

Chilling Effects

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Monitoring the legal climate for Internet activity



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Photo DMCA (Copyright) Complaint to Google

August 3, 2012

Sender Information:

[Redacted]

Sent by:

US

Recipient Information:

Google, Inc.

Mountain View, CA, 94043, USA

Sent via: online form

Re: Websearch Infringement Notification via Online Form Complaint

Google DMCA Form: Infringement Notification for Web Search

Contact Information

Name: [redacted]

Company Name:

Copyright holder: [Redacted]

Country/Region: US

YOUR COPYRIGHTED WORK

Copyright claim #0:

The photographs that I took of myself in the nude (as well as my Facebook page and cell phone number) can be viewed at the URL below.

Original work URL(s):

[http://isanybodydown.com/2012/08/02/\[Redacted\]](http://isanybodydown.com/2012/08/02/[Redacted])

Allegedly infringing URLs:

0. [http://isanybodydown.com/wp-content/gallery/\[Redacted\].jpg](http://isanybodydown.com/wp-content/gallery/[Redacted].jpg)
1. [http://isanybodydown.com/wp-content/gallery/\[Redacted\].jpg](http://isanybodydown.com/wp-content/gallery/[Redacted].jpg)
2. [http://isanybodydown.com/wp-content/gallery/\[Redacted\].jpg](http://isanybodydown.com/wp-content/gallery/[Redacted].jpg)
3. [http://isanybodydown.com/wp-content/gallery/\[Redacted\].jpg](http://isanybodydown.com/wp-content/gallery/[Redacted].jpg)

SWORN STATEMENTS

FAQ: Questions

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

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- [Photo DMCA \(Copyright\) Complaint to Google](#), Stephanie Keith, October 16, 2012
- [DtecNet DMCA \(Copyright\) Complaint to Google](#), Lionsgate, October 24, 2012
- [BPI DMCA \(Copyright\) Complaint to Google](#), BPI (British Recorded Music Industry) Ltd, October 24, 2012
- [BPI DMCA \(Copyright\) Complaint to Google](#), BPI (British Recorded Music Industry) Ltd, October 24, 2012
- [DtecNet DMCA \(Copyright\) Complaint to Google](#), Lionsgate, October 24, 2012

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- [Craig Brittain of "Is Anybody Down?" Tries To Censor Popehat Posts About Him By Filing a Transparent](#), Ken, *Popehat.com*, November 4, 2012
- [EFF Urges Judge To Rule for the Mother Of The "Let's Go Crazy" Dancing Baby](#), Adi Kamdar, *EFF, EFF Press release*, October 11, 2012
- [Microsoft DMCA Notice Mistakenly Targets BBC, Techcrunch, Wikipedia and U.S. Govt | TorrentFreak](#), Ernesto, *TorrentFreak*, October 7, 2012
- [Repeat Senders](#), Wendy Seltzer, *Chilling Effects Clearinghouse*, December 15, 2010
- [Better to Switch Than Fight?](#), David Abrams, *Chilling Effects Clearinghouse*, September 3, 2010

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.

[checked]

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

[checked]

SIGNATURE

Signed on this date of:

08/03/2012

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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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