

DMCA § 512: How It Works



Section 512 of the DMCA establishes the notice-and-takedown process for resolving claims of online copyright infringement. It also includes a safe harbor framework so that Internet platforms which comply with the law’s requirements are not automatically liable for their users’ copyright infringement. This law strikes a valuable balance that is still relevant today.

“The DMCA provides important certainty that our hosting of user generated content will not lead to costly and crippling copyright infringement lawsuits.”

- Paul Sieminski, Automattic¹

Each § 512 stakeholder has responsibilities and enjoys benefits, depending on what information and content it controls. The copyright holder kicks off the notice-and-takedown process by identifying potential infringement. Internet platforms have to promptly remove allegedly infringing content when they receive a notice from a rightsholder in order to qualify for DMCA safe harbors. Oftentimes, though, notices are (mis)directed to legitimate content—e.g., a flagged piece of content does not implicate copyrighted content, is not infringing, or is protected by fair use—and it is up to users to file counter-notices to have their lawful content restored.

Copyright Holders	Internet Platforms	Internet Users
<ul style="list-style-type: none"> • Knows what is copyrighted • Knows what is (and is not) infringement • Knows facts relevant to fair use 	<ul style="list-style-type: none"> • Can remove content identified as infringement • Cannot identify copyright infringement alone • Can communicate with copyright holders & users 	<ul style="list-style-type: none"> • Allegedly infringing posts are removed from the Internet • Must file counter-notices to have lawful content restored
<ul style="list-style-type: none"> • Gets an automatic injunction against allegations of infringement when it sends a takedown notice 	<ul style="list-style-type: none"> • Receives safe harbor protections for compliance with DMCA requirements 	<ul style="list-style-type: none"> • Enjoys use of Internet platforms that are able to exist because of DMCA safe harbors

Imposing new burdens on Internet platforms would harm startups: Despite its age, § 512 has successfully balanced the interests of copyright holders and Internet platforms. Changes that shift that balance would have an outsized and negative impact on startups.

- **The high costs of filtering outweigh the benefits.** Content filtering technology is very expensive, and even the most costly and sophisticated tools cannot accurately identify all infringement on a platform. Especially for platforms that rarely encounter copyrighted content, the high costs of imperfect technology are difficult to justify.
- **Startups have the most to lose.** Large companies may be able to afford filtering and bear litigation risks. But startups will not be able—and their investors are likely not willing—to face those costs.

