

Responding to Takedown Requests for Digital Library Repositories

Author : Kristina Niedringhaus

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Brianna L. Schofield & Jennifer M. Urban, *Berkeley Digital Library Copyright Project Report: Takedown and Today's Academic Digital Library*, **U.C. Berkeley Pub. L. Research Paper** No. 2694731 (November 2015), available at [SSRN](#).

A recent push to provide increased access to research, scholarship, and archival materials, as well as a desire to provide greater visibility to faculty and institutional work, have driven more and more academic libraries to create online repositories. These repositories have successfully generated greater visibility for scholarly work and archival collections and greatly enhanced access to these materials for researchers. Greater visibility and access, however, also bring greater potential for requests that libraries takedown materials either because of intellectual property rights claims or other claims, such as privacy.

[Schofield](#) and [Urban](#) studied the experience of academic libraries hosting open access repositories and their experience with notice and takedown requests, both under section 512(c) of the Digital Millennium Copyright Act ("DMCA") and otherwise. They used a survey and targeted interviews to investigate how often takedown requests are received, for what type of content, the basis of the concern, and how the library responded to the takedown request. Schofield and Urban go on to provide recommendations on how libraries should respond to these takedown requests. Their findings have been published in *Berkeley Digital Library Copyright Project Report: Takedown and Today's Academic Digital Library*. (available at [SSRN](#)) and will be presented at [The Future of Libraries in the Digital Age](#) conference.

Establishment of accessible repositories has been on the rise as the issue of access to research, particularly publicly-funded research, has gained attention in academia and the press. Traditionally the academic publishing model has been one where the author(s) sign over rights to their work in exchange for publication. Academic libraries then pay substantial sums of money to gain access to journals, and other publications, in which the research is published. The open access movement gained momentum particularly in the hard sciences and there are now federal, and sometimes state, restrictions requiring that certain types of publicly funded scientific research are made openly accessible for no cost. In addition, some academic institutions have begun encouraging, or even requiring, faculty to publish research in an open access format. These trends have fueled, in part, the rise in academic digital repositories.

Section 512(c) of DMCA (17 U.S.C. § 512(c) (2014)) provides protection for an "online service provider" ("OSP") for copyright infringement by a user of the OSP. Schofield and Urban note that libraries developing and maintaining online, publicly accessible repositories may meet the definition of an OSP under the DMCA and become subject to both its requirements and protections. However, the authors also point out that the safe harbor provisions are only available for content loaded by a third party, such as a faculty member or student. Libraries who manage academic digital repositories often load the content on behalf of the author. As Schofield and Urban emphasize, that step, when performed by the library, eliminates the protections of § 512(c) since the library, through a librarian or staff member, did

the actual loading of content.

The study revealed DMCA takedown requests are currently infrequent, although their incidence could rise as repositories become more prevalent. More common were non-DMCA takedown requests. While some of these did arise from copyright claims, the most frequent reasons given were privacy, embarrassment, and defamation concerns. Schofield and Urban found that many of these non-DMCA takedown requests were handled on a case-by-case basis, depending upon the cause for complaint.

Although the respondent pool for the study was small, see [the article](#) for why, the findings are intriguing and indicate that librarian managers of these repositories should be developing best practices for handling takedown requests as they are likely to grow in number and frequency. Some of the recommendations from the authors, for both DMCA and non-DMCA takedown requests, include author education about preserving rights, publication agreement transparency, and development of best practices within the academic library community. As the Schofield and Urban report highlights, authors, publishers, and academic institutions are likely to find the incidence of takedown requests on the rise. Academic libraries, as the developers, managers, and curators of digital repositories, should be prepared to respond.

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