The Next Great Copyright Act

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Notice and Takedown Project

• Berkeley Law and American Assembly:
  – Analysis of machine-coded and hand-coded Section 512 notices
  – Surveys and interviews with OSPs about their internal practices

• Research Network
  – www.takedownproject.org

• Sponsors
  – Alfred P. Sloan Foundation
  – Google Inc.
Research Challenges

• Lack of transparency

• Large volume of data
Coding Notices

- **6 months** of Chilling Effects data from May 1, 2013 – October 31, 2013

- **Largest Submitters**: Google, Twitter, <10 others who submit to CE regularly

- **288,675** Notices

- **11,142,136** Allegedly Infringed Works

- **108,331,663** Allegedly Infringing Links
OSP Survey and Interview Responses

• Preliminary findings - survey and interview process is ongoing

• Challenge
  – OSPs fear transparency may lead to “increased potential of being subject to a lawsuit” and will bring “floods of notices”
Standardization of Form Notices

- OSPs report that form notice result in:
  - Some say “significant decrease,” others say “dramatic increase”
  - Increased compliance with statutory requirements
  - Question whether the quality of the underlying claim is also improved
Notice and “Staydown”

- Would require filtering
  - Not practically or financially feasible for many OSPs
  - Cannot account for fair use
Abusive or Erroneous Notices

• Requests to remove non-infringing content; suppressing free expression

• “…impact in particular cases on legitimate speech can be serious”
Ineffective Counter-Notice Provisions

• Intimidating requirements with potential for large statutory damages

• Insufficient legal disincentives to filing abusive or erroneous notices

• “...essentially eviscerates the whole idea of a counter-notice”
Benefits of Notice and Takedown

• Safe harbor is the “foundational legal enabler of online services”
  – Is “woven in” to the “fabric of how [OSPs] function”

• Clear standards and procedures for responsibility
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