

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HARRISON SNOW KINSLEY,  
Plaintiff,  
v.  
UDEMY, INC.,  
Defendant.

Case No. [19-cv-04334-JSC](#)

**ORDER RE: MOTION FOR  
SUMMARY JUDGMENT**

Re: Dkt. No. 56

Harrison Kinsley, a computer programming educator, filed this action alleging that Udemey, Inc. (“Udemey”) reproduced and distributed his copyrighted works in violation of the federal Copyright Act and state law.<sup>1</sup> Before the Court is Udemey’s summary judgment motion. (Dkt. No. 56.)<sup>2</sup> Udemey contends that no triable issues of material fact exist and that it is protected from Mr. Kinsley’s claims under the Copyright Act’s safe harbor. After carefully considering the parties’ briefing, the Court concludes that oral argument is not necessary, *see* N.D. Cal. Civ. L.R. 7-1(b), vacates the April 1, 2021 hearing, and GRANTS Udemey’s motion. No reasonable trier of fact could find for Mr. Kinsley on any claim.

**FACTUAL BACKGROUND**

Udemey is a technology company that provides third-party individuals, or “instructors,” the ability to upload educational content for Udemey users. (Dkt. No. 57-1 at 4.) To limit copyright infringement on its site, Udemey requires that instructors agree that their content does not misappropriate or infringe upon another party’s intellectual property or impersonate another

<sup>1</sup> All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 7 & 17.)

<sup>2</sup> Record citations are to material in the Electronic Case File (“ECF”): pinpoint citations are to the

1 person, and verify that they have the right to publish or use the content published on Udemy's  
2 platform. (Dkt. No. 57-2 at 2.) Before permitting an instructor to post content, Udemy conducts a  
3 quality review process, but does not investigate legal issues or possible infringements during this  
4 process. (Dkt. No. 56-2 at 2 ¶¶ 7-9.) However, if a user identifies content posted on Udemy's  
5 platform as infringing on a third party's copyright, Udemy has processes and procedures whereby  
6 that user may report the infringement. (Dkt. No. 57-16.)

7 To help identify possible infringements, Udemy allows users to see "free previews" of  
8 each course. (Dkt. No. 56-2 at 3 ¶ 15.) If after investigating a reported infringement Udemy  
9 determines the content has infringed on another copyright, Udemy removes the course and makes  
10 it unavailable to users, including those who previously purchased the course. (Dkt. Nos. 57-1 at  
11 11, 56-2 at 3 ¶ 14.) Udemy also has a repeat infringer policy—if an instructor infringes on  
12 copyrighted material or is a risk of multiple infringements, it may ban the instructor's account—  
13 but Udemy cannot automatically scan its platform for potential infringements. (Dkt. Nos. 57-5,  
14 56-2 at 2 ¶ 11.) In light of this limitation, Udemy uses a vendor that runs searches to identify  
15 potentially infringing material elsewhere on the internet. (*Id.* at 4 ¶ 26.)

16 Mr. Kinsley alleges that two of his courses, Mastery Python 3 Basics Tutorial Series +  
17 SQLite with Python ("Mastery Python 3") and OpenCV with Python for Image and Video  
18 Analysis – Hands On! ("OpenCV"), were uploaded to Udemy's platform and infringed upon his  
19 copyrights. Mastery Python 3 was uploaded to Udemy on January 5, 2018. (Dkt. No. 57-8.) On  
20 January 13, 2018, Mr. Kinsley notified Udemy that the uploaded Master Python 3 course was  
21 infringing on his copyrights. (Dkt. No. 57-9 at 7.) Udemy removed the course material on  
22 January 16, 2018 and banned the instructor's account. (Dkt. Nos. 57-9 at 7, 56-2 at 4 ¶ 30.)  
23 OpenCV course material was uploaded to Udemy on May 10, 2018. (Dkt. No. 57-10.) Mr.  
24 Kinsley submitted a copyright complaint regarding the OpenCV material on June 20, 2018;  
25 Udemy removed the material the same day, and subsequently banned the posting instructor. (Dkt.  
26 Nos. 57-9 at 7, 56-2 at 4 ¶ 31.)

## DISCUSSION

falls within 17 U.S.C. § 512's safe harbor. Udemy additionally argues that summary judgment is appropriate on Mr. Kinsley's non-copyright claims because they are preempted under the Copyright Act and, even if they are not preempted, that undisputed evidence shows Udemy is nonetheless entitled to summary judgment. Furthermore, Udemy's argument goes, Mr. Kinsley cannot survive summary judgment because he has no right to any damages.

## **I. Copyright Claims**

"Title II of the [Digital Millennium Copyright Act], set forth in 17 U.S.C. § 512, 'protects qualifying Internet service providers from liability for all monetary relief for direct, vicarious and contributory infringement.'" *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1088 (C.D. Cal. 2001) (quoting S. Rep. 105–190, at 20 (105th Congress, 2d Session 1998)); *see also Ellison v. Robertson*, 357 F.3d 1072, 1076 (9th Cir. 2004) ("Congress opted to leave current law in its evolving state and, instead, to create [with 17 U.S.C. § 512] series of safe harbors, for certain common activities of service providers.") (internal quotation marks and citations omitted). The safe harbor set forth in § 512(c) applies where a plaintiff seeks to hold an internet service provider liable for either: (1) infringing "material" stored and displayed on the service provider's website or (2) infringing "activity using the material on the [service provider's computer] system." *See* 17 U.S.C. § 512(c)(1)(A)(i). Udemy contends that it satisfies the safe harbor's requirements and falls within its ambit, and therefore summary judgment is appropriate on Mr. Kinsley's copyright claims. The Court agrees.

### **A. Safe Harbor Threshold Requirements**

As a threshold matter, § 512(c) applies only to "service provider[s.]" 17 U.S.C. § 512(c)(1). A "service provider" is a "provider of online services or network access, or the operator of facilities" for these services. 17 U.S.C. § 512(k)(1)(B). Every reasonable trier of fact would find that Udemy is a service provider as defined under § 512(k)(1). It provides online services to its users in the form of its courses and, moreover, Mr. Kinsley does not dispute that Udemy is a service provider. *See UMG Recordings, Inc. v. Shelter Cap. Partners LLC*, 718 F.3d 1006, 1015 n.4 (9th Cir. 2013) (determining that entity was a "service provider" in analysis of its

1 “designated agent” to receive notifications of claimed infringement as required under 17 U.S.C. §  
2 512(c)(2). (Dkt. No. 57-4 at 6-7.)

3 “To be eligible for any [safe harbor] limitations of liability, a service provider must meet [§  
4 512(i)’s] conditions[.]” *Ellison*, 357 F.3d at 1080 (citation omitted). Section 512(i)(1)(A) requires  
5 that a service provider “adopt[] and reasonably implement[] and inform[] subscribers and account  
6 holders of [its] policy that provides for” the termination of “subscribers and account holders . . .  
7 who are repeat infringers[.]” *See also Ellison*, 357 F.3d at 1080. Udemy satisfies this  
8 requirement. Its “Instructor Copyright Ban Policy” bans instructor accounts where an instructor  
9 “represents a high risk of additional infringements,” and presumes a “high risk of additional  
10 infringement . . . when there has either been a material violation [of the policy], cases of  
11 impersonation, and repeated non-material violations.” (Dkt. No. 57-5 at 2.) The policy lays out  
12 Udemy’s consequences for copyright infringement and its investigative processes regarding  
13 possible infringements and has been in place since 2015. (Dkt. Nos. 57-5 at 2, 56-2 at 3 ¶ 24.)  
14 Udemy’s “Intellectual Property Policy” also informs its users that any instructor deemed to be a  
15 “repeat infringer” shall have their courses removed. (Dkt. No. 56-4 at 2.) These documents  
16 clearly “inform subscribers of [Udemy’s] policy of terminating repeat infringers in appropriate  
17 circumstances.” *Ventura Content, Ltd. v. Motherless, Inc.*, 885 F.3d 597, 615–16 (9th Cir. 2018)  
18 (internal quotation marks omitted). Furthermore, Udemy terminated the accounts of the  
19 instructors who posted the content infringing on Mr. Kinsley’s copyrights. (Dkt. No. 56-2 at 4 ¶¶  
20 30-31.)

21 Second, § 512(i)(1)(B) requires that a service provider “accommodate[] and [] not interfere  
22 with standard technical measures.” “Standard technical measures” are defined as “technical  
23 measures that are used by copyright owners to identify or protect copyrighted works[.]” 17 U.S.C.  
24 § 512(i)(2). There is nothing in the record to indicate that Udemy interfered with any measures  
25 that its customers or instructors could use to identify or protect copyrighted works; in fact, their  
26 policies accommodated protective measures to stop infringing activity, and permitted users to see  
27 “free previews” of courses and report potentially infringing courses and works. (Dkt. No. 56-2 at

28 ¶¶ 15-18, 20-22.) In opposition, Mr. Kinsley argues that Udemy does not meet § 512(c)(2)’s

requirements because it waited until after he filed this lawsuit to ban the infringing instructors. (Dkt. No. 66 at 3.) This alleged delay, however, does not change that Udemy had policies in place—and informed its instructors of these policies—that complied with § 512(i)(1)(A) before Mr. Kinsley notified Udemy of the infringing courses or filed this action. Accordingly, Udemy satisfies § 512(i)’s conditions to be eligible for “safe harbor limitations of liability.” *Ellison*, 357 F.3d at 1080.

### **B. Safe Harbor & 17 U.S.C. § 512(c)**

After satisfying § 512(i)’s requirements, a service provider must satisfy the requirements of § 512(c) to enjoy its safe harbor’s protections.

Under § 512(c)(1), a service provider must have no “actual knowledge that the material” or activity using the material on its system is infringing, or “in the absence of actual knowledge” it must be “unaware of facts or circumstances from which infringing activity is apparent[.]” If the service provider does not acquire actual or apparent knowledge, “upon obtaining such knowledge or awareness” the service provider must act “expeditiously to remove” or disable access to the material. 17 U.S.C. § 512(c)(1)(A)(iii). Second, “in a case in which the service provider has the right and ability to control” infringing activity it must “not receive a financial benefit directly attributable to the infringing activity[.]” *Id.* at § 512(c)(1)(B). Finally, pursuant to § 512(c)(1)(C), “upon notification of claimed infringement[.]” a service provider must “respond[] expeditiously to remove[] or disable access to” the allegedly infringing material.

#### **1. 17 U.S.C. § 512(c)(1)(A)**

Regarding the requirements set forth in § 512(c)(1)(A), “actual knowledge” means “knowledge that is actual, not merely a possible inference from ambiguous circumstances.” *Ventura Content*, 885 F.3d at 609. Udemy received Mr. Kinsley’s copyright complaints concerning the Mastery Python 3 class on January 13, 2018, and the OpenCV class on June 20, 2018. (Dkt. No. 57-9 at 7.) There is nothing in the record to indicate—and Mr. Kinsley proffers no evidence to suggest—that Udemy had actual knowledge regarding the alleged infringements prior to these dates. *See Ventura Content*, 885 F.3d at 609; *see also UMG Recordings*, 718 F.3d at

1021 (“[U]f the material is infringing material that falls within a category of content eligible for copyright

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