

# Using the DMCA to strengthen your copyright claims

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## Agenda

- Brief overview of the DMCA.
- Embedding Copyright Management Information (CMI) in your metadata.
- Using DMCA notification to interrupt an infringer's advertising revenue and payment processing.

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## DMCA Overview

- Enacted in 1998
- Three primary goals:
  - WIPO treaty compliance
  - Anti-circumvention
  - Protect OSPs from liability



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## Proper Copyright Notice 17 U.S.C. § 401

(b) Form of Notice.— If a notice appears on the copies, it shall consist of the following three elements:

- (1) the symbol © (the letter C in a circle), or the word “Copyright”, or the abbreviation “Copr.”; and
- (2) the year of first publication of the work . . . ; and
- (3) the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.

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## Why Include Copyright Notice Anymore?

17 U.S.C. § 401(d) Evidentiary Weight of Notice.— If a notice of copyright in the form and position specified by this section appears on the published copy or copies to which a defendant in a copyright infringement suit had access, **then no weight shall be given to such a defendant's interposition of a defense based on innocent infringement in mitigation of actual or statutory damages,** except as provided in the last sentence of section 504 (c) (2).

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## Copyright Management Information 17 U.S.C. § 1202(c)

- Anything in a valid copyright notice
- Title of the work and other identifying info
- Author's name and other identifying info
- Copyright holder's name and other identifying info
- Performer, director, and other credits (AV works only)
- Restrictions on use and other licensing info
- Links to any of the above

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## Falsification of CMI

### 17 U.S.C. § 1202(a)

No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement—

(1) provide copyright management information that is false, or

(2) distribute or import for distribution copyright management information that is false.

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## Removal or Alteration of CMI

### 17 U.S.C. § 1202(b)

No person shall, without the authority of the copyright owner or the law—

(1) intentionally remove or alter any copyright management information,

(2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered . . . , or

(3) distribute, import for distribution, or publicly perform works . . . knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing or . . . having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement . . . .

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## Remedies for CMI Violations

### 17 U.S.C. § 1203

- Copyright registration is not necessary
- Injunctive relief is available
- Statutory Damages:
  - At any time before final judgment is entered, a complaining party may elect to recover an award of statutory damages for **each violation** of section 1202 in the sum of not less than \$2,500 or more than \$25,000

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## Where to Put CMI as Metadata

- IPTC: International Press Telecommunications Council [www.iptc.org](http://www.iptc.org)
- EXIF: Exchangeable Image File Format. Created by Japan Electronics and Information Technology Industries Association (JEITA) [www.exif.org](http://www.exif.org)
- Whenever possible, use both

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## Changing your Nikon Camera Settings

- On the camera: MENU > Set Up Menu > Copyright > Input Copyright > (add your notice) > Enter
- Can also use the Image Comment field for additional information (phone number, email, website, etc.)

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## Changing your Canon Camera Settings

- Attach the camera to your computer and run your EOS Utility software
- Under Camera Settings choose the copyright field and enter your copyright notice

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## Applying CMI in Photoshop

- Photoshop uses Adobe's XMP metadata standard but synchs data with EXIF and IPTC
- Adjust metadata on individual files using the File Info menu item. **File > File Info**
- Create a template using the Metadata panel. **Tools > Create Metadata Template**

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## Other Metadata Tools

- FxIF plugin for Firefox: View IPTC and EXIF data in your browser with a right-click
- Opanda EXIF Editor (Windows only)
- Various Adobe products (Lightroom, etc)
- Command line tools: EXIFutils (multi OS)

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## Benefits of Proper Notice & Use of CMI

- Practical: make it easy for potential users to contact you
- Proper notice defeats any “innocent infringer” claim
- § 1203 Damages: \$2,500–\$25,000
- CMI cases can be difficult to prove, but the threat of large damages is a powerful tool

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## Be Aware of Metadata Removal

- Photo sharing sites
- Thumbnail and cut-down generators
- Agency image processing
- Client image processing

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## Questions on CMI?



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## Using DMCA and DMCA-style Takedown Notices on Advertising and Payment Processing Companies

- The DMCA protects Online Service Providers against liability for the infringing acts of users
- Payment processors and online ad services have adopted DMCA-style takedown procedures for Terms of Service violations

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## Typical DMCA Notification Requirements

- (1) A signature (physical or electronic)
- (2) Identification of the copyrighted work (a copy of it helps)
- (3) Identification of the allegedly infringing work
- (4) Your contact information
- (5) A statement that you have “a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law. ”
  - Note that recent case law says you must consider fair use in forming this good faith belief
- (6) “A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed”

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## Important Points about the DMCA

- It only protects an OSP from liability for the infringement of their users, not their own infringement
- It requires strict compliance, including registering an agent with the copyright office (see [www.copyright.gov/onlinesp/](http://www.copyright.gov/onlinesp/)) and maintenance of a “repeat offender” policy
- Making a false notification can subject you to separate legal claims and damages

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# Non-DMCA Terms of Use Prohibitions

“AdSense publishers may not display Google ads on webpages with content protected by copyright law unless they have the necessary legal rights to display that content” [Google AdSense Terms of Use](#).

“You agree that You will not at any time conduct Your business in any manner that directly or indirectly offers, sells, leases, licenses or displays, delivers, advertises, recommends, or promotes any product(s), service(s), data, information, image(s), text and/or any content which . . . infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party, including, but not limited to, the unauthorized copying and posting of trademarks, pictures, logos, software, articles, musical works and videos.” [Authorize.net Terms of Use](#).

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## Sample non-DMCA Report



INFRINGEMENT REPORT

Date:

PayPal, Inc.  
Attn: PayPal Acceptable Use Policy  
2211 North First Street  
San Jose, CA 95131  
Fax number: 1-402-537-5774

Dear PayPal:

I, the undersigned, state **UNDER PENALTY OF PERJURY** that

- I am the owner, or an agent authorized to act on behalf of the owner, of certain intellectual property rights ("IP Owner");
- I have a good faith belief that the website or webpage located at the following URL(s) (the "Website") sells, offers for sale, or makes available goods and/or services that infringe the IP Owner's intellectual property rights.

URL:

URL:

- Please identify the intellectual property rights that you claim are infringed by the Website (e.g. "XYZ copyright", "ABC trademark, Reg. No. 123456, registered 1/1/04", etc) :

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# How to Find which Ad Services an Infringer is Using

- Get the Adblock Plus plugin for Firefox
- Go to the infringing website
- Under Adblock, select "open blockable items"
- Review the URLs to find what ads are being served on the site

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Blockable items on current page

Address	Filter	Type
http://adm.fwmrm.net/crossdomain.xml	fwmrm.net^\$third-party	object subr...
http://adm.fwmrm.net/p/sonymusic_live/wrap...wrmrm.net/p/sonymusic_live/crossdomain.xml	fwmrm.net^\$third-party	object subr...
http://c.blogads.com/adjs.php?n=71982385&what=zone:48&exclude=,	blogads.com^\$third-party	script
http://cache.blogads.com/623054685/feed.js	blogads.com^\$third-party	script
http://dg.specificclick.net/?u=http%3A%2F%2Fperez Hilton.com%2F&r=	specificclick.net^\$third-party	frame
http://g.blogads.com/delivery/ajs.php?zone1...harset=UTF-8&loc=http%3A//perez Hilton.com/	blogads.com^\$third-party	script
http://img.perez Hilton.com/included_ads/adzones/160x600_page_1-3_us.js	*160x600*	script
http://img.perez Hilton.com/included_ads/adzones/300x250_page_1-3_us.js	*300x250*	script
http://img.perez Hilton.com/included_ads/adzones/728x90_page_1-3_us.js	*728x90_*	script
http://img.perez Hilton.com/wp-content/them.../adzone_between_4-5_posts_us.js?version=3	/[!a-z\d+=%@]{1}[d{5,}]{1}(w*d+x)d?d*(show...	script
http://img.perez Hilton.com/wp-content/them...geotarget/blogads_left_column_page13_us.js	/[!a-z\d+=%@]{1}[d{5,}]{1}(w*d+x)d?d*(show...	script
http://img.perez Hilton.com/wp-content/them...logads_right_column_page13_us.js?version=8	/[!a-z\d+=%@]{1}[d{5,}]{1}(w*d+x)d?d*(show...	script
http://img.perez Hilton.com/wp-content/uploads/2008/06/2_advertise.png	/[!a-z\d+=%@]{1}[d{5,}]{1}(w*d+x)d?d*(show...	image
http://pagead2.googleadsyndication.com/pagead/show_ads.js	pagead2.googleadsyndication.com^\$third-part...	script
http://partner.googleadservices.com/gampad/google_service.js	googleadservices.com^\$third-party	script

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## File Your Takedown Notices

- Because it isn't a true DMCA notice, different companies may have different requirements
- Smaller advertising services may not be as responsive as the big guys

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For more information:

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**imua**  go forward  
LEGAL ADVISORS<sup>SM</sup>

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