

10 Years of the DMCA – A look at current trends in website operator liability

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Overview

- What is the DMCA?
- What is a safe harbor?
- Current cases applying the DMCA

Section 512 – What is a service provider?

- (A) As used in subsection (a), the term “service provider” means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user’s choosing, without modification to the content of the material as sent or received.
- (B) As used in this section, other than subsection (a), the term “service provider” means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

Four Safe Harbors

1. Transitory digital network communications
2. System caching
3. Information residing on systems or networks at the direction of users
4. Information location tools

512(c) – Safe Harbor, Part 1

- **(1) In general.**— A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

512(c) – Safe Harbor, Part 2

- (A) (i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;
- (ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or
- (iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;
- (B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and
- (C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

512 – Notifications of infringement

- A notification must have:
 - Physical or electronic signature of a person authorized to act on behalf of the owner
 - Identification of the copyrighted work claimed to be infringed
 - Identification of the material claimed to be infringing
 - Contact information for the complaining party
 - A statement that the complaining party has a good faith belief that the use is not authorized by the owner, and that the notice is accurate.

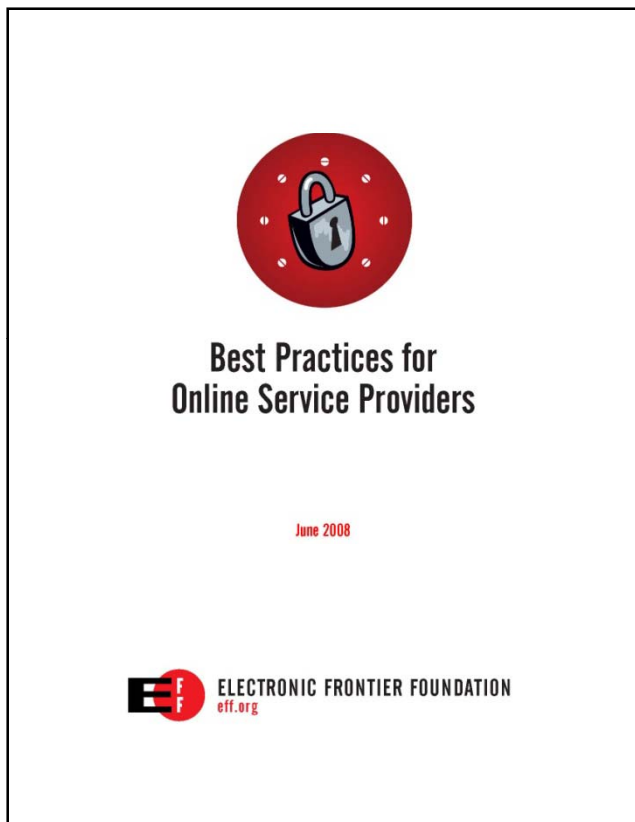
The DMCA takedown procedure

- Notification given to the Service Provider
- The Service Provider takes the material down, and notifies the user who uploaded the material.
- If taken down improperly, the user can file a counter-notice

What must be in a counter-notification?

- A counter-notice is similar to a regular notice, with a statement as to why the content is non-infringing.
- Also requires a statement consenting to jurisdiction in federal court.
- In 10-14 days, if no suit is filed by the original notifier, the material is to be put back up by the Service Provider

Resource – EFF Whitepaper



- “Best Practices for Online Service Providers”
- <http://www.eff.org/files/eff-ospbp-whitepaper.pdf>
- Not a substitute for specific legal advice, but certainly good practices to implement

Recent Cases

- Lenz v. Universal Music – 572 F. Supp.2d 1150 (N.D. Cal. 2008)
- Viacom v. Google – 253 F.R.D. 256, 87 U.S.P.Q.2d 1170 (S.D. NY 2008)
- IO Group, Inc. v. Veoh Networks, Inc- 586 F.Supp.2d 1132 (N.D. Cal. 2008)
- UMG Recordings, Inc. v. Veoh Networks, Inc. – 89 USPQ2d 1449, 2008 WL 542381 (C.D. Cal. 2008)

Lenz v. Universal – 572 F. Supp.2d 1150 (N.D. Cal. 2008)

The screenshot shows a YouTube video player for the video "Let's Go Crazy" #1. The video features a young child in a red shirt pushing a blue toy stroller. The video has 880,407 views and 1,046 ratings. The page includes a search bar with the text "lenz let's go crazy", a navigation menu with "Home", "Videos", "Shows", "Channels", and "Community", and a "Sign Up" button. Below the video player, there are sections for "Video Responses" and "Text Comments". The "Video Responses" section shows four thumbnails with timestamps: missmaje... (0:31), jdoollit... (0:33), pinkadel... (0:34), and tiny pand... (0:30). The "Text Comments" section shows a comment from LFCsteUK (5 hours ago) that says "wtf iust hannened?!!? every kid does that!". On the right side of the page, there is a sidebar with the channel name "edenza", a "Subscribe" button, and a list of "Related Videos" including "Babies Dancing Lebanese Dabka", "DANCING BABY", "Jive Dancin'", "Funny Crazy Babies And Kids", and "Baby Going Crazy". There is also a "Featured Videos" section with three thumbnails and titles: "Didier Drogha on Chelsea's game against Barcelona", "How to make a Pinata, Decor It Yourself", and "AIR SUPPLY, sexiest shower scene ever, and the".

Viacom v. Google (YouTube)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STANTON

VIACOM INTERNATIONAL INC.,
COMEDY PARTNERS,
COUNTRY MUSIC TELEVISION, INC.,
PARAMOUNT PICTURES CORPORATION,
and BLACK ENTERTAINMENT TELEVISION
LLC,
Plaintiffs,
v.
YOUTUBE, INC., YOUTUBE, LLC, and
GOOGLE INC.,
Defendants.

07 CV 2103
Civil Action No. _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
AND DAMAGES

RECEIVED
MAR 13 2007
U.S.D.C. S.D. N.Y.
CASHIERS

Plaintiffs Viacom International Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation, and Black Entertainment Television LLC (collectively, "Plaintiffs"), by and for their Complaint against Defendants YouTube, Inc. and YouTube, LLC (collectively, "YouTube"), and Google Inc. ("Google") (all collectively, "Defendants"), aver as follows:

INTRODUCTION

1. Over the past decade, the emergence of broadband networks, Internet protocol and inexpensive wireless networks has revolutionized the way Americans inform and entertain themselves. Millions have seized the opportunities digital technology provides to obtain creative works and to express themselves creatively. Entrepreneurs have made

Viacom v. Google (YouTube)

- Viacom, et al is seeking \$1 billion in damages, plus declaratory and injunctive relief.
- Asserts these are infringements which are induced by Google, and Google is either directly, vicariously, or contributorily liable
- Google has answered, and the case is in the discovery phase

Viacom v. Google (YouTube)

- An interim order regarding discovery can be found at Viacom International v. YouTube, Inc., 253 F.R.D. 256, 87 U.S.P.Q.2d 1170 (S.D.NY July 2, 2008)
- Viacom sought extensive, wide ranging discovery, but the court narrowly allowed some requests.

Viacom v. Google (YouTube)

- Not required to turn over source code for the Google search engine, or code to ID potentially infringing videos.
- Required to turn over copies of all removed videos, and data from a log of all users who accessed the data, which was later agreed between the parties to be produced in an anonymized fashion.

Viacom v. Google (YouTube)

- Discovery is currently aimed at determining the limits of what Google knew about the videos, and when, to determine its eligibility for the safe harbor.

Veoh

veoh™ Search CBS, MTV, YouTube & more

My Veoh Videos TV Shows Movies Music

Video Size: SMALL LARGE X

The Pirate Bay

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thepiratebay.org how do I download?

01:15 / 07:18

HIDE RELATED VIDEOS

your copyright can kiss my a\$\$

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All the Videos, TV Shows and Movies You Want to Watch. All In One Place.

Funimation TV Cool Sci-Fi TV Hot Reality TV

MoonPhase
xxxHolic
Aquarion
Suzuka
Glass Fleet
Jyu-Oh-sei

The Flash
Lost
Blade
Wonder Woman
Star Trek
Babylon 5

Survivor: Tocantins
Rock of Love Bus
The Amazing Race
Dancing with the Stars
The Real World
48 Hours Mystery

KENTUCKY GRILLED CHICKEN
GRILLED & HOT!

Faythallegra: Faythallegra:

DEPARTURE CITY: ARRIVAL CITY:
Leaving from Going to BOOK NOW

THE NEW GREYHOUND
WE'RE ON OUR WAY

Advertisement

Rocket Man Clears Canyon 00:29
STAR TREK 02:18
Don't Spread Germs (Jet Propelled Germs) 01:01



IO Group, Inc. v. Veoh Networks

- Adult content producer sues Veoh after users upload its videos to Veoh.
- 1st notice to Veoh was the lawsuit
- Before suit, however, all content had been removed when Veoh decided to no longer host adult content.

Veoh's policies

- Only registered users can upload videos.
- Automated process determines if in proper format, takes screen captures.
- User provides metadata about file
- Veoh employees would only occasionally review files

Veoh's policies

- After receiving takedown notice, user is warned, and content is removed. At second violation, the account is terminated and ALL content uploaded by that user is removed.
- Veoh's system can recognize the cryptographic hash of an identified infringing file, so the exact file cannot be uploaded again.

DMCA Safe Harbor Analysis

- Use of the automated procedures to process files did not disqualify Veoh from 512(c)'s safe harbor.
- Veoh had no actual knowledge of infringing activity.
- The nature of the content did not raise enough concern that it was infringing
- Acted expeditiously to remove content

IO v. Veoh

- No right or ability of Veoh to control the infringing activity, and it otherwise merited the safe harbor, so summary judgment was entered in Veoh's favor.

2nd Case – UMG v. Veoh

- Infringing content is music videos, which are streamed to users
- Same conduct and policies by Veoh
- Different court, but again Veoh is entitled to safe harbor protection under 512(c), and denies a motion for partial summary judgment filed by UMG.

2nd Case – UMG v. Veoh

- Specifically denies summary judgment to Veoh, though, as Veoh has not proven that it did not benefit financially from the infringement.

Thank You!

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