

ABSTRACTS

This study examines the takedown procedures of the Korean and the U.S. copyright laws that were designed to strike a balance between the copyright holders' interests in expeditiously taking down infringing materials from the Internet and the rights of online service providers(OSPs) who have no responsibility for, or knowledge of, third party materials. First analyzed is the Online Copyright Infringement Liability Limitation Act codified at 17 U.S.C. §512, focusing on the elements of takedown notice, misrepresentation, counter notification and put-back procedures. The study also analyzed the recent *Lenz* case, in which the court attempts to require copyright holders to consider whether the use of the copyrighted materials is fair use before sending out takedown notices. Second analysis involves the Korean copyright law that deals with takedown procedures, which turn out to be much more focused on the rights of copyright holders. In sending takedown notices to OSPs, Korean copyright holders do not have to make any claim of copyright infringement but only to submit documents proving that they are rightholders. Consequently, takedown notices regarding legitimate uses of copyrighted materials that are allowed by the current law will be processed with no restraints and the legitimate uses will be blocked. There is no mechanism to check whether takedown notices have been based on legitimate claims regarding copyright infringement, nor to have those who sent illegitimate takedown notices be accountable for their acts. In addition, counter notifications can be made only by those who retain the copyright or those who are permitted to use the material by the copyright holder. Naturally counter notifications and put-backs are made very rarely, if not never. This study thus concludes that the current takedown procedures strongly protect the rightholders' interests while denying users' rights to use copyrighted materials in lawful ways, and suggests possible ways for reform.

Keywords : takedown procedures, notification, misrepresentation, OSP, DMCA, fair use