DMCA AGENT REPLY

December 27, 2011

Robert Kasunic
Deputy General Counsel
Copyright Office
GC/I&R
P.O. Box 70400
Washington, D.C. 20024

Re: Reply Comment to Notice of Proposed rulemaking and request for comments: Designation of Agent to Receive Notification of Claimed Infringement , RM 2011-6

Dear Mr. Kasunic:

Google Inc. submits these comments in reply to the comments of the Recording Industry Association of America and of MiMTiD Corp. submitted on November 28, 2011 in the above referenced matter on possible improvements to the DMCA Copyright Agent registration process.

The RIAA Comments

The RIAA asks that "the Office to specify that the person named as agent must be someone who is authorized to accept service of process on behalf of the service provider, to avoid any doubts that the database can be relied upon for enforcement of copyrights in circumstances contemplated by Section 512."

This request has no basis in the Act and is contrary to its purpose of providing a quick, expeditious, *non*-judicial way of

removing infringing material. Enmeshing those who receive takedown notices – often non-lawyers – in accepting service of process is a singularly bad idea.

RIAA also objects to designating an agent by title or function. RIAA states a concern about emails going into general mailboxes and not being read, but gives no evidence that this has in fact been a problem. Google believes that the very privacy problems of naming individuals outweighs any theoretical possibilities. We note that the MPAA, in its comments, favors title or job description designations.

For the same privacy concerns, we urge the Office to reject the RIAA (and MPAA's) call for a requirement that a physical address be included for the DMCA agent. Respectfully, these organizations simply do not appreciate the physical safety issues raised by such a requirement.

Finally, we urge the Office to reject RIAA's request for a requirement that "the service provider...disclose any shareholders or related groups of shareholders (such as a family) with a majority ownership of the service provider; and any persons or entities with a controlling interest in or decision making power over the service provider." This wildly sweeping intrusion into ownership issues has no basis in the Act.

MiMTiD Corporation

In his widely read Technology & Marketing Blog, Professor Eric Goldman wrote that MiMTiD's "filing was a piece of work. It appears to misunderstand the existing 512 safe harbors, and most of it is just a rant against Google." See

http://blog.ericgoldman.org/archives/2011/12/copyright_offic_4.htm

We are shocked that a company with experience in this area would misuse a government process by filing such misleading comments, based on meritless legal premises. Contrary to MiMTiD's aassertions, the DMCA safe harbors do not require online service providers to accept or act on every takedown notice, regardless of accuracy. As MiMTiD is well aware from discussions we have had with it, Google sees a large number of bogus takedowns. MiMTiD itself has made several rather embarrassing mistakes in its notices submitted to Google. We have thus far avoided publicizing MiMTiD's mistakes, but may well change this policy in light of the comments.

Contrary to MiMTiD's comments, the DMCA does not impose any obligation on search engines to contact website operators regarding takedown notices. Google does, nevertheless, make efforts to inform site owners of takedowns submitted for their domains, including through Google's Webmaster Tools.

We suggest MiMTiD consult counsel to better understand the legal basis of the DMCA safe harbors, as we do not believe any qualified legal counsel, nor the Office, would agree with the legal premises asserted in MiMTiD's comments.

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