

The GoldieBlox Video: Copyright Infringement or Fair Use?

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Introduction

GoldieBlox posted a video to its website that depicted young girls creating an elaborate and entertaining Rube Goldberg device. The only audio in the video was music, a performance of the Beastie Boys song “Girls” with the original misogynistic lyrics changed to be empowering to girls and women. The video was developed in connection with GoldieBlox’s launch of toys aimed at girls, in connection with its stated mission to inspire girls to become engineers. The Beastie Boys (along with the musicians’ record label) own the copyright to the lyrics and music of the song “Girls.” As such, the musicians believed that the use without their permission of the music and some of the words from the song was an infringement of their intellectual property rights. GoldieBlox argued that the use was permissible as a fair use, specifically that the song GoldieBlox created was a parody of the original song. Because fair use was a defense to a copyright infringement claim and was only asserted once a copyright owner has proven that its work was used without permission, there was inherent uncertainty in whether GoldieBlox’s use would be protected. Accordingly, GoldieBlox had to evaluate its legal risk and decide whether to continue to assert its rights to the song in the video.

Background

Deborah Sterling, a Stanford engineer and MBA, formed the toy company GoldieBlox out of a concern that, although the engineering profession is a desirable one, only 11 percent of engineers are women (Kickstarter, n.d.). Determined to help increase the ratio of women in the profession, Sterling envisioned Goldieblox as a company based on the idea that girls could build and invent fabulous things (GoldieBlox, n.d.). The company’s strategy was to provide construction toys, each with an accompanying book series, geared to girls between five and nine years old to expose them to the concept of building and creating.

The Challenge

In connection with GoldieBlox's core strategy to create engineering toys for girls, one of the company's marketing strategies was to promote its products on social media with the release of entertaining and thought-provoking videos on YouTube and the GoldieBlox website (Marketing Report, 2013). Each of these videos depicted girls playing with its toys, set to a musical track or "anthem" by a popular artist ("Complaint", 2013). Some of the artists whose music was incorporated into videos were Queen, Daft Punk, Krewella, Kaskade, Avicii, Slam, k.flay and Trevor Guthries ("Answer", 2013).

On November 18, 2013, GoldieBlox released an online video, "GoldieBlox and the Princess Machine," showing three girls rejecting the stereotypical depictions of girls on television in favor of the creation of a large, complicated and fun highly engineered contraption. In this video, GoldieBlox used the Beastie Boys' song "Girls," recording a new version of the song that replaced the misogynistic lyrics of the original with lyrics meant to be empowering to girls and women ("Complaint", 2013). One verse, for example, included the lines:

*Girls to build the spaceship,
Girls to code the new app,
Girls to grow up knowing that they can engineer that.
Girls.
That's all we really need is Girls.
To bring us up to speed it's Girls.
Our opportunity is Girls.
Don't underestimate Girls.*

The video was meant to be provocative and viewers, indeed, found it stirring. Whereas the lyrics of the original song depicted girls as being limited to gender-typical behaviors and occupations, the lyrics of the song in the video celebrated the broad capabilities that girls possess and suggested that there were no limits to the things girls can do (Complaint, 2013). And it appeared as if the strategy was successful. At the time of its release GoldieBlox began promoting the video on its Twitter and Facebook accounts and, shortly thereafter, the video went viral. It was viewed by over eight million people within the first week of its release (Michaels, 2013). Viewers really responded to GoldieBlox's message of empowerment.

The Beastie Boys first learned that their song was included in a GoldieBlox video a week after it was released on the internet when their representative was contacted in connection with GoldieBlox's submission of the video to a Superbowl advertising competition (Answer, 2013). The Beastie Boys contacted GoldieBlox to inquire about the use of their song in the video. Later that day, fearing that it might be sued for copyright infringement, GoldieBlox's attorneys filed a declaratory judgement in Federal court in California, seeking a ruling from the court that GoldieBlox's use of the song "Girls" as an empowering anthem was a protected fair use as a parody of the sexist song ("Answer", 2013).

In response to GoldieBlox's lawsuit, the Beastie Boys published an open letter to GoldieBlox that set forth their policy that none of their music could be used for commercial purposes:

Like many of the millions of people who have seen your toy commercial "GoldieBlox, Rube Goldberg & the Beastie Boys," we were very impressed by the creativity and the message behind your ad. We strongly support empowering young girls, breaking down gender stereotypes and igniting a passion for technology and engineering. As creative as it is, make no mistake, your video is an advertisement that is designed to sell a product, and long ago, we made a conscious decision not to permit our music and/or name to be used in product ads. When we tried to simply ask how and why our song "Girls" had been used in your ad without our permission, YOU sued US.

It also came to light that a member of the Beastie Boys had recently passed away and his will contained a clause prohibiting the use of his music in advertising (Cubarrubia, 2012). Adam "MCA" Yauch's will stated:

Notwithstanding anything to the contrary, in no event may my image or name or any music or any artistic property created by me be used for advertising purposes.

GoldieBlox had a decision to make. Should the company go forward with the lawsuit? Copyright laws gave the exclusive right to owners of creative works to determine the way in which those works were used, but the principles of fair use provided protection to a parodist to make use of another's copyrighted work. If GoldieBlox's use of the song "Girls" was a legitimate parody, the use of the song would be a fair use and would not contradict the wishes of the Beastie Boys as expressed in their letter and in MCA's will. To answer this question, GoldieBlox must evaluate the video based on the principles of copyright infringement and the defense of fair use defense.

References

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