



Colette Vogele, Vogele & Associates
Jonathan Band, Jonathan Band PLLC
EFF Senior Staff Attorney Fred Von Lohmann

DMCA Copyright Safe Harbors

8 THINGS TO REMEMBER FOR SERVICE PROVIDERS

#1: Register a Copyright Agent!!! Instructions at www.copyright.gov/onlinesp/

#2: The DMCA Safe Harbors are Only for Copyright Infringement. Not trademark, obscenity, defamation, celebrity publicity rights, or anything else.

#3: Implement and Notify Users that Repeat Infringers Will be Terminated. Put the policy in your Terms of Use and create a system that flags users who draw multiple DMCA takedowns for possible termination.

#4: The Six Requirements for a Compliant Takedown Notice: In order to be effective, a DMCA takedown notice must be a written communication (e.g., email, letter, fax) and must:

- (1) include a physical or electronic signature of the copyright owner or her representative;
- (2) identify what work is being infringed;
- (3) identify the material that is claimed to be infringing, along with information sufficient to permit you to locate the material on your site.
- (4) include contact information for the complaining party.
- (5) include a statement that the complaining party has a good faith belief that the use is not authorized by the copyright owner, its agent, or the law.
- (6) include a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the copyright owner.

Technically, if a notice fails to include at least (2), (3), and (4), you are entitled to ignore it. Nevertheless, it's generally a good idea to contact a complaining party to give them a chance to amend their notice to comply with all 6 requirements.

#5: Take Down Blatant and Obvious Infringements When You Come Across Them: Although you have no obligation to seek out or monitor for infringements, when employees come across content that is obviously infringing, they should notify the Copyright Agent, who should review it and take down obvious infringements.

#6: Keep Good Records of Takedowns and Terminations: If challenged, you want to be able to show a court how seriously you took your DMCA responsibilities.

#7: The DMCA Does Not Require Takedown in Every Instance. You need to have a notice and takedown procedure if you want the DMCA safe harbors, but sometimes you don't need the safe harbors because what your users are doing isn't infringing. So you can make exceptions in appropriate cases without losing your DMCA protections.

#8: Notify Users About the Counter-Notice Procedure. Section 512(g) of the DMCA allows users to send counter-notices when their material is improperly targeted by a DMCA takedown. If the service provider and the user have complied with the requirements of the counter-notice, the service provider may restore the content after 10 business days.