
THE NOTICE-AND-TAKEDOWN MECHANISM IN ONLINE COPYRIGHT PROTECTION: INTERNATIONAL EXPERIENCES AND THE POTENTIAL FOR APPLICATION IN VIETNAM

VO Trung Hau, Faculty of Law, Binh Duong University, Viet Nam

VO Hoang Thong, SAPUNG Company Limited

ABSTRACT

In the context of the rapid development of the digital environment, online copyright infringement has become increasingly widespread, causing significant damage to authors and the creative industries. The “notice-and-takedown” mechanism has been adopted by many countries as an effective solution to promptly address infringements while balancing the interests of rights holders, intermediary service providers, and users. The United States pioneered this model with the DMCA, while France and the European Union emphasize transparency and restrictions on general monitoring, thereby establishing a robust legal framework with diverse practical applications. In recent years, Vietnam has incorporated this mechanism into its current Intellectual Property Law, reflecting its efforts toward integration and modernization of copyright protection tools. However, the practical implementation still faces many challenges, such as risks of abusive notices or counter-notices, requiring close coordination among regulatory authorities, rights holders, and platforms to ensure the mechanism’s maximum effectiveness.

Keywords: Copyright, copyright protection, digital environment, copyright infringement, notice-and-takedown mechanism.

1. INTRODUCTION

In the context of the rapid expansion of the digital environment, copyright infringement in cyberspace has become increasingly serious. Digital works (such as music, films, e-books, etc.) can be easily copied and illegally distributed, circumventing the ordinary technical protection measures adopted by rights holders. In Vietnam, numerous websites and social media platforms openly provide infringing content, causing substantial damage to authors, publishers, and the creative industries. This situation underscores the urgent need for an effective legal mechanism to safeguard copyright in the online environment. Globally, the “notice-and-takedown” mechanism has emerged as a central solution to address online copyright infringements. Under this mechanism, copyright holders are entitled to send notices requesting intermediary service providers to remove infringing content; in return, providers who promptly comply are exempted from legal liability for third-party content. Many countries have successfully implemented the notice-and-takedown mechanism, most notably the United States with the Digital Millennium Copyright Act (DMCA) and France with the Law on Confidence in the Digital Economy (LCEN). Examining international experiences and assessing the potential for adopting this mechanism in Vietnam is essential as the country seeks to its legal framework on copyright to meet integration requirements. Notably, Vietnam acceded to key international treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) in 2022, and amended the Intellectual Property Law in the same year to strengthen copyright protection in the digital environment.

2. THE THEORETICAL BASIS OF THE NOTICE-AND-TAKEDOWN MECHANISM IN ONLINE COPYRIGHT PROTECTION

The notice-and-takedown mechanism is a method of copyright enforcement based on the principle of intermediary liability, which is determined according to the knowledge of infringing acts. Specifically, service providers (e.g., social networks, content-sharing platforms, web hosting providers) are not held legally liable for user-generated content until they “know or have clear information” that such content infringes copyright. Once a valid notice is received from the rights holder regarding infringing material, the provider must act promptly and expeditiously to remove or disable access to that content; otherwise, they may be deemed complicit or jointly liable for the infringement. Conversely, if the provider complies with the takedown request in a timely manner after being notified, the law grants them a “safe

harbor,” meaning exemption from liability for user-generated infringements. This mechanism incentivizes platforms to cooperate with rights holders in protecting copyright while shielding them from the obligation to pre-screen all uploaded user content. [1]

The notice-and-takedown mechanism reflects a balance between protecting intellectual property rights and preserving a free flow of information on the Internet. Instead of imposing absolute liability that would require service providers to monitor all user-generated content (a task that is impracticable and may lead to “over-removal” of lawful content) [2], the mechanism only obliges removal where there is clear evidence of infringement. However, one consequence of relying on external notices is that service providers tend to “remove immediately” any allegedly infringing content to avoid legal risks, even without full verification. As a result, abuses of the notice-and-takedown procedure have emerged: false or malicious notices may be submitted to force the removal of lawful content or to engage in unfair competition. This raises a theoretical challenge: how to ensure that the mechanism operates for its intended purpose, effectively protecting copyright without becoming a tool of censorship or an obstacle to freedom of expression. Consequently, many legal systems have introduced safeguards against abuse, such as requiring the notifying party to certify the accuracy of the claim and accept legal liability for misrepresentation, while also granting the alleged infringer the right to submit a counter-notice to have the content reinstated if they believe the removal was mistaken or wrongful.

3. OVERVIEW OF THE NOTICE-AND-TAKEDOWN MECHANISM IN ONLINE COPYRIGHT PROTECTION

Globally, the notice-and-takedown mechanism was first explicitly codified in the United States through the Digital Millennium Copyright Act (DMCA) of 1998, and was later adopted in similar forms by the European Union and many other jurisdictions. The common objective is to establish a standardized procedure whereby rights holders can request the removal of infringing content, while intermediaries who comply are exempted from legal liability. The following section examines two representative models, the United States and France in order to draw lessons for Vietnam.

3.1. Experience From The United States

The United States was the pioneer in adopting the notice-and-takedown mechanism

through the Digital Millennium Copyright Act (DMCA) of 1998. The DMCA established a detailed procedure for notice and takedown under 17 U.S.C. §512, providing the legal foundation for the “safe harbor” of Internet service providers. Accordingly, an Online Service Provider (OSP) is exempted from liability for copyright infringements committed by its users if the OSP satisfies certain conditions, most notably the implementation of the notice-and-takedown procedure upon request from the rights holder.

The basic procedure under the DMCA is as follows: The copyright owner or their authorized representative submits a written notice to the Online Service Provider (OSP) through the designated agent identified by the OSP. This notice must include the statutorily required information, such as: the signature of the notifying party; identification of the copyrighted work and the infringing material; a specific link (URL) to the infringing content; a good-faith statement that the material is being used without authorization; and a declaration under penalty of perjury that the information provided is accurate, with a commitment to accept liability for any misrepresentation. Upon receipt of a valid notice, the OSP must promptly remove or disable access to the allegedly infringing material. At the same time, the OSP is obliged to notify the user who uploaded the content (the alleged infringer) that their material has been removed and to provide the reasons for such removal.

Once the content is removed, the DMCA allows the alleged infringer to submit a counter-notice to the OSP, asserting that the removal was a mistake or that they hold lawful rights to the material. A counter-notice must include the user’s identifying information, specification of the removed content, a sworn statement under penalty of perjury that the user believes the content was removed due to error or misidentification, and a commitment to accept the jurisdiction of the federal court where they reside. Upon receiving a valid counter-notice, the OSP must inform the rights holder who initiated the takedown request and wait for a prescribed period (under the DMCA, 10 business days from forwarding the counter-notice). If the rights holder does not file a lawsuit within that period, the OSP is required to restore access to the removed content. Conversely, if the rights holder initiates court proceedings in a timely manner, the OSP must continue to disable access until the court issues a final ruling on the lawfulness of the content.

The DMCA mechanism has established a normative framework for addressing online copyright infringements. It ensures that infringing content can be removed expeditiously

without lengthy court proceedings, while at the same time safeguarding the uploader's right to appeal. In practice, the DMCA notice-and-takedown system is used extensively; for example, Google alone processed approximately 3.5 billion copyright-related takedown requests in the past twelve months, equivalent to nearly 10 million requests per day [3]. This system has contributed to fostering a culture of copyright compliance on major platforms such as YouTube and Facebook, where professional procedures for receiving and processing DMCA notices have been developed. In addition, the DMCA requires Online Service Providers (OSPs) to adopt policies for terminating services to repeat infringers, thereby creating a further deterrent against intentional violations. Nevertheless, the DMCA mechanism is not without shortcomings. As noted earlier, abuses of bad-faith or erroneous notices have occurred—for instance, where the DMCA has been misused to request the removal of legitimate critical content. Section 512(f) of the DMCA provides sanctions for knowingly submitting false notices, yet in practice, enforcement of this provision remains limited. Despite ongoing debates, the U.S. notice-and-takedown model is generally regarded as an effective and balanced tool for online copyright protection, serving as a reference model for many other jurisdictions.

3.2. Experience From France

Unlike the United States, which has a dedicated statute on notice-and-takedown, the European Union (EU) has implemented this mechanism through the intermediary liability provisions of the E-Commerce Directive of 2000 (2000/31/EC). The Directive stipulates that hosting providers are not liable for unlawful content supplied by users, provided that “upon obtaining actual knowledge” of the infringement, they act expeditiously to remove or disable access to such content. However, the Directive does not specify what constitutes “actual knowledge.” In France, this provision was transposed into national law through Law No. 2004-575 on Confidence in the Digital Economy (LCEN). France went further than the EU Directive by adding detailed procedural rules for notice. Article 6-I-5 of the LCEN establishes a legal presumption that a provider is deemed to have “knowledge” of the infringing nature of the content once it receives a valid notice from the rights holder. The statute also clearly defines the formal and substantive requirements of a valid copyright infringement notice. Specifically, the notice must include: the full identity of the notifying party; a description of the copyrighted work allegedly infringed; a description and precise address (URL) of the infringing content; evidence of the infringing act; citation of the legal provisions relied upon; and a declaration made in good faith that the notifying party believes the information is accurate. These

requirements aim to ensure that providers are equipped with sufficient information to identify and remove infringing content as quickly as possible. In practice, French courts have imposed strict sanctions on providers that delayed removal after receiving a notice. For instance, service providers have been held liable for infringement if they failed to remove the notified content within just a few days of receipt. [4]

A fundamental principle of EU and French law is the prohibition of imposing a “general monitoring obligation” on intermediary service providers. Article 15 of the E-Commerce Directive (transposed into French law under Article 6-I-7 of the LCEN) stipulates that service providers are not required to proactively monitor all user-generated or stored content, nor are they obliged to actively seek out unlawful activities on their services. This gives rise to a practical question in France: after a service provider has removed infringing content pursuant to a notice, are they required to prevent that content from reappearing permanently? Prior to 2012, some lower courts in France held that if the same infringing material (for example, a video) was re-uploaded by users after its initial removal, the provider would still be liable for failing to prevent its reappearance, even without a new notice from the rights holder. The reasoning was that once the provider had been made aware of the content’s infringing nature, it should implement measures to block it permanently, an approach often referred to as “notice-and-staydown.” However, this interpretation of “notice and continued removal” proved controversial, since in effect it imposed a duty of proactive monitoring (requiring providers to track and detect re-uploads of infringing material), which contradicts Article 15 of EU law. [5]

The issue was definitively resolved on 12 July 2012, when the French Court of Cassation delivered judgments in a series of cases involving Google and content-hosting websites. The Supreme Court of France rejected the “notice-and-staydown” approach, holding that service providers are not obliged to guarantee that previously removed content will never reappear on their platforms. According to the Court, in order to request removal once again, the rights holder must submit a new notice that meets the statutory requirements. In other words, each repeated act of infringement requires a separate notification, and providers are only responsible for removal upon receipt of such notice. Imposing a duty on providers to proactively prevent all future copies of infringing content would amount to a general monitoring obligation, which is unlawful. This decision has been regarded as reasonable, since otherwise the burden placed on providers would be excessive and impracticable given the vast volume of online

information. At the same time, it aligns with the U.S. model, where DMCA notices are also processed on a URL-specific basis.

In addition to the ordinary notice-and-takedown mechanism, French law also provides a more robust tool to address online copyright infringements. Article L.336-2 of the French Intellectual Property Code (introduced through the HADOPI Law of 2009) allows copyright holders to petition the courts for orders requiring intermediaries to take “all necessary measures” to prevent or terminate acts of copyright infringement. This provision paves the way for courts to impose proactive measures such as content filtering or blocking access to infringing sources (for instance, ordering ISPs to block a specific infringing website). However, the application of Article L.336-2 must remain consistent with the general framework of EU law, meaning that courts cannot issue orders resulting in a permanent general monitoring obligation and must ensure a fair balance of interests among stakeholders. To date, French courts have exercised caution in applying this provision so as to avoid conflicts with the LCEN and the EU E-Commerce Directive.

4. SOME LESSONS FOR VIETNAM

From the international experiences of the United States and France, valuable lessons can be drawn for developing and implementing the notice-and-takedown mechanism in online copyright protection in Vietnam. First and foremost, it is necessary to affirm the importance of such a mechanism in the context of Vietnam’s widespread copyright infringement in cyberspace [6]. The notice-and-takedown procedure allows for swift resolution of online infringements, addressing the shortcomings of traditional remedies (court litigation or administrative sanctions), which are often time-consuming and resource-intensive.

An important lesson is that Vietnam must establish a clear and detailed legal framework for the notice-and-takedown process. In the past, Vietnamese law did not permit rights holders to directly request service providers to remove infringing content. Under Joint Circular No. 07/2012, Internet Service Providers (ISPs) in Vietnam were only obligated to remove infringing content upon receiving a written request from a competent state authority (such as the Inspectorate of the Ministry of Information and Communications or the Ministry of Culture, Sports and Tourism). This meant that if an individual discovered their work being illegally uploaded online, they could not directly request the platform to remove it, but had to report the matter to state authorities for verification and an official takedown order. This cumbersome

process led to severe delays in addressing infringements, failing to match the speed of online dissemination, and thereby causing serious harm to rights holders. Such shortcomings were criticized by international organizations such as EuroCham, IIPA (International Intellectual Property Alliance), and AUSCHAM in their assessments of Vietnam's IP protection environment. The clear lesson is that rights holders must be empowered to directly and swiftly protect their works by sending takedown notices to intermediaries, rather than depending entirely on state intervention.

Recognizing this necessity, Vietnam has recently made positive strides toward aligning with international practices. Under pressure from commitments in new-generation trade agreements (such as CPTPP, EVFTA, RCEP,...), the National Assembly adopted the 2022 amendments to the Intellectual Property Law. The new law, effective from January 1, 2023, introduced provisions on the responsibilities of intermediary service providers to promptly remove or disable access to infringing digital content once they become aware of the infringement or upon receiving a written notice from either the rights holder or a competent authority. This was a breakthrough change: for the first time, Vietnamese law recognized notices from rights holders alongside notices from state agencies. Under the revised Article 198(b), intermediary service providers in Vietnam must promptly remove infringing content upon receiving a request directly from the rights holder, rather than solely from state authorities as before. Many rights holders have regarded this as a major step forward, reflecting Vietnam's efforts to harmonize with international standards on digital copyright protection.

Lessons from the United States and France also highlight that, for the notice-and-takedown system to be effective, detailed implementing regulations are essential to govern procedures, responsibilities, and the rights of all stakeholders. In line with this, following the 2022 IP Law amendments, the Vietnamese Government issued Decree No. 17/2023/ND-CP (April 2023) providing detailed guidance, including Article 114, which sets out the procedure for notice-and-takedown of infringing digital content. Under Decree 17/2023, rights holders or their legal representatives may submit a takedown request directly to the intermediary service provider via mechanisms established by the provider. The request must include necessary evidence of ownership and infringement, consistent with international standards for valid notices. Specifically, the notice must provide: identifying information of both the requester and the recipient (names, addresses, contact details); evidence of copyright ownership (e.g., a copy of the copyright registration certificate or extract from the national register of copyright);

evidence of infringement (original and infringing copies, screenshots, URLs, comparative analysis, etc.); the precise address (URL) of the infringing content along with a description; and a declaration of legal responsibility for the accuracy of the notice (with a similar undertaking required from the respondent in case of objection). These requirements reflect international best practices, ensuring sufficient information for intermediaries to act while imposing liability on the notifying party to deter abuse.

The procedure under Decree 17/2023 also closely mirrors the U.S. DMCA model. Upon receipt of a valid request, within 72 hours, the intermediary must temporarily remove or disable access to the allegedly infringing content and notify both the requester and the respondent (the uploader). This 72-hour timeframe is considered reasonably prompt, preventing further dissemination of infringing content. After removal, the respondent may submit an objection (similar to a “counter-notice”) within 10 business days from the takedown. If no objection is filed, the intermediary must permanently remove or block access to the content. Conversely, if an objection is received, the intermediary must, within 72 hours, restore access to the content and forward the objection to the rights holder. At this stage, the burden shifts back to the rights holder: if they wish to pursue permanent removal, they must file a civil lawsuit or request administrative enforcement by competent authorities. If the rights holder initiates proceedings, the intermediary must comply with the decision or judgment. If no action is taken, the content remains accessible. This framework protects the rights of accused parties in cases of error or dispute, akin to the counter-notice and restoration mechanism under the DMCA.

Thus, Vietnam has essentially internalized and localized the core elements of the notice-and-takedown mechanism from the U.S. (notice, counter-notice, restoration) and from Europe (requirements for detailed notices, liability for misrepresentation, and the prohibition of general monitoring). This represents significant progress in establishing a legal foundation for more effective copyright enforcement in the digital environment. However, international experience also shows that legislation alone is not sufficient; the mechanism’s effectiveness depends heavily on implementation and stakeholder awareness. Vietnam must enhance outreach and guidance so that rights holders understand how to use the notice-and-takedown process to protect their works. At the same time, intermediary service providers (such as digital content platforms, social networks, and e-commerce sites) must strengthen their capacity to cooperate in handling notices. Article 114 of Decree 17/2023 emphasizes that the speed of response and good-faith cooperation among ISPs, rights holders, and other stakeholders will determine the

system's success. Without active and timely engagement by ISPs, the mechanism will not achieve its intended effect.

Furthermore, Vietnam must anticipate and address potential shortcomings of the new system, drawing on debates in the United States and France. For example, concerns exist that infringers may abuse the objection mechanism: by merely filing a counter-notice (even without merit), content would be restored, shifting the burden onto rights holders to quickly litigate in order to secure permanent removal. Such tactics could delay enforcement and increase costs if infringers exploit the process. To mitigate this, Vietnam could consider sanctions against frivolous or bad-faith objections aimed at prolonging disputes. In addition, the efficiency of court proceedings is crucial, if litigation is excessively protracted, infringing content may resurface and spread during the interim, causing ongoing harm to rights holders. Accordingly, reforming civil procedures in intellectual property cases, for instance, enabling rapid interim measures, should be considered to ensure that the notice-and-takedown mechanism operates effectively.

5. CONCLUSION

The notice-and-takedown mechanism is regarded as an important and effective solution in online copyright protection. Experience from the United States (DMCA) and France/EU demonstrates that this mechanism strikes a balance of interests: ensuring prompt protection of copyright, reducing liability for intermediary service providers acting in good faith, while at the same time guaranteeing legitimate users the opportunity to respond. Vietnam has adopted and incorporated this mechanism into its domestic law through the 2022–2023 legal amendments, reflecting its determination to integrate internationally and address the widespread problem of copyright infringement. However, practical implementation still requires refinement to prevent abuse and to enhance effectiveness. Overall, the notice-and-takedown system serves not only as a key “legal framework” but also as a tool to foster a sustainable digital creative environment, contributing to the protection of national intellectual property assets and the fulfillment of international commitments.

REFERENCES

1. Ash Johnson & Daniel Castro (2021), How Other Countries Have Dealt With Intermediary Liability, Information Technology & Innovation Foundation.
2. Christoph Schmon & Haley Pedersen (2022), Platform Liability Trends Around the Globe: Taxonomy and Tools of Intermediary Liability, Electronic Frontier Foundation.
3. Ernesto Van der Sar (2025), Google's Piracy Purge: 3.5 Billion DMCA Takedown Notices in a Year, TorrentFreak Stats.
4. Christine Gateau & Christelle Coslin (2013), No 'Stay Down' Obligation for Hosting Providers in France, Society for Computers & Law.
5. Catherine Jasserand (2012), France: The Court of Cassation puts an end to the Notice and Stay Down Rule, Kluwer Copyright Blog.
6. Vinh Hy (2022), *The Mechanism for Removing Copyright and Related Rights Infringing Content in the Digital Environment*, Van Hoa Newspaper.