

Developing Dolphin-Safe DMCA Takedowns: Responsibly Policing User Generated Content

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User-Generated Content
Participatory Media
YouTube

Political Expression
Parody
Satire
Tributes
Pastiche

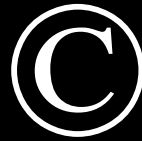




Photo by Flickr user [linkzilla](#)



Dolphins

[video: JibJab's "This Land"]

[video: “Vote Different”]

[video: “Stop the Falsiness”]

[video: Michelle Malkin's "Vent: Akon's Assault"]

[video: “Jesus Will Survive”]

Target infringements;
while preserving fair use.

Dolphin-Safe DMCA takedowns

Not *Viacom v. YouTube*

Not case-by-case fair use analysis

Legal background rules

for © owners:

DMCA takedowns
17 U.S.C. 512(c)

For dolphins:

Counter-notice -17 U.S.C. 512(g)

Sue -17 U.S.C. 512(f)

512(g) counter-notice

- 10-14 day waiting period
- consent to jurisdiction; agree to accept service

512(f) misrepresentation:

- knowing material misrepresentation
- damages, attorneys fees, and costs

512(f) misrepresentation:

- “Knowingly” means that a party actually knew, should have known if it acted with reasonable care or diligence, or would have had no substantial doubt had it been acting in good faith, that it was making misrepresentations.

EFF's 2007 512(f) docket

Diehl v. Crook

Machulis v. Silver

MoveOn.org v. Viacom

Sapient v. Geller

Beyond the legal baseline

DMCA Takedown Best Practices

1. Wide berth for creative, transformative uses

2. Human review

3. Notice to those taken down

4. Dolphin hotline

5. Prompt review for dolphins

6. Counter-notice process

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