

Putting Bogus Takedowns on Notice: New CDT Report on DMCA Abuse and Political Campaigns

by [Andrew McDiarmid](#) [1]

October 6, 2010

A few weeks ago, [Fox News and Chris Wallace sued](#) [2] a Missouri candidate for the U.S. Senate for copyright infringement over the use of Fox footage in a TV and web ad. Fox simultaneously sent a DMCA takedown notice to YouTube, which removed the ad. While actually bringing a lawsuit is a novel twist, this incident is the latest in a trend that first garnered major attention two years ago when [the McCain campaign publicly complained](#) [3] to YouTube about similar takedowns aimed at some of its ads. The media companies' approach is problematic because the way campaigns tend to use news footage is almost certainly protected under the fair use doctrine, and thus should not be subject to DMCA takedowns.

CDT has been looking into precisely this problem, and today we released a [report](#) [4] detailing the extent to which overly aggressive takedowns stifle legitimate political speech. The report pulls together in one place information on a dozen incidents that have occurred in recent years, and provides analysis as to the true motivations behind these takedowns, as well as the impact on the political speech that is so fundamental to the First Amendment. Abuse of the notice-and-takedown system in the political context does not appear to be a problem that's going away, and the damage it causes will likely increase as campaigns and commentators rely ever more on new media to reach voters.

In all cases, the campaign ads are paradigmatic fair uses: relatively short clips reused toward a new purpose (and a civic purpose at that), with no effect on any market for the source material. Perhaps accordingly, based on our research it seems the motivations behind the takedowns have little to do with copyright and more to do with protecting reputations for objectivity and staying above the political fray. These are not issues the DMCA was intended to address, and using its process to protect them is a clear abuse of a system that otherwise strikes a pretty reasonable balance between enforcing copyright and allowing user-generated content online.

It is ironic that news networks – among the foremost defenders of the First Amendment – balk at the reuse of their footage for political advertising and commentary. Political speech is at the very core of what the First Amendment is intended to protect. As more of that speech happens online, targeting it with takedowns could undermine the tremendous value of the Internet to the political process.

The upshot is that media companies need to resist the urge to send bogus takedowns. They may not like a particular use of their footage – and they are of course free to complain directly to and even sue campaigns. But in the cases we examine in the report, there is no legitimate copyright claim that warrants use of the notice-and-takedown process. Copyright does indeed give broadcasters some rights to control the dissemination of their message, but it and the DMCA are not a blanket legal weapon to control how the facts and analysis news outlets provide is interpreted, debated, and appropriately reused in advocacy. Savvy audiences will understand that uses of short clips do not constitute an endorsement; viewers will recognize the hands of the campaigns in crafting their advertising. News broadcasters must learn to let go.

As the 2010 election season heats up, we would like to keep up with new incidents as they occur. If you work for a campaign and are the target of a takedown, please let us know.

CDT would like to thank [Corynne McSherry](#) [5], [Wendy Seltzer](#) [6], and [Fred von Lohmann](#) for their comments and suggestions. Special thanks to [Ben Sheffner](#) for the [Copyrights and Campaigns blog](#) [7]; and to former CDTers [Jonathan Dunn](#) [8] and [Anna Kim](#) for their research assistance and work on early drafts.

- [YouTube](#)
- [political speech](#)
- [DMCA](#)
- [Digital Millennium Copyright Act](#)
- [Digital Copyright](#)

Copyright © 2013 by Center for Democracy & Technology. CDT can be freely copied and used as long as you make no substantive changes and clearly give us credit. [Details](#).

Source URL:

<https://cdt.org/blogs/andrew-mcdiarmid/putting-bogus-takedowns-notice-new-cdt-report-dmca-abuse-and-political-campai>

Links:

- [1] <https://cdt.org/personnel/andrew-mcdiarmid>
- [2] <http://www.ipbrief.net/2010/09/29/fox-news-files-copyright-infringement-suit-against-missouri-democratic-senate-candidate-robin-carnahan/>
- [3] <http://cdt.org/blogs/david-sohn/mccain-campaign-says-video-takedowns-stifle-fair-use>
- [4] <http://www.cdt.org/report/campaign-takedown-troubles-how-meritless-copyright-claims-threaten-online-political-speech>
- [5] <http://www.eff.org/about/staff/corynne-mcsherry>
- [6] <http://wendy.seltzer.org/blog/>
- [7] <http://copyrightsandcampaigns.blogspot.com/>
- [8] <http://www.dowlohnes.com/jdunn/>