

Discussion Draft of the Working Group as Distributed at the Fourth Public Meeting of the Multistakeholder Forum on Improving the Operation of Notice and Takedown System on September 10, 2014

Note: The Working Group notes that this Discussion Draft is a work in progress, is subject to further comment by the Working Group and merely represents a snapshot of the Working Group discussions and work as they existed on September 10, 2014. This document will be subject to further revisions before the Fifth Public Meeting of the Multistakeholder Forum on Improving the Operation of Notice and Takedown System on October 28, 2014.

PARTIAL DISCUSSION DRAFT – SUBJECT TO FURTHER STAKEHOLDER DISCUSSION AND COMMENT

USPTO DMCA Multi-stakeholder Forum

**DMCA Notice-and-Takedown Processes:
List of Good Practices (Bad, and Situational Practices Being Developed)**

Good

Good General Practices

Making DMCA takedown and counter-notice mechanisms easy to find. There are many different ways to accomplish this, depending on the nature of the service in question, but some examples include ensuring that copyright takedown and counter-notice mechanisms appear readily in search engine results, are linked from web page headers and footers, are [included as a redirect to a particular URL – FMC to provide code to accomplish this] and/or described in Terms of Service or Help/Contact pages; [ideally we would identify a reasonable number of ways to do this and suggest them as preferred ways so that notice senders would have an idea of where to begin their search]

1. Providing a clear, “plain English” explanation (consistent with DMCA requirements) of who can submit a DMCA notice and counter-notice; what information should be submitted to comply with DMCA requirements; and what additional information, if submitted, can facilitate the removal of alleged infringing content;
2. Implementing processes that are efficient for receiving and acting on notices that are commensurate with the level of good faith claims of instances of infringement sought to be submitted by rights owners e.g. through
 - a. allowing multiple URLs to be submitted online at one time, email, in a web form that can accommodate multiple URLs, or through upload of a text file
 - b. offering, where appropriate, alternate methods of submitting notices for larger notice senders [, including, for example, scalable, machine-readable processes];Additional efficiency may be achieved by establishing a standard document structure for the email or uploaded text file.
3. Providing confirmation of receipt of a notice or counternotice that includes a method to identify the notice or counternotice in further communications, such as a copy of the completed web form, or an email confirming that the content has been acted upon; and
4. Explaining to submitters that DMCA notices and counter-notices are only accepted to address copyright infringement claims and are not the proper method to report other legal claims (i.e. non-copyright issues such as trademark or defamation issues) or violations of community guidelines, terms of use, etc., and that there are legal sanctions that can apply for [certain knowing and material misrepresentations in DMCA notices].

For Service Providers When Email is the Submission Mechanism

1. All Good General Practices
2. Any good practices particular to email?

For Service Providers When a Web form is the Submission Mechanism

1. All Good General Practices
2. Web form should have clearly labeled fields and clearly mark which fields in a submission are required by the DMCA, and are therefore mandatory and which fields are requested in order to allow for better processing of the notice(e.g where multiple works

Comment [JJH1]: Discuss whether to tie labeling additional information fields to efficiency or mandatory fields to efficiency. Also discuss adding examples of essential info to identify different types of works alleged to be infringed.

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appear on a single URL or where a work such as a visual image cannot readily be identified by title/author alone.];

3. Providing sample text, help buttons and instructions to help explain what information is being requested;
4. Employing industry-standard features that promote efficient submission of forms such as avoiding server-side settings that would disable browser-side auto-completion features that help submitters to easily complete fields based on prior input and employing practices similar to those used as industry standards for online sales transactions wherever possible to retain properly entered data, so the notice sender does not have to re-enter it to complete a notice if certain fields on the notice have been entered incorrectly;
5. Explaining why a notice or counter-notice submission is rejected to allow the sender to efficiently correct the submission and resubmit;
6. Implementing efficient practices for receiving and acting on notices, [recognizing that reasonable use of certain measures for security reasons or to deter fraudulent , erroneous or abusive submissions may be appropriate in certain circumstances] While cross-referencing “bad faith practices” section for discussion of unreasonable uses of these measures;

Comment [sa2]: Highlighted language still under consideration by group and will likely be made more specific to illustrate certain security practices discussed

Good [Faith] Notifier Practices

1. Good faith submission of all information required by Section 512(c);
2. Submitting take down requests presented as Section 512 notices only for alleged copyright infringement;
3. [TBD whether to include/how to address educational information for users and how to reflect that notice sender has appropriately considered whether use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law.]

Comment [sa3]: This bullet is a placeholder for several discussion points the internet user community has raised, but which the group has not yet discussed

Bad Practices

Bad [Faith] Notifier Practices

To be added

Bad General Practices

1. Intentionally obfuscating the procedure, such as hiding contact information for submission of take down notices or counter-notices, or placing web forms or DMCA agent's email address behind multiple click-through advertisements;
2. Requiring notice and counter-notice submitters to watch advertising, or provide anything of value as a pre-condition to submitting a notice or counter-notice.

Others to be added

For Service Providers When Email is the Submission Mechanism

1. All Bad General Practices
2. [Any bad practices particular to email?]

For Service Providers When Web Form is the Submission Mechanism

1. All Bad General Practices

To be added

For UseNet Service Providers

To be added.

Situational Practices (that Vary Based Upon the Situation/Context)

1. [Trusted Submitter Programs: Discussion of potential features of these programs that further efficiency]
2. [Acknowledgement and Status Reporting: Discussion of this practice in relation to small and large service providers and potential features of these programs]
3. [Requesting additional information:
 - a. [Decide how to discuss service provider requests for optional information to encourage efficient submissions without imposing undue burdens on submitters and produce net overall efficiency]