

## **WHAT TO DO WHEN SOMEONE STEALS YOUR WEB SITE CONTENT AND YOU DO NOT KNOW WHO DID IT**

You have discovered that a web site contains content that uses original text, artwork, photography or software that you created or commissioned. You dutifully do some research (including using a "WHOIS" search on the web) to determine who owns the web site, but the site owner has hired a third party (such as Domains By Proxy) to hold the domain name so that the owner's identity is not publicly available. There is no other identifying information on the web site and it is therefore impossible as a practical matter to figure out who is responsible for copying your creative content.

What can you do? Fortunately, U.S. copyright law provides a remedy, in the form of the Digital Millennium Copyright Act or "DMCA", as it's known. The DMCA contains provisions, called "take-down" provisions, which provide a quick and easy remedy to copyright owners of content that is infringed (that is, copied) on the web. Under these provisions, you, as the copyright owner or licensee of copyrighted content, may notify an "Internet Service Provider", or "ISP", such as the host of the web site containing the infringing material, of the infringement. You may couple this notification with a demand for "take-down", that is, removal, of the infringing material.

Under the DMCA, the ISP must take the infringing content off the site, even if it means making the entire site inaccessible to web users, or else it can be held liable as an infringer itself in a court of law. Because of this law, ISPs routinely cooperate with takedown notices.

To whom should the takedown notice be sent? Most ISPs have a policy which sets forth where to send the notice. This policy is often incorporated into a broader intellectual property (IP) policy or abuse policy. Sometimes it's actually called DMCA policy. Under the DMCA, the ISP is required to identify an agent to whom takedown notices are sent. Typically, this will be a physical address, email address or fax number.

The takedown notice itself must follow a format prescribed by the law and should include the following:

1. A physical or electronic signature of someone authorized to act on behalf of the copyright owner;
2. Identification of the work that has allegedly been infringed;
3. Identification of the web site material that is allegedly infringing;
4. Information for the web site owner to contact the complaining party, such as a postal address, telephone number, or email address;
5. A statement that the complaining party has a good faith belief that the allegedly infringing use is not authorized or legal; and



6. A statement that the information in the takedown notice is accurate and, under penalty of perjury, that the author of the takedown notice is authorized to act on behalf of the copyright owner.

Upon receipt of the DMCA notice, the ISP will take down the content and advise the site owner of the removal. The site owner then may transmit a "counter-notification" to the ISP which sets forth the site owner's legal position for restoration of the material to the site. Upon receipt of this counter-notification, the ISP is obligated to re-post the content but not until 10 days from notifying the copyright owner of receipt of the counter-notification. During this 10 day period, the copyright owner may institute a lawsuit claiming copyright infringement, and the ISP may not restore the content if the lawsuit is instituted in this 10 day period once the copyright owner notifies the ISP of the lawsuit.

Most infringers who have no legal right to use your copyrighted content will not counter-notify, so in the vast majority of cases, the takedown notice results in cessation of the infringement. The DMCA is a valuable tool in fighting online infringement.

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This *Internet Law Alert* was written by **Jeanne M. Hamburg**, a Member of Norris McLaughlin & Marcus, its Intellectual Property Group and the founder of its Internet Law Section. She practices all aspects of trademark and copyright law, both transactional and litigation. In 2009, she was named a New York Super Lawyer® in Intellectual Property and Intellectual Property Litigation; only five percent of New York attorneys are awarded this honor. For more information concerning the Digital Millennium Copyright Act and remedies for online copyright infringement, please do not hesitate to contact Jeanne at [jhamburg@nmmlaw.com](mailto:jhamburg@nmmlaw.com) or (212) 808-0700.

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## INTELLECTUAL PROPERTY ON THE WEB

Trademark, Copyright and Patent Issues  
That Impact All Companies in the Internet Age

Thursday, June 17, 2010 • 8:00 - 10:30 AM  
NMM Media Room, 721 Route 202/206, Bridgewater, NJ 08807

For more information, please visit **Upcoming Events** at [www.nmmlaw.com](http://www.nmmlaw.com).

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