

Twenty Years Later, DMCA More Broken Than Ever

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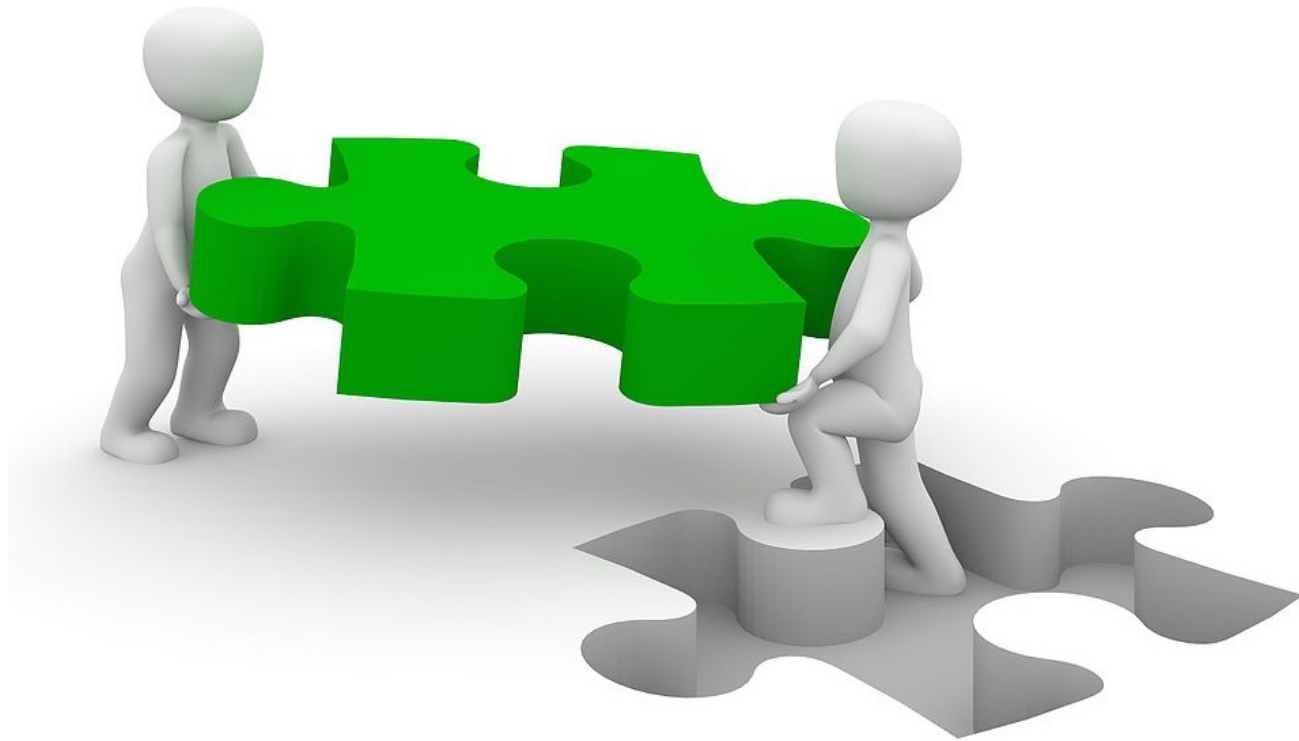
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Section 512 Safe Harbors

House and Senate Reports =

Section 512 “preserves strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements” online

Section 512 Safe Harbors



Section 512 Safe Harbors

Designated Agent

Expeditious Removal

Representative List

Repeat Infringer Policy

Standard Technical Measures

Actual Knowledge

Red Flag Knowledge

Section 512 Safe Harbors

actual knowledge = “knowledge that the material or an activity using the material on the system or network is infringing”

red flag knowledge = “aware of facts or circumstances from which infringing activity is apparent”

Section 512 Safe Harbors

removal obligation = service provider maintains safe harbor if, “upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material”

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not red flag = service provider views
“one or more well known photographs
of a celebrity at a site devoted to that
person” since they may be licensed or
fair use

Section 512 Safe Harbors

red flag = service provider views sites that are “obviously infringing because they . . . use words such as ‘pirate,’ ‘bootleg,’ or slang terms . . . to make their illegal purpose obvious . . . from even a brief and casual viewing”

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red flag = service provider “that views such a site and then establishes a link to it . . . must do so without the benefit of a safe harbor”

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thepiratebay.se	4,573	1,376	4,976,195
thepiratebay.org	4,876	1,065	4,203,545
thepiratebay.rocks	1,328	195	2,092,379
thepiratebay.cr	2,017	216	2,039,731
ikwilthepiratebay.org	1,467	267	1,843,671
thepiratebay.ee	3,422	737	1,688,563
piratebayblocked.com	705	83	1,638,933
thepiratebay.lv	1,662	235	1,291,235
thepiratebay.bid	2,261	348	1,289,450
thepiratebay.co.in	1,661	289	1,280,603

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Perfect 10 v. CCBill (9th
Cir. 2007)

Viacom v. YouTube (2d
Cir. 2012)

UMG v. Shelter (9th Cir.
2013)

Capitol v. Vimeo (2d Cir.
2016)



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Thanks so much!

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