

Stanford's DMCA Policy is a Protect Racket

The Bad Guys – What's at Stake

- The vast majority of DMCA complaints are sent by the RIAA and MPAA
- They use three main tactics to extort money from accused file-sharers
 - Lawsuits
 - Pre-litigation letters
 - DMCA complaints

Lawsuits

- Current copyright law allows for penalties of \$750 to \$150,000 per infringement (think, per song)
- The RIAA has successfully sued tens of thousands of people for absurdly large amounts of money
 - Most egregious: \$1.8 million judgment against a single mother who shared 24 songs
 - Joel Tenenbaum, a Harvard undergrad, got hit with a \$675,000 judgment for sharing 31 songs
 - Even the smallest judgments are in the tens of thousands

Lawsuits Abuse the Legal System

- Start with a John Doe lawsuit against many different defendants in unrelated cases – sometimes over a hundred
 - Violates Federal Rules of Civil Procedure
 - Some judges have rejected this practice as illegal – The RIAA just finds other judges
- RIAA files an *ex parte* discovery motion
 - Means defendants never given a chance to defend their anonymity in court
 - *Ex Parte* only intended when immediate, irrevocable harm would occur otherwise
- RIAA then drops John Doe suit and sues defendants individually

The RIAA Deliberately Runs up Defense Costs

- Even when they get the wrong person, which happens all the time, the RIAA tries to run up defense costs
- Always fight judgments that would award attorney's fees to the defendant – and usually succeed
 - Candy Chan spent tens of thousands defending herself from false accusations of file-sharing. The RIAA got the case dismissed without awarding attorney's fees, and then sued her 14-year old daughter instead.
- When a case fails, they attempt to get it dismissed “without prejudice”, meaning they can sue again for the same thing
- File suit in friendly districts across the country from the defendant

Extortion Through Pre-Litigation Letters

- RIAA also uses “pre-litigation letters” demanding a settlement for around \$3,000 from unidentified John Does
- Cost of settling far less than hiring a lawyer to defend one's self – even the innocent are better off to settle
- Serves a second purpose – Can trick unidentified John Does into contacting the RIAA and revealing their identities
 - In at least one case, a John Doe inadvertently revealed her identity after a court had *rejected* the RIAA's discovery motion

DMCA Complaints

- This tactic relies on cooperation from ISPs, such as Stanford
- The RIAA sends a complaint to an ISP with the IP address of an alleged infringer, and the ISP can choose to forward the complaint
- When sending these complaints, the RIAA does not know the identity of the recipient, only the IP address

Stanford's DMCA Policy

- If you receive a DMCA complaint, Stanford will forward you the complain, and then **disconnect your internet connection and suspend your axess/sunet lds**
- In order to get reconnected, you must “pass a short 5-question quiz, and indicate that you have either removed the file from your computer, or are no longer sharing it with others” – in short, you must admit guilt to get your connection reinstated
- Second complaint comes with a \$500 reconnection fee
- Third complaint comes with a \$1000 reconnection fee and referral to Judicial Affairs

What if you haven't infringed?

- Stanford's policy allows you to submit a “counterclaim”
- Submitting a “counterclaim” will get your connection restored and any other punishment rescinded
- Here's the problem: **Stanford will then reveal your identity to your accusers, so they can sue you without having to subpoena Stanford for your identity**
- Considering the consequences of getting sued, you're better off submitting a false confession and paying Stanford's protection money even if you haven't infringed

Stanford claims they have no choice

- Stanford's DMCA policy says, “...the DMCA tells Stanford what it can and cannot do with respect to facilitating the transfer of files.”
- According to Stanford, “The University as a service provider can give its users the connections they need to transfer files, but if any illegal activity is detected, the University must guarantee that the transfers have ceased. The DMCA holds the University liable if illegal file transfers persist but limits the University's liability if it cooperates fully with every aspect of the law. ”
- This is not supported by anything in the DMCA!

Stanford will never be liable

- Under section 512(a) of the DMCA, an ISP is never liable for infringing content transmitted by their users if:
 - It was the user, not the service provider who initiated the transmission
 - The transmission is handled automatically
 - The ISP does not select the recipients
 - The ISP does not save the contents of the transmission (except as necessary to transmit it)
 - The ISP does not modify the content
- Stanford could throw out every complaint it gets and still not be liable

So where did this “counternotice” crap come from?

- It came from section 512(c), which only applies to sites such as YouTube which actually host the allegedly infringing content
- This system of forwarding the counternotice to the accuser is not in any way required for ISPs

“Repeat Infringers”

- Stanford's policy says, “the DMCA requires that Stanford have in place a policy that provides for TERMINATION of Internet services for repeat infringers.”
- This does NOT mean repeatedly **accused** infringers
- Wendy Seltzer, founder of ChillingEffects.org:
A 'repeat infringer' is not someone who has merely been accused of wrongdoing, but one who has been proven to have engaged in unlawful activity, twice. The distinction is important because entertainment industry accusations are not proof of infringement; at times, they are downright laughable.

Handling Pre-Litigation Letters

- Stanford forwards the extortionist pre-litigation letters
- Stanford does not warn students about the risks of revealing their identities to their accusers
- Stanford deserves a minimal amount of credit for suggesting students hire a lawyer before responding
- 40 Stanford students have settled, for a total of \$150,000, according to ResComp

And Lawsuits?

- At the time I was researching this last year, Stanford had never been subpoena'd for a student's identity in a file-sharing lawsuit
- Since then, it's happened 7 times.
- Stanford says in their DMCA policy that they will comply with subpoenas – despite the RIAA's *ex parte* discovery practices that leave students unable to defend their anonymity
- Other universities (Boston University, New Mexico U.) have fought the subpoenas
- Some universities expunge IP logs regularly and thus cannot reveal student identities

What Can You Do?

1. Don't get caught file-sharing.
2. Don't support the RIAA. Check RIAAradar.com before buying music

Any Questions?