the terms of Article 10 of the European Convention on Human Rights. Both the European Court of Human Rights (see *Ashby Donald and others v. France*, Judgment of 10 January 2013) and the European Court of Justice (Case C-70/10, Judgment of 24 November 2011) have made it clear that intellectual property rights must be balanced against the protection of other fundamental rights, such as freedom of expression. Your client's at best trivial intellectual property interest is clearly insufficient to override Greenpeace Nordic's right to criticise your client's actions by means of a parody, taking into account that coal power is a matter of significant public interest. I would also point out that Fortum and Mr Lundmark are required to tolerate a higher degree of criticism: "large public companies inevitably and knowingly lay themselves open to close scrutiny of their acts and, as in the case of the businessmen and women who manage them, the limits of acceptable criticism are wider in the case of such companies" (*European Court of Human Rights, Steel and Morris v. the United Kingdom*, 15 February 2005).

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In short, it is difficult to avoid the impression that your client is trying to silence criticism of its irresponsible investment in coal by misusing copyright arguments.

Please confirm no later than 15th of May that you will retract the erroneous notification to Facebook. In the meantime, our rights are reserved.

Kind regards

Mads Christensen
Executive Director
Greenpeace Nordic

A handwritten signature in black ink, appearing to read 'Mads Christensen', followed by a long horizontal line extending to the right.

