Jason Bloom, Lee Johnston, Joseph Lawlor, Wesley Lewis in Intellectual Property & Technology Law Journal: Copyright Office Finds Aspects of the DMCA 'Unbalanced' in Favor of Online Service Providers

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The U.S. Copyright Office published a long-anticipated report assessing the efficacy of Section 512 of the Digital Millennium Copyright Act ("DMCA"). In the nearly 200-page report, the Copyright Office takes a critical look at the DMCA's "safe harbor" provisions, ultimately concluding that certain aspects of Section 512 have become "unbalanced" in the 20 years since it was enacted.

According to the Copyright Office, the "balance" has shifted almost uniformly in favor of online service providers ("OSPs") to the detriment of rightsholders who own copyrights.

OSPs and others may disagree with the Copyright Office's characterization of this shift. Many OSPs devote significant resources to comply with the requirements of the DMCA safe harbor, and others have implemented measures that go beyond those required by the DMCA. As one example, in recent years major OSPs have implemented "fingerprinting" technologies that are able to prevent the posting of copyrighted material before it is even posted, even though the DMCA does not require OSPs to take such proactive measures.

Fundamentally, the report is based largely on anecdotal and qualitative information rather than quantitative data. The Copyright Office admits as much and observes that due to the private nature of the takedown system under Section 512, "it has been difficult to quantify the extent to which many of the concerns expressed about the current U.S. notice-and-takedown system . . . represent significant limitations in need of remedy."

While the Copyright Office stops short of proposing wholesale reform to the DMCA, it identifies several key areas where it believes the law has become outdated. The report also makes several recommendations to Congress for adjustments to the law that, in the view of the Copyright Office, might better balance Section 512 and meet the goals of the DMCA safe harbor provisions.

Excerpted from the *Intellectual Property & Technology Law Journal*. To read the full article, click on the PDF linked below:

Bloom-Johnston-Lawlor-Lewis-Copyright-Office-DMCA-Report.PDF

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