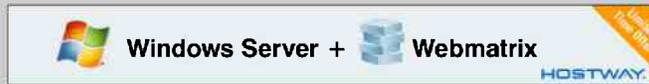


EXHIBIT V



- stories
- recent
- popular
- ask slashdot
- book reviews
- games
- idle
- yro
- cloud
- hardware
- linux
- management
- mobile
- science
- security
- storage

Hotfile Sues Warner Bros Over Abuse of Takedown Tool

Posted by Unknown Lamer on Tuesday September 13, @01:37PM
from the dirca-makes-me-entertaining dept.



schwit1 writes with a piece in Torrent Freak about [ongoing litigation](#) between Hotfile and a few movie studios. From the article:

"Hotfile has sued Warner Bros. for fraud and abuse. Hotfile accuses the movie studio of [copyright abuse](#) and [fraud](#) by taking down hundreds of titles that don't hold the copyrights to including open source software. Among other things, Hotfile is looking for damages to compensate the company for the losses they suffered."

Near the end of the article it is mentioned that files taken down by the tool were replaced with links to [legally procure](#) similar works from Warner Bros.

100 of 155 comments loaded

mpaa yro copyright

Related Links

[Microsoft Reveals More Windows 8 Details](#)

[Court Rules "Locker" Site Is Not Direct Copyright Submission: Hotfile Sues WB for Copyright Fraud and Abuse](#)

[Court Denies EPIC's Rehearing Request, Awards Fees](#)

Archived Discussion Load All Comments

15 Full 85 Abbreviated 0 Hidden

Comments Filter: All Insightful Informative Interesting Funny

The Fine Print: The following comments are owned by whoever posted them. We are not responsible for them in any way.

Tool Use (Score:4, Insightful)

by nman64 (912054) on Tuesday September 13, @01:37PM (#37390116) Homepage

The use of tools ^{is} a significant early step in the development of humankind. Maybe in as little as a couple million years, the big studios will be ready to be part of civilized society.

Share

- Re: Good one. It's all masturbation jokes from here on out.
- Re: I am highly offended that you would suggest a tool of some nature, like a jack, being used as an item in a masturbation joke. WTF?
- Re: Do you think we're all just stroking our own egos here? I'm sorry for ejaculating like this but to me this is a serious issue.

under penalty of perjury (Score:5, Interesting)

by gloddart (321702) on Tuesday September 13, @01:45PM (#37390204) Homepage

I would really like someone to hold them to that.

Yes, copyright infringement is illegal. But, stating under penalty of perjury that you own a copyrighted work, and clearly not having checked to see if you do -- well, that should be treated with some pretty harsh legal consequences. In fact, maybe someone can spin it so that the Warner pays the statutory damages as if they pirated the work -- what's that, like 9 trillion dollars per offending file?

Hopefully Hotfile gets some traction on this one.

Share

- Re: Indeed it should, but I wouldn't hold my breath if I was you. If you really want someone to get slapped down for perjury it helps no end for them to be standing in a court, in front of a judge when they do it.

Re:under penalty of perjury (Score:5, Insightful)

by Balthroth (2370816) on Tuesday September 13, @01:55PM (#37390348)

Actually, it's worse than that. They then replaced the file (they didn't own) with links to purchase their own works. IMHO (ANAL, though) that is commercial infringement of copyright, and commercial infringement is a criminal offense. So is perjury for that matter.

Also, Warner Bros should loose their rights under the DMCA to issue takedown requests at all, since they clearly cannot be trusted to issue valid requests. Make them get a court order every single time. Hopefully, this will serve as a nice precedent against automated takedown tools in the future.

Parent Share

Lenz v. Universal (Score:5, Interesting)

by lepples (727027) slash2006NO@SPAMplease!t.com on Tuesday September 13, @02:00PM (#37390408) Homepage Journal

Also, Warner Bros should loose their rights under the DMCA to issue takedown requests at all, since they clearly cannot be trusted to issue valid requests.

I wonder to what extent *Lenz v. Universal* and the unclean hands doctrine can be extrapolated to keep a service provider's safe harbor intact when faced with takedown requests from someone suspected of perjury.

Parent Share

- Re: I tried to ignore "then", but you followed it up with "loose".
- Re: Your right, but regardless that doesn't affect my point nor does your criticism phase me.
- Re: regardless is not a word.
- Re: is "whoooooosh"?
- Re: FTFY. Also "Hah" you forgot to put a period at the end of your sentence.
- Re: We can't escape CrackedButter, our little walking library!
- Re: Oh, the delicious irony!
- Re: regardless is a perfectly cromulent word.
- Re: Indeed it is a travishamockery!
- Re: Seriously? You overlook the actual problems in his post to try to make a point that you're already 90 years too late to make?
- Re: I didn't overlook. I figured it would be far more practical use of my time if I solved that problem first. Besides, it seems like Hotfile has the situation under control for now.
- Re: I think you underestimated the parent poster's retulidation.
- Re: that doesn't affect my point. Unfixed it for you.
- Re: I think you meant "effect".
- Re: My kingdom for a mod point for creative misuse of the language.
- Re: Well done, replies to your post seem to be evenly split between people who did not get the joke and people offering suggestions to make it better. Impressive job, good sir!
- Re: Thank you. I think one part of the joke phased right through pretty much everyone, though.
- Re: It didn't faze me at all.
- Re: Very nice, though ironically you used the correct "affect" in this context.

Re:under penalty of perjury (Score:4, Insightful)

by The Imutable (2459842) on Tuesday September 13, @02:25PM (#37390684)

Hopefully, this will serve as a nice precedent against automated takedown tools in the future.

Tools are just tools. This one was abused and should be taken from the abuser, but by no means indicates that the tool itself is bad. This is the other side of the fence of the historic ruling on VBPs that just because you can do something illegal

with a tool is not reason enough to ban it

Parent Share

Re: and gun its will argue wholeheartedly against that logic s...

Re: The whole DMCA takedown thing needs to be dismantled. What is a... guilty until proven innocent, and that's just plain old American...

Re: They could remedy the situation by providing actual evidence that they own the works: if a bill collector called me up they'd have to prove that they do indeed own debt that I'm responsible for paying. I'm not sure why that shouldn't apply to...

Re: Except that the bill collector industry is also riddled with abusers. They can slam an entry onto all three credit reports even if it's totally bogus - and it's up to YOU, the innocent party, to clean up the mess. Sure, the entry is removed, but...

Re: That's exactly why I believe the credit agencies should be subject to libel and slander charges for their repeated demonstration of reckless disregard for the truth in anything they say. In spite of many examples of debt collector...

Re: This is a not a solution, but...

Re: Yes, and they can also file defamation of character suits as well if it's just that most people in that situation don't bother to learn what their rights are. But, the ultimate solution is regulation. Require creditors to assume that a...

Re: Kinda odd to have one free look per year. Here the system works so that if your credit rating is changed, you must be informed about it in advance and you have couple weeks time to challenge it if the filing is erroneous...

Re: I rather like that setup. Where is "here"?

Re: That would probably be an improvement, but what evidence is appropriate?

Re: Also, Warner Bros should loose their rights under the DMCA to issue takedown requests at all! Can't we just send the guy who signed the notices to jail?

Re: I fully expect Warner Brothers to plead "not guilty by reason of corporate insanity" - they have strong supporting evidence!

Re: Defense: Your Honour, I ask for an adjournment on the grounds that the prosecution's lawyer is a cartoon rabbit.

Re: DMCA has not been violated.

Re:under penalty of perjury (Score:5, Informative)

by crankyspice (63953) on Tuesday September 13, @01:58PM (#37390385)

The DMCA's penalty of perjury language only applies to the statement that the author is "authorized to act on behalf of the owner of an exclusive right that is allegedly infringed." 17 USC 512(c)(3)(A)(vi) (<http://www.copyright.gov>)

If I work for Consolidated Pictures, which owns the rights to the movie The Cairo Goose, and I send a DMCA takedown notice on the file MSDN_Preview_WinNT_Cairo-(g00a3).rar, and state under penalty of perjury that I am authorized to act on behalf of the owner of the exclusive rights in The Cairo Goose, I'm fine, even though upon closer inspection the RAR file is, on its face, obviously not a copy of my employer's motion picture. (It's someone else's copyright to enforce.))

To be clear, I'm not saying (in a DMCA takedown) that I own the rights to that file/ I'm identifying a work (The Cairo Goose), saying under penalty of perjury that I'm authorized to act on behalf of the rights holder of that work (The Cairo Goose), and, not under penalty of perjury, that I have a good-faith belief that the file in question is a copy of The Cairo Goose.

Note that 512(f) does provide liability for any damages, including costs and attorneys' fees, incurred by the alleged infringer when a DMCA notification knowingly materially misrepresent[s] infringement.

Also, 512(g) provides for reinstatement of content upon counter-notification where there was a mistake or misidentification of the material.

Parent Share

Re: To be clear, I'm not saying (in a DMCA takedown) that I own the rights to that file/ I'm identifying a work (The Cairo Goose), saying under penalty of perjury that I'm authorized to act on behalf of the rights holder of that work (The Cairo Goose)...

Re: Vexatious is one of my favorite words. It got me out of a bad non-compete. I think the "if you plan on continuing start saving all your emails" and the potential cost of discovery helped.

Re: USC17 512 (a)(3)(iv) The statement here is referring to the DMCA notice. Guess what, if you're filing them for things that clearly aren't the work you're claiming, then it's an act of perjury. What exactly the punishment is for that, I do not...

Re: Not-checking filenames and not-verifying the claimed files does not strike me as "good faith." And I'm skeptical that "authorized to act on behalf of the owner of an exclusive right that is allegedly infringed"...

Re: I have worked for an ISP Abuse department and routinely had to enforce DMCA

Re: No, it actually doesn't. See the court's opinion in Rossi v. MPAA, No. 03-16034 (December 1, 2004) (<http://www.steptoec.com/assets/attachments/1740.pdf> [steptoec.com]), where the proprietor of InternetMovies.com targeted the 9th Circuit to...

Re: Nope, it should be more like the current "challenge" system in tournament tennis. Make it so that WB can take down as many genuine motions as they like. Put three false takedowns in a month should be considered abuse of the...

Re:under penalty of perjury (Score:5, Informative)

by graminah (897285) on Tuesday September 13, @02:04PM (#37390462)

It is apparent what is happening

The studios are using the results of simple keyword searches to trigger takedowns. As an example, while claiming to remove files that are copies of the movie "The Box", Warner removed several files related to the alternative cancer treatment book "Cancer: Out Of The Box". Another title deleted by Warner was "The Box that Saved Britain", a production of the BBC, not Warner.

If the studios want Hotfile to spend time and resources to stop aiding in the distribution of the studios' copyrighted content, then it's also the studios' responsibility to spend their own time and resources to correctly identify their copyrighted content

Parent Share

Re: More importantly, perjury is a FELONY criminal offense while copyright infringement can a criminal or civil offense. The robo-signers of the complaints should be charged as criminals. Isn't it telling that the same organizations that are pushing to...

Re: Either that, or make them fill out an almost unreadable captcha and make them wait at least 2 minutes before each delete, to make them prove that they actually took the time to read the full name of the file they're deleting (instead of using a...

I think we also need to see them for also all the possible content we may have downloaded and lost on

Re: What about creating content with those search terms. Instead of "The Matrix" how about "my movie" or "The Matrix" and essays on Eastern philosophies in the movie. Wait for them to robo-take-down, and then sue.

Interference with Contracts (Score:4, Interesting)

by Tekfactory (937096) on Tuesday September 13, @01:52PM (#37390294) Homepage

The article states loss of accounts and goodwill, but a software publisher was using hotfile to distribute his freeware app, and Warner deleted his files

Hopefully Hotfile has the money to go the distance on this one and not settle out of court

Hopefully the judge won't let Warner and the other four studios drop the case so no precedent can be set.

I don't at all doubt that Warner was using a piece of software and a script and made some mistakes, but that the mistakes got worse after they were notified that is negligence

Too bad they won't get fined MAFFIAA imaginary numbers. How many freeware downloads didn't happen because they deleted the file, must have been millions at \$750 a piece right?

Share

Cloning blues Was it a clone of a video game published by Williams, Atan Games, Tengen, or Midway? Because Warner might be under the impression that say, a video game with the same rules as Joust or Klax infringes Warner's copyright in...

Re: their reg exps would have probably hit even dosbox. WB bought the service to weed out those files from some lazy, lazy bastards who probably billed WB by the amount of files' loss. Lose for everyone except these lazy bastards.

Re: You can't copyright the rules of a game.

Re: I am aware of that. The Tetris Company is (hence Tetris v. Borsocia) and apparently neither are some other publishers of some early 1980s arcade games.

Re: Ooh, videogame "clone" lawsuits! Ding-dong! That'll be the 1980s on the front porch, they want their - well everything actually - back. But they say we can keep Lady Gaga.

Re: I bet Warner claims that because it was a freeware app, no damages can be awarded because no profit was lost.

Re: If that were the case, I would like to see an argument to have all of Warner's commercials removed from video based media. After all, commercials are free!

Re: Hotfile is suing Warner, so Warner does not have the option of dropping that case. I am not quite sure how Warner managed to replace the link with a link to buying something from them, but that is a fairly serious charge (and one I have no...

Re: In the Article (I know new here, etc) they state the Hotfile case is in response to 5 Studios suing Hotfile. So I want both Hotfile to vigorously pursue their legal claim, and the 5 studios suing Hotfile to not be allowed to drop their original suit if it...

Replacement Links (Score:5, Interesting)

by Fnord666 (882225) on Tuesday September 13, @01:57PM (#37390306) Journal

Near the end of the article it is mentioned that files taken down by the tool were replaced with links to legally procure similar works from Warner Bros

Just to clarify any misunderstandings about what this meant (Emphasis mine)

Hotfile suspects that the overboard takedowns were not only an attempt to prevent copyright infringement, but also a scheme to make profits. Warner proposed to Hotfile an affiliate deal where content that was taken down would be replaced with links to movie stores where users could buy Warner movies. More takedowns thus means more potential revenue.

Warner had an economic motive to make these misrepresentations. As noted above, in early 2010 Warner proposed a business arrangement with Hotfile whereby Warner sought to present economic links to Hotfile users who might purchase a Warner file for Warner's profit in place of links that Warner had deleted using its SRA.

Share

Re: The problem is on Slashdot the only weirdo who actually RTFA was Fnord666 My hypothesis: You could post a dupe of any Slashdot story with an appropriately tweaked summary, and produce similar kneelink response comments in the...

A proposed solution (Score:5, Insightful)

by DarkHealth (207196) on Tuesday September 13, @01:57PM (#37390372) Homepage

Share

This should happen more often! (Score:5, Insightful)

by Adrian Lopez (2615) on Tuesday September 13 @01:58PM (#37390384) Homepage

The DMCA gives copyright holders the power to take down content based on little more than their say so. It is therefore very important that making bogus DMCA claims carry penalties commensurate with the damage (both moral and monetary) suffered by those whose content is taken down by means of fraudulent or negligent copyright claims.

Share

Re: On the bright side it means you can file DMCA takedowns for content named Re:otely. Similarly to content that you hold the copyright for, right?

Warner Bros: too much money to care (Score:3)

by s4shdbrk (755837) on Tuesday September 13 @02:02PM (#37390436)

A valiant effort on Hotfile's part but they'd have better luck pulling hairs out of a honeybadger's ass than getting that lawsuit to stick.

Share

Anti-Piracy Tool and No Surprise (Score:2)

by Fmor086 (1092229) on Tuesday September 13 @02:03PM (#37390450) Profile

According to the complaint, Warner systematically misused the anti-piracy takedown tool (SRA) Hotfile had built for them.

So Hotfile built a tool called SRA (which stands for Special Rightsholder Account? Go figure) that Warner uses to take down whatever it wants without Hotfile having to get involved. Is anyone surprised that Warner then took down whatever they thought might in some way, shape or form relate to something that they do hold the copyright to?

Share

Re: It is surprising that Warner took down open source software that has no relations to its copyright content. I assume that other movie studios have similar agreements with Hotfile and they seem to be following the rules fine. If the allegations are true, it seems surprising that Warner was quite so reckless about it. Although exactly what the thoughts are of various individuals within a company we can only speculate.

"BEEEEP" FAIL! (Score:5, Informative)

by snugge (229110) on Tuesday September 13 @02:04PM (#37390456)

from the faq

Q Can I search the Hotfile server for certain files?

A No. Hotfile protects the privacy of our users. Only the person storing a file on Hotfile gets the download link. That person decides who should have access to the link. A file can only be downloaded if the download link details are known.

it should read

Q Can I search the Hotfile server for certain files?

A Yes. Hotfile do not protect the privacy of our users. All major Hollywood Companies get access to your download link. These companies decides who should have access to the link. They can download and look at your private files as they wish. They can choose to delete your files.

Share

Re:"BEEEEP" FAIL! (Score:2)

by Anonymous Coward on Tuesday September 13 @03:02PM (#37391096)

That's likely not how it happened. How many hotfile links can you find on the internet for all who visit the site?

Answer: Quite a few.

Without being explicitly told otherwise, it's not really fair to assume hotfile is sharing the info with people in ways it claims it doesn't.

Parent Share

Re:"BEEEEP" FAIL! (Score:1)

by Anonymous Coward on Tuesday September 13 @03:25PM (#37391400)

AFAIK, the copyright tool requires the studios to have the link to be able to delete it. They can't make them up or look them up; they're most probably scraping some sites and not caring what links they get.

Parent Share

Re:"BEEEEP" FAIL! (Score:2)

by krest (835314) on Wednesday September 14 @05:51AM (#37396746)

You're making a big assumption as to how it works, and I think you're almost certainly wrong.

I'd wager that all the tool allows the likes of Warner to do is to feed it a link and to have it take down the file at that link.

What's likely been happening is Warner has been mining the internet for Hotfile links that contain certain words and automatically submitting them to the tool.

So in other words it's not that Hotfile lets the movie industry look at everyone's hotfile links; but that if you let the movie industry know your link by publicising it somewhere public on the internet, they might then take it down.

There doesn't seem to be any evidence they're given a free reign to just look through all your private files.

Parent Share

penalties (Score:4, Informative)

by meglon (1901833) on Tuesday September 13 @02:07PM (#37390504)

from: http://www.cornell.edu/law/org/01guide/responding-dmca-takedown-notice-tar/01guide/responding-dmca-takedown-notice-tar/01guide/responding-dmca-takedown-notice-tar [cit:medialaw.org] The highlighted part:

Section 512(f) of the DMCA creates liability for knowingly making false claims in a DMCA takedown notice or counter-notice. See 17 U.S.C. 512(f). So, if you claim in a counter-notice that your content does not infringe the complaining party's copyrighted work while knowing this to be false, then the copyright owner can win damages from you, including court costs and attorneys' fees stemming from your wrongful counter-notice. Note, however, that this provision also works against a person or company sending a wrongful takedown notice. If someone claims in a takedown notice that you are infringing their copyrighted material while knowing this to be false, then you can win damages from them in a lawsuit. In recent years, the targets of wrongful takedowns have fought back and won damages and favorable settlements from individuals and companies sending bogus takedown notices. For instance, in Online Policy Group v. Diebold, Inc., 337 F. Supp. 2d 1195 (N.D. Cal. 2004), two students and their ISP sued voting machine manufacturer Diebold after it tried to use DMCA takedown notices to disable access to internet postings of the company's leaked internal email archive. The court granted summary judgment to the students and ISP on their claim, finding that portions of the email archive were so clearly subject to the fair use defense that "[n]o reasonable copyright holder could have believed that [they] were protected by copyright." According to the EFF, Diebold subsequently agreed to pay \$125,000 in damages and fees to settle the lawsuit. For another example, see Crook v. 10 Zen Monkeys in our legal threats database. Someone who has sent a baseless takedown notice about your content may be more inclined to back off if you remind him or her about section 512(f) of the DMCA, in addition to sending a counter-notice.

Share

Re: Does "knowingly" still apply if the process is automated? They probably just search on the titles of their movies and have a script takedown every hit.

Re: Easy enough to find out. If any internal memo references the file, there's concept of accuracy being less than perfect, then they know there will be false positives in the fix. At that point, they KNOW a percentage will be baseless.

Re: Its worse than that. Hotfile notified them they were taking down files that weren't theirs and they kept doing it.

They should forget about money (Score:2) and demand an actual trial for perjury, with criminal penalties. The law says it is perjury, and Warner Bros. has committed it. More importantly, as per the article, only a single person at Warner was legally

Re: but WB in prison? how does that work? the bazos who were working them? that would send a nice message at least.

Re: If only there were some law specifically created for going after corrupt organizations. [wikipedia.org]

Re: Exactly what I was thinking, either this was some "lone wolf" messing with Hotfiles, or there was some "collusion" to engage in willful violation of federal law. It will be interesting to see how Warner handles this.

Re: I fully expect them to allow Bugs Bunny to serve the sentence on their behalf.

- Re: Nope, the DMCA is more stupidly written than you think, it is it's only perjury if you file a takedown claiming a file is something you don't have the rights to (i.e. I send a takedown request for a Disney movie, which I don't hold rights to). There is
 - Re: in this context perjury might also be part of the existing agreement between hotfile and WB in the normal process WB sends notice to hotfile who then has to look at content and make a judgement to pull or counter. In this process it looks like
 - Re: ... which is exactly what happened in this case, assuming you agree that Warner's agent knew or should have known that their automated tool was subject to error
 - Re: Nope they had the rights they claimed to have. The fact that the files they wanted taken down had nothing to do with the films they had rights to is irrelevant to the letter of the DMCA. Though hopefully the judge will be unamused enough to
- "similar" works? (Score:1)** The tool replaced files with links to "similar" works, or were they the "same" works? And if they were the "same" works, does Warner have the rights to them?
- Re: So if I use false pretense to gain otherwise unauthorized access to a protected resource or service, and I then delete, modify and insert data while utilizing that unauthorized access...

Precedent indicates Hotfile is correct (Score:4, Informative)

by gstickler (920733) on Tuesday September 13, @04:51PM (#37372192)

[Lenz v. Universal Music Corp.](#) [wikipedia.org], circumstances aren't the same, but they do establish that copyright holders must exercise good faith in determining that a copyright infringement has actually occurred before filing a takedown notice. They don't specifically set out what constitutes good faith, but clearly removing items that simply contained the words "The Box" wouldn't qualify given this "fair use" precedent actually included 29 seconds of copyrighted material and was deemed plausible enough fair use for the counterclaim to proceed.

Lenz v. Universal Music Corp. was a 2007 case in which the US District Court for the Northern District of California ruled that copyright holders must consider fair use before issuing takedown notices for content posted on the internet. Stephanie Lenz posted on YouTube a home video of her children dancing to Prince's song "Let's Go Crazy." Universal Music Corporation (Universal) sent YouTube a takedown notice pursuant to the Digital Millennium Copyright Act (DMCA) claiming that Lenz's video violated their copyright in the "Let's Go Crazy" song. Lenz claimed fair use of the copyrighted material and sued Universal for misrepresentation of a DMCA claim. The court held that, in violation of the DMCA, Universal had not in good faith considered fair use when filing a takedown notice.

The court also explained that liability for misrepresentation is crucial in preventing abuse of the DMCA as a means to stifle controversial speech.

And [USC 17 512](#) [copyright.gov] subsection (f) establishes penalties for misrepresentation by either the copyright holder or the alleged infringer

- Share
- Re: Lenz established Fair Use must be considering before issuing a takedown notice but it relied on 17 USC 512(f)(1) to award Lenz damages. The plain language of 17 USC 512(f)(2) would make it so that Hotfile does not need to establish a
 - Re: Lenz did more than establish that copyright holders must consider fair use, in doing so, it established that the copyright holder has an obligation to determine with some level of certainty (i.e. in good faith) that a violation has in fact occurred
 - Re: No, open source is used by big business to cheaply make corporate applications. Then somewhere along the line they forget that they didn't write the open source software that builds their bottom line. For instance, every god damned corporate
 - Re: No I believe the point is they are basically using the tool as an extremely rude advertising platform. I'm sorry but your copy of gnoppax has been removed by a DMCA takedown, can I interest you in legally purchasing a blu-ray of the matrix?
 - Re: What are the odds that he acted alone and without the knowledge of the studios?
 - Re: Oh, that's what the studios will claim. Or that it was this "small group" acting in collusion with each other. (Although if they do that, Hotfiles could theoretically claim RICO Act violations...and go after the whole org to track down this "colluding"

Slashdot Archived Discussion | Get 55 More Comments | 100 of 155 loaded | Submit Story

Never put off till run-time what you can do at compile-time. — D. Gries