Copyright Infringement and the DMCA's Safe Harbor Provisions
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YouTube, Facebook, Twitter, and countless other online platforms are used to share all sorts of information, including video clips, pictures, art, poems, and other copyrighted works. A vast majority of the time, users upload and share copyrighted works without permission from the copyright owners. In some cases, the copyright owners may not object to these uses of their copyrighted works even though such uses may infringe their rights. In other cases, however, copyright owners adamantly object to any unauthorized use of their copyrighted works.

For example, Viacom (the owner of Paramount Pictures, MTV, Comedy Central, etc.) sued YouTube for $1 billion in damages because YouTube users had uploaded more than 150,000 clips of Viacom programming, which had been viewed more than 1.5 billion times.[1] Thanks to the safe harbor provisions of the Digital Millennium Copyright Act ("DMCA"), YouTube was able to settle the case without paying any damages to Viacom.

The safe harbor provisions of the DMCA limit copyright infringement liability for online service providers that store information on systems or networks at the direction of their users if the service providers meet certain criteria.[2] To be afforded the protections of the safe harbor, a service provider (i) must not have actual knowledge of the infringing material or activity, (ii) must not be aware of facts or circumstances from which the infringing activity is apparent, or (iii) must act expeditiously to remove or disable access to the infringing material upon learning of it.[3] Additionally, if the service provider has the right and ability to control the infringing activity, the service provider must not receive a financial benefit directly attributable to the infringing activity.[4]

The DMCA clearly places the burden of policing copyright infringement squarely on the shoulders of copyright owners. When a copyright owner finds that her copyrighted work is being infringed online, she can provide a take-down notice to the applicable service provider in order to have the infringing work removed. For the notice to be adequate under the DMCA, it must identify the copyrighted work, identify the infringing work with sufficient specificity that the service provider can locate the infringing work, provide contact information for the copyright owner and a statement regarding the copyright owner's good faith belief that the

complained of material is not authorized, and the notice must be signed under penalty of perjury.[5]

While the DMCA offers protections to online service providers, such service providers should take affirmative steps to ensure that they fall within the safe harbor provisions. For instance, any online service provider should consider providing instructions on its website for submitting copyright infringement take-down notices, including to whom the notices should be sent. Online service providers should also have procedures in place to promptly address such take-down notices, including procedures for expeditiously removing or blocking access to infringing works.

Copyright owners should also take advantage of the relatively simple take-down procedure provided for in the DMCA. The DMCA take-down procedure can enable a copyright owner to protect her copyrighted work without the time and expense of sending a demand letter or engaging in litigation.

[1] *Viacom International, Inc. v. YouTube, Inc.*, No. 07 Civ. 2103 (S.D.N.Y. 2010).

[2] *See* 17 U.S.C. § 512(c).

[3] *See* 17 U.S.C. §§ 512(c)(1)(A)(i)-(iii) and 512(c)(1)(C). The DMCA explicitly states that the safe harbor protections are not conditioned on a service provider monitoring its service or affirmatively seeking facts indicating infringing activity. *See* 17 U.S.C. § 512(m)(1). Thus, the safe harbor protections are available so long as the service provider does not have actual knowledge of specific and identifiable infringements of particular individual items, as opposed to mere general knowledge that such activity is prevalent.

[4] *See* 17 U.S.C. § 512(c)(1)(B). For the service provider to have the right and ability to control the infringing activity, the service provider must have actual item-specific knowledge of the infringing activity.

[5] *See* 17 U.S.C. §§ 512(c)(3)(A)(ii)-(vi).