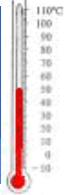


Chilling Effects

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Monitoring the legal climate for Internet activity



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Print-friendly

Photo DMCA (Copyright) Complaint to Google

August 13, 2010

Sender Information:

Michael Laxer
Sent by:
[Private]

Toronto, ON, Canada

Recipient Information:

Google, Inc.

Mountain View, CA, USA

Sent via: fax
Re:

Google, Inc.

[redacted]

Attn: Google Legal Support, DMCA Complaints

13 August 2010

DMCA Infringement Notification for Web Search and all other products |

1. The infringed upon work at issue is an image that appears at
<http://www.facebook.com/album.php?aid=148005&id=747025992&l=aa4787d788>

2. a) The infringing webpages carrying a cropped version of the infringed upon image are

<http://www.causepimps.ca/andy-lehrer/top.html>

<http://www.causepimps.ca/andy-lehrer/andy-lehrer.jpg>

b) Via Google.ca, a page containing a cropped version of the infringing material is returned with the following search query: andy lehrer

FAQ: Questions

- [Why does a search engine get DMCA takedown notices for materials in its search listings?](#)

Other Recent C&Ds

- [Music DMCA \(Copyright\) Complaint to Google, Varese Sarabande](#), May 16, 2011
 - [DMCA \(Copyright\) Complaint to Digg, Patrick Pickford](#), May 12, 2011
 - [Picture DMCA \(Copyright\) Complaint to Google, Moritz van der Meulen](#), May 11, 2011
 - [Download DMCA \(Copyright\) Complaint to Google, Fluent in 3 months](#), May 11, 2011
 - [Blog DMCA \(Copyright\) Complaint to Google, Petronas Legal student](#), June 5, 2011
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Related News

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 - [Better to Switch Than Fight?](#), David Abrams, *Chilling Effects Clearinghouse*, September 3, 2010
 - [The IFPI's Takedown Campaign: By the Numbers](#), Blake Ellis Reid, *Chilling Effects Clearinghouse*, May 16, 2010
 - [Fight the \[Automated\] Powers That Be](#), David Abrams, *Chilling Effects Clearinghouse*, April 27, 2010
 - [We Don't Need No Stinkin' Court Order. We've Got the DMCA.](#), David Abrams, *Chilling Effects Clearinghouse*, March 11, 2010
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c) with the following search result:

<http://www.google.ca/#q=%22andy+lehrer%22&hl=en&prmd=ilno&ei=qqhITLCRItONnQfMjrD5DA&start=10&sa=N&fp=5377902e6cdfefb87>

3. I can be contacted at [redacted]@gmail.com or by surface mail at:

[redacted], Toronto, ON M5G 2G4

4. I do not have contact information for the owner of the website.

5. I have a good faith belief that use of the [copyrighted](#) materials described above as allegedly infringing is not authorized by the copyright owner, its agent, or the law. Michael Laxer, who is the owner of the photograph and on whose Facebook page the photograph appears, has authorized me to act as his agent in this matter.

6. I swear, under penalty of perjury, that the information in the notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Sincerely,

[redacted]

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FAQ: Questions and Answers

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Question: Why does a search engine get DMCA takedown notices for materials in its search listings?

Answer: Many copyright claimants are making complaints under the Digital Millennium Copyright Act, Section 512(d), a safe-harbor for providers of "information location tools." These safe harbors give providers immunity from liability for users' possible copyright infringement -- if they "expeditiously" remove material when they get complaints. Whether or not the provider would have been liable for infringement by users' materials it links to, the provider can avoid the possibility of a lawsuit for money damages by following the DMCA's takedown procedure when it gets a complaint. The person whose information was removed can file a counter-notification if he or she believes the complaint was erroneous.

Question: What does a service provider have to do in order to qualify for safe harbor protection?

Answer: In addition to informing its customers of its policies ([discussed above](#)), a service provider must follow the proper notice and takedown procedures ([discussed above](#)) and also meet several other requirements in order to qualify for exemption under the safe harbor provisions.

In order to facilitate the notification process in cases of infringement, ISPs which allow users to store information on their networks, such as a web hosting service, must designate an agent that will receive the notices from

copyright owners that its network contains material which infringes their intellectual property rights. The service provider must then notify the Copyright Office of the agent's name and address and make that information publicly available on its web site. [512(c)(2)]

Finally, the service provider must not have knowledge that the material or activity is infringing or of the fact that the infringing material exists on its network. [512(c)(1)(A)], [512(d)(1)(A)]. If it does discover such material before being contacted by the copyright owners, it is instructed to remove, or disable access to, the material itself. [512(c)(1)(A)(iii)], [512(d)(1)(C)]. The service provider must not gain any financial benefit that is attributable to the infringing material. [512(c)(1)(B)], [512(d)(2)].

Question: What are the provisions of 17 U.S.C. Section 512(c)(3) & 512(d)(3)?

Answer: Section 512(c)(3) sets out the elements for notification under the DMCA. Subsection A (17 U.S.C. 512(c)(3)(A)) states that to be effective a notification must include: 1) a physical/electronic signature of a person authorized to act on behalf of the owner of the infringed right; 2) identification of the copyrighted works claimed to have been infringed; 3) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed; 4) information reasonably sufficient to permit the service provider to contact the complaining party (e.g., the address, telephone number, or email address); 5) a statement that the complaining party has a good faith belief that use of the material is not authorized by the copyright owner; and 6) a statement that information in the complaint is accurate and that the complaining party is authorized to act on behalf of the copyright owner. Subsection B (17 U.S.C. 512(c)(3)(B)) states that if the complaining party does not substantially comply with these requirements the notice will not serve as actual notice for the purpose of Section 512.

Section 512(d)(3), which applies to "information location tools" such as search engines and directories, incorporates the above requirements; however, instead of the identification of the allegedly infringing material, the notification must identify the reference or link to the material claimed to be infringing.

Question: Does a service provider have to follow the safe harbor procedures?

Answer: No. An ISP may choose not to follow the DMCA takedown process, and do without the safe harbor. If it would not be liable under pre-DMCA copyright law (for example, because it is not contributorily or vicariously liable, or because there is no underlying copyright infringement), it can still raise those same defenses if it is sued.

Question: How do I file a DMCA counter-notice?

Answer: If you believe your material was removed because of mistake or misidentification, you can file a "counter notification" asking the service provider to put it back up. Chilling Effects offers a [form to build your own counter-notice](#).

For more information on the DMCA Safe Harbors, see the FAQs on [DMCA Safe Harbor](#). For more information on Copyright and defenses to copyright infringement, see [Copyright](#).

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