

## Cat vs. Mouse 2.0:

### *Online Copyright Enforcement 10 Years After The Death of Napster*

With the critical and popular success of last-years box-office (and now Golden-Globe-winning) motion picture “The Social Network,” a single word synonymous with the tech boom of the turn of the century (and the intellectual property headaches that accompanied it) was thrust back into the public consciousness:

*Napster.*

Named after its “nappy-headed” creator (college-student Shawn Fanning), Napster achieved global fame as the world’s most well-known and highly trafficked “peer-to-peer” online file sharing service. From 1999 through 2001, Napster allowed computer users to easily share electronic music, movie and television files with other participants through direct “peer-to-peer” download connections ... and engage in massive copyright violations in the process.

To say that technology has undergone a dramatic change since then would be putting things mildly. Today, “peer-to-peer” file sharing has transformed into an amorphous and complex system known as “BitTorrent” downloading. Instead of using Napster-like programs to search for files to download directly from a single online user, BitTorrent downloading requires users to: (1) install a BitTorrent program from one source that does not possess the ability to search for downloadable content; (2) visit a website operated by a second source that provides the user with the ability to search for pirated files; (3) download a “dot-torrent” file from that site that contains information identifying the many external sources from which the offending file may be downloaded; then finally, (4) open the “dot-torrent” file in the aforementioned BitTorrent program, which automatically establishes connections between the downloader and hundreds of other online users who have at least a portion of the file at issue.<sup>1</sup> The BitTorrent application then simultaneously downloads pieces of the file from those multiple, anonymous users.<sup>2</sup>

Confused? You should be. The advent of torrent technology has created a host of problems for those seeking to enforce their intellectual property rights. Many popular torrent search engine websites are located overseas, in countries where intellectual property rights are less substantive or may not exist at all.<sup>3</sup> The faceless pirates who make unauthorized copies of copyrighted content available through BitTorrent downloading are virtually impossible to identify or locate. The practice is so widespread that even those with the means to enforce their intellectual property rights (such as major movie studios) have relegated themselves to cease-or-desist letters with little to no follow-up, with the expense of thousands of individual lawsuits greatly outweighing the potential damages for each subjectively low-valued case of infringing conduct.

Those seeking to prevent (or limit) unlawful downloading of their intellectual property through the use of BitTorrent technology find themselves left with few potentially viable avenues of recourse, the last of which may very well be search engines such as Google. These online directories often serve as the gateway between those seeking to commit direct copyright infringement through BitTorrent downloading, and the secondary torrent websites that actively facilitate the infringement. There can be little question that those seeking to locate torrent websites (or the torrents themselves) turn to popular search engines like Google in droves, leaving copyright holders wondering what, if anything, can be done to at least slow down the unlawful downloading of their copyrighted material.<sup>4</sup>

### **The DMCA and Direct Copyright Infringement**

Before torrents existed, there was the Digital Millennium Copyright Act (the “DMCA”).<sup>5</sup> Signed into law by President Clinton in 1998, the DMCA substantially amended and added several new provisions to Title 17 of the United States Code to extend the reach of copyright into the online arena while, at the same time, limiting the liability of the providers of on-line services for copyright infringement by their users under certain circumstances. Shortly after the DMCA’s passage came *A&M Records, Inc. v. Napster, Inc.* (9<sup>th</sup> Cir., 2001) 239 F.3d 1004, in which the 9<sup>th</sup> Circuit Court of Appeals was asked to resolve the question of whether the now-infamous internet file-sharing service committed copyright infringement by facilitating the unauthorized transmission of protected content amongst its users.

In *Napster*, the Court first analyzed existing direct copyright infringement law with respect to Napster’s peer-to-peer online file-sharing service. The Court held that in order to establish a *prima facie* case of direct copyright infringement, a plaintiff must prove: (1) ownership the allegedly infringed material; and (2) that the alleged infringer violated at least one exclusive right granted to copyright holders under 17 U.S.C. §106. When it came to the second element, the *Napster* Court was clear - downloading a copyrighted content file from other users (regardless of where those users are located) violates a copyright holder’s exclusive reproduction right set forth within 17 U.S.C. §106(1).<sup>6</sup>

In the case of torrent downloading, however, search engines like Google do nothing more than link the user to a second website, which in turn links the user to a file containing instructions for a program to find the infringing file. Neither Google nor the torrent site physically store any infringing content; when used together however, they create a chain of information that actively facilitates the user’s access to pirated content. Thus, to establish liability against such search engines, a plaintiff must turn to the concept of contributory infringement.

## **Contributory Infringement**

One commits contributory infringement by intentionally inducing or encouraging direct infringement.<sup>7</sup> There are two categories of contributory liability: (1) “actively encouraging (or inducing) infringement through specific acts”; and (2) “distributing a product distributees use to infringe copyrights, if the product is not capable of ‘substantial’ or ‘commercially significant’ noninfringing uses.”<sup>8</sup> Active encouragement of copyright infringement occurs when “one who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another.”<sup>9</sup>

Together, these cases hold that to prove a *prima facie* case for active contributory infringement, the plaintiff must establish: (1) direct infringement by another; (2) the defendant’s knowledge of the infringing activity; (3) that the defendant actually induced, caused or materially contributed to the infringing activity; and (4) that the defendant intended to do so.

## **Proving Knowledge & Intent**

With respect to a contributing infringer’s knowledge, the rule is presently phrased in terms of a “knew or should have known” standard. In *Religious Technology Center v. Netcom On-Line Communication Services, Inc.*, 907 F.Supp. 1361 (N.D. Cal., 1995), a disgruntled former Scientology minister posted allegedly infringing copies of Scientological works on an electronic bulletin board service. The messages were stored on the bulletin board operator's computer, then automatically copied onto Netcom's computer, and from there copied onto other computers comprising “a worldwide community” of electronic bulletin board systems. The Court established the rule that if Netcom *knew or should have known* that the minister infringed the plaintiffs' copyrights, “Netcom[would] be liable for contributory infringement since its failure to simply cancel [the former minister's] infringing message and thereby stop an infringing copy from being distributed worldwide constitute[d] substantial participation in [the former minister's] public distribution of the message.”<sup>10</sup>

In 2001, the 9<sup>th</sup> Circuit Court of Appeals applied the *Netcom* rule to cases involving providers of online services in the now-infamous case of *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9<sup>th</sup> Cir., 2001). In the now-infamous decision the signaled the death of illegal peer-to-peer file sharing networks in their then-current format, the Court held, “[I]f a computer system operator learns of specific infringing material available on his system and fails to purge such material from the system, the operator knows of and contributes to direct infringement.” Although the Court did not conclude that Napster knew of specific instances of infringing conduct, it held Napster liable for contributory infringement because it: (1) “knew of the availability of infringing music files”; (2) “assisted users in accessing such files”; and (3) “failed to block access to such files.”<sup>11</sup>

As was the case then, Courts today must analyze a defendant's intent in light of "rules of fault-based liability derived from the common law."<sup>12</sup> Of course, it is well-settled common law precedent that intent may be directly proven or imputed from circumstantial evidence.<sup>13</sup> Recently, the Court in *Perfect 10, Inc. v. Amazon.com, Inc.* (9th Cir. 2007) 508 F.3d 1146 confirmed that intent can be established in a case involving contributory infringement if the plaintiff proves that the infringing conduct was "substantially certain" to result from the defendant's actions, as is more particularly described below.

### **The "Perfect 10" Rule**

*Perfect 10* involved a plaintiff who operated a website containing photos of nude models. The photos were protected under copyright law as the plaintiff's intellectual property. Perfect 10 sued Google (and others) for, amongst other things, providing links to third-party websites that were committing direct infringement by displaying those photos and offering them for download without prior authorization or approval from Perfect 10. In taking the lead from precedent such as *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913 (2005), the Court in *Perfect 10* held, "[A]n actor may be contributorily liable for intentionally encouraging direct infringement if the actor knowingly takes steps that are substantially certain to result in such direct infringement." In so holding, the Court noted that although neither *Napster* nor *Netcom* expressly required a finding of intent, those cases were consistent with *Grokster* because both decisions ruled that a service provider's knowing failure to prevent infringing actions could be the basis for imposing contributory liability.<sup>14</sup>

The *Perfect 10* Court also addressed the "longstanding requirement" of materiality of contribution to infringement.<sup>15</sup> In particular, the 9<sup>th</sup> Circuit Court of Appeals held:

Both *Napster* and *Netcom* acknowledge that services or products that facilitate access to websites throughout the world can significantly magnify the effects of otherwise immaterial infringing activities ... The Supreme Court has acknowledged that "[t]he argument for imposing indirect liability" is particularly "powerful" when individuals using the defendant's software could make a huge number of infringing downloads every day ... Moreover, copyright holders cannot protect their rights in a meaningful way unless they can hold providers of such services or products accountable for their actions pursuant to a test such as that enunciated in *Napster* ... "When a widely shared service or product is used to commit infringement, it may be impossible to enforce rights in the protected work effectively against all direct infringers, the only practical alternative being to go against the distributor of the copying device for secondary

liability on a theory of contributory or vicarious infringement.”<sup>16</sup>

The result of this analysis was the Appellate Court’s adoption of the trial court’s test for determining whether an internet service provider<sup>17</sup> can be held liable for active contributory infringement. Simply stated, liability will be imposed if the plaintiff can prove that the defendant: (1) “has actual knowledge that specific infringing material is available using its system,” [*Napster*, 239 F.3d at 1022]; and (2) “[can] take simple measures to prevent further damage” to copyrighted works [*Netcom*, 907 F.Supp. at 1375], yet (3) continues to provide access to infringing works.

### **Application of the Perfect 10 Rule to Google links**

The *Perfect 10* decision finds its import in its analysis of Google’s actions in providing users with links to third party websites containing infringing content to the elements set forth above. To that end, the Court was clear in its determination that “Google substantially assists websites to distribute their infringing copies to a worldwide market and assists a worldwide audience of users to access infringing materials. We cannot discount the effect of such a service on copyright owners, even though Google’s assistance is available to all websites, not just infringing ones.”

Thus, the Court held, Google *could* be held liable for contributory infringement arising from it doing nothing more than providing links to third-party websites “if it had knowledge that infringing [content] were available using its search engine, could take simple measures to prevent further damage to [those] copyrighted works, and failed to take such steps.” The Court went a step further in *dicta*, opening the door for such liability to apply not only to links to infringing content, but to websites providing unauthorized passwords for users to access copyrighted materials as well.<sup>18</sup>

### **The Trump Card: 17 U.S.C. § 512**

Section 512 of the DMCA was passed in 1998 as a compromise between the nation’s copyright and online service provider (“OSP”) industries. Concerned about the direction of court decisions concerning their liability for their users’ copyright infringement, OSP’s lobbied Congress and received various safe harbors from potential secondary liability. In exchange, OSPs were required to “accommodate” technical protection measures employed by copyright holders and implement policies for terminating the accounts of repeat infringers.<sup>19</sup>

17 U.S.C. §512(d) limits the liability of a “service provider” such as Google “for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity...” To qualify for such immunity, the provider must either: (1) lack knowledge of the infringement and be unaware of facts of circumstances making the infringement “apparent”; or (2) upon

learning of the infringement, act “expeditiously to remove, or disable access to, the material.” If the provider can satisfy either element, then the copyright holder must prove that it provided formal notice of the violation to the defendant, as set forth within Section 512(c)(3) (described below). If the copyright holder does so, then the burden shifts back to the service provider, who must prove that it “expeditiously ... remove[d], or disable[d] access to, the material that is claimed to be infringing ...”<sup>20</sup>

17 U.S.C. §512(c)(3) states that a notification of claimed infringement must be in writing and provided to the service provider’s designated agent (with the United States Copyright Office). Section 512(c)(3) adds that the notice must also “substantially” include the following:

- (1) A physical or electronic signature of a person authorized to act on behalf of the [copyright] owner;
- (2) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- (3) Identification of the [infringing] material ... or ... the subject of infringing activity ... that is to be removed; and
- (4) Information reasonably sufficient to permit the service provider to locate the material.
- (5) A statement that the complaining party has a good faith belief that use of the material is unauthorized; and
- (6) A statement that the information above is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the copyright owner.

The purpose behind the notice requirement under the Digital Millennium Copyright Act (DMCA) is to provide service providers with adequate information to find and examine allegedly infringing material expeditiously.<sup>21</sup> Thus, Section 512 sets forth two qualifying provisions with respect to the elements listed above. First, “A notification ... that fails to comply substantially with the provisions [above] shall not be considered ... in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.” By enacting this passage into law, the legislature has attempted to protect defendants from cases in which they were unable to avail themselves of the DMCA’s safe-harbor provisions due to an ineffective notice, but nevertheless find themselves subject to liability based on imputed knowledge arising from that same defective notice.

Second, despite the foregoing, the legislature also determined that a plaintiff's failure to substantially comply with the more technical provisions of Section 512(c)(3) should not leave it without recourse. Thus, if the Court determines that a failure to substantially comply with the aforementioned six elements exists, it must then determine whether there was nevertheless substantial compliance with elements (2), (3) and (4), above. If so, the service provider has the burden of proving that it "promptly attempt[ed] to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions [above]." If the provider does so, the statute prohibits the contents of the notice from being factored into its determination of whether the provider's actual knowledge exists.<sup>22</sup>

Given the novel issues these takedown notice provisions have raised, and the relative infancy of the statute itself, precious little exists in the way of precedent analyzing the sufficiency of specific notices with respect to the foregoing. Presently, the *Perfect 10* Court is in the process of determining a new appeal with respect to the District Court's application of the six notice elements to the facts at issue in that matter. Until that decision is rendered and published, however, attorneys have little more than a handful of California decisions to guide them.<sup>23</sup>

### **Conclusion**

Given the foregoing, the state of the law in California – and indeed, across the country – is very much in flux with respect to the application of contributory copyright infringement law and DMCA safe harbor provisions to search engine providers such as Google, who do nothing more than provide links to sites and files that do not directly infringe anyone's intellectual property in and of themselves. While it may be likely that a Court examining the issue of BitTorrent downloading will come to the same conclusion as the Court in *Perfect 10* did with respect to links to torrent websites (i.e., that Google substantially assists websites to distribute infringing material to a worldwide market and assists a worldwide audience of users to access infringing materials) this is by no means a foregone conclusion. As the war against online piracy rages on, those seeking concrete answers are, at this time, without any. The only substantive, definitive relief available may very well be the results that flow from a copyright holder's service of a DMCA-compliant notice. Anything else may very well be left up to those legal pioneers such as *Perfect 10* and Google with the resources to pursue the resolution of these issues within the federal judiciary system.

## MCLE SELF-TEST

1. 1. A DMCA notice that fails to comply substantially with the six elements of 17 U.S.C. §512(c)(3)(A) may still be considered in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent. (F)
2. 2. Contributory liability for copyright infringement solely consists of active encouragement or inducement of direct copyright infringement through specific acts. (F)
3. 3. To prove a *prima facie* case for active contributory infringement, a plaintiff must establish that the defendant intended to commit direct copyright infringement. (F)
4. 4. So long as a website provides assistance to both infringing and non-infringing content to users on a non-discriminatory basis, it will not be held liable for contributory copyright infringement. (F)
5. 5. If a defendant proves that it neither knew nor had any reason to know of the infringing activity at issue, it will not be held liable for contributory infringement. (T)
6. 6. If a computer system operator fails to purge infringing material from its systems, the operator knows of and contributes to direct infringement. (F)
7. 7. To satisfy DMCA requirements, a notice of infringement must specifically comply with all six elements of 17 U.S.C. §512(c)(3)(A). (F)
8. 8. An actor may be contributorily liable for intentionally encouraging direct infringement if the actor knowingly takes steps that are substantially certain to result in such direct infringement. (T)
9. 9. In order to prove a *prima facie* case of direct copyright infringement, the plaintiff must prove ownership the allegedly infringed material. (T)
10. 10. Liability for contributory infringement will be imposed even if the Court finds that the infringement was not material in nature. (F)
11. 11. A service provider will be liable for contributory infringement if it knows of infringing material on its system, can take simple steps to prevent further damage, yet continues to provide access to the infringing works. (T)



12. A service provider will qualify for immunity under the DMCA if it acts expeditiously to remove or disable access to infringing material upon learning of the infringement. (T)
13. Unlike the Napster program, BitTorrent technology assists users in download infringing content through direct “peer-to-peer” connections located through the use of a BitTorrent software program. (F)
14. If a service provider lacks knowledge of infringing material, it may still be held liable if the copyright holder provides formal notice of the violations at issue under the provisions of 17 U.S.C. §512(c)(3). (T)
15. 17 U.S.C. §512(c)(3) states that a notification of claimed infringement may be oral. (F)
16. A valid DMCA notice need not contain a specific statement that the complaining party has a “good faith belief” that the use of the material at issue was unauthorized. (T)
17. The definition of a service provider under the DMCA is rarely in dispute, broadly interpreted, and even Google admits that its search engine falls within its scope. (T)
18. If a DMCA notice identifies the copyrighted work claimed to have been infringed, the infringing material that is to be removed, and information permitting the service provider to locate that material, but nothing else, the service provider may still be liable for contributory copyright infringement. (T).
19. A service provider will be entitled to safe harbor under the DMCA if it responds and removes noticed content within a few days after receiving a DMCA-compliant notice, and if it maintains automated features for identification of other suspect material that provides notice directing copyright owners to a link with instructions for submitting copyright infringement notices to it. (T)
20. A DMCA notice that fails to identify the copyrighted material at issue or provide enough information to locate infringing material may still be found to substantially comply with the provisions of 17 U.S.C. §512(c)(3). (F)

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<sup>1</sup> *Columbia Pictures Industries, Inc. v. Fung*, 2009 WL 6355911, \*2 (C.D. Cal, 2009).

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<sup>2</sup> As one expert recently explained, “The only purpose of a dot-torrent file is to enable users to identify, locate, and download a copy of the actual content item referenced by the dot-torrent file.... Once a user has clicked the ‘download’ torrent button or link, the ... desired content file should begin downloading to the user’s computer without any further action or input from the user.” *Id.* at \*3.

<sup>3</sup> See, e.g., <http://thepiratebay.org/about> (“The Pirate Bay was started by the [S]wedish anti copyright organization Piratbyrån in the [*sic*] late 2003, but in October 2004 it separated became run [*sic*] by dedicated individuals. In 2006 the site changed it's [*sic*] ownership yet again. Today the site is run by an organisation [*sic*] rather than individuals, though as a non-profit. The organisation [*sic*] is registered in the Seychelles ...”)

<sup>4</sup> Indeed, many high-powered and well-funded corporations in the entertainment industry have seen their threats of legal action against torrent search engines such as <http://thepiratebay.org> met with defiant and intentionally-public ridicule. See, e.g., [http://static.thepiratebay.org/ea\\_response.txt](http://static.thepiratebay.org/ea_response.txt) (in reply to an email notification of infringing conduct from Electronic Arts, Inc., owners of <http://thethepiratebay.org> responded, “Hello and thank you for contacting us. We have shut down the website in question. Oh wait, just kidding. We haven't, since the site in question is fully legal. Unlike certain other countries, such as the one you're in, we have sane copyright laws here. But we also have polar bears roaming the streets and attacking people :-( ... Thank you for your entertainment. As with all other threats, we will publish this one on <http://static.thepiratebay.org/legal/>”).

<sup>5</sup> See, *Pub. Law* 105-304 (October 28, 1998).

<sup>6</sup> & *M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004, 1014-1017 (9<sup>th</sup> Cir., 2001).

<sup>7</sup> *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1170 (9<sup>th</sup> Cir. 2007), citing *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 545 U.S. 913, 929-30 (2005).

<sup>8</sup> *Id.*, citing *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417, 442 (1983).

<sup>9</sup> *Gershwin Publishing Corp. v. Columbia Artists Management, Inc.*, 443 F.2d 1159, 1162 (2d Cir., 1971) ; see also, *Ellison v Robertson*, 357 F.3d 1072, 1076 (9<sup>th</sup> Cir., 2003); *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 264 (9<sup>th</sup> Cir., 1996); *Napster, supra*, 239 F.3d at 1019;

<sup>10</sup> *Religious Technology Center v. Netcom On-Line Communication Services, Inc.*, 907 F.Supp. 1361, 1365-67, fn4 & 1374 (N.D.Cal., 1995).

<sup>11</sup> *Napster, supra*, 239 F.3d at 1019-1022.

<sup>12</sup> *Grokster, supra*, 545 U.S. at 934-35.

<sup>13</sup> See, e.g., *DeVoto v. Pac. Fid. Life Ins. Co.*, 618 F.2d 1340, 1347 (9<sup>th</sup> Cir., 1980) (“Tort law ordinarily imputes to an actor the intention to cause the natural and probable consequences of his conduct.”).

<sup>14</sup> *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1157, 1169 & 1171-1172 (9<sup>th</sup> Cir. 2007).

<sup>15</sup> *Id.*, citing *Gershwin, supra*, 443 F.2d at 1162 (“An actor's contribution to infringement must be material to warrant the imposition of contributory liability.”)

<sup>16</sup> *Id.*, citing *Napster, supra*, 239 F.3d at 1022; *Netcom, supra*, 907 F.Supp. at 1375; *Grokster, supra*, 545 U.S. at 929-30

<sup>17</sup> The definition of a service provider is rarely in dispute, as it is typically interpreted in an all-encompassing fashion. See, e.g., *In re Aimster Copyright Litig.*, 252 F.Supp.2d 634, 658 (N.D. Ill., 2002) (“A plain reading of [17 U.S.C. § 512(k)] reveals that ‘service provider’ is defined so broadly that we have trouble imagining the existence of an online service that would not fall under the definitions....”). Courts have held that Amazon, eBay, and Aimster all qualify as “service providers” under the statutory definition. See, e.g., *Corbis v. Amazon.com*, 351 F.Supp.2d 1090 (W.D. Wash., 2004) (holding that Amazon meets the statutory definition of a service provider); *In re Aimster*

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*Copyright Litig.*, 334 F.3d 643, 655 (7th Cir., 2003) (affirming a district court ruling that Aimster was a service provider); *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082, 1087 (C.D. Cal., 2001) (acknowledging the broad definition of a service provider and stating that eBay “clearly” falls within that definition).

<sup>18</sup> *Perfect 10, supra*, 508 F.3d at 1172 & 1177, fn13.

<sup>19</sup> Urban, Jennifer M. and Quilter, Laura, “Efficient Process or ‘Chilling Effects’? Takedown Notices Under Section 512 of the Digital Millennium Copyright Act,” <http://mylaw.usc.edu/documents/512Rep/> (visited January 17, 2011); *see also*, 17 U.S.C. §512.

<sup>20</sup> 17 U.S.C. §512(d).

<sup>21</sup> *Perfect 10, Inc. v. CCBill, LLC*, 340 F.Supp.2d 1077 (C.D.Cal., 2004).

<sup>22</sup> 17 U.S.C. §512(c)(3)(B).

<sup>23</sup> *See, e.g., Brave New Films v. Weiner* (N.D.Cal., 2009) 626 F.Supp.2d 1013 (Statement, under penalty of perjury, confirming that the information in a DMCA notice was accurate, and that infringing content had been posted without authorization, complied with element (5) of DMCA notice provisions); *Io Group, Inc. v. Veoh Networks, Inc.*, (N.D.Cal., 2008) 586 F.Supp.2d 1132 (Service provider entitled to safe harbor under DMCA where it responded and removed noticed content within a few days after DMCA-compliant notice was received, and automated feature for identification of other suspect material contained notice directing copyright owners to link with instructions for submitting copyright infringement notice to provider.); *Perfect 10, Inc. v. CCBill, LLC*, (C.D.Cal., 2004) 340 F.Supp.2d 1077 (Where DMCA notice did not identify copyrighted material or provide enough information to locate infringing material, notice was insufficiently specific to satisfy statutory requirements, and service provider’s failure to terminate infringing client accounts did not constitute evidence that it had failed to reasonably implement its termination policy.); *Hendrickson v. eBay, Inc.*, (C.D.Cal., 2001) 165 F.Supp.2d 1082 (Despite requests from operator, owner never attested to good faith and accuracy of his claim, and failed to identify which copies of film being offered were infringing.).