

Dear Colleague(s)

Thanks for raising such valuable issue.

We at [Perry4Law](#), an exclusive techno legal ICT and IP law firm of New Delhi India, wish to share our opinion in this regard. Our opinion is as follows:

(1) Effectiveness Of US Copyright Law: Although US Copyright law is a good one yet authors and other copyright owners, at US level and international level, are not encouraged to fight for the cause even when there is a copyright violation. This is undermining the importance of Copyright protection in US.

The biggest problem seems to be originating from the Internet and online environment. Websites in US are openly picking up contents from sites of other jurisdictions and when notified about the copyright violation insist upon filing a DMCA notice.

This is a flawed procedure as, for instance, an Indian websites whose copyright has been violated by a US hosted websites has to follow the procedure prescribed by a foreign jurisdiction. This amount to extending the copyright law of US to other countries that is not permissible under [TRIPS Agreement](#) and other international norms.

Similarly, even if we can comply with DMCA requirements these US websites are not complying with DMCA requirements themselves. They are ***not entitled to DMCA protection*** at all still they openly violate copyright of others and hide behind the wall of DMCA as foreign nationals cannot come to US to prosecute them.

Further, companies like Google are serving their advertisements on such copyright infringing contents, though unknowingly and unintentionally, that is the main reason why such contents are lifted. Although Google is really good at removing offending contents upon its platforms and denying advertisement upon such offending contents once it becomes aware, yet its policy of reposting of removed infringement material once the DMCA counter notification, howsoever defective and redundant, has been field by the copyright offender is really frustrating.

This is nothing less than double jeopardy as first US based websites steal contents and commits copyright violation and then Google asks the copyright owner to file a case against such offender to continue to remove such offending contents. The requirement of Google for filing a case is counter productive as a person whose 5-10 articles have been lifted as it is and without permission has to come to US all the way from India or a foreign jurisdiction to prevent the offender from continuing copyright violation. Something must be done in this regard.

Further, concepts like fair use are greatly abused in US and US websites consider mere acknowledgement as complete defence of fair use. That is not the legal position. In short, US copyright law has been wrongly interpreted and is heavily leaning in favour of copyright offenders and against copyright holders, national or international.

(2) **Some Suggestions:** We believe the following may be helpful in this regard:

(a) **Electronic DMCA Agent Registry:** An updated electronic DMCA agent registry or database must be established by US copyright office and the same must be available to public at large. Currently it seems to be outdated and we could not find the details of DMCA agents of some websites that are claiming to comply with the same. Further, such database must be user friendly and easy to navigate.

(b) **Websites Norms:** A dominant majority of US websites are not complying with the DMCA norms and still they are claiming DMCA protection. Foreign nationals cannot do much in such situation as filing a case in US is counter productive for small cases and causes. US websites must clearly and absolutely follow the DMCA requirements.

(c) **DMCA Information:** US websites are not providing sufficient information about DMCA agents and their contact details. Many of them have also not registered a DMCA agent with US copyright office. Still they violate copyright of others and claim DMCA protection. These websites must provide clear DMCA related information. If these websites are not complying with DMCA requirements, they must not insist upon DMCA notice.

(d) **DMCA Sufficient Compliance:** US copyright office must clearly mention what amount to sufficient DMCA notice compliance by national and international organisations and individuals. DMCA is meant to provide “safe harbour” and not to use as a shield against online copyright violations. There is nothing that restricts a websites owner to remove copyright violating contents from his site without invoking the DMCA procedure on its own or on coming to know about the same through an e-mail.

Perry4Law and *Perry4Law Techno Legal Base (PTLB)* suggest use of a “prima facie violation test” using an “informal communication method”. A majority of online service providers (OSPs) in US are not aware of the requirements of DMCA still they insist upon filing of a DMCA complaint. They do not realise that they are not fulfilling the prerequisites of “safe harbour protection” at all and insisting upon filing a DMCA complaint to remove clear copyright violating contents would not save them from various civil, criminal and financial sanctions.

Under the “prima facie violation test”, the copyright owner or his agent/authorised complainant need not to file a DMCA complaint and a written complaint through e-mail should be sufficient. All that is required is providing of copyright violating links and links of copyrighted materials. This is also sufficient otherwise as well because as per DMCA an OSP that is not complying with the safe harbour requirements is not entitled to its protection and an e-mail mentioning copyright violation is sufficient to impose various liabilities upon it.

(e) **Liquidated Damages:** Those who violate US copyright law or law of a country that is a party to TRIPS Agreement and affect copyright of small value and lesser stakes, they must be imposed a liquidated damage that is pre determined. This would benefit all the

stakeholders as small copyright holders would be entitled to such liquidate damages and copyright infringer would be deterred to take law in their own hands.

(f) Administrative Authority: An administrative authority must be established at US copyright law office that can receive complaints and grant such liquidated damages. This way small copyright holder can get a speedier justice and relief without going through the lengthy and expensive litigation procedure.

(g) Conflict Of Laws: The administrative authority can also coordinate IP enforcement with other countries. For instance, if IPRs of a US person are violated in India, such administrative authority can contact its counterpart in India and the matter can be resolved instantly.

(h) Online Advertisement Revenue Determination: There is also no mechanism by which the revenue generated by the copyright offenders and online advertising companies through placing advertisements upon such copyright violating posts can be determined. Such a mechanism must be developed by US copyright office.

We hope US would consider these suggestions of [Perry4Law](#) and [PTLB](#) while formulating any new legislation or policy for enforcement of foreign IP rights.

[Geeta Dalal](#)

Partner

[Perry4Law](#)

ICT & IP Law Firm

New Delhi, India

[[Perry4Law IPR Blog](#)]

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PS: The following information was previously submitted to the U.S. Copyright Office at 10:09 on 1/13/12. We have just included the name, date and place details in the present communication.