

# DMCA Take-down Notices on Campus: A Case Study

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## ABSTRACT

The purpose of this study is to investigate the effects the Digital Millennium Copyright Act (DMCA), Section 512(c), take-down notices have on a university campus. Specifically this study will examine: the policies and procedures one university employs to comply with the DMCA, the content of received DMCA take-down notices, whether the notices comply with the standards set forth in the DMCA for notification, and the effects DMCA take-down notices have on university students and faculty.

## Categories and Subject Descriptors

N/A

## General Terms

Legal Aspects

## Keywords

Digital Millennium Copyright Act, DMCA, take-down notices, university campus

## 1. INTRODUCTION

In 1998 President Bill Clinton signed into law the Digital Millennium Copyright Act (DMCA). Title II of the DMCA created Section 512, the 'Safe harbors' provision. Title II of the DMCA was a compromise between online service providers (OSPs) and copyright holders first negotiated in the Online Copyright Infringement Liability Limitation Act of 1998 [1]. Concerns over the 'Safe harbors' provision are continually highlighted by Chilling Effects, a partnership between groups such as: the Berkman Center for Internet & Society, DePaul University College of Law, and the Electronic Frontier Foundation to name a few [2]. Eleven years after codification, research detailing the affects that the 'Safe harbors' provision has created on university and college campuses is lacking. This case study proposes to answer the following questions: What policies and procedures does a university campus employ to comply with

the 'Safe harbors' provision? Do the DMCA take-down notices, outlined in 512(c)(3), comply with the guidelines set forth in the law? What affects do DMCA take-down notices and university policies have on the education of university students? How do DMCA take-down notices affect the intellectual freedom of both students and faculty on campus?

## 2. METHODOLOGY

### 2.1 Case study site

The site of this case study is a state university located in an urban center located geographically in the Midwest of the United States. The university has a student enrollment around 30,000 and a faculty numbering around 1,500. The university provides on-campus housing for students or university owned housing scattered around the city. A high percentage of first year undergraduate students reside in university owned housing, however after the first year many students move to non-university owned housing. Each student is provided with network access on campus, website space, and file storage on university owned equipment accessible via the Web.

### 2.2 Access to DMCA take-down notices

Access to DMCA take-down notices may prove difficult for this research. The university may view the take-down notices as confidential information under the Family Educational Rights and Privacy Act or other university privacy policies when the subject of the notice is a student. Further, research concerning take-down notices at the university may raise concerns that the end result may negatively impact the reputation of the institution. Initial contact with university officials has been mixed. There are three university offices that deal with DMCA take-down notices, university IT, the legal office, and the Dean of students. Of the three university offices, only one has offered support and expressed interest in collaborating on the study, university IT. The other two university offices have not responded to an initial inquiry sent by the authors.

A second means to obtain access to the DMCA take-down notice is to submit an open records request. The state in which this university is located has a robust open records statute which would be applicable for this research. This method would provide the least favorable outcome for this research however. Important information from the DMCA take-down notices may be redacted

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or worse, all but the basic language found in every DMCA take-down notice would be accessible. An outcome such as this would be severely limiting to the potential usefulness of the study.

### **2.3 Policy and process analysis**

The authors will conduct a legal analysis of the university policies and procedures directly related to the receipt of a DMCA take-down notice. As part of the policy analysis, the authors will examine any programs the university employs to help students understand copyright law and their rights under copyright law. Especially of interest are any materials the university provides on the receipt of a DMCA take-down notice or how one may respond to a DMCA take-down notice. Later, interviews with appropriate members of the three university offices will be conducted. The interviews will focus on university policy and procedures related to their respective offices. Among the subjects of inquiry will be questions related to how the university developed policy, whether the DMCA take-down notice function is efficient or burdensome for the university, what ways the university is combating copyright infringement, and how to improve the 'Safe harbors' provision and take-down notices for the university. Finally, the authors will also conduct an ethical analysis on the university's policies and procedures.

### **2.4 DMCA take-down notice analysis**

DMCA take-down notices will be coded in a restricted access database. Basic information related to the subjects of the DMCA take-down notice would be limited to classification of faculty or staff. However detailed information about the 'complaining party' would be kept for statistical inquiry. The DMCA take-down notices would also be checked against the 'Elements of Notification' found in 512(c) (3) for adherence to the prescribed notification process.

The DMCA take-down analysis will also include the identification of the allegedly infringing materials. As part of the notification process, the 'complaining party' was to identify the location of allegedly infringing materials. The authors will investigate what file types are most frequently targeted and try to reconstruct the context of the targeted file.

## **3. OUTCOME**

The results of this research will begin to fill a void in the literature focused on the effects of the Digital Millennium Copyright Act. Policy decisions require a verbose amount of information in order to make well tailored and proper laws. In August of 2008, the Higher Education Opportunity Act was signed into law. This law, which will go into effect in July 2010, requires that universities and college campuses develop plans and employ technological deterrents to assuage, or ideally halt, copyright infringement on university and college campuses. Unfortunately this research was not made available in time for that policy deliberation. However any future policy deliberations may find the results of this research informative.

## **4. REFERENCES**

- [1] URBAN, JENNIFER M. AND LAURA QUILTER. 2006. Efficient process or "chilling effects"? Takedown notices under section 512 of the Digital Millennium Copyright Act. *Santa Clara Computer & High Tech. L.J.* 621.
- [2] Chilling Effects <http://www.chillingeffects.org/about>