

The Marginalization of Copyright by the DMCA

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This article explains how the incentives created by the DMCA safe harbors have made the substantive content of copyright largely irrelevant in the online world. The article explores the divergence between "IRL" where Jim Gibson's model of risk aversion and right accretion still has some relevance and the experience of users online, where it does not.

Prior to the DMCA, decisions about whether a given work would be published work, were, albeit loosely and with some biases, anchored around the substantive content of copyright law. In that world, disputes about legality were mediated through gladiatorial contests where representatives (such as the famed Luther Campbell and Acuff Rose) did battle to establish applicable standards. Under the DMCA safe harbors, this is been replaced by battles between zombie armies of infringers and copyright owners exchanging posts and takedowns.