

Our responses



**Testimony of Katherine Oyama, Sr. Copyright Policy Counsel, Google Inc.
House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet
Hearing on “Section 512 of Title 17”
March 13, 2014**

Chairman Coble, Ranking Member Nadler, and Members of the Subcommittee:

Thank you for the opportunity to testify today regarding Title II of the Digital Millennium Copyright Act of 1998 (“DMCA”), codified in Section 512 of title 17 of the U.S. Code.

The DMCA’s ‘safe harbors’ for online service providers are one of the foundations of the modern Internet, which have allowed for an explosion of creativity and free expression. Today, the Internet enables more than \$8 trillion in e-commerce every year.¹ The ‘safe harbors’ have been crucial not only to Google’s many online products and services, but also to those of nearly every other Internet company.

True, but if we send several notices about the same song on the same site – like we do with Google – shouldn't service providers get the hint?

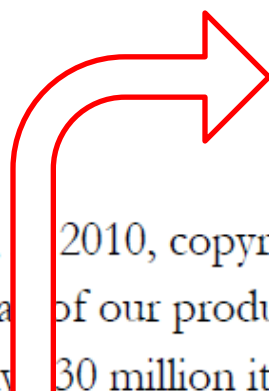
online. Service providers cannot by themselves determine whether a given use is infringing. A text, song, image, or video can infringe copyright in the context of one site but be legal on another, through license or in the context of criticism, political speech, or other legally protected use.

And increasingly, copyright owners welcome certain kinds of fan-driven uses, even if formally unauthorized, as an important part of viral marketing and promotional efforts. Accordingly, courts have repeatedly found that the initial responsibility of identifying infringing works online and notifying service providers properly falls on the copyright owner. After being notified, the DMCA shifts the burden to the service provider to disable access to the material promptly.

The careful balance struck by the DMCA safe harbors created the legal infrastructure for the Internet we know today, making possible online platforms like eBay, Amazon, YouTube, Facebook, and Twitter, which have created jobs and economic activity. To the extent that the DMCA safe harbors provide copyright agents with the ability to identify and remove infringing activities protected by the DMCA safe harbors provide

The DMCA did not intend for service providers like Google to get away with indexing rogue sites again and again after clear notice of rampant infringement, creating an endless source of frustration for copyright owners

We agree, and we've given props to Google for improving its system – but Google still limits the number of notices we can send as well as our ability to effectively search for infringement.



For example, in 2010, copyright owners asked us to disable access to approximately 3 million items across a portion of our products. In 2013, in contrast, we received takedown notices for approximately 30 million items. In other words, today we receive takedown notices for more items *every week* than we received in all of 2010. Despite the rapidly increasing volumes, Google has managed to reduce the average time to process takedown notices, which is a testament to the efforts Google has made to improve and scale its procedures. Today, for example, when we receive a copyright removal request for Search, our average turnaround time is less than 6 hours.

As far as we can ascertain, there are two forces behind the rapid increase in takedown notices. First, over the past 3 years, Google has made substantial investments in making the process more efficient. As the process has become more efficient, copyright owners have been increasingly willing to use it. It has sometimes been a challenge to meet the rising demand, and hundreds of Google employees are involved in the effort. Nevertheless, Google remains committed to making the DMCA process work smoothly, quickly, efficiently, and at no charge for copyright owners.

While the DMCA safe harbors have proven themselves to be effective and valuable for service providers and copyright owners alike, they are not, by themselves, a complete solution to the problem of copyright infringement online. Piracy has been a challenge online, and Google takes that challenge seriously. Accordingly, Google has invested in many measures that go beyond the requirements of the DMCA.

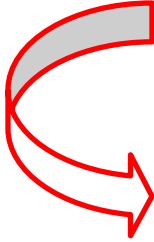
For example, Google has invested more than \$60 million to date on the development of Content ID on YouTube. With this system, rightsholders are able to identify user-uploaded videos that are entirely or partially their content, and choose, in advance, what they want to happen when those videos are found.

Google created Content ID in 2008. Google's revenues since then have surpassed \$200 billion – so Google only spends less than 0.03% of its revenues on preventing copyright theft on YouTube?

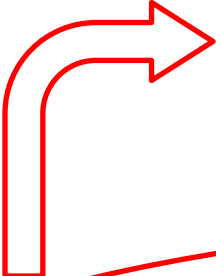
This system allows rightsholders to upload reference files (audio-only or video) of their content, along with metadata and policies describing what they want to happen when their content is found. Google compares videos uploaded to the site against these reference files and identifies the content and applies the rightsholder's preferred policy: mute, monetize, or block. Copyright owners have "claimed" more than 200 million videos on YouTube with the help of Content ID.

While Google is proud to have developed and deployed Content ID, it is important to note that Content ID is not a one-size-fits-all solution for every sort of service or all kinds of service providers. So, for example, YouTube could never have launched as a small start-up in 2005 if it had been required by law to first build a system like Content ID. Nor does such a system work for a service provider that offers information location tools (like search engines and social networks) but does not possess copies of all the audio and video files that it links to. And, of course, Content ID is not perfect, sometimes mistakenly ascribing ownership to the wrong content and sometimes failing to detect a match in a video.

The DMCA safe harbors have succeeded precisely because they do not attempt to impose detailed technology mandates on the rapidly evolving world of online technologies and service providers. Instead, they provide a floor of legal certainty for service providers large and small, upon which content owners and service providers can build further voluntary measures.



Yes! Voluntary measures are the common sense approach and are proving to be effective with other Internet intermediaries (see agreements with ISPs, payment processors, ad networks, advertisers, etc) – but Google hasn't yet actually entertained the idea of a voluntary agreement with content owners...



We have seen no demonstrable evidence that this is true. For example, we've sent more than 2 million notices to Google regarding illegal site mp3skull.com, and yet Google still lists mp3skull at the top of search results when users search for an artist's name + song title + 'download.' Google still has a lot of work to do in this area.

In addition to removing pages from search results when notified by copyright owners, Google also factors in the number of valid copyright removal notices we receive for any given site as one signal among the hundreds that we take into account when ranking search results. As a result, sites with a relatively high number of valid removal notices may appear lower in search results. Google is the only search engine that has implemented such a demotion signal in its ranking algorithm, and we believe that this ranking change should help users find legitimate, quality sources of content more easily.

Our experience with the demotion signal, however, has taught us that it will only succeed if there are better, legitimate results to show above those that have been demoted. There is work to be done on this score, and we have been actively engaged with the motion picture and music industries to explore how we can encourage legitimate sites to take the necessary “search engine optimization” (SEO) steps to that will allow those sites to appear in search results above unauthorized sources. We look forward to continuing our work, in collaboration with other stakeholders, to further evolve and enhance the demotion signal.

We also believe that there are more effective ways to strike at the root causes of piracy online, in hopes of getting ahead of the whack-a-mole problem.

Google is not just waiting for...
 invested in bringing new...
 and video rentals...
 on-demand streaming music...
 mix of compelling services th...

The rogue site business model relies on advertising revenue. Advertising revenue relies on visitors. Visitors are led there by Google. Google has a role to play here and failing to at least demote these rogue sites off the first and second pages of search results is not productive.

Until these compelling legitimate alternatives have fully displaced pirate sites, however, there is more that needs to be done. We have long said that the most effective way to combat rogue sites that specialize in online piracy is to attack their sources of revenue. These sites are almost exclusively for-profit enterprises, and so long as there is money to be made by their operators, other anti-piracy strategies will be far less effective.

As a global leader in online advertising, Google is committed to rooting out and ejecting rogue sites from our advertising services. Google continues its efforts, both proactive and reactive, to detect and act against advertisers and web publishers who violate our policies against copyright infringement. Since 2012, we have ejected more than 73,000 sites from our AdSense program, the vast majority of those caught by our own proactive screens.

Google AdSense-served ads repeatedly appear on apps that Google has already removed from its app store for copyright violations. Not sure that really counts as 'commitment'?



We have some thoughts on reasonable, modest voluntary steps that we both can undertake that will make a real difference (as listed in RIAA CEO Cary Sherman's written testimony for the notice and takedown hearing, which can be viewed [here](#)):

- Let us monitor effectively. Provide tools to allow us to search in a manner commensurate with the size of the problem, and then allow the number of takedown notices we submit to reflect ALL the infringing files on a site, rather than a tiny fraction of them;**
- Help end "whack-a-mole." Ensure that when links to content are taken down, the same content on the same site is not continuously re-indexed when repopulated by the pirate site, rendering the takedown process useless;**
- Push down pirate sites in search results. Demote pirate sites in search rankings, using objective criteria such as the number of legitimate takedown notices submitted about the site;**
- Help the consumer know what's legitimate. Promote authorized sites and services to consumers in search rankings, through a "badge" or some other consumer-friendly information;**
- Stop "finishing the sentence" to lead to a pirate site. Modify the "autocomplete" function so it does not lead users to sites or apps based on the number of legitimate takedown notices submitted about the site;**
- Don't give pirate sites a continuous "do-over." Develop a common sense approach to implementing a repeat infringer policy.**

**We look forward to working with
Google on voluntary measures to
build a flourishing, dynamic Internet
that works for everyone.**