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Rights Enforcement in Digital Environments

This paper considers copyright enforcement in distributed and platform-based digital environments, particularly “takedown” regimes and the more recent automated filtering and “graduated response” or “three strikes” regimes that the copyright industries are currently advocating in multiple countries and through multi-lateral trade agreements. As content moves further onto mobile and other distributed platforms, platform providers and other intermediaries are likely to continue to feel pressure to implement enforcement strategies. Such enforcement regimes eschew a process that relies on neutral arbiters and formalized transparency systems, instead pushing the role of the arbiter onto the intermediary in a private, non-transparent process. The paper draws on the author’s previous empirical research on the use of Section 512 takedown notices in considering the following broader questions: what are the implications of such nontransparent, informal regimes? How do the identified characteristics of these regimes affect the relationship between service providers and consumers and between individuals as they connect online? What is the effect, if any, on expression, privacy and other consumer and public interests? What are the implications for competition and consumer choice? Relatedly, who should bear the burden of enforcement? The paper is in progress, but I tentatively expect to explain the importance of both process transparency and the neutral arbiter to balanced and accurate copyright enforcement regimes, and to propose minimum requirements for enforcement regimes that preserve or recreate these attributes.