University of Massachusetts Amherst

From the Selected Works of Laura Quilter

July, 2007

Section 512 in the Educational Context

Laura Quilter

Available at: https://works.bepress.com/laura_quilter/10/
Section 512 in the Educational Context

ICPL @ Cornell

Laura Quilter
2007 July 26
Study background

• 2 prior studies showing substantive flaws in 20-40% of copyright notices

• Qualitative interviews to tease out best practices and further research directions

• 30+ interviews; 27 institutions or organizations (targeted & opportunistic; not systematic)

• Section 512 (DMCA): safe harbor for service providers from potential liability for clients’ copyright infringement. §§ (a), (c), (d), (e).
Findings & further directions: Institutions swamped by notices

- Many “notices” demand rapid responses
- Spam, phishing, viruses, network security, etc.
- P2P notice—“spam”:
  - automated;
  - contact information;
  - accountability;
  - asymmetric costs for sender & recipient
  - … but more time-consuming
- Further directions: rights enforcement companies; institutional costs
Findings & further directions:

Most-restrictive* approaches

- Confusion of law
- Political pressure
- Economic efficiencies: notices sometimes treated with other “abuse” notices; line staff handling the notices

* “Most-restrictive” from First Amendment law, which looks to “least restrictive means”
Findings & further directions: 

**Educational institutions**

- Most-favored status under copyright law … 
  § 107 (“fair use”); TEACH Act; 512(e); §504(c)(2) (“good faith”); 11th Amendment

*nevertheless* …

- Political pressure
- Desire to be “good citizens”
- Sense that it is university role to educate students about copyright

  *… afraid to go on record*
Findings & further directions:  
*Educational institution approaches*

- Network cutoff & academic discipline
- Sharing student information with complainants
- Network monitoring
- Network “shaping”
- Education (“scared straight” approaches)
- Licensed music subscriptions
- *Filtering programs*
Best practices:

Policies and campus administration

• Campus review & committee
  – Academic freedom, IT needs, student privacy

• Outsourcing and filtering
  – Outsourced network services may institute filtering
  – “Content-neutral” approaches preferable to screening on filetypes, file content, & types of technology (P2P)

• Research support
  – Gather & make available cost data
  – Support inter-institutional full-scale study efforts
Best practices: Procedures & line staff

• Line staff support
  – Someone to call
  – Training in campus policies, priorities, and mission
  – Adequate resources to segregate copyright/IP from “abuse”, and to distinguish 512(a) and (c)

• Balanced and accurate educational material

• Evidence-based triggers for academic discipline
  – Bot-notices appear problematic; research needed
  – Network monitoring may have significant chilling effects; at the least, careful wording is appropriate
Section 512

- Section 512(a): Network services--ISPs (P2P). *No takedown.*
- Section 512(c): Hosted content (websites). *Notice-and-takedown.*
- Section 512(d): Information location tools (search engine results). *Notice-and-removal of links.*
- Section 512(e): Educational employees. *Copyright education requirements.*