



ELECTRONIC FRONTIER FOUNDATION eff.org

Freedom of Expression, Privacy, and the TPP

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Intermediaries and Free Expression

- Broad, clear legal protections of Internet intermediaries are essential to protecting free expression.
- The U.S. approach to intermediary liability in the copyright context has negatively impacted freedom of expression and unnecessarily imposed costs.
- Blanket immunity (or judicial takedown) regime:
 - reduces regulatory burden and promotes innovation
 - reduces abuse targeting legitimate uses
 - promotes freedom of expression
 - better protects privacy
 - encourages due process



U.S. Intermediary Liability, Copyright

- Section 512 has had unintended consequences.
 - While it has procedural safeguards, it has resulted in the removal of a significant amount of non-infringing material.
 - Expedited process tempts use for non-copyright purposes.
 - Allows for short-term censorship, without any judicial input (examples at <http://www.eff.org/takedowns>):
 - Political campaign videos (e.g., CBS News and McCain presidential campaign ad)
 - Media criticism (e.g., MSNBC receives takedown for using unreleased footage regarding national political ad campaign)
 - Personal non-commercial videos (e.g., Universal Music sends takedown targeting mother's 29 second "dancing baby" video)



Privacy and Anonymity

- Judicial system is best suited to balance rights to anonymous speech with need to redress wrongs.
- Self-initiated pre-complaint notices (subpoenas), issued in the name of protecting copyright law, are insufficient.
- Rights holder should be required to petition a court, which can balance competing interests prior to the disclosure of identity information, in order to avoid abuse and a chilling effect on speech.



Blacklists

- Recent US legislative proposals (e.g., SOPA, PIPA) have moved towards more overreaching, restrictive approaches targeting intermediaries.
- Blacklists, DNS blocking are inevitably overbroad, subject to abuse.
- TPP proposals could build similar infrastructure.
 - see Art. 29(3)(b)(vi)(B) (conditioning intermediary immunity on accommodation of vague “standard technical measures,” developed by right holders, that protect copyrighted materials)



A Brief Word About TPMs

- As U.S. experience with DMCA over last 12 years has shown, overbroad legal protection for TPMs can cause considerable harm to important public policy interests outside the copyright sphere.
- Risks overrides national copyright law exceptions, chilling effect on scientific research and publication, stifling innovation.
- Report: “Unintended Consequences: 12 Years Under the DMCA”
 - <http://www.eff.org/unintendedconsequences>



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