

# COPYRIGHT

PROFESSOR KRISTELIA GARCÍA

---

SLIDES 23: LIABILITY OF ONLINE SERVICE PROVIDERS  
AND SECTION 512 SAFE HARBOR

# Class Outline

---

- Online Service Provider (OSP) Liability
- Section 512 Safe Harbor
- Safe Harbor v. Secondary Liability
- Section 512 and the Internet

# 17 USC § 512

Section 512 contains a number of safe harbors that eliminate liability if OSPs comply with certain conditions. These are completely voluntary, but of course one may be subject to copyright infringement lawsuits if one doesn't comply, although defenses can still be raised.

An OSP can be any website, email provider, or anything else that operates online (YouTube, but not Spotify) as distinguished from an Internet Service Provider (ISP), which are companies such as Comcast and Verizon that connect customers to the internet.

§ 512(a) -- Transitory Network Communications: The OSP is not liable for automatically-made, unmodified copies created due to another's action.

Example: Alice uses Gmail to send a copyrighted work to Bob. In the course of sending the message, Gmail copies the work in its internal email-routing processes.

Gmail is exempted from liability by § 512(a).

→→→

§ 512(b) -- System Caching: The OSP is not liable for caching copies if they are made available by another and transmitted at the recipient's direction, provided that the OSP complies with the owner's conditions and disables access on notice of a court order. Example: Alice subscribes to Comcast, and downloads a copyrighted work. Comcast automatically caches the work in accordance with its standard caching algorithm. Comcast is exempted from liability by § 512(b).

§ 512(c) -- User-Uploaded Content: The OSP is not liable for infringing material that is hosted on its servers if it is uploaded by users, if the OSP takes down material that it knows or should know is infringing, and if the OSP complies with notice-and-takedown procedures. The notice-and-takedown procedure has been criticized as stifling free speech because takedown notices can be issued even if the work is not infringing, for example if it is fair use. Example: Alice uploads an episode of her favorite show to YouTube. YouTube receives a DMCA takedown notice from the copyright owner, and quickly removes the video. YouTube is exempted from liability by § 512(c).

→→→

§ 512(d) -- Links and Indices to Infringing Content: The OSP is not liable for linking to or indexing infringing content, provided that it follows the same takedown procedures as for section (c). Example: Alice searches Google and comes across a song she wrote being hosted by an infringing website. She submits a DMCA takedown notice to Google, which promptly removes the link. Google is exempted from liability by § 512(d).

## Overview

Owners

Reporting organizations

Specified domains

Requests

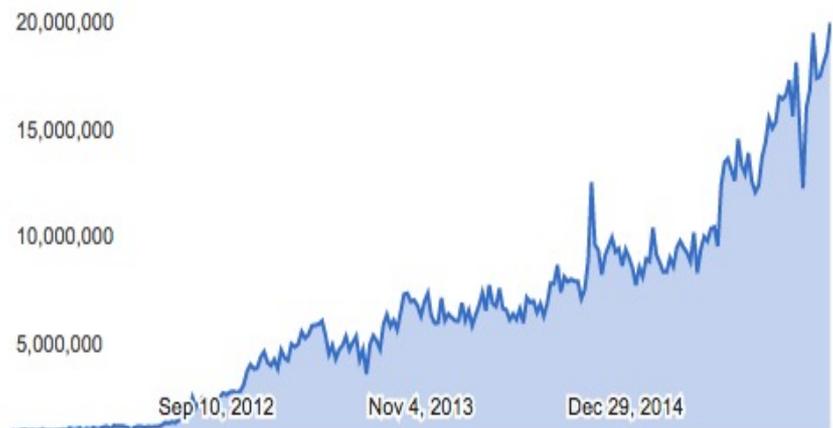
FAQ

Download data

Visible changes

Google regularly receives requests from [copyright owners](#) and [reporting organizations](#) that represent them to remove search results that link to material that allegedly infringes copyrights. Each request names specific URLs to be removed, and we list the domain portions of URLs requested to be removed under [specified domains](#).

### URLs requested to be removed from Search per week



This data consists of the copyright removal notices received for Search since 2011, with **some omissions**

[What's not included?](#)

### Copyright removal requests received for Search in the past month

**76,248,145** URLs Requested to be Removed

**72,546** Specified domains

**6,712** Copyright Owners

**3,262** Reporting Organizations

### Top Reporting Organizations in the Past Month

| Organization | URLs |
|--------------|------|
|              |      |

### Top Copyright Owners in the Past Month

| Copyright Owner | URLs |
|-----------------|------|
|                 |      |

### Top Domains Specified in the Past Month

| Domain | URLs | % |
|--------|------|---|
|        |      |   |

# Section 512(c)

- § 512(c)(1)(A): knowledge
  - Specific infringing activity
  - Willful blindness
- § 512(c)(1)(B): financial benefit + right and ability to control infringing activity
- § 512(c)(1): “by reason of” storage

## 2 general requirements in order to qualify for one of Section 512's safe harbors:

1. Comply with technical measures applied by © owner
2. Maintain a policy of terminating accounts of repeat infringers

## Section 512(k)(1)(B):

defines “service provider” as “a provider of online services or network access, or the operator of facilities therefor....”

# §512(g)(3) – Counter notification

To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:

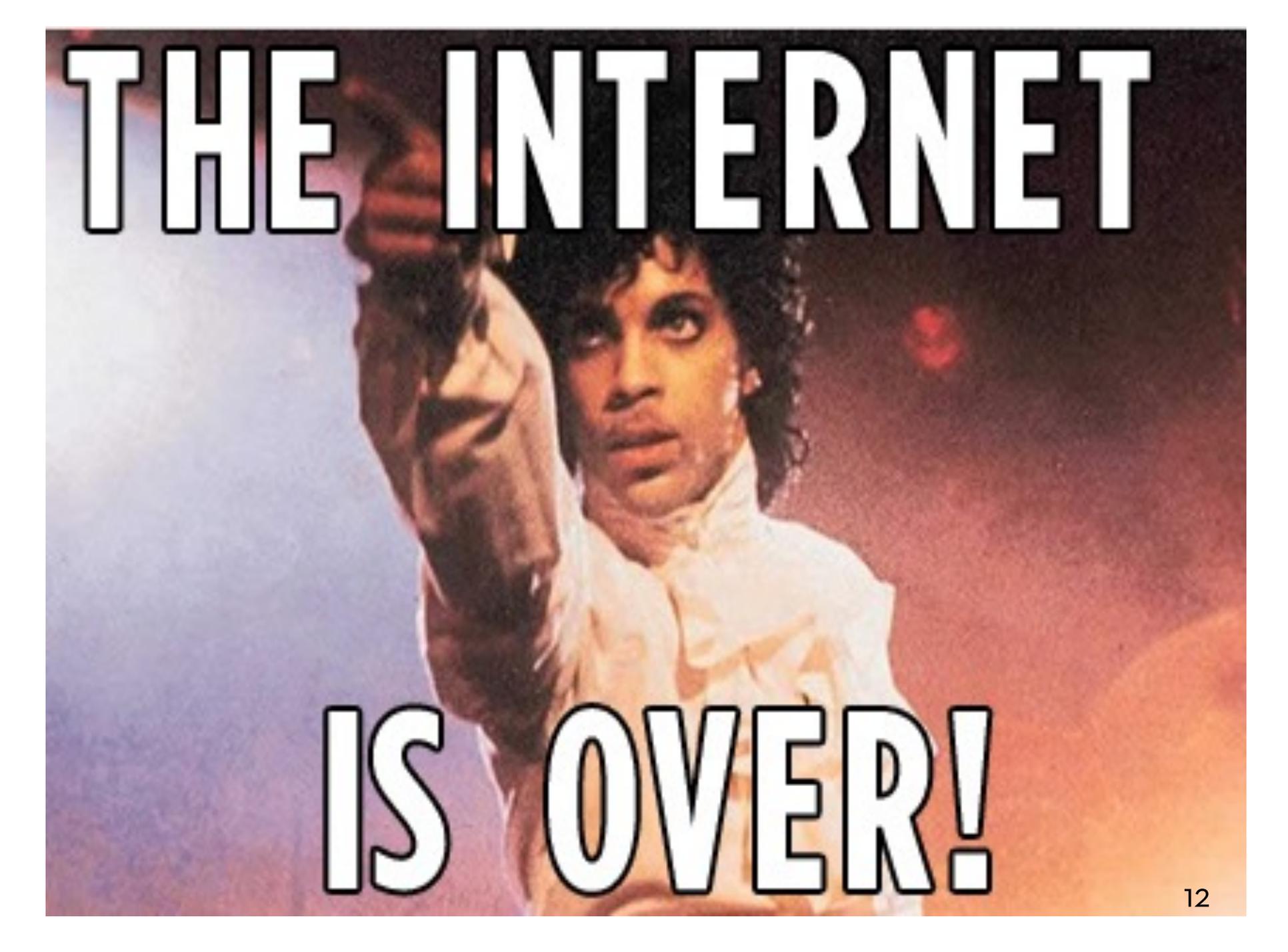
(A) ... signature of the subscriber...

(B) Identification of the material that has been removed... and the location at which the material appeared before it was removed...

(C) ...statement under penalty of perjury that the subscriber has a good faith belief that the material was removed... as a result of mistake or misidentification...

(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to jurisdiction...



A photograph of Prince and the New Power Generation performing on stage. Prince is in the center, wearing a white ruffled shirt, with his right arm raised. The background is a mix of blue and red lighting.

**THE INTERNET**

**IS OVER!**

## §512(f)

Provides a cause of action against one who “knowingly materially misrepresents...that material or activity is infringing.”