



Failing to make this evaluation—similar to a submitting party’s duty to consider fair use prior to takedown—could lead to liability under Section 512(f) of the DMCA for parties who knowingly and materially misrepresent that third-party content is infringing in a takedown request. A knowing representation can be inferred from business practices that constitute “head in the sand” willful blindness—a meaningful risk for companies who handle their DMCA takedowns in-house and without input from legal counsel. Under the wrong circumstances, erroneous DMCA takedowns can lead to liability for tortious interference as well.

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