

Policy You Need to Know: Digital Millennium Copyright Act

The Gist: Passed in 1996, the Digital Millennium Copyright Act (DMCA) prohibits the development or dissemination of any technology that is intended to overcome copyright control systems. It also established the “safe harbor” provision for online service providers that host third party content.

Why It Matters: This is the most recent major update to U.S. copyright law. It directly impacts any businesses trying to protect copyrighted content or ones that allow users to post content on their online platform (YouTube, Facebook, etc.).

The Need to Know: If a business has copyrighted material it wants to protect online or is hosting third party content online, the DMCA applies. The two most significant provisions are:

- **Anti-circumvention.** The anti-circumvention provision of the DMCA (17 U.S.C. 1201) prohibits the production or dissemination of technology, services, or products that would thwart copyright protection measures. Its primary aim was to prevent unauthorized reproduction of content, but it has been applied more broadly to cases where no infringement occurs. There are exceptions to the anti-circumvention rules, such as for some research and reverse engineering, but copyright limitations like fair use do not apply to anti-circumvention liability.
- **Safe Harbor.** Without this provision of the DMCA (17 U.S.C. 512), YouTube, Facebook, and Tumblr likely would not exist as we know them. Under the safe harbor provision, which provides a limitation on intermediary liability, online sites that host content posted by third parties (think user-generated content) may not be liable for damages based on that content. This means that if a copyrighted video is posted to a video sharing site, the site is not subject to statutory damages or other remedies for infringing the copyrights of the works’ owner — so long as it responds to notices from the rightsholder about infringing content posted by users. If the copyright owner files a complaint with the site, the company has the responsibility to remove infringing works in a timely manner. The service provider must notify the user who uploaded the content; that user may file a counternotice asking access to be restored, if there is a good faith belief that the content does not infringe the rightsholder’s copyright.