Section 512 and Criminal Liability

Copyright Law – Professor Grimmelmann
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Section 512

- creates a set of statutory "safe harbors" for various Internet entities
  - comply with the conditions, and you get complete immunity from infringement
  - fail to comply, and the normal rules apply
- if you figure out a good way of teaching this, let me know

§ 512(a)–(b) are for AT&T and Comcast

- § 512(a): computer networks used to transmit infringing materials aren't liable
  - the qualifying conditions are stringent (system must be truly automatic)
  - in return, the immunity is absolute (e.g. no exception for knowledge)
- § 512(b) allows efficient network designs

§ 512(c)'s regime

- immunity applies to ordinary operations of Craigslist, Facebook, Yahoo! Answers, etc.
  - i.e., any site with user-generated content
- how do (c)(1)(A) and (c)(1)(B) narrow the immunity? where have we seen these tests?
- read the whole section closely; there are a lot of hidden conditions on the immunity

notice and takedown

- 512(c)(1)(C): send a properly-formatted takedown notice to the site, and it loses the safe harbor unless it "acts expeditiously to remove" the infringing material
  - failure to take down ≠ infringement
  - but how do most sites respond?
  - defective notices don't count at all

counter-notice and putback

- § 512(g): the user may send a counter-notification claiming (under penalty of perjury) a good faith belief that the material was removed "as a result of mistake"
- service provider must put material back in 10–14 days, *unless* the copyright owner files suit against the user

criminal infringement

criminal infringement

- the main criminal provision is § 506(a)
  - we'll work through the three prongs
- § 506(c)–(d): small-potatoes penalties for fraudulent copyright notices
- § 506(e): small-potatoes penalty for lying to the Copyright Office in your registration

U.S. v. Moran

- Moran "insures" his videotapes. what's that?
  - is he a *civil* copyright infringer?
  - is he a *criminal* copyright infringer?
- did Moran make a mistake of fact or of law? was his mistake objectively reasonable?
- NB: "volitional" ≠ "willful"

U.S. v. LaMacchia

- how is LaMacchia a typical MIT student?
  - is he a civil copyright infringer?
  - did he act "willfully?"
- why didn't the feds even charge him with copyright infringement?
- why else are we reading a wire fraud case?

No Electronic Theft Act

- *Moran* and *LaMacchia* remain good law
- but look at "financial gain" in § 101
  - and at § 506(a)(1)(B)
- would Moran infringe today?
- would LaMacchia infringe today?

Artists Rights and Theft Prevention Act

- check out the third prong: § 506(a)(1)(c)
- guess which industry lobbied for this one?
  - what other section goes along with it?

discussion

- is file-sharing criminal infringement?
  - what additional facts, if any, would you need to know to answer this question?

sentencing

- the sentencing rules for criminal copyright infringement are in 18 U.S.C. § 2319
- what's the sentence for a first-time offender who willfully infringes by copying and selling a single unauthorized CD?
- where else do you need to look to answer this question? what other facts matter?

next time

fair use