

Improving the Efficiency of the Notice and Takedown System:
Public Interest Principles

*Comments for the Second Public Meeting of the Multistakeholder Forum on Improving
the Operation of the DMCA Notice and Takedown System
Internet Policy Task Force, Department of Commerce*

May 8, 2014

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Improving the Efficiency of the Notice and Takedown System: Public Interest Principles

A more efficient notice and takedown system will benefit content owners and service providers by streamlining the process for identifying and taking offline infringing content. However, such efficiency must not come at the price of undermining safeguards against takedown abuse. To the contrary, the multi-stakeholder discussions regarding the process can and should explore opportunities to improve the process for *all* stakeholders – including the public, as posters and readers of online content. Any standardized process should include standard procedures to help protect free expression and civic discourse that depend on Internet platforms.

In keeping with this goal, the multi-stakeholder dialogue regarding standardization should incorporate the following elements.

1. *Accuracy and completeness.* Standardized forms for submitting takedown notices should be structured to discourage the submission of incomplete, inaccurate and inappropriate notices.
 - All the elements set forth in 47 USC 512(c)(3) for a valid takedown notice should be required fields in web takedown forms. In order to help users evaluate and respond to potentially improper takedowns, a web takedown form should include
 - Identification of *each* of the specific original copyright protected works claimed to have been infringed.
 - An optional field where the takedown notice sender is encouraged to provide the URL where the original copyrighted work can be found, if available.
 - Web takedown forms should remind users about the core elements of a copyright infringement allegation. Specifically, the submission process should require each user to certify that (i) he/she is or represents the copyright owner; (ii) the use of the work has not been authorized by the copyright owner; and (iii) he/she has considered whether the use of the work is protected by the fair use doctrine or otherwise authorized by law, and has a good faith belief that it is not authorized. These reminders should be in plain English, so that the average Internet user can understand and properly heed these reminders.
 - Web takedown forms should include an explicit warning that sending a false or misleading takedown notice may result in liability.
 - Web takedown web forms should provide links to plain English definitions of key legal terms found on the form, including “fair use.”

- Web forms should prompt senders to check that the information they have provided (e.g., contact information) is accurate.
2. *Transparency.* The notice-handling systems of web platforms should be structured to promote prompt and complete notice to the person who posted the content identified in each notice.
 - Where possible, the notice handling system should be designed to automatically notify the poster with the full contents of the takedown notice – either at the time the notice is received, or at the time the platform acts on the notice by taking down the content.
 - Notice to the poster should include clear information about the poster’s right to submit a counternotice and the mechanism for doing so.
 - Notice to the poster should clearly identify each of the specific copyrighted work(s) claimed to have been infringed, so users can fully consider how to respond, including whether to submit a counternotice.
 3. *Information.* One benefit of standardization should be facilitating the operation of takedown notice databases, so we can all learn how to make the process better.
 - Standardization of the structure of data contained in takedown notices should make it easier for third parties to create public databases with takedown notice information. Standards discussions should consider APIs that would make it simple for such databases to import data supplied by content platforms.
 - Content platforms should consider sending takedown notice data to third party databases on an automated basis, as part of the notice handling process.
 4. *Level playing field for lawful users.* Standardization discussions should aim to make counternotice more efficient as well.
 - Wherever applicable, standardization approaches aimed at streamlining notice submission or notice processing systems should be extended to counternotice submission and counternotice processing as well. For example, the development of an easy-to-use web takedown form should be paired with an equally easy-to-use web counternotice form.
 - Content platforms should consider automating the process of re-posting content for which they have received counternotices, so that re-posting becomes the default response to counternotices.
 5. *Avoid collateral damage to lawful speech.* In addition to these affirmative steps, discussion of any standardized procedure should expressly consider and seek to ameliorate potential risks to lawful speech.