

Evidence of unjustified notifications and incorrect takedowns

USA

The Digital Millennium Copyright Act (DMCA) as a model?

In 2009, Google noted that more than half (57%) of the takedown notices it has received under the US Digital Millennium Copyright Act 1998, were sent by business targeting competitors and over one third (37%) of notices were not valid copyright claims.¹

The Electronic Frontier Foundation's Takedown Hall of Shame² “collects the worst of the worst” and thus demonstrates how the system is systematically abused by rightsholders. Just to list some of the cases:

- In 2009, the whistle-blower website 'Cryptome' published Yahoo's Compliance Guide for Law Enforcement. Yahoo immediately issued a takedown request under the DMCA.³
- In April 2011, Facebook took down a number of fan pages offline due to false copyright claims.⁴ The company did not investigate before disabling the pages.
- In May 2011, a copyright complaint lead to the removal of a public domain music library.⁵
- In February 2012, an article published on a popular technology and policy blog was deleted from Google search results via a DMCA notice asking for the removal of a total of 555 URLs.⁶
- Warner Brothers Entertainment's automated scheme to send copyright infringement notices results in the removal of a substantial amount of lawful content.⁷
- The report “Unintended Consequences: 12 years under the DMCA” released by the EFF lists many other worrisome cases.⁸
- In September 2012, due to the use of *Vobile*, a third-party service for automated copyright enforcement, parts of the live streaming of an award ceremony showing short clips from the winning episode were banned.⁹

Why the DMCA is not a model to follow:

- Thousands of automated notices with hundreds of links each are sent out on a daily basis (see published notices on chilingeffects.org¹⁰).
- There is insufficient transparency of removed content and notices. Although the Chiling Effects project tries to give more transparency to users, it is run by a non-profit organisation and has therefore limited capacity. Not all notices are published and sometimes with important delays.
- Content is taken down and only afterwards questions are being asked about the legality of the material.
- The takedown demand can be challenged in court, but this is time-consuming and costly for the average user.
- In cases where content is politically time sensitive, temporary takedown is sufficient to suppress political discourse.

1 PCWorld <http://pcworld.co.nz/pcworld/pcw.nsf/feature/93FEDCEF6636CF90CC25757A0072B4B7>

2 EFF Takedown Hall of Shame: <https://www.eff.org/takedowns>

3 Cryptome, Yahoo notices <http://cryptome.org/0001/yahoo-cryptome.htm>

4 Facebook takes down ArsTechnica's fanpage <http://arstechnica.com/tech-policy/2011/04/facebook-takedown-followup-what-happened-and-what-facebook-needs-to-fix/>

5 EDRI.org Takedown of public domain website: <http://www.edri.org/edrigram/number9.9/takedown-public-domain-website>

6 Techdirt article censored by bogus DMCA takedown notice <http://www.techdirt.com/articles/20120223/15102217856/key-techdirt-sopapipa-post-censored-bogus-dmca-takedown-notice.shtml>

7 EFF calls on foul robo takedowns <https://www.eff.org/press/releases/eff-calls-foul-robo-takedowns>

8 EFF report: <https://www.eff.org/files/eff-unintended-consequences-12-years.pdf>

9 How copyright enforcement robots killed the Hugo Awards <http://io9.com/5940036/how-copyright-enforcement-robots-killed-the-hugo-awards>

10 Chilling effects, example of an automated notice <https://www.chilingeffects.org/dmca512c/notice.cgi?NoticeID=205681>

Cases in Europe

The following examples are clearly simply the tip of the iceberg, as the vast majority of users do not have resources to take cases to court. Also, with regard to providers giving themselves the right via terms and services, for ex. to delete content “at any time and for any reason” (<http://www.xbox.com/en-US/legal/livetou>) or, even more surreal, to remove services “for any reason or no reason” (<http://msdn.microsoft.com/en-us/library/windows/apps/hh694058.aspx>):

UK

- November 2011: The IWF blocked users of file-sharing site Fileserve from accessing their personal files and downloading files uploaded by others, allegedly because a specific link was thought to contain child sexual abuse imagery. Paid subscribers of Fileserve were also blocked from downloading content from the site.¹¹
- December 2011: Vodafone's “child protection” filter blocked underwear retailers in the UK.¹²
- In May 2008, Yahoo's Flickr forum posts reported the degradation of access to the Yahoo!-owned Flickr service by 3 UK-based broadband providers. 120 UK customers complained to Flickr over a 6 day period. Nearly all complainants were “pro” users (i.e.: high end customers, paying for enhanced Flickr service). User feedback quickly identified the ISPs concerned. It transpired that a single Flickr account had been identified by the Internet Watch Foundation as containing unlawful material. However, instead of blocking the specific URL concerned, the ISPs' blocking solution had the effect of preventing all their customers from uploading photos to Flickr. Flickr staff directed users to report this to their ISPs but users were told that the blocking they experienced was legitimate and a consequence of the IWF identifying illegal content on Flickr - even the fact of Yahoo!'s Head of Public and Social Policy being on the board of the IWF was not enough to help Flickr. Attempts by Flickr to seek redress directly with ISPs were also unsuccessful. Yahoo!'s engineering and policy teams were able to resolve the issue bilaterally and informally in the end but this experience demonstrated that, were this to occur on any scale, processes and remedies to address reports from users and/or site owners are either non-existent or not fit for purpose.¹³
- In February 2010, music blogs are deleted by Google without warning, without further explanation.¹⁴

Germany

- In August 2010, the "Gesellschaft zur Verfolgung von Urheberrechtsverletzungen" (GVU) asked successfully for the removal of 4 videos on the platform Vimeo that the rightholder had uploaded himself. The allegedly copyrighted material did not belong to them.¹⁵
- In June 2011: GEMA issued a false notice asking for the removal of a video by Nina Paley on YouTube: “Sita Signs the Blues”.¹⁶

11 EFF Week in Internet Censorship <https://www.eff.org/deeplinks/2011/11/week-internet-censorship-opaque-censorship-turkey-russia-and-britain>

12 Vodafone customers can't buy underwear online <http://www.sroc.eu/2011/12/vodafone-customers-cant-buy-underwear.html>

13 Flickr's full forum posts available at: <http://www.flickr.com/help/forum/en-us/72110/>

14 Google removes music blogs www.guardian.co.uk/music/2010/feb/11/google-deletes-music-blogs and www.theregister.co.uk/2010/02/11/google_musicblogocide_2010/

15 Sixtus vs. Gvu <http://sixtus.cc/in-sachen-gvu>

16 NY Times: <https://www.nytimes.com/external/gigaom/2011/07/14/14gigaom-sita-sings-the-blues-blocked-in-germany-34306.html>

Poland

- Before municipal elections in September 2011, a blogger (A.J.) got into a conflict with a local governor (file published by the court after anonymisation). The blog run by A.J. allowed users to leave their own comments. One user left a comment that was offensive towards the local governor. Regardless of the fact that A.J. removed the post immediately without waiting for a legal notice, the governor brought the case to court claiming that the mere fact of having published this sort of post about him constituted an infringement of his "personal goods" (reputation), which in turn might have had an effect on the results of elections. Surprisingly, the court agreed with this reasoning and imposed a financial punishment on the blogger. This judgment clearly shows that not all Polish courts recognise the limitations of liability that exist under E-Commerce directive (and its Polish implementation). The blogger was punished for not executing pre-screening of third-party content and for not preventing the infringement.

Netherlands

- In July 2011: MobyPicture did not respond fast enough to a notification of Amazon, after which Amazon denies access to port 80 of the website. The entire site (with 500.000 customers in 2010) became unreachable.¹⁷
- In April 2011, Leaseweb received a notification from the Dutch National Police Agency requesting to take down the magazine "Inspire" that is hosted on a website of a customer. The content of this magazine is considered to be illegal (as it is related to Al-Qa'ida). By Dutch law authorities need a court order and are not allowed to ask for voluntary removal by sending a letter and making a phone call.¹⁸
- November 26th, 2010: MobyPicture and some related websites are taken offline after a user posted a supposedly copyrighted picture to the website. After a failed attempt by the hoster SiteSolutions to contact MobyPicture by e-mail, SiteSolutions took down the entire website and all related websites (of other clients, companies and projects).¹⁹

Belgium

- In October 2011 a court ordered the blocking of 10 domain names of The Pirate Bay. Fearing liability/consequences, the access providers Voo and Numericable started to voluntarily block The Pirate Bay on IP address basis without any court order.²⁰

Romania

- A lawyer published a copy of all laws from 1990 until 2011 (text of laws are in the public domain) on his website. The Official Journal claimed to have a copyright on the format how the laws are published and filed a complaint against the lawyer. In parallel, the Journal had asked the hosting provider to take down the content, based on a simple letter sent via a bailiff. The hosting provider took down the content and suspended the entire hosting account, where other websites were hosted. However, the lawyer sent a letter to the provider explaining the situation and threatening with a legal action against the hosting company. As a result, the hosting company replaced the content. The letters and replies (only in Romanian): <https://www.box.com/shared/a1793u73x2> and <https://www.box.com/shared/a1793u73x2> - Domain names are kurtyan.org and monstruloficial.ro

17 Webwereld.nl: <http://webwereld.nl/nieuws/107444/amazon-haalt-nederlands-mobypicture-offline.html>

18 Politie vraagt verwijdering opruiende tekst, mag dat wel? <http://blog.iusmentis.com/2011/04/08/politie-vraagt-verwijdering-opruiende-tekst-mag-dat-wel/>

19 MobyPicture <http://mathys.vanabbe.com/the-moby-troubles-of-friday-26-november-this-is-what-happened/>

20 Numerama.fr: <http://www.numerama.com/magazine/20979-des-fai-bloquent-the-pirate-bay-et-ses-miroirs-sans-ordre-judiciaire.html>