Notice and Takedown in Everyday Practice

Jennifer M. Urban
UC Berkeley School of Law

Platform Law: Public and Private Regulation of Online Platforms
Berkeley Center for Law and Technology
Berkeley Law
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“Notice and Takedown”
**It's Here!!**

Napster v2.0 is now available! [Download it now](http://web.archive.org/web/1999106215720/http://napster.com/) and join the internet music revolution!

Welcome to Napster, the future of music. Napster is the best search engine available, and the best way for users to find and download MP3s. By creating a virtual community, Napster ensures a vast collection of MP3s for download. Napster also eliminates the problems of conventional FTP transferring by using cutting-edge technology to ensure the completion of each MP3 transfer.

**napster features include:**

- **Advanced Search System**
  - Search every library online for songs - you can specify the minimum ping times, bitrates and frequency. All results are paged to allow you to find the fastest sites. The search is realtime, so the list of available songs you receive is reliable every time. Never again deal with tied up sites. If you cannot access the song, it simply does not show up in the results.

- **Chat System**
  - The easy-to-use napster interface allows users to chat with each other in a number of different forums based on music genre.

- **Audio Player**
  - Your choice of the internal napster player or an external MP3 player of your choice, making napster the most complete MP3 product on the market.

- **HotList**
  - napster's hotlist allows users to keep track of their favorite MP3 libraries. The hotlist notifies users as to when their favourite libraries are online and accessible.

- **Playlist**
  - The playlist helps users maintain and manipulate MP3 playlists, so users can pick the order in which they wish to hear songs in their library.

- **Feedback**
  - napster contains a built-in form for submitting bugs, suggestions and comments. napster's feedback provides the staff with an immediate way to realize concerns associated with the software.

**Bottom Menu**
Notice and Takedown in Everyday Practice

**Study 1:** Qualitative examination of the way notice and takedown is operationalized in everyday practice.

**Study 2:** Quantitative examination of random sample of 108 million takedown notices archived in Lumen (formerly Chilling Effects).

**Study 3:** Quantitative examination of random sample of notices sent to Google Image Search.
STUDY 1

“Woven into the fabric” of the Internet ecosystem
STUDIES 2 and 3: Quantitative Study of Six Months of Lumen Notices

• **6 months** of Lumen data from May 1, 2013 – October 31, 2013

• **Largest Submitters to Lumen:** Google (the vast majority; most to Web Search), Twitter, <10 others who submit to Lumen regularly

• **288,675** Notice bodies

• **108,331,663** individual takedown requests

• **11,142,136** Allegedly infringed works

• Margin of error +/- 2.29 at a 95% confidence interval, and +/-3.02 at a 99% confidence interval
STUDIES 2 and 3:
Quantitative Study of Six Months of Lumen Notices

• Research questions
  – Descriptive statistics
  – Match with assertions by rightsholders and OSPs in Study 1?
  – Integrity of the process—do notices raise questions regarding validity?
STUDY 2: Random Sample from the Entire Six-Month Set

- **Recipient OSP**: Overwhelmingly, Google Web Search (99.8%)

- **Automated Notices from Professionalized Senders**:
  - 98.9% submitted with automated form
  - 95.4% from Trusted Copyright Removal Program

![Sender Role Diagram]

*Figure 1: Sender Role*
Figure 3: Industry of Principal

- Music | 44.0%
- Adult Entertainment | 28.1%
- Movies/Television | 17.0%
- Software | 7.5%
- Games | 5.4%
- Other | 5.3%
- Books | 4.2%
- Web Design | 0.4%
- Photography | 0.2%
Figure 5: Types of Target Sites
STUDY 2: Questionable Requests

31%: Raised at least one question regarding validity
19.5%: Exhibited statutory compliance issues; mostly id issues
6.6%: Exhibited a potential fair use characteristic

Figure 7: Problematic Takedown Requests in Six Months of Notices Sent to Lumen (Showing Error Bars Based on Margin of Error of +/-2.29 at 95% Confidence Interval)
STUDY 3: Sample of Google *Image Search* Notices

**Sender Role**
(Google Image Search Sample)

- Principal: 41.5%, 52.9%
- Unknown: 5.1%
- Agent: 0.5%

Legend:
- Red: Non-Miller Requests
- Pink: Miller Requests
STUDY 3: Sample of Google Image Search Notices

Sender Type
(Google Image Search Sample)

<table>
<thead>
<tr>
<th>Type</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual</td>
<td>16.0%</td>
</tr>
<tr>
<td>Small Business (1–99 employees)</td>
<td>19.3%</td>
</tr>
<tr>
<td>Small–Medium Business (100–999 employees)</td>
<td>0.3%</td>
</tr>
<tr>
<td>Medium Business (1,000–9,999 employees)</td>
<td>0.1%</td>
</tr>
<tr>
<td>Unknown</td>
<td>11.3%</td>
</tr>
</tbody>
</table>
STUDY 3: Sample of Google *Image Search* Notices

**INDUSTRY OF PRINCIPAL (GOOGLE IMAGE SEARCH SAMPLE; NON-MILLER REQUESTS)**

![Pie chart showing industry distribution](image)

- E-Commerce: 5.1%
- Other/Unknown: 6.3%
- Photography: 10.5%
- Individual: 33.9%
- Adult Entertainment: 20.3%
- Art/Design: 23.8%

Figure 10: Industry of Principal (Google Image Search Sample; Non-Miller Requests)
TYPES OF TARGET SITES (GOOGLE IMAGE SEARCH SAMPLE; NON-MILLER REQUESTS)

- Other or Unknown | 47.7%
- Social Media | 24.6%
- Personal Website/Blog | 15.6%
- Individual | 10.9%
- News | 7.4%
- E-Commerce | 6.9%
- Forum/Fan Site | 6.3%
- Video Streaming | 6.1%
- Torrent | 5.9%
- Aggregator | 3.8%
- Cyberlocker | 1.7%
- Corporate | 1.6%
- File Search | 1.0%
- Education | 0.9%
-
STUDY 3: Questionable Requests

• Including the Miller requests, **70.2%** of the Google Image Search takedown requests presented questions about their validity.
  • All of Miller’s were improper subject matter

• Without the Miller requests, **36.3%** of the remaining Google Image Search takedown requests were questionable.

• Compared to Study 2:
  Issues with claim vs. identification issues
STUDY 3: Questionable Requests

- Issues with claim vs. identification issues
“The Walygator logos, images, and mascots are the property of Olipark, which owns the Walygator Park trademark.” (translated)

“They were private pictures meant for an ex-girlfriend that is using them to blackmail me.”
HIGH-LEVEL ANALYSIS AND CONCLUSIONS

For purposes of understanding platform regulation/freedom/harm/reform, what can we learn from this?

1. Importance of the system

2. Diversity of the ecosystem
   a. Evolution in response to large-scale infringement: demands a shift to automation for some
   b. “DMCA Classic” still appears dominant (by OSP, not by notices)
   c. Need more research

3. Improving noticing is not one-size-fits-all

4. Voluntary best practices and education vs. statutory reform proposals

5. Effects on majority DMCA Classic OSP and start-up FTO

6. Transparency
Thank you

jurban@law.berkeley.edu

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