DMCA COMPLIANCE: YOU'VE RECEIVED A NOTICE, NOW WHAT?

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PREPARED FOR
EFF'S WEB 2.0 BOOTCAMP
OCTOBER 10, 2007

WE WILL COVER…

- ★ TAKEDOWN NOTICES
- ★ COUNTER NOTICES
- ★ PUTTING MATERIAL BACK UP
  - ★ (NOT ADDRESSING: SPECIAL RULES FOR NON PROFIT EDUCATIONAL INSTITUTIONS)

TAKEDOWN NOTICES

- MINIMUM REQ'S OF NOTICE:
  - IN WRITING
  - PROVIDED TO DESIGNATED AGENT <u>AND</u>
  - INCLUDES 7 SPECIFIC ITEMS…

7 PARTS OF COMPLETE NOTICE

1. "REASONABLY SUFFICIENT" CONTACT INFO OF COMPLAINING PARTY (E.G., ADDRESS, TELEPHONE, EMAIL ADDRESS)*

2. SUFFICIENT INFORMATION TO I.D. THE COPYRIGHTED WORK(S) (LOW STANDARD?)*

3. I.D. OF THE (ALLEGEDLY) INFRINGING MATERIAL & A URL (A.K.A. INFORMATION "REASONABLY SUFFICIENT" TO PERMIT LOCATION)*

*= 3 MINIMUM REQUIREMENTS

7 PARTS OF COMPLETE NOTICE

4. STATEMENT THAT PARTY COMPLAINING HAS A "GOOD FAITH BELIEF" THAT THE USE IS "NOT AUTHORIZED BY THE OWNER, ITS AGENT, OR THE LAW"

5. STATEMENT OF THE ACCURACY OF THE NOTICE

6. STATEMENT <u>UNDER PENALTY OF PERJURY</u> THAT COMPLAINING PARTY IS AUTHORIZED TO ACT ON BEHALF OF THE COPYRIGHT OWNER

7. PHYSICAL OR E-SIGNATURE OF OWNER/AUTHORIZED REPRESENTATIVE

HOW TO RESPOND…

- ★ IF NOTICE DOES NOT "COMPLY SUBSTANTIALLY" WITH (AT LEAST) 1, 2 + 3
- ★ IF NOTICE "SUBSTANTIALLY COMPLIES" WITH AT LEAST 1, 2, & 3
- ★ IF NOTICE COMPLIES WITH ALL REQUIREMENTS

NOTICE DOES NOT AT LEAST "COMPLY SUBSTANTIALLY" WITH 1, 2 & 3

- ★ YOU HAVE NO OBLIGATION UNDER DMCA TO DO ANYTHING.
- ★ NO "RED-FLAG KNOWLEDGE" WILL BE PRESUMED BASED ON THE ERRONEOUS NOTICE.

"SUBSTANTIALLY COMPLIES" WITH 1, 2 & 3 (BUT FAILS OTHER PARTS)

- YOU NEED TO "PROMPTLY ATTEMPT" TO CONTACT THE PERSON MAKING NOTIFICATION <u>OR</u>
- "TAKE[] OTHER REASONABLE STEPS TO ASSIST IN THE RECEIPT OF NOTIFICATION THAT SUBSTANTIALLY COMPLIES…"
  - <u>IN OTHER WORDS</u>: ACKNOWLEDGE RECEIPT, ERROR, & REFER TO STATUTE TO CORRECT.
- IF YOU FAIL, THEN POSSIBLE "RED-FLAG KNOWLEDGE" (LOSE SAFE HARBOR).

NOTICE "SUBSTANTIALLY COMPLIES" W/ ALL REQMTS.

- ★ YOU MUST REMOVE/DISABLE ACCESS TO THE MATERIAL —> BASED ON YOUR OWN "GOOD FAITH"
- ★ TIMING: "RESPOND EXPEDITIOUSLY" (CONSERVATIVE RULE = 5 DAYS)
- ★ NOTIFY USER —> MUST BE "PROMPT" (BUT NEED NOT BE BEFORE YOU REMOVE/DISABLE)
- ★ TIP: BEFORE NOTIFYING USER, DETERMINE IF A "REPEAT INFRINGER"

COUNTER NOTICES

- ★ WHAT: METHOD BY WHICH A USER CAN HAVE CONTENT THAT IS WRONGFULLY TAKEN DOWN, PUT BACK UP.
- ★ WHY:
  - ★ CRITICAL FOR FAIR USE SITUATIONS
  - ★ CATCHES ERRORS BY COMPLAINING PARTY
  - ★ ALLOWS SERVICE PROVIDER (YOU) TO PUT THE MATERIAL BACK WITHOUT FEAR OF LIABILITY (IF YOU HAVE "GOOD FAITH")

COUNTER NOTICES - 5 REQMTS.

1. SUBSCRIBER'S NAME, ADDRESS, AND TELEPHONE
2. I.D. OF THE MATERIAL REMOVED/DISABLED & LOCATION AT WHICH IT HAD APPEARED (URL)
3. STATEMENT UNDER PENALTY OF PERJURY THAT USER HAS A "GOOD FAITH BELIEF" THAT MATERIAL WAS REMOVED/DISABLED AS RESULT OF MISTAKE/MIS-ID.

COUNTER NOTICES - 5 REQMTS

4. STATEMENT INCLUDING 2 THINGS:
   - ★ CONSENT TO FEDERAL JURISDICTION WHERE SUBSCRIBER IS LOCATED (OR IF OUTSIDE THE U.S. WHERE SERVICE PROVIDER "MAY BE FOUND")
   - ★ CONSENT TO ACCEPT SERVICE OF PROCESS FROM THE PERSON WHO PROVIDED NOTICE.
5. PHYSICAL OR E-SIGNATURE OF OWNER/AUTHORIZED REPRESENTATIVE

WHETHER TO PUT BACK - LAW

- ★ IF COUNTER-NOTICE IS RECEIVED, "PROMPTLY" DO 2 THINGS:
  - ★ GIVE A COPY TO ORIGINAL COMPLAINING PARTY
  - ★ INFORM COMPLAINING PARTY THAT MATERIAL WILL BE REPLACED IN 10 DAYS (FROM DATE OF COUNTER NOTICE?)
- ★ REPLACE THE MATERIAL NOT LESS THAN 10 NOR MORE THAN 14 DAYS AFTER RECEIVING… BUT….

WHETHER TO PUT BACK - LAW

★ EXCEPTION!!: IF THE COMPLAINING PARTY FILES "AN ACTION" AND NOTIFIES YOUR DESIGNATED AGENT OF THAT FACT.

★ DON'T REPLACE/PUT BACK THE MATERIAL.

WHETHER TO PUT BACK - QUESTIONS

- ARE YOU OTHERWISE ON RED-FLAG NOTICE?
- IS THE SUBSCRIBER A REPEAT-INFRINGER? (MUST HAVE A POLICY TO TERMINATE.)
- ARE YOU STILL WITHIN THE NARROW 10-14 DAY WINDOW?

RESOURCES

- ★ THE DMCA: 17 U.S.C. 512 ET SEQ
- ★ EFF'S DMCA RESOURCES
- ★ COPYRIGHT OFFICE INFO ON HOW TO REGISTER AN AGENT

THANK YOU.

AT EASE.

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PODCAST: RULES FOR THE REVOLUTION

BLOG: CYBERLAW.STANFORD.EDU/BLOG/COLETTE-VOGELE

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