



**BEFORE THE
U.S. COPYRIGHT OFFICE**

512 Study – Empirical Research

Docket No. 2015-7

The Copyright Alliance appreciates the opportunity to submit the following empirical research in response to the U.S. Copyright Office’s Request for Additional Comments regarding its Section 512 Study, published in the Federal Register on November 8, 2016.

Purpose:

The purpose of this study was to compile, understand and examine the experiences of individual creators who monitor for online infringement of their works and how they respond when they discover infringements. In particular, it examines the extent to which individual creators are using the DMCA’s notice and takedown process, explores the effectiveness of this process, and highlights issues and concerns pertinent to individual creators’ use of the process.

Executive Summary:

While most respondents are proactive about monitoring for online infringements, a significant number decline to monitor because of the difficulty or time commitment, and also because many just do not know how. Individual creators who monitor most often do so manually, using search engines, but do not follow a regular daily, weekly, or monthly schedule. A significant majority of individual creators who monitor have uncovered infringement of their work online.

After uncovering infringement, most individual creators ask the user or website to take the material down, but attempt to do so via email, phone, “flagging/reporting,” rather than by using a DMCA form. However, most of those that do use DMCA forms have, at least once, received no response and the infringing material never came down.

When asked about receiving takedown notices, nearly all of the respondents reported having never received a takedown notice from another copyright owner, which suggests that claims that the DMCA notice and takedown process harms innovation and creativity are incorrect.

Opinions on the overall effectiveness of section 512 is split pretty evenly down the middle, with close to half finding it effective and the other half finding it ineffective in combatting infringement.

Methods:

Using Survey Monkey, we created a survey consisting of 26 questions designed to gather information about individual creators online monitoring practices and their use of the DMCA notice and takedown process. A copy of the questions is provided in Appendix I. The questions focused on respondents' practices regarding monitoring for infringement of their work online and what, if any, steps they took to address infringements that they discover, including whether and how they use the DMCA's notice and takedown process. The survey utilized "branching logic," meaning that the particular set of questions varied from one respondent to the next based on that respondent's answers to previous questions in the survey. As a result, respondents were given between 7 and 19 questions to answer. The questions were mostly multiple choice, some of which allowed the respondent to select more than one answer, but also included opportunities for respondents to include open-ended responses.

The survey was active beginning January 17, 2017 through February 24, 2017. Over the course of those five weeks, the Copyright Alliance reached out to individual creators and small businesses within creative industries ("small creators") through email, Twitter, and Facebook to complete this survey. The survey was also widely distributed by Copyright Alliance member and non-member organizations and individuals. A total of 1,362 small creators, including individuals and businesses who are not members of the Copyright Alliance, took the survey.

Demographics of Respondents:

- **64.9%**¹ identify as visual artists
- **25.8%** identify as musicians
- **19.8%** identify as literary artists
- **15.6%** identify as performing artists
- **10.7%** identify as filmmakers
- **2.7%** identify as software developers or engineers
- **10.2%** identify as "other"
 - Including: various types of artist agents, record labels, publishers, producers/audio engineers, YouTube creators etc.

¹ Percentages are rounded to the nearest tenth.

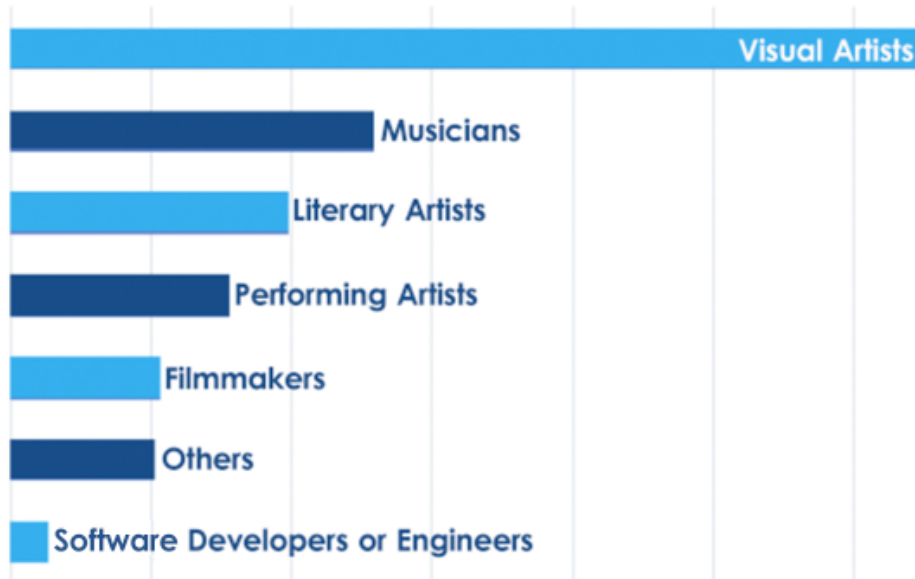


Figure 1

Results:

Small Creators Monitoring for Infringement

The first set of questions asked about respondents’ practices regarding monitoring for infringement. Of the 1,362 respondents who took our survey, **52.2%** responded that they currently monitor the internet for copyright infringement of their copyrighted works, or have monitored in the past, independently, without employing a third-party service to assist, while **37.4%** of respondents answered that they have never monitored the internet for infringement of their copyrighted work, independently or with the assistance of a third party service.

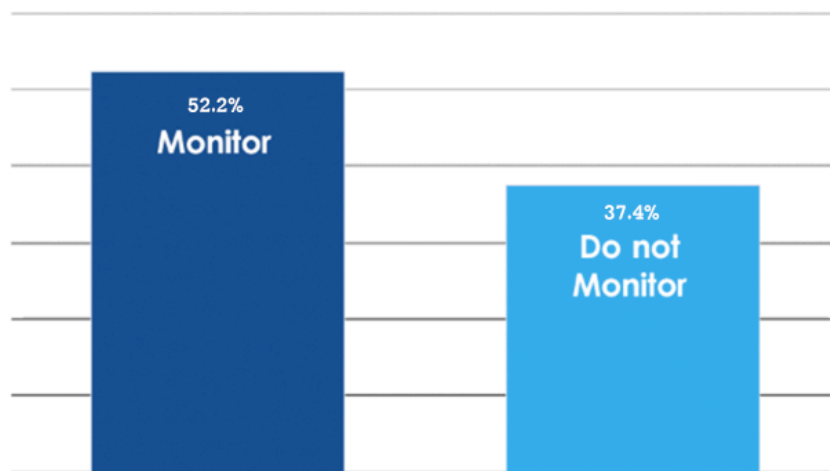


Figure 2

Of those respondents who do not monitor, **49%** say they decline to monitor because they do not know how, and **33%** answered they do not monitor because it is either too difficult or too time consuming to do so. A small percentage, **2.5%**, say they do not monitor because they do not mind when people infringe on their work.

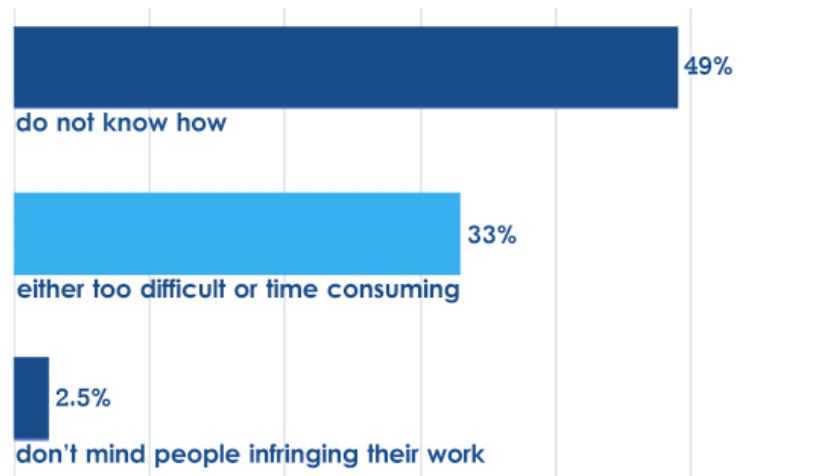


Figure 3

While most respondents currently monitor, or have monitored in the past, for online infringements of their works, more than a third of respondents stated they do not monitor at all. The results seem to indicate that, of those who do not monitor, a lack of education and understanding about the DMCA and how to find and report online infringements was the most significant cause for their not monitoring. The second most significant cause was the difficulty and time commitment associated with small creators policing the internet for copyright infringement. A mere 2.5% of respondents say they do not mind having their work infringed online, which runs counter to arguments made by some, that a significant number of creators do not mind having their works used without permission.

Several small creators stated that the cost of enforcing a copyright under the DMCA² was too expensive to serve as a viable option. Several others expressed confusion about the process: one respondent wrote “I am not sure about what exactly constitutes infringement on the internet, and how to correct it” while others explained that they do not monitor because they do not or had not yet registered their works with the U.S. Copyright Office, demonstrating that those creators are under the false impression that a work must be registered with the Office before sending a DMCA notice.

These findings highlight the fact that most creators *are* concerned by the threat of copyright infringement online, and those creators who choose not to take an active role in monitoring for infringement do so not because they do not object to unauthorized use of their works but because they find it too difficult or time consuming, or feel that they lack the requisite knowledge.

² Monitoring and/or litigating

Of those respondents who do monitor, **77.5%** have found infringing copies of their work online. They most frequently listed 1) a user-uploaded media platform, 2) a social media platform, and 3) personal blogs as sites where they found infringing copies of their work. While **80.8%** of those respondents who monitor do so manually, using search engines, **35.9%** manually monitor a specific set of websites. Finally, **63.4%** of those who monitor do so randomly as opposed to on a regular daily, weekly, or monthly schedule.

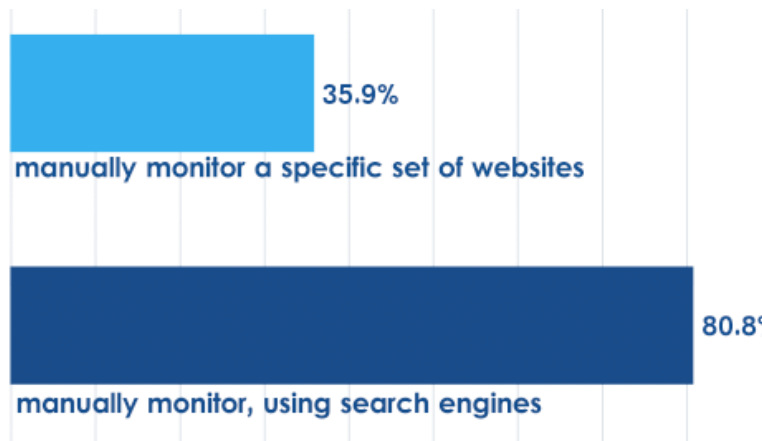


Figure 4

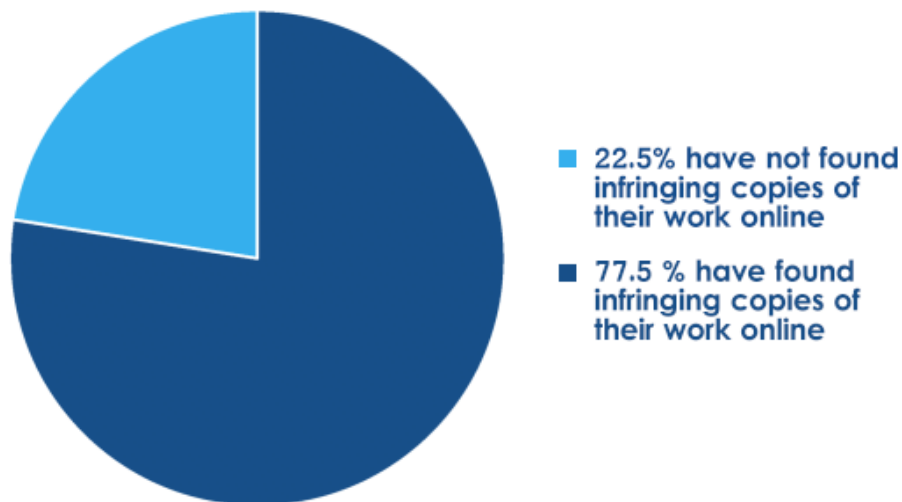


Figure 5

These results show a few important things about how small creators monitor for infringement: 1) instead of employing someone to monitor for them, they are investing their own time—time that could otherwise be spent creating new works—to police the internet for copyright infringement; and 2) While they do not follow a set schedule for monitoring—perhaps due to the time commitment, confusion, or difficulty discussed above—these creators continue to monitor regularly, at random, and have discovered infringement that they otherwise would be oblivious to.

Small Creators' Experience with the DMCA

The next set of questions asked respondents who monitor for copyright infringement of their works online what steps they take when they find an infringement. Of those who monitor and have found infringement online, **52.9%** of respondents answered that they contact the user or website and tell them to take the infringing material down, as compared to **22.0%** who choose to monetize or attempt to license the work.



Figure 6

Of those who tell the user or website to take the material down, only **34.7%** send a DMCA takedown notice, while **65.3%** contact the site (including “flagging” or “reporting” content) or user directly through other means and do not send an actual DMCA notice. This demonstrates that small creators are primarily not using the DMCA notice and takedown process, and instead, contact the website or user asking them to remove the content.

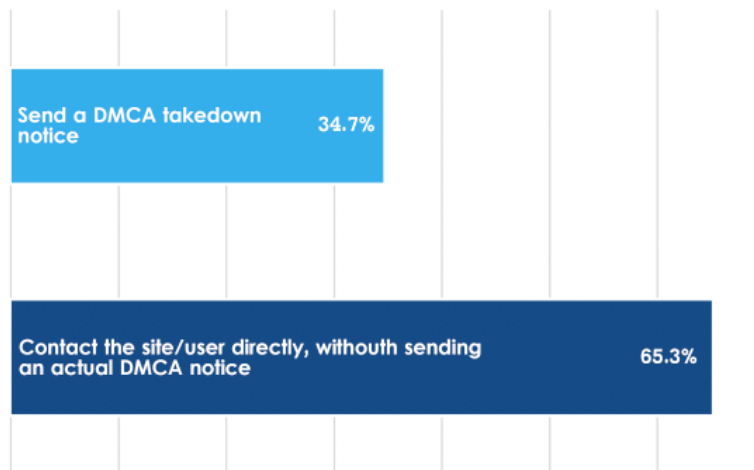


Figure 7

Of those who send a DMCA notice, **55.7%** have, at least once, received no response and the content stayed up. This suggests a failure on the part of at least some to abide by and qualify for the DMCA safe harbors.

Of those respondents who have found infringing content online and tell the user or website to take it down, **52.4%** think the DMCA notice and takedown process is an effective tool for combatting infringement online, while **47.6%** think the DMCA is ineffective, which suggests that the DMCA is not entirely ineffective, but that there are ways it can and should be improved.

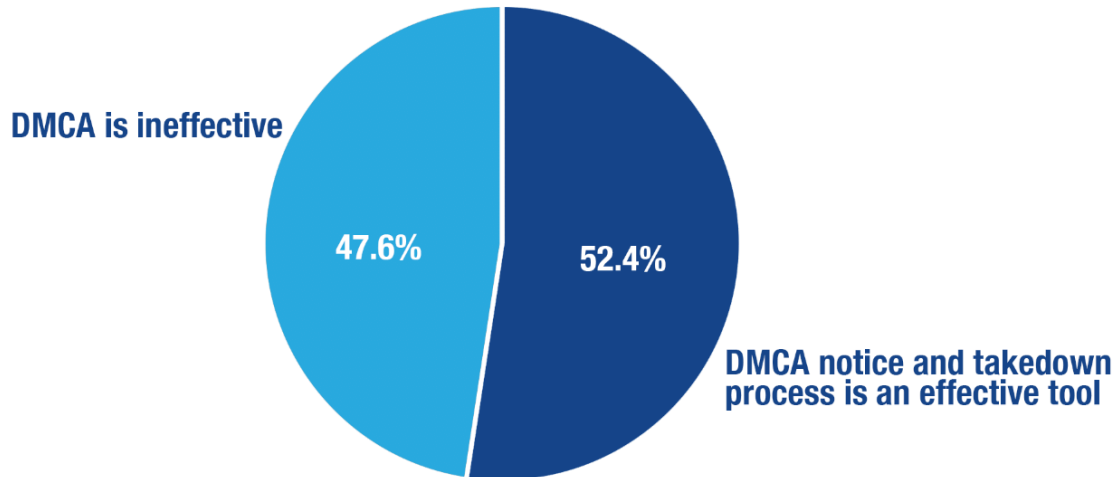


Figure 8

The next question asked respondents about what types of responses they received from sites or users. Of those who monitor and tell the user or website to take the material down, **36.2%** report having received backlash, such as intimidation, threats or shaming, as a result.

The survey also asked whether respondents were ever on the receiving end of a DMCA notification. Of the respondents, **94.3%** report having never received a takedown notice from another copyright owner. Despite claims that the DMCA notice and takedown process harms innovation and creativity, this finding that almost none of the respondents report having ever received a takedown notice suggests otherwise. If the DMCA notice and takedown process actually harmed innovation and creativity, we would expect to see a greater number of creators reporting that they received takedown notices.

Recommendations:

These findings strongly underscore the need for educational resources and programs aimed at informing small creators about copyright law, especially their rights and responsibilities and the DMCA notice and takedown process. ISPs and internet users could also benefit from educational resources. The findings also suggest that ISPs must do more to make the process for sending a DMCA notice more clear, including greater transparency, conspicuous placement of DMCA forms, and uniformity. If forms are placed conspicuously on the website, small creators will be more likely to see and use the proper forms rather than contacting the website and user through other methods. These steps would not only help small creators, but it would also help ISPs as it would decrease instances where small creators are using improper means for reporting infringements and requesting takedowns. Further, uniformity will help creators who report that the process is confusing because once they understand the requirements for one DMCA form, they understand the requirements across the board. This will also help ISPs by decreasing

instances of non-compliant notices and allowing ISPs to process forms more quickly and efficiently.

It is important that the Copyright Office, the copyright community, and ISPs step up to help small creators. Since a significant majority of creators use search engines to monitor for infringement, search engines in particular can play a vital role in working with the creative community to better target their educational resources and tools in an effort to minimize the difficulty and time commitment involved.

Approximately half of the respondents feel that the DMCA notice and takedown process is effective, and the other half believe it to be ineffective. Taken in conjunction with the rest of the statistics we've discussed, that statistic suggests that small creators believe that there are certainly some concerns with implementation of section 512. How to address those concerns was beyond the purview of this survey. By addressing the issues discussed throughout this report, a greater majority of small creators would be satisfied with the DMCA. This can be accomplished through many ways, including the development of educational resources, best practices, and voluntary measures.

APPENDIX I
(survey questions)

* 1. Have you ever monitored the internet for copyright infringement of your work, either on your own or through a service that you have hired?

- Yes, I have monitored for infringement on my own
- Yes, I have hired a service to monitor for me (Image Rights, Digimarc, PicScout, TinEye, etc.) **but I have not monitored on my own**
- No, the organization that I license or assign rights to monitors for infringement
- No.

* 2. Why don't you monitor the internet for infringing copies of your work? (Check all that apply)

- I don't put my work online
- It's too difficult or time consuming
- I don't know how
- I don't mind when people infringe my work
- Other (please specify)

* 3. Have you ever found infringing copies of your work online?

- Yes
- No

4. Which websites have you found infringing copies of your work on? (list no more than 5)

* 5. How do you monitor for infringement of your work online? (Check all the apply)

- I manually monitor using search engines (including reverse image searches)
- I manually monitor specific websites
- I use an automated search tool (Content ID, etc.) provided by the website

* 6. How often do you monitor for infringement of your work online?

- Daily
- Weekly
- Monthly
- Whenever I release a new project or post a work online
- Randomly

7. What service(s) do you hire to monitor for infringement of your work online?

8. If possible, please ask the service or lawyer you employ to monitor for infringement online to complete this survey when you are finished. Select "Next" to continue.

* 9. On average, how many hours per day do you spend monitoring for infringement of your work online?

- Less than 1 hour
- 1 - 2 hours
- 2 - 3 hours
- More than 3 hours

* 10. On average, how many hours weekly do you spend monitoring for infringement of your work online?

- Less than 1 hour
- 1 - 3 hours
- 3 - 5 hours
- 5 - 10 hours
- More than 10 hours

* 11. On average, how many hours per month do you spend monitoring for infringement of your work online?

- 1 - 3 hours

- 3 - 5 hours
- 5 - 10 hours
- More than 10 hours

* 12. On average, how many hours do you spend monitoring for infringement when your new project is released?

- 1 - 5 hours
- 5 - 10 hours
- 10 - 15 hours
- 15 - 20 hours
- More than 20 hours
- n/a

* 13. What do you do when you find infringement of your work online?

- Monetize or attempt to license my work
- Tell the user or site to take it down
- Contact a lawyer or law enforcement
- Contact the organization that I licensed my work to
- Nothing

* 14. How do you contact the user or site to ask them to take it down?

- I send a DMCA notice (using my own notice and/or the form provided by the site)
- I "flag/report" the content on the site (**without** using the DMCA form)
- I directly contact the site via email/phone/letter etc. and/or the offending social media account directly

* 15. What responses have you received? (Check all the apply)

- Notification that the content has been taken down
- A counter-notice contesting infringement
- No response, but the content was taken down
- No response, and the content stayed up
- Other (please specify)

* 16. What responses have you received? (Check all the apply)

- Notification that the content has been taken down
- No response, but the content was taken down
- No response, and the content stayed up
- Other (please specify)

* 17. How long does it generally take to receive a response?

- Within a day
- Within a week
- Within a month
- More than a month
- I generally don't receive a response

* 18. Have you ever **received** a takedown notice from another copyright owner?

- Yes
- No

19. If the Copyright Alliance offered a service to send takedown notices on your behalf for a small fee, would you be interested?

- Yes
- No

* 20. What kind of creator are you? (Check all the apply)

- Visual artist (photographer, illustrator, painter, etc.)
- Literary artist (writer, etc.)
- Filmmaker (director, cinematographer, screenwriter, etc)
- Musician (composer, songwriter, etc.)
- Performing artist (singer, dancer, actor, comedian, etc.)
- Software developer or engineer
- Other (please specify)

* 21. Specifically, what kind of work do you create?

22. If you would like to share additional comments, please upload them here for our review: Uploaded documents must be less than 16MB. PDF or Word (doc or docx) only.

* 23. Do you think the DMCA is an effective tool for combatting online infringement?

- Yes
- No

* 24. Have you ever received backlash or negative repercussions as a result of sending a takedown notice? (intimidation, threats, etc.)

- Yes
- No

* 25. Please describe the backlash or negative repercussions you received as a result of sending a takedown notice

* 26. How have you responded to takedown notices you have received from other copyright owners? (Check all the apply)

- Took the material down
- Sent a counter-notice
- Licensed the material
- Did nothing
- Other (please specify)

APPENDIX II

The Copyright Alliance is a non-profit, non-partisan public interest and educational organization representing the copyright interests of over 1.8 million individual creators and over 13,000 organizations in the United States, across the spectrum of copyright disciplines. The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.