

QUICK TIPS FOR MONITORING AND ENFORCEMENT OF WEB 2.0 CONTENT

Determine your pain tolerance. Factors to consider:

- Who posted the content?
- What results are you seeking?
- Is the use damaging to your business?
- Is the use damaging to your IP?
- Is the use a legal violation?
- Is the use a violation of the website's terms of service?
- Categorize what is most problematic to your business or IP. One possible framework:

Egregious threat	Possibly infringing trademark use	Non-infringing trademark use	Tolerable
Counterfeit goods Tarnishment Impersonation Defamation Egregious infringement	Unauthorized use of trademarks (indirect or even non-economic impact) Fan use (try to use to your advantage)	Fair use Commercial or comparative use	Comment or even criticism

Consider PR ramifications of acting vs. not acting. Think about:

- Will my enforcement efforts be highlighted, like on chillingeffects.org?
- Will there be fan backlash?
- What will happen to the Web content in question, e.g., might it be deeply buried on the website after another day or two?
- Spin your wins. Perhaps use your own company's blog or website to show how you're shutting down frauds, because you care about protecting customers and keeping costs down.
- Consider other non-legal solutions, such as enlisting fan base, customers, or employees to help with monitoring and reporting, perhaps through a creative or fun incentive program, which can also help mitigate any negative PR.

Establish and follow your plan:

- Know the sites most prevalent in your industry.
- Develop contacts at sites for speedy takedown assistance.
- Maintain standard DMCA and other takedown notices.
- Create spreadsheets to track takedown requests and content once deactivated.

Best defense is a good offense:

- Search social media websites not only for enforcement but also for assessing the risk associated with adopting a new mark.
- Suing or paying after the fact only works so many times.
- Being smart and speedy is most cost-effective.

Handy websites to assist with enforcement:

KnowEm.com

- Check trademark “availability” in various disciplines, e.g., blogging, community, business.
- Provides high level description of the main feature of a particular site.
- Can pay to have the particular trademark or name registered.

TweetBeep.com

- Receive alerts when people are “tweeting” about your company.

RowFeeder.com

- Provides spreadsheets of tweets about a specified topic for a fee.

Adgooroo.com

- AdGooroo provides reports as to who's bidding on keywords that tie to trademarks.

Routinely monitor:

- Wikipedia (including for defamatory or misleading information)
- Facebook, MySpace, Twitter, LinkedIn, YouTube, eBay, and online shopping sites (all for user names, logos, and other infringement or misuse)
- Industry blogs and fan sites
- Second Life

DMCA tips:

For website owners:

- Be sure to follow the safe harbor requirements. File Designation of Agent with Copyright Office, quickly and strictly comply with Notice and Takedown Provisions, and avoid direct financial benefit (remove ads and ad revenue from pages with user generated content).
- Review your websites carefully to identify all user generated content.

For content providers and copyright owners:

- Report alleged infringement vigilantly and in good faith.
- Consider whether the alleged infringement is a fair use before issuing Takedown Notice.