

Trade Secrets Takedown on the Internet: A YouTube Takedown Video Notice Letter Example

By Stephen Pinson

The Digital Millennium Copyright Act (the “DMCA”) can help owners of some intellectual property (e.g., copyrights) remove online infringing content. But, the DMCA does not apply to trade-secrets. So, what is a company to do if it finds its trade secrets being infringed on a video hosting site like YouTube?

Terms of Service:

The first thing to do is review the Terms of Service posted on the internet site. In the Terms of Service, find any provision that prohibits the posting of infringing materials. Normally, providers will remove all content if properly notified that such content violates the Terms of Service and/or infringes on another’s intellectual property rights.

Notice:

The next step is to draft a notice letter to YouTube identifying the infringing material and where it can be found, and then requesting that the provider remove the infringing material. To file a notice of infringement with YouTube, the company must provide a written communication that a third party is infringing its trade secrets and the notification must set forth the following items:

1. Identify in sufficient detail the trade secret that has been infringed.
2. Identify the material claimed to be infringing the trade secret listed in item #1 above.
3. Include the following statement: "I have a good faith belief that use of the trade secrets described above in the allegedly infringing videos is not authorized by the owner, its agent, or the law."
4. Include the following statement: "I swear, under penalty of perjury that the information in the notification is accurate and that I am the owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed."
5. Sign the document (electronically or handwritten).
6. Include any supporting evidence of the infringement is based.
7. Send the written communication to YouTube, LLC.

As a caveat, please note that anyone who signs the notice letter, and swears that the information contained in the letter is true, will be liable for damages (including costs and attorneys' fees) if they materially misrepresent that a product or activity infringed the company's trade secrets.

Other content hosting providers may have similar requirements, but it is critical to check the process for each content hosting provider to determine that a takedown request includes all the required information. Even though a takedown notice seems straightforward, a company should seek the help of experienced legal counsel to guide them through the process because of the possibility of misrepresentations. Any misrepresentation could lead to an award of damages which can be costly for a company. Experienced counsel can help determine the facts and any supporting evidence to put an infringer on notice and have the video removed, restricted, or inaccessible to the public.



About the author Stephen Pinson:

Stephen represents clients involved with intellectual property and technology disputes. Specifically, he defends clients in software licensing and copyright infringement matters. Prior to joining the firm, Stephen practiced in high-stakes securities litigation, regulation, and enforcement actions. He spent the majority of his time prosecuting and defending large corporate clients, institutional investors, and Wall Street firms.

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