Can libraries be held liable for the actions of patrons using library-provided Internet services?

One of the provisions of the Digital Millennium Copyright Act (DMCA) of 1998 that amended the U.S. copyright law was Section 512, "limitation on liability relating to material online." This provision protects online service providers (OSPs) from liability for third party infringement. This means that an online service provider will not be held responsible for the alleged infringements of users of their networks. Libraries typically get their online Internet services from telecommunications or cable companies, like Verizon or Comcast. Some libraries host their own network services, such as e-mail networks via university or college institutions. While there is some debate over whether all libraries providing Internet services to patrons fall into the category of online service provider under this provision, our legal counsel has suggested that we interpret the category broadly in order to benefit from the safe harbor established in Section 512.

Online service providers will not be held liable for the actions of third parties using their networks if:

the transmission of alleged infringing content was conducted by a person other than the service provider;

the transmission and routing of the alleged content occurs by an automatic technical process of the system;

the service provider does not determine who will receive alleged infringing content;

no copy of the material is made by the service provider other than copies that are made as a result of transmission; and

the online service provider does not modify the alleged infringing content.

In other words, the network operates in a neutral fashion without manipulation or control of the online service provider.

An OSP will not be held liable for monetary relief, injunctive relief or infringement of copyright if when contacted by a rights holder who claims that infringing material is found on the OSP's network expeditiously removes the content. OSPs should name a "designated agent" who rights holders can contact to report alleged infringements. The designated agent does not have to be a lawyer. The designated agent is the person who receives the "takedown" notices from the rights holder.

In university and college settings, the agent is often a person working in the IT department or may be a librarian at the campus library. Few state libraries or school districts have named designed agents, but as requests for takedown from rights holders seem to be on the rise and big OSPs are turning to libraries to help with their own takedown requests, it may be wise to identify someone who can respond to the questions, preferably someone central to the public library or school system of the city or state.

The OSP must provide the name, address, phone number, fax number, and email address of the agent on a publicly accessible place on its website. Additionally, the OSP must provide this information to the U.S. Copyright Office, which maintains a directory of agents. A form is available on the office's website,

copyright.gov/onlinesp/. A fee of $80 must be paid when the form is submitted. The OSP should also keep records of the takedown notices received in order to identify repeat infringers.

Often times, a library will be unable to identify the alleged infringer or be able to find the alleged infringing content particularly when it is transferred through a file sharing system like BitTorrent. Making the effort to find the content and remove or disable access to the content is what is required.

An alleged infringer whose content is found and removed from a network can request that access to the material be restored if the user believes the takedown was the result of a mistake or a misidentification. This process is detailed in 17 U.S.C. § 512(g)(2).

Rights holders have been lobbying for stricter rules to apply to alleged infringers such as the "three strikes and you're out" proposal. This would mean that if a user infringed three times, his or her network access would be suspended. These proposals have been included in various bills, but none has gone forward. ALA does not endorse this proposal for several reasons including the fact that many takedown notices are filed in error, and some alleged infringement are fair uses.

The big OSPs (Verizon, AT&T, etc) are under pressure from rights holders to track the activities of their subscribers and identify infringements. Under the Higher Education Opportunity Act, universities and colleges are required to actively combat illegal file sharing. In short, rights holders want other groups to police the net for them.

What should libraries do?

- Name an agent.
- Remove alleged content at the request of a rights holder when it can be found.
- Keep records of the takedown notices received in order to identify repeat infringers if they can ever be identified.
- Place signs near public computer terminals about the copyright law similar to those notices that have been used for years at public photocopiers. It can be as simple as, "Using library computers to copy and distributed copyright protected works may be an infringement of the copyright law (Title 17 U.S. Code)."

Libraries do not have to block file sharing protocols like BitTorrent, Kazaa2, or Gnutella even at the request of their OSP. File sharing protocols are often used for non-infringing purposes. Blocking computer services from library patrons is not required to obtain the liability limitations. It also is not a wise long-term decision because libraries will then be at the beck and call of rights holders and network providers, censoring legitimate services and blocking access to information.

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