

**Meta Description:** In February 2020, the long running copyright lawsuit between Akilah Hughes and Carl Benjamin came to an end.

# Akilah Obviously v Sargon of Akkad – Implications for Creators

In February 2020, the long running copyright lawsuit between Akilah Hughes and Carl Benjamin came to an end. Although, Akilah would obviously have been disappointed with the outcome.

Akilah, who owns a YouTube channel called “Akilah Obviously”, sued Carl, who is also a content creator under the name “Sargon of Akkad”, earlier in August 2017. Akilah’s case was that Carl flagrantly copied and used a video she posted to her YouTube channel without permission. Needless to say, Carl demurred, saying he was wholly within the copyright laws and his actions amounted to “fair use”.

The court agreed with Carl and granted a motion to dismiss the lawsuit [in February this year](#). But there’s more.

Carl Benjamin, through his attorney, filed a further motion claiming attorney fees for the lawsuit filed by Akilah Hughes. In July 2020, the court [agreed once more](#), finding in favor of Carl, and awarding attorney fees of over \$38,000 against the Plaintiff.

Now that the saga has come to an end (barring an appeal by Akilah), there’s no better time to dissect the events. Cases relating to the DMCA and related copyright issues involve matters that are important to creators everywhere. So, this article discusses the outcome of the lawsuit, its implications and what it means for YouTubers covered by these laws.

But first...

## What happened?

If you’ve paid much attention to YouTube over the past few years, you probably already know the central plot of this story. But here’s a very short recap for the newbies.

Akilah Hughes was a supporter of Hilary Clinton’s presidential bid in the 2016 US presidential elections. She devotes her YouTube channel to several things including race, social commentary and feminism. After Hilary’s loss in the November 2016 elections, Akilah created and published a 9-minute video on her YouTube channel that detailed the events and her feelings about them. The video included exclusive footage from Hilary’s foiled “election party” and was titled *We Thought She Would Win*.



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On the day after Akilah posted her video, Carl Benjamin posted a video on his “New Memedia” YouTube channel. Carl is described by the court as “*anti-ideological and anti-identitarian... focusing on the left, racism, feminism...*” (so, not a supporter of Hilary Clinton). The video consisted of six clips from Akilah’s video, seeming to highlight inconsistencies in her stance and was roughly 2 minutes long. It was titled *SJW Levels of Awareness*.

Akilah took exception to the video and initiated a takedown notice with YouTube. Carl sent a counter-notice in response, stating that his use of the work was “*entirely transformative... and intended for parody*”. YouTube reinstated the video and Akilah filed a lawsuit against Carl, according to normal Digital Millennium Copyright Act (DMCA) procedure.

Now you’re all caught up, let’s look what the court had to say about the case, and why it sided with Carl. Here’s [the court’s decision](#), if you’d like a look.

## The court’s decision

Under the DMCA, an owner of a copyrighted work can file a lawsuit to prevent another person from infringing on their copyright. In addition, they can claim compensation for the infringement, on grounds that it affected their income, stole their market share etc.

Akilah’s lawsuit alleged wholesale copying of her “priceless” work contrary to the DMCA, and claimed roughly \$180,000 in damages. But as mentioned above, the court disagreed with Akilah’s claim, holding that Carl’s use amounted to fair use under the DMCA. This was because:

- Carl’s use of the copyrighted work was clearly “*for the transformative purpose of criticism and commentary*”. This was clear from how he edited the video and the title he gave it.
- The portion of the video used was reasonable, being roughly 20% of the work. Importantly, the portions used were only those that “*linked to the critical purpose*” of Carl’s video.
- Finally, Carl’s video catered to an entirely different audience and there was no danger it would usurp Akilah’s usual audience.

After securing judgment in his favor, Carl took things up a notch and filed a motion seeking compensation for the “frivolous” lawsuit. Under the DMCA, the winning party in a lawsuit may be able to recover attorney fees but only if the court agrees.

Again, the court agreed, basing its decision on certain principles called the “Fogerty factors”. According to the court, Carl would be allowed to recover attorney fees because:



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- Akilah’s claims were “objectively unreasonable”, especially since a reasonable look at the video showed no laws were broken.
- The claims were brought based on improper motivation. Several of Akilah’s repartees in the tweetstorm following the incident were considered by the court as disclosing an improper motive. These included [Akilah’s promise](#) to take “hundreds of thousands USD” from Carl and [other tweets](#). The court also noted she was using the lawsuit to silence her political critics and boost her own profile.
- Finally, the award would serve to deter others from doing the same, and also to compensate Carl for having to defend the suit. It didn’t matter that he had raised up to \$120,000 via a GoFundMe campaign to fund his attorney fees.

Essentially, Akilah not only lost, but is now on the hook for \$38,000 after filing her lawsuit. Here’s what we learned from the decision.

## Implications of the decision

The DMCA provides a powerful tool for content creators to protect their work and enjoy the benefits of their labor. But it is a tool that must be used carefully, otherwise a creator may end up losing in more ways than one.

The court’s decision in *Akilah v Hughes* shows clearly that even though the DMCA protects copyright, it also has other important ends. One of these is to protect the use and enjoyment of intellectual works by the public. This is the reason behind including a “fair use” exception to the protection given to creators.

There’s another important implication of the court’s decision that’s not often talked about. Court decisions are not often isolated – they usually have knock-on effects that can be far-reaching. If the court had held in favor of Akilah, it would have changed the rules defining how you can use or reproduce other people’s content. Of course, this depends on the reasons the court gives for its decision.

Overall, it’s impossible to say Akilah was hard-done by this decision. It represents a logical application of the fair use laws, although requiring her to pay all of Carl’s attorney fees may have been a tad bit harsh.

## What the decision means for YouTubers

The decision reaffirms the right of YouTubers to protect and enjoy their work. You should not spend hours, days, weeks or even months creating high quality work only to have it ripped off.



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If you were victimized by someone's actions, there are robust laws that let you take action. These include sending a DMCA takedown notice through YouTube and also exploring legal action in a lawsuit.

But it is absolutely important to understand the laws and obtain solid legal advice before suing. Also, you should never activate the DMCA process solely for personal gain or because you want to "make someone pay". While it's only natural to want to hold an infringing party accountable, your primary motivation should be the loss you have suffered.

At least that way, even if you don't win the case, there will be no argument that you were improperly motivated.



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