

Recent Decision Illustrates Potential Global Implications of DMCA Takedown Requests

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The Digital Millennium Copyright Act (DMCA) is a section in the US Copyright Act that provides a safe harbor for internet service providers so long as they comply with a notice and takedown system. The way the DMCA works is a company, such as an internet website host, a search engine, or a website operator, registers an agent with the United States Copyright Office. Then, any individual or entity who finds content it owns that is protected by copyright (whether or not registered) on a website hosted by the internet service provider can submit a takedown request to the service provider's DMCA agent that contains the information required by the statute. The requestor should consider issues like fair use before filing the takedown notice. Assuming the complaint is compliant with the statute and legitimate, the service provider may then remove the content and send a notice to the alleged infringer about the removal to avoid a contributory infringement claim. The alleged infringer is then allowed to submit a counter-notification explaining why the takedown is not justified. The service provider then forwards the counter-notification to the original complaining party, which then has 10-14 days to file a lawsuit over the content. If no lawsuit is filed, the content will be reinstated by the service provider. If a lawsuit is filed, then the content remains disabled until the lawsuit is resolved.

In April of 2023, Nexon Korea Corporation, owner of video game Persona 3 (P3), sued Ironmace Co. Limited, Ju-Hyun Choi, and Terence Seungha Park for copyright infringement and trade secret theft. Choi and Park were former employees of Nexon and founded Ironmace, another Korean corporation, in 2021. Together at Ironmace, Choi and Park created Dark and Darker, which, like P3, is a Dungeons and Dragons inspired role playing fantasy video game. After the game went live, Nexon filed a takedown notice under the DMCA with Valve Corporation, the platform that hosted the game in the United States. Valve removed Dark and Darker from their platform. Ironmace went on to file a counter notice saying its game did not violate any of Nexon's US copyrights, and then Nexon filed its lawsuit in Washington State, where Valve is based.

Related People

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