

Section 512 in the Educational Context

ICPL @ Cornell

Laura Quilter
2007 July 26

Study background

- 2 prior studies showing substantive flaws in 20-40% of copyright notices
- Qualitative interviews to tease out best practices and further research directions
- 30+ interviews; 27 institutions or organizations (targeted & opportunistic; not systematic)
- Section 512 (DMCA): safe harbor for service providers from potential liability for clients' copyright infringement. §§ (a), (c), (d), (e).

Findings & further directions:

Institutions swamped by notices

- Many “notices” demand rapid responses
- Spam, phishing, viruses, network security, etc.
- P2P notice-“spam”:
 - automated;
 - contact information;
 - accountability;
 - asymmetric costs for sender & recipient
 - ... *but more time-consuming*
- *Further directions: rights enforcement companies; institutional costs*

Findings & further directions:

Most-restrictive approaches*

- Confusion of law
- Political pressure
- Economic efficiencies: notices sometimes treated with other “abuse” notices; line staff handling the notices

* “Most-restrictive” from First Amendment law, which looks to “least restrictive means”

Findings & further directions: *Educational institutions*

- Most-favored status under copyright law ...
§ 107 (“fair use”); TEACH Act; 512(e); §504(c)(2)
 (“good faith”); 11th Amendment

nevertheless ...

- Political pressure
- Desire to be “good citizens”
- Sense that it is university role to educate students about copyright

... afraid to go on record

Findings & further directions:

Educational institution approaches

- Network cutoff & academic discipline
- Sharing student information with complainants
- Network monitoring
- Network “shaping”
- Education (“scared straight” approaches)
- Licensed music subscriptions
- *Filtering programs*

Best practices:

Policies and campus administration

- Campus review & committee
 - Academic freedom, IT needs, student privacy
- Outsourcing and filtering
 - Outsourced network services may institute filtering
 - “Content-neutral” approaches preferable to screening on filetypes, file content, & types of technology (P2P)
- Research support
 - Gather & make available cost data
 - Support inter-institutional full-scale study efforts

Best practices:

Procedures & line staff

- Line staff support
 - Someone to call
 - Training in campus policies, priorities, and mission
 - Adequate resources to segregate copyright/IP from “abuse”, and to distinguish 512(a) and (c)
- Balanced and accurate educational material
- Evidence-based triggers for academic discipline
 - Bot-notices appear problematic; research needed
 - Network monitoring may have significant chilling effects; at the least, careful wording is appropriate

Section 512

- Section 512(a): Network services--ISPs (P2P). *No takedown.*
- Section 512(c): Hosted content (websites). *Notice-and-takedown.*
- Section 512(d): Information location tools (search engine results). *Notice-and-removal of links.*
- Section 512(e): Educational employees. *Copyright education requirements.*