

Web 2.0 Working Group - Introduction to Social Networking Charts and DMCA

The Web 2.0 Working Group of the Online Trademark Use Subcommittee of the INTA Internet Committee has undertaken a study to assess the trademark and copyright protections afforded rights owners and associated policies of established and emerging social networking sites and related services, including Twitter, Facebook, Google+, MySpace, LinkedIn, YouTube, Ning, Flickr (Yahoo! owned), Yelp and Second Life. The study is now complete and the results are set forth in a series of charts prepared by the Working Group that detail for each site the following:

- description of the service
- summary of and links to site terms of use and policies respecting intellectual property protections, infringement/abuse complaints and general “take-down” practices
- links to notice and take-down policies for copyright claims under the Digital Millennium Copyright Act (“DMCA”)
- summary of and links to advertising and promotional guidelines (where applicable)
- summary of and links to privacy policy
- other relevant content and contact information

DMCA

The following is a brief summary of the DMCA provisions relevant to the attached charts.

All the sites post “take-down” policies and procedures authorized under the “safe harbor” provisions of the DMCA, codified at 17 USC § 512 (“Limitations on Liability Relating to Material Online”). The DMCA “safe harbor” provides a qualified immunity for online service providers (OSPs), including Internet service providers (ISPs), defined broadly, which post a required infringement policy on their site, register a DMCA agent with the U.S. Copyright Office, and post and enforce a “take-down” process with respect to copyright infringement complaints and removal of offending content.¹

The DMCA safe harbor provide a defense against copyright infringement liability if OSPs/ISPs comply with and implement specified policies, which include the obligation to block access to, or remove from their systems, allegedly infringing content upon receipt of a notice from rights owners or their authorized agents specifying the nature and site location (by URLs) of such content. Such notices must be issued to the site’s designated DMCA agent. The safe harbor provisions also provide for a counter-notification process, which extends the safe harbor

¹ Section 512 actually covers three primary types of online content and its transmission: (i) Transitory Digital Network Communications, (ii) System Caching, and (iii) Information Residing on Systems or Networks at Direction of Users. Category (iii) is the focus of the Working Group’s charts as it pertains to user-posted content that is displayed online.

to block claims against OSPs/ISPs by their end users who post such content if such users, in turn, notify the providers in a timely manner that such content is not infringing.

All DMCA take-down notices must contain a statement by the rights owner or its agent that they have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and a second statement, made under penalty of perjury, that the information in the notice is accurate and that the complainant is the copyright owner or otherwise authorized to act on the copyright owner's behalf. Many sites now automate the take-down notice process by enabling notices to be filed online.

While the DMCA is restricted to copyright infringement claims (there being no comparable statutory safe harbor for trademark infringement claims), many sites do employ some form of notice and removal process for trademark claims. These practices are reflected in the accompanying charts.

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