



Abuse of DMCA Section 512 Stricter Restrictions Will Make It Even Easier to Censor Free Speech & Hurt Users

DMCA Section 512 was crafted by Congress as the best solution to support creativity, foster innovation and protect free speech while still giving rightsholders the ability to safeguard their works.

The notice-and-takedown system allows rightsholders to notify platforms of an alleged infringement; then the platform takes down the content. The poster of the content then has an opportunity to appeal if they believe it was taken down wrongfully.

Unfortunately, there is some abuse and misuse the law by sending a takedown notice in instances that are NOT copyright infringement. Research shows that [nearly a third](#) of takedown notices are potentially problematic. Reasons for false or abusive takedown notices include:

- Automated bots
- Not recognizing licensed uses
- Challenges around samples, covers and other legal uses
- Remixing and reusing public domain works
- Growing cottage industry of firms that specifically search for alleged copyright infringement
- Failure to consider or recognize fair use
- Actually seeking a trademark or defamation claim
- Reacting to public relations problems

Policy proposals that would require mandatory content filters or change to a notice and staydown system would only make the impact of abuse that much more harmful to creativity, free speech and everyday consumers.

Misusing DMCA to Suppress Free Speech

When a [clip](#) compilation of celebrity doctor Dr. Drew Pinsky began circulating showing him dismissing the seriousness of the COVID-19 virus, he turned to the DMCA to silence his critics. Not only did he use a takedown notice to try and stop the negative attention, he also took to Twitter to threaten anyone else tweeting the video citing copyright law violations. His misuse of the DMCA only attracted even more attention, and the full video was rightfully restored along with an apology video.

A disgruntled New Yorker created a [parody website](#) for Time Warner Cable with actors posing as customer service reps that asked “What Can We Do Worse?” Though the accounts were clearly fake, Time Warner went after the social media accounts one by one.

[VentureBeat critic](#) James Gubb posted a review of a new video game, but his review was attacked by another critic on Twitter who posted a screenshot of part of the original review. Not happy with the criticism, Grubb issued a DMCA takedown notice, and the negative Twitter post was hidden for several days. Since the post was a fair use it was eventually restored.

Blogger [Michelle Malkin](#) accused hip hop artist Akon of being a misogynist, vulgar and degrading” in video podcast, using short excerpts from Akon’s music videos and concerts to make her point. Universal Music Group (UMG) filed a DMCA takedown notice that forced YouTube to take down Malkin’s podcast episode. When Malkin filed a counter-notice, the episode was restored to YouTube.

[Abuse By the Entertainment Industry](#)

[FIFA](#) sent a takedown notice to a family who posted a 5 second video of their seven-year-old son celebrating his team’s victory at home with a blurry image of the game on TV in the background. Despite a clear fair use, the video was removed from Twitter due to the DMCA takedown notice.

[Sony Music Entertainment](#) claimed that 47 seconds of a musician’s performance of a Bach work posted to Facebook violated their copyright, but the musician issued a counter notice stating “This is my own performance of Bach. Who died 300 years ago. I own all the rights.” Despite not even owning the original copyright, Sony rejected the counter notice, but the work was eventually restored when the story got traction on Twitter.

After Viacom [sued](#) YouTube for uploaded clips that were allegedly infringing, it was revealed that over 100 of those clips had actually been uploaded by Viacom’s marketing department for publicity.

When a mom posted a 29-second YouTube video of her baby dancing to Prince’s hit “Let’s Go Crazy,” she [received a takedown notice](#) from Universal Music Publishing Group (UMPG) even though the video was non-infringing and a fair use. After years of litigation, the mother finally won her battle.

During the 2004 Presidential Election cycle, online animation company [JibJab](#) made a memorable video of George Bush and John Kerry singing along to the tune of Woody Guthrie's "This Land is Your Land." When the video went viral, music publisher Ludlow Music issued JibJab a letter claiming copyright ownership of the Guthrie song and demanding the video be taken down. Not only was the video a fair use, the legal dispute revealed that the song is in the public domain for all to use because the copyright expired in 1973.

Rapper Dan Bull’s video [included](#) sampling from a Jay-Z song. Several years after the video was posted, his video received a takedown notice by *another* rapper who used the same sample from the original Jay-Z song. Even Jay-Z’s song actually sampled from two other rappers. Meanwhile, plenty of other videos that used the same sampling were not targeted.

[Automated Takedowns From Bots](#)

Documents revealed in a lawsuit against Warner Brothers Entertainment [found](#) the movie studio was issuing thousands of infringement takedown notices from “robots” -- notices that did not include review by an actual human being. Warner also knew its robots were removing content to which Warner had no rights.

Music group Total Wipes, which claims to represent 800 music labels and cooperates with major digital music stores, launched a DMCA [takedown notice spree](#) sending notices to 15,000 URLs and Google. The notices targeted sites that used words included in the title of their clients’ song “Rock The Base & Bad Format.” Clearly, many of the sites should not have been targeted, including “rock” climbing companies and sites referencing military “bases.” Still unclear to this day is why websites mentioning “coffee,” such as Caribou Coffee and coffee.org, were targeted and even stores that sell coffee such as Ikea, Walmart, Fair Trade and Dunkin Donuts.