

Cyberlaw and Information Intermediaries

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Cyberlaw

- [Intellectual Property
- [Telecommunications
- [Media Law
- [Cybercrime
- [Internet Jurisdiction

Netizen Rights

— [Freedom of Expression

— [Due Process

— [Privacy

— [Transparency

— [Consumer Protection

Access to Knowledge

- [**Innovation**

- **Open Infrastructure**

- **Collaborative Production**

- [**Development**

- **Economic Growth**

- **Individual Autonomy**

Regulating Behavior

- developing strategies to use human or institutional intermediaries
- indirectly regulate individual behavior by changing the technology itself

Traditional Gatekeeper Role

— [Whistleblower

— [Bouncer

— [Chaperone

Types of Information Intermediaries

— [Hosting Providers

— [Internet Service Providers

— [Domain Name Registrars

— [Financial Intermediaries

— [Auction Platforms and
eCommerce actors

— [Search Engines

— [Participative Web Platforms

— [Virtual Worlds

— [Distributed Computing

— [Social Networks

Immunity from Liability

— [Communications Decency Act §230 (1996)

— No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

— 1. The defendant must be a "provider or user" of an "interactive computer service."

— 2. The cause of action asserted by the plaintiff must "treat" the defendant "as the publisher or speaker" of the harmful information at issue.

— 3. The information must be "provided by another information content provider," i.e., the defendant must not be the "information content provider" of the harmful information at issue.

Copyright Safe Harbor

- [Digital Millennium Copyright Act §512 (1998)
 - Transitory Digital Network Communications
 - System Cacheing
 - Information Residing on Systems
 - Information Location Tools

Notice & Takedown Procedure

[Infringement Allegation Notice

- The name, address, and electronic signature of the complaining party [512(c)(3)(A)(i)]
- The infringing materials and their Internet location [512(c)(3)(A)(ii-iii)], or if the service provider is an "information location tool" such as a search engine, the reference or link to the infringing materials [512(d)(3)].
- Sufficient information to identify the copyrighted works [512(c)(3)(A)(iv)].
- A statement by the owner that it has a good faith belief that there is no legal basis for the use of the materials complained of [512(c)(3)(A)(v)].
- A statement of the accuracy of the notice and, under penalty of perjury, that the complaining party is authorized to act on the behalf of the owner [512(c)(3)(A)(vi)].

Counter-Notice & Putback Procedure

Counter-Notice Requirements

- The subscriber's name, address, phone number and physical or electronic signature [512(g)(3)(A)]
- Identification of the material and its location before removal [512(g)(3)(B)]
- A statement under penalty of perjury that the material was removed by mistake or misidentification [512(g)(3)(C)]
- Subscriber consent to local federal court jurisdiction, or if overseas, to an appropriate judicial body. [512(g)(3)(D)]

Putback

- [512(g)(2)] If the copyright owner does not bring a lawsuit in district court within 14 days, the service provider is then required to restore the material to its location on its network. [512(g)(2)(C)]

Trademark Infringement

Lanham Act 32(2)

(B) Where the infringement or violation complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical or in an electronic communication as defined in section 2510(12) of title 18, United States Code, the remedies of the owner of the right infringed or person bringing the action under section 43(a) [15 USC 1125(a)] as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of such electronic communications. The limitations of this subparagraph shall apply only to innocent infringers and innocent violators.

Netizen Rights (redux)

— [Freedom of Expression

— [Due Process

— [Privacy

— [Transparency

— [Consumer Protection

Freedom of Expression

- [Freedom of Speech
- [Right to Read
- [Chilling Effects
- [Democratic Culture
- [Anonymity

Due Process

- [Notice of Procedure
- [Specificity of Claims
- [Right to Appeal
- [Redress for Abuse/Misuse of Law

Privacy

— [Notice/Disclosure/Collection Limitation

— Mandatory Disclosure of Personal Data

— [Choice/Consent

— [Access

— [Security/Integrity

— [Enforcement/Redress

Transparency

- [Arbitrary Application of Law
- [Conflicts of Interest
- [Accountability
- [Accuracy

Consumer Protection

- [Anti-Competitive Behavior
- [False Advertising
- [Contracts of Adhesion/Terms of Service
- [Unconscionable Terms

Open Innovation

— [End-to-End Principle

— [Interoperability

— [Creative Destruction

— [Level Playing Field

— [Collaborative Production

— [Modularity

— [Granularity

— [Freedom to Tinker

— [Distributed Responsibility

— [Self-Organizing Community

— [Reputation Economies

— [Correctability

Domestic Economic Growth

— [Translation

— [Adaptability to Local Customs

— [Network Effects

— [Open Standards

— [Skill Development

Thank you.

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