



**SPI 307**

# **Copyright Infringement and DMCA (with my Attorney)**

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Pat Flynn: So, imagine this. You do a Google search for something that you've written, and you find it. It's the number one result, but guess what, it's not yours. Well, it is yours, you've written it. It is your content. It's originally yours, but somebody else ripped it off and used it for themselves. That's not okay.

Or imagine, creating an online course and selling it for \$197, and then finding out that it's on sale on another website. That same exact course that you spent all that time and money and effort to create, and you see it on sale for \$29, and people are buying it.

This is stuff that happens to me all the time, and it happens to way too many people, so I wanted to bring on my attorney, Richard Chapo, who's been on the SPI podcast before, to talk about exactly what you should do when this happens to you. Maybe it's a blog post, maybe it's a YouTube video that somebody else took and set up on their own channel and then started to feed ads into it to try to make money from your content, or maybe it's a course or a product that you have.

In the digital space, it's so easy to do this, and it's happening all the time, but it doesn't have to weigh you down, and it doesn't have to be difficult for you to respond, which is why I have Richard on the show today.

So, before we get into that interview, just want to say thank you so much for coming on. Thank you so much for subscribing. Hit it.

Announcer: Welcome to the Smart Passive Income podcast, where it's all about working hard now, so you can sit back and reap the benefits later.

And now your host. His motto is, "Don't let today's opportunities become tomorrow's what ifs." Pat Flynn.

Pat Flynn: Hey what's up guys? Thanks so much for listening in on the Smart Passive Income podcast today. Today we have a conversation between myself and Richard Chapo from SoCallInternetLawyer.com. He's been my attorney for nearly a decade now, and he's helped

me out so much to make sure I do things in a proper manner, but also, to put out a lot of fires, and more importantly, make sure that my stuff doesn't get stolen, and this stuff, like I said, happens a lot, and we talk about in this episode how to handle it if this happens to you.

So, I'm hoping that ... Well, I was going to say I hope the intro didn't scare you, but I kinda hope it did because again, this stuff happens. You may be dealing with this right now, and although we do get a little technical in this episode ... I'm just warning you. Richard always does a good job of making sure this is something that we can understand, and then of course, on the show notes page, there's a transcript already available, just in case you need to go back and read through things, and of course you can find everything ... and the links and everything we mentioned here on the show notes at [smartpassiveincome.com/session307](http://smartpassiveincome.com/session307).

All right, here we go. An interview with Richard Chapo from SoCallInternetLawyer.com. Let's get right to it.

Hey everybody, what's up? I'm happy to welcome back Richard Chapo, who was featured in episode 231, which was actually quite a surprise fan favorite. It was an attorney round table. We had a couple of attorneys on talking about money and legal considerations when starting out, and I invited Richard back on to talk about something really important, and we'll get into that in just a moment, but Richard, man, thanks for coming back on the show and helping all of us out.

Richard Chapo: Thank you for having me back on. Looking forward to it.

Pat Flynn: Yeah, totally. So, what are we going to talk about today? What will people get out of listening through this whole episode?

Richard Chapo: We are going to talk about the much maligned area of copyright infringement, specifically the Digital Millennium Copyright Act, which applies to the internet, what it is, how to use it to your benefit if somebody is stealing your content, and how to protect your site if

you allow users to post to it, and the analysis that is involved in all of that.

As well as, looking at situations of that with some of your content, so people can see real-world examples.

Pat Flynn: Yeah, so we'll talk about my stuff that has been stolen, and what we've done to sort of help out stopping that. So, this is going to be really helpful. Stuff that not a lot of people talk about, because we don't often know exactly what we're talking about, which is why we have you on.

So first off, what is DMCA? People have seen this around ... people have seen DMCA links on the bottom of different websites and such, but like why is it there? When did it even come into play?

Richard Chapo: Sure, the DMCA is an abbreviation for the Digital Millennium Copyright Act. It was a federal law that was enacted ... Well, is a federal law that was enacted in 1998, and what the law was really doing was addressing copyright online ... how certain situations would be dealt with.

The genesis behind the law being drafted, was actually something that most of the listeners and yourself don't really deal with, it was the criminalization of copyright infringement as far as breaking into electronic devices and electronic platforms, so for instance, hacking an Apple phone or something of that sort. That scenario doesn't really apply much to what were doing when we're talking about the business side, but it did include provisions for addressing how sites and apps would deal with copyright infringement when you had users uploading content.

So, if you think back to 1998, most of us are still on dial-up modems, and the law at that point, and the internet, quite frankly, was very, very, very new as a commercial medium. There was no Facebook. Google was called BackRub at that time.

To give you an idea of how different an era that was, the senate

unanimously passed the DMCA, which today I don't think they would unanimously pass anything. So, it was a law that was designed to basically create an environment where sites could grow, and particularly they were more focused on communities, like forums ... could grow without having to be worried constantly about copyright infringement and be crushed by those.

And basically what it did is create a trade-off where sites such as Facebook or any site that gets user-generated content has immunity from copyright infringement claims based on that user content, so long as they follow a compliance process, and it's not that difficult, but that's been the law since then.

It's received a good bit of criticism, but is often the case, critics really haven't really come up with a better idea. So, we still have it now 17, 18 years later, and we're putting along, and it's definitely something, as a listener, if you're starting a site or an app and you're gonna allow users to get involved with it, you want to be familiar with it from the side that you want to protect yourself, and you want to also be familiar with the side that ... you know, you see people go out and they copy your blog posts, they copy your courses, they copy whatever, and re-publish it somewhere, you want to know how to deal with that.

You can always call an attorney, and I'm always glad to take your business, but quite frankly, we're expensive, so if you can learn how to do it yourself ... A lot of the steps you should be okay, and be able to address those particularly if you're not a big entity or a well known person, such as yourself Pat, it's often easier to get rid of it.

When you're a bigger entity or somebody of that sort, they'll often try to fight it as long as possible so that they can make money.

Pat Flynn: Right. Is worrying about other people stealing content something we actually need to worry about? Is this common? Is this happening all the time?

Richard Chapo: Yes, absolutely. All the time. A lot of people picture somebody

sitting at a desk going out and copying the content, a lot of time it's just bots. It's just software that will go out and harvest that information. I mean, there's completely legal software that's used to go out and harvest phone numbers and email addresses to build lists, and so you do get that, and there are automated website builders, and what have you, so it is very, very common, so it is something you really want to address.

If you use a site like Copyscape or something of that sort that's free, you can put particularly with text, you can put a paragraph in there, and then be shocked at how many websites out there that it appears on. So yeah, it's definitely a big problem.

Pat Flynn: So, is the DMCA something that once set up, will stop people from stealing our content, or is it something that then we can use after people steal our content to help fix things?

Richard Chapo: Yeah, unfortunately it's not going to block people. You can use it afterwards to go after them, so if you want, we can talk about some of the experiences you and I have had with your content to kind of give an idea, but basically, people come on ... they steal your content, you find it somewhere else, and then at that point you can use what are called the take down procedures in the DMCA to go ahead and try to get it pulled down.

Pat Flynn: Okay, and we'll talk about the take down procedures in just a minute, but there's been a few examples. I mean, every time I publish a blog post now, Richard, you know that there are dozens, if not hundreds of sites out there that scrape that content. Essentially stealing it, putting it on their own site.

Now, some of them do include a link -

Richard Chapo: Right.

Pat Flynn: Now, is that stealing or is that okay, because ... Well, at least they're crediting me for it.

Richard Chapo: Right. Well, it's not so much ... We don't categorize it as stealing, we categorize it as infringing, copyright infringement. It is still infringing. There is ... The web is wonderful. There's lots of free information, unfortunately some of it's just wrong.

There are people out there that will tell you that if you link back to the original source, that that is a defense to copyright infringement claim. It is not. It has never been. It never will be. I don't know where that came from. That's more of an idea about plagiarism.

So, if you think, if you ever had to do a paper for school, or something of that sort, and they say, "Link to your resources, or list your references," it's a plagiarism thing. So when you do that, that's not.

Now, we also have to remember that the web is a sharing environment, so a lot of times people don't really care. I'll give you an example. There's a professor who writes on internet legal issues, esoteric issues, and I look at his blog all the time, because quite frankly he breaks some things that I otherwise wouldn't see, and I reposted his post a couple of times onto LinkedIn, and he finally contacted me and said, "You know, I don't want my posts up on LinkedIn," and I never really even thought about it. So, technically I was infringing on his content, and then obviously I removed the post and it wasn't a big deal, but ...

You know, you always have to think about that. A lot of people, they see the Facebook button, Instagram button, Twitter button or whatever it is, and they click and share. Always just make sure first when you look at that content, that in fact, those are there and they want them shared, but the link in and of itself is not gonna get you around infringement, and yeah, when people take your post, and they just re-post it, particularly if there's nothing there, then obviously that's classic infringement.

Pat Flynn: Now, my other question related to this would be, let's say that I found a piece of content that I thought was amazing, and I wanted to republish it on my own blog. Obviously, I can't just take it and do



that, whether I have a link or not, like we just established, but what if I were to ask that permission? If that person says yes, is that verbal yes okay? Is it an email that would have to do that, or would there be some other more formal to make sure that I'm okay if I then take that person's stuff, with his permission, and post it on my own site?

Richard Chapo: Well, the law school answer is that you would want a release document. The real-world answer is as long as it is in writing, I feel comfortable standing in court and defending it. If you say, "Hey, I love this post. Do you mind if I republish it on Smart Passive Income?" And they reply in an email, "Yes." And you do that, and then they later say, "Well, technically you didn't meet the copyright infringement restrictions." I'm fine with that in court.

Yeah, they could sue you, but when we're standing in front of the judge or the jury, one of the questions that's used to evaluate whether it's an infringement, more importantly what the damages would be, what is the reasonableness of the people's position? Then I can guarantee you that if we're standing in front of a judge definitely, a judge is going to look at him and give him the middle finger salute and to where they're gonna go.

You know, because if they gave you permission in an email, you know, that's just from a common sense standpoint, that should suffice, and yes, there are technical legal arguments that can be made, but some of the things that lawyers get in trouble with ... having done complex litigation ... I worked for a very, very good litigator for a long time. He defended wrongful death cases and sophisticated contractual matters across borderlines and things, which are very technical, and he used to always tell me, "Common sense. Common sense. Common sense. Never forget common sense." So, I think in that situation, if you have an email that comes back and says, "Yes, you can use it," they're not gonna get very far trying to sue you.

Now, an oral promise or some kind of oral statement, that I would never rely on, because think about it, if you think about if there was ever a trial, and you get in there, you want some kind of objective



evidence, because if they just give you an oral answer, and then they get on the stand and they say, “No, I never said that.” Well, how do we prove that they didn’t.

Pat Flynn: It’s a he said, she said kind of thing at that point.

Richard Chapo: Right.

Pat Flynn: Okay. Now, let’s get into some of the times where some of my stuff has gotten taken, and we’ll go through examples of that, and then we can hopefully give people clear instructions on what to do if that were to happen to them, and we’re not just talking about content and things scraped either.

For me, when I see those bots and other people take my stuff, it’s not worth my time, even to kind of worry about that right now; although, I maybe shouldn’t have said that because people might do that and ... anyway.

With the courses though - so I’ve just recently come out with courses. Smart From Scratch was my first one and a couple of months later, I had an email from a fan who said, “Hey Pat. This website’s selling your course, and for like 80% off.” And so I check it out and there it is, it’s my course with my name on it, and the name of my course on it, and it’s being sold for a significantly lower price point, which is obviously wrong. They’re making money off of the content that I created and the course, and the IP that I have, and of course, the first thing that I did was I reached out to you.

Richard Chapo: Right.

Pat Flynn: And then what happens?

Richard Chapo: So at that point, we take a look at it and obviously, in that situation there were no fair use defenses, which is something we’ll talk about in a few minutes. It was just obvious infringement.

And there were other courses that were listed that were not

your courses. Other courses that the person that obviously had taken from other people, and so in that situation, from the DMCA perspective, the response would be to file what's called a takedown notice, but because I'm an attorney, a lot of people, they get a little fearful when they get a nasty letter from an attorney, so instead in that case, I skipped the DMCA or I held it off for a while, and went with a cease and desist letter.

If you have somebody who's ... I wouldn't do them for blog posts personally, because like you're saying, people are gonna steal those right and left and it really becomes expensive to try to fight it all the time, but with a course or something substantive, in that case, you may want to hire an attorney.

Because what a cease and desist letter says is basically what you would think, if you think about what's a horrible letter from an attorney and it says, "Dear Jerk, I represent Pat Flynn ... blah, blah, blah, and we have this copyrighted course and we recognize that you're selling it in an unauthorized manner," and then you make various substantive threats based on what the copyright damages are for something like that and the things that can happen.

So again, in a course type of situation, you know, or something valuable that's being stolen, not just a blog post, but something that has inherent value, that would probably be the best way to go, and in that case, you know, it obviously worked, and they took it down.

In a more traditional case, if that's not really a possibility or doesn't look like a good option, with a takedown notice, basically what you're going to do is you're gonna send them a takedown notice. The takedown notice is just basically five, six elements that you have to put in it, and what it is, is basically the first element is you have to identify the infringing material via the URL. So, we would look at the site and what's the URL, where that page is appearing.

Two, you would have to post the URL on your site where you have the original content, then you have to make a statement under penalty of perjury that you have a good faith belief that they don't

have the right to use it.

Another declaration saying under penalty of perjury saying that you are authorized to submit this takedown, and what that means is either you're an authorized agent, such as myself an attorney, or you're the person that owns the copyright, such as yourself, Pat. And then finally, you sign the notice by saying, "I hereby signed the notice."

Once you submitted that, the DMCA is triggered and at that point, that site has to take down that content, if it's user-generated content. Now, what really happens in a lot of cases, is that it's not user-generated content, the site owner just stole the content. So in that situation, the best way to deal with it is really go hunt down their host, and you can do that by doing a Whois search for their domain, and then looking through the domain listing. They will often list the hosts, sometimes by sequential numbers instead of the actual host, but you can do a search for those and you can often find the host. Sometimes you have to dig a little bit.

But when you find the host, you can submit the DMCA takedown to the host, and here's where it gets kind of interesting. Under the DMCA, a website is protected so long as they comply with the compliance process. One of the factors of that is that they have to keep a list of repeat infringers, and as the name suggests, these are people who are constantly getting complaints against them.

And the number is surprisingly low, maybe three a year, two to three a year, two to three every two years, the company will actually set its own policy, in this case, the host. And if that person gets that number of complaints, the host will take down their site, and will cancel their account and will terminate them. That's how you can get them to take down the whole site.

But if you're looking just for the content yourself, when you send in that DMCA takedown notice, the host will go to that site and will either take down the page, or will send them a notice saying, "Hey, we received a copyright infringement complaint. We're gonna take

down your content in one or two days, and you need to respond.” Now at that point, 95% of the cases, that content is going down because they don’t have any justified reason for using it.

Just to carry out the process, if they were to do what’s called a counter notice and say, “No, I have a right to use this.” The host would then send that information to us, as well all the information they have for them about their address, their name, things of that sort, and then we would have 10-14 business days to file a copyright infringement lawsuit against that party in federal court.

And so that’s how the DMCA basically works. Again, when you submit a DMCA takedown notice to a host, in 95% of the cases, that’s just gonna take care of it.

Something else that can come up if you’re dealing with a pure black hat practitioner is that they’re gonna host outside the United States, so Amsterdam or somewhere like that, and the DMCA is only a United States law. Now, there are treaties that it’s supposed to be enforced in other countries, and if you want to spend 80 grand in attorney’s fees, then we can go through that process. Most people don’t, that’s why the black hat persona is using these off-shore entities.

At that point, what you do is you look at their payment processor, and you look at their monetization strategy, and you try and identify any companies in those two areas that are in the U.S. So, in your situation when we were dealing with one of the courses being stolen, I hunted their payment process and found out that they were using PayPal.

Well, PayPal is a U.S. company, and so if we would have not been able to resolve the matter without too many problems, I would have served a takedown notice on PayPal, and PayPal would have closed their account and seized whatever money they had in there. As you can imagine, that has quite an effect.

Pat Flynn:

Right.

Richard Chapo: It will slow people down.

The other side of that is that if they're promoting affiliate sites or anything of that sort and any of those are in the U.S., and often if they're not in the U.S., you can send a notice to them as well, and they will often act.

The one fortunate thing that we have being in the U.S. is that we are a huge commercial market and a huge consumer market, so most companies will be doing business with the U.S. in one form or another, and as long as you can identify those areas, you're usually in good shape, and you'll be able to get it taken down.

Now, there is one caveat to this that came up in the case where your course was stolen. There were other courses stolen on the site and one of the questions that was raised was ... It had your course taken down, but it didn't have the whole site taken down, and why wasn't that the case.

Well, the DMCA only deals with the content that has been stolen, it doesn't deal with the whole site, so if you think about ... It makes sense if you think about it on a bigger scale, think about Facebook. 1.4 billion users ... Facebook can't obviously monitor it all, and so if somebody posts a cartoon or a photograph from a magazine or something on their site, there's clearly copyright infringement.

You know, if the copyright holder was able to make a complaint that resulted in all of Facebook being taken down instead of that particular post, it would be chaos, and the internet itself would grind to a halt, so that's why you can't do that.

Again, and there are measures for dealing with that, which is mostly the repeat infringer, that's kind of why that's provision is there, so that if it is somebody that is getting constant complaints, all of their stuff will be taken down and that's the general hope.

Pat Flynn: Hmm. Interesting. Okay, now my question is, okay ... Is simply creating a course enough for you to go out and give these

takedown notices if people steal them, or is there something that I have to do as a course creator to make it official or make it, “Yeah, this is ... You’re stealing.” Because it’s like at what point does it become officially a course?

Richard Chapo: Well, that’s a good point, and there’s some interesting detailed legal analysis on that. My general position is once you publish it.

Pat Flynn: Once you publish it.

Richard Chapo: It is actually copyrighted before then. It’s really copyrighted when you finish it, but there are questions ... How do you establish exactly that date? When dealing with other companies online when you’re serving a takedown notice, or something of that sort, it’s so much easier if you can just say, “It’s on the site. It was on the site at this date,” if anybody asks questions.

And obviously that date is going to be before the person who stole it put it up on their site. And you can use the way back machine and other vehicles for establishing that, so as long as you can show that your original content was up before the copied version, you’re gonna be fine.

Pat Flynn: Cool. Okay, so what can we do right now to protect ourselves, whether we have a course or not, but to just keep us in the safest place possible?

Richard Chapo: Well, I mean ... I think there are two ways to break it down. One is how to stop people from stealing your content, so why don’t we talk about that first.

Pat Flynn: Sure.

Richard Chapo: Basically, the simplest approach is to learn the takedown notice process. So, we just talked the six elements. If you do a search online for takedown notice example, you’ll see them. This is a basic form, there’s no magic to it or anything. You’ll see copies of them, and then you have those and you want to put those together.



If you see your content stolen somewhere, and then you're gonna serve it on whoever the host is for that site ... you know, that's typically where ... Well, typically I will actually send it to the site first. I give them a chance, because sometimes what will happen ... Let me give you an example.

There are a lot of people that build websites out there for medical practices and lawyers and people like that, and the professionals or the individuals in the business don't really know anything about copyright, and so people, particularly freelancers will build a site and they'll use copyrighted content without getting permission, and then they will publish it. I have a chiropractor that this has happened to, and they started getting notices from ... The chiropractor started getting notices from Getty Images about ... He was infringing on their content because there was an image on the site that had not been purchased, and he had no idea.

And I talked to the webmaster, and the webmaster had just taken it. The web designer had just taken it and republished it, and so you're gonna run into situations like that. So sometimes just sending a message directly to them saying, "Hey, what are you doing?", will get it taken down. If not, then do the takedown notice.

Now, unfortunately the law is getting a little more complex than it used to be, and we have to blame a baby and Prince, Prince the musician. What happened was, was there was a case that involved a dancing baby on YouTube, it was a case called *Lenz v. Universal*. Universal was the publisher for Prince, and it's a dancing baby and the baby dances for I don't know how long, but they sampled a Prince song for 20 to 29 seconds depending on how you count the provisions of the song there in the video. 10 years of litigation occurred over whether this was copyright infringement or not, and it's a fascinating discussion on wasted money on legal fees and all kinds of just ... Everything that people hate about the law, this case pretty much exemplified it.

One of the things that came out of the case however though, it was last year ... the 9th district, 9th federal district, which covers

California, Oregon. They basically said that before you serve a takedown notice, you have to do a fair use analysis and have a reasonable belief that there is no fair use defense to the use of your content.

What does that mean? Fair use is a subject I hate explaining because it's very amorphous under law, it's very vague. There's no bright lines, but basically what fair use is the idea that you're using the content in some way that has a defensive exemption to an infringement claim.

Think about a parody or think about a movie review where somebody uses an image, something of that sort. That's fair use. They're clearly not copying 10 seconds out of the next Star Wars movie for the purpose of selling it and making money. They're just doing a review, so that's news.

Or if you do a parody where you do some sort of a mock up, Spaceballs. Spaceballs was a movie that was a parody of Star Wars. Those kinds of things are going to be fine, but when you're considering the fair use defense, you have to consider some basic elements, and I hate them so much that I actually wrote them down.

One is the ... Basically what fair use is, is the copying of copyright material done for limited or transformative purpose, such as comment on, criticize, or parody. As long as you do that, you don't have to get permission from the copyright owner.

The courts look at four elements. One is the purpose and character of your use, and what that basically means is did you just copy it and republish it or did you add anything to it, so if you've added something to it, or you've made some changes or something substantive that's significant ... You think of a rap song that's sampled someone else's music, then that's in your favor. That would suggest a fair use element there.

The second issue is the nature of the copyright at work. What we're talking about here is, is the copyrighted work something that was

fully created by the person, the copyright owner, or is it something that was created by them, but incorporates a lot of things that are not copyrighted.

For instance, you cannot copyright facts, so if I was to write a book, and you know a timeline of CIA actions, and it's just citing facts ... this date this happened, this happened, the copyright on that book is much weaker than if I just went out and wrote the latest Harry Potter book. Obviously, that's all gonna be fiction. It's all created by J.K. Rowling, and so in that situation, the courts are gonna view the fiction novel as having a much stronger copyright, because it's really a creative work.

You're gonna look at that situation. The third issue is the amount of the portion taken. If you think about the baby case we were just talking about, they didn't sample the whole song. They just sampled 20 seconds while the baby is dancing and then we spent 10 years arguing over is 20 seconds too much or not, and that's the nature of fair use.

That fourth element is the effect that the use has upon the potential market. As we were talking about with your course, this person is republishing the course, you're not getting any income out of it, and they're republishing it at an 80% discount. That's obviously not going to be a fair use defense. They're using it purely to profit and it's hurting you economically, so in that situation, the fair use defense fails.

The reason why I hate fair use defenses is two-fold. One, unless it's just an obviously case such as a parody, whether an act is considered fair use or not, is only determined at trial in your copyright infringement case. You only learn whether you qualify or not, after spending many, many of dollars ... tens of thousands ... hundreds of thousands of dollars at trial, and it's an argument that's made to the jury, and the supreme court has wrestled over which one of these four elements is important or not important, and you will see cases that are very similar factually that get decided differently, primarily because one side or another has a better

lawyer than the other side.

It's really just an argument that's made in court, and so unless it's an obvious case, fair use is something that you generally want to be kind of leery of, and I know people get online and they scream and yell and pound their fists, "This is fair use!" You say, "Really, cool. Great. Give me 50 grand and then we'll go prove it on court," and then suddenly they're not as excited.

When looking at content that somebody has stolen from you, just look at it and try to keep those elements in mind, which obviously you won't, but just look at it and try and think, "Is there a substantive reason for them to do that? Is there some kind of a verified use for that? Are they criticizing me? Are they doing a parody? Is there some element to it that would potentially substantiate it?"

To give you an example, let's just use your sample so that we can go through it and show it. When that site had your course, they stole it, they republished it, they republished the sales page, and they were just selling it, so if we look at the four elements.

The purpose of character of the use, did they add anything to that content? Did they add anything to the court? Was there any kind of addition or anything that added value to it? No. They just stole and used that course, so that element of fair use failed.

You know, the nature of the copyright at work. Well, you created it from scratch, so that your course is much more like a fiction book than it would be some sort of factual recitation, so in that sense again, no not fair use.

The amount of the course that was taken. They took the whole thing, so they failed on that one, and then did it hurt you economically, and obviously, if somebody sells your product at 80% off and isn't even giving you a piece, then I'm gonna say yeah.

In that case, all four elements failed, so we could go after them, and that's an unfortunate development and unfortunate legal

requirement. Again, right now, it's only really in the 9th district, and the court has received so much criticism I'm not sure how much longer it will last, but that it is kinda where it stands there.

In the rest of the U.S., you don't really need that. You can just go forward and file a takedown notices, and it's not a big deal. That's the big element of that, and then again, who to serve notices on, really you want to focus on ... I would always contact the site first, unless they're just obviously stealing your content trying to make money off of it, and in that case, to me, the host is the place to go.

And the reason being is that the host, obviously, is hosting thousands of sites, so one, they understand the DMCA implicitly, and two, maintaining their reputation is very important to them, and they make sure that they get rid of repeat infringers. If we talk about Bluehost, we talk about any of the big guys, GoDaddy, whatever, they're very cognizant of this, because if they blow it, and they don't get rid of their repeat infringers, they can run into huge problems.

Pat, you're out here with me in San Diego, are you on Cox or are you on Time Warner?

Pat Flynn: I'm on AT&T.

Richard Chapo: AT&T, you rebel. I'm on Cox, and so whoever we're talking about is the cable provider, and Cox recently ran into a wee bit of a DMCA problem. What had happened was, Cox was receiving complaints, DMCA complaints, from big content producers, music producers and movie producers, and what they were saying was basically, "Hey, your users are posting this content. You should comply with copyright infringement law and the DMCA, and do this." And Cox did.

And so what they would do is they would cancel accounts for people that were just obviously repeat infringers of music and what have you. Problem was, one of the music producers I think, started realizing that these people were getting back online, and he couldn't figure out how, and so they sued Cox, and it was part of the

discovery process where sides exchanges documents and things, and the email came out, and what the email said ... It was from a manager at Cox, and he was telling the entire sales staff, “Okay, here’s what happens. If we have repeat infringers, you need to cancel their accounts,” and then I don’t remember the specifics, but it basically said, “After 45 days, contact them and sign them back up again.”

Pat Flynn: Whua wuah.

Richard Chapo: Yeah, well whua wuah 25 million dollars, whua wuah. That was the judgment against them, because they were failing to get rid of those repeat infringers, and I can guarantee you every host company is fully aware of that, so if they’re getting your complaint about a site, they’re gonna react, and it may take them a few days. Google gets something like 8 million complaints a month, so you’re gonna have to wait a week or so for them to get around to it. They have a herd of people trying to deal with these issues, but with a host, you can always get that.

And that is one final thing that I skipped that let me mention, in some cases you’re gonna get really unlucky and the person who takes your content is going to be all off-shore, so we’re talking about somebody who lives in Brazil, they’re hosting in Amsterdam, their payment processor is in Germany, and they’re taking the money as Bitcoin, so what do you do in that situation?

The answer is, you either go spend a bunch of money chasing them around the world, or you try to cut off their traffic resources. You can go to Google, Yahoo, and Bing, and submit DMCA takedown notices there, and they will pull that link to the stolen content, which can help. You can try it with social media, and sometimes it works, sometimes it doesn’t, but that’s really the best approach that you’re really going to be able to take in that situation.

A lot of cases, if you can get rid of the search engine traffic, the site tends to disappear, but that’s unfortunately the situation you’re in. Beauty of the World Wide Web is that it’s world-wide, the downsize



is that it's world-wide, so sometimes trying to enforce this can be difficult.

Pat Flynn: Some websites like YouTube have their own copyright infringement forms that you can fill out.

Richard Chapo: Yes.

Pat Flynn: I've done that several times. I've had a few people who have literally downloaded my videos and then republish them as their own, even though it's my face on there ... you know, the same content, and there's thousands of views, and they're running ads, and they're making money off it, and they're not linking to me at all, and even if they are, that's just not cool.

Richard Chapo: Yes.

Pat Flynn: And so, YouTube has a form. It's really easy to fill out, and this is just like these other ones where you put in your name, address, all the stuff. You link to the infringing video, you link to the original one, and all this other stuff, and I've had those been fixed within 24 hours, you know, YouTube's pretty fast and Google, relatively, for how many they get, that they're really fast too.

Richard Chapo: Yep. No. It's a definite problem. One of the things you will see with those sites because they are large, is that they often will not automatically take down the content, so what you're talking about they will, because it's just an obvious infringement. If there's an area that's a little bit more questionable, sometimes they will not just because they believe in free speech, and my threat to them quite frankly has been, "Well, you're waiving the DMCA," and Google says, "Well, look at our balance sheet, and we're not exactly concerned," because they have the money, I'm having to deal with that.

So, even if they were found as a co-infringer or joint infringer with somebody, they have so much money that's not really gonna matter. If the EU fining them 2.8 billion dollars, they're really not afraid of

me.

So yeah, that's a definitely situation. It kind of brings us to the second side of the DMCA, which is also very important, which is protecting your site from the concept of if you have users posting to your site, so some sites-

Pat Flynn: Even in the comments too?

Richard Chapo: Yes, in comments as well. Comments, the chance of you having a copyright infringement problem in your comments is very low, but the price of complying is so cheap that you might as well do it, and particularly because Europe has some very bizarre views on copyright infringement.

So in Europe, they've actually had some cases where they've said that if you link to content ... excuse me ... that is infringing, then you can be found liable if you knowingly did it, which is just horrible. It's a terrible, terrible interpretation, because if you think about it ... I mean, I link to stuff all the time, I have no idea if it's original or not.

Huffington Post, Yahoo, I mean, they link to all kinds of different things, so it's somewhat of a clash between practicality and the law, but it is out there. We don't have that rule in the U.S., although linking is still shockingly open to a lot of different legal interpretations.

But anyway, so let's talk about your site. So you have a site or an app, and you're gonna allow people to post to it in one form or another, which is almost always the case these days. There's almost always some form of interactivity, so the question then becomes well what if they post something that is infringing on somebody else's copyright?

Again, we look at the Facebook example. Somebody posts a meme or an image or whatever it may be. At that point, under traditional copyright law, because you have it on your site, you are technically, potentially jointly liable with them for copyright infringement, and so

the answer has been through the DMCA is what you might want to do is you want to comply with the DMCA compliance process that is going to give you immunity. It's called the Safe Harbor Immunity. It's found in Section 512(c) of the DMCA, and I'm sure all the listeners will go look at that section.

Basically, what it says is as long as you designate a DMCA agent ... This is a person that's gonna be listed on your site. If you go to Smart Passive Income, and you go to the bottom of the site and you click DMCA, you will see yours truly listed in the DMCA policy. This is a person who will receive copyright complaints regarding anything on the site that users uploaded. Facebook has one. Everybody has one.

This agent has to be registered with the copyright office, and it's a ... They're listed in a public domain that's online, so everybody can see them, but you need this agent. Now, once the agent receives a takedown notice, that we talked about with the six elements, at that point, they are then going to communicate ... If they work for the site, they're just going to take down the content, or if they're an independent agent like myself, and then I'm gonna contact the site and talk to them about, "Look, you need to take this down," and here's an area where the DMCA gets a lot of criticism that a lot of people don't understand.

If a copyright complaint comes in, the content in question has to be taken down. It must be taken down. It's not a choice. You don't look at the content and decide yes or no. It must be taken down under the law, so if somebody submits something to your host saying that you're infringing, and the host just takes down that page, or God forbid, your whole site. They're doing that because the law requires them to do that.

So, just a few seconds ago I said some of these bigger entities won't do that. Why won't they do that? Because they don't care if they waive the DMCA protections. You know, a copyright infringement case, worst case scenario that you're Drake and you completely rip somebody off, rip somebody else's songs or lyrics

off or whatever, you know, maybe to 10 million dollars, which to you and me and to most people, is a ghastly amount of money, but to YouTube, Google, Facebook, Instagram, it's not.

But, so that's what's gonna happen in that situation, and then you're gonna take that content down, and then at that point, a notice is sent out to the person who posted it, if you have contact information for them. Typically, you will in one form or another, and you send an email saying, "Hey, we received a copyright infringement from Evil Record Producer Company. We've taken down your content, if you want to file a counter notice with us, please do so. You may want to talk to a lawyer."

Now again, in 95% of cases that's the end of game, and the content is down, and it's all done. In the 5% of cases where they come back and file a counter notice, at that point you're going to say, "All right," and you send that off to the copyright holder who made the original content ... the original complaint. As well as any information you have regarding that person, and if you don't hear back from them in 10 to 14 days, between 10 to 14 days after receiving the counter notice, you republish the content.

And at that point, the copyright holder has to decide whether they want to go through the expensive process of filing a copyright infringement case in federal court. If they do file that, they file it against the person who posted the content, not against you, so your site is protected. That's the whole beauty of the DMCA.

If, Pat, you were to post something on Facebook that infringed on one of my fascinating legal arguments on my blog, legal articles, and I sued you for copyright infringement for doing that, I couldn't sue Facebook. And so, that's the advantage with your site, and that's why you always want to comply with your site, because it's gonna protect you from the number one legal claim that arises online, and that's the steps that you take.

If they do go through that process, sometimes they will try to name you as a defendant. Any lawyer that has half a brain, can get you

out of that case quickly, because the judge will see. You might have to go to what's called a summary judgment, which means you would have to sit around for a while to get out, but you will get out, and that's the basic process of dealing with that.

One thing about all of this that you do need to know is that in 2016, our tax dollars at work, the United States Copyright Office finally launched an online DMCA agent registration system, and despite the law being passed in 1998, for roughly 18 years, you had to send in filed paperwork to get it done. It literally took two months to get registered. They had one poor clerk who was doing all the work for the entire world, and it was just chaos.

They've now launched an online system, and you can go in there ... I'll include links. I'll give Pat links so you that they'll be in the notes, and you can go to the system to try to get registered. There are videos and what have you. It's very simple, and it costs an extremely obscene amount of money, \$6, and it's renewed every three years, so you'll have to pay \$6 every three years.

But basically what you're going to list is the name of the agent, and it can be yourself as a site owner, the street address, the real street address, not a p.o. box or any of the shenanigans that a lot of us have used in the past, a phone number, and an email contact for the site, and you also have to list all of your online properties.

For people who are working from home, who might be a little alarmed about one of their fans appearing on the doorstep, you can use a DMCA agent service. Full disclosure, I have one. It's [dmcaagentservice.com](http://dmcaagentservice.com), and basically what we do is we list ourselves instead of yourself, so that your name, your phone number, and your email are not out there.

There are a couple of different groups that do it, and that gives you some privacy. It doesn't give you a ton of privacy, because you still have to come up with a street address, but if it's a worst case scenario, where you're really concerned about your safety, we can petition the copyright office, and they will sometimes let you use a

p.o. box, so there are solutions for it.

But going ahead and doing that process is really going to protect you. It's going to be really important to do. That's one of those things that you can do once, and you'll probably forget about it, because you're not going to run into a lot of issues, but if you have sites where you're allowing people to post videos or anything of that sort, you really want to take that step, because it just it gives you ... It's like buying insurance, and it costs you six bucks.

Where can you find more about all of this, there is a great book called the DMCA Handbook, and it was written by an attorney in Arizona, and it's on Amazon. Unfortunately it went out of print. I did recently speak with her however, and it's going to come back for a second edition, apparently some time in October or November, so you can look on Amazon to pick that book up if you need it, and it basically explains the process of, okay, you have a site. You're gonna allow people to post to your site, how do you deal with the DMCA.

If you need an attorney for one of these things, obviously just ... you can literally contact ... I'm in California. Attorneys are licensed by state. You can contact any copyright attorney in your state or in your town. There should be one, at least one, and you can contact them, and they'll be able to help you with it. At least, guide you with it ... guide you through the process.

But the DMCA is very controversial with users. It's very controversial with copyright owners, but for businesses, and that's you if you're launching a site online, it is incredibly value. There's very few laws that give you immunity completely from monetary damages for liability in any area of business, and this is one, so really, really, really take advantage of it.

Pat Flynn: Okay, so the one call to action that you have for people would be to once again what?

Richard Chapo: If you have site where you're gonna allow people to interact on it,



get in compliance with the DMCA.

Pat Flynn: Is that including comments?

Richard Chapo: That does include comments. I would do it for anything, because I've looked through comments on some of your posts and sometimes people will post an image or a video or something, or they can even quote somebody else. If you quote somebody else, you sometimes can run into infringement claims, and obviously there are tons of memes or what have you that quote people, and you don't see anything come out of that, but you never know.

Again, it's only six bucks, so you know, if you want to get a bang for your buck, this is the place to do it. I would definitely do that, and with stolen content, go look up the takedown notices. They're really simple. I probably made it sound far more complex than it is. They're really simple, and then just hunt the host of the site that is stealing your content and complain to the host, and the host will 99.9% of the time deal with it.

Pat Flynn: Cool. Thanks Richard. If people have questions, are they welcome to ask them in the comment section of this podcast episode for you?

Richard Chapo: Sure. Yeah, add some comments. You can also reach me at my site at SoCallInternetLawyer.com, and if you need a DMCA agent, you can contact me through dmcaagentservice.com ... very creative title. We charge 70 bucks a year, but I'll give you a discount. I hadn't actually thought about that. How much of a discount will I give?

Pat Flynn: I'll leave it up to you man.

Richard Chapo: Come on. How about a 20% discount if you mention Pat's podcast.

Pat Flynn: 25.

Richard Chapo: 25? What am I, made out of money. Okay, 25.

Pat Flynn: Yeah. See what I do for you guys? You guys are awesome. Check

out Richard, he's been great. He's been so supportive of me, and he's helped me through so many situations, and I'm gonna continue to work with him, because he's fantastic, and if you're in California, definitely look him up for sure, so.

Any final parting words? I know this is maybe quite exhausting for people to listen to Richard, maybe a little bit overwhelming for some as well. Any calming tips from somebody who knows all this stuff to help people out?

Richard Chapo: I think that using common sense with copyright is really something that can help you. The DMCA can sound confusing, particularly probably the way I presented it, but once you do it, it literally ... if you spend three hours going through it and running through processes, you'll have it down, and you'll be protected forever.

It's a good investment, again, watch out for the DMCA Handbook. Again, it should come out in a couple of months, so if you can get it, download that. She explained ... The attorney's name is ... I've forgotten her first name. Mablesen, I believe is her last name, but she explains it, not in legal terms, she explains it in, "Okay, you own a site. You know, here's what you do," and I think she even gives you sample messages to send out to somebody, so it's very helpful. I think the book is a little expensive, it's like 45 bucks, but it's a lot cheaper than hiring me.

Pat Flynn: Cool. Richard, thank you so much. I appreciate you. We'll link to everything you mentioned too in the show notes, and if you have any questions head over to the show notes page on the blog, and Richard will be there to support you.

Thanks man. I appreciate it.

Richard Chapo: Great. Hey, thanks for having me on.

Pat Flynn: All right, guys. I hope you enjoyed that. Well, it wasn't really an interview, more like a conversation. A lot of information I know. So, again like I said in the beginning, make sure you head to

[smartpassiveincome.com/session307](http://www.smartpassiveincome.com/session307). Remember that number 307 in case anything happens to you and your website or your course, you can come back to this and reference it for how to handle that situation, and I do hope that never happens to you, but once you get to a certain level, it will.

And so, just be aware that this stuff exists, but also, this episode exists to help you as well. If you could go to [smartpassiveincome.com/session307](http://www.smartpassiveincome.com/session307), in case you have any questions. Of course, the links are there like I said, but if you have questions or want any clarification on this, Richard, he does a good job of coming in every once in a while, so although he may not be able to answer your question right away, he does go in there, and of course, if you want to check him out, you can go to [SoCallInternetLawyer.com](http://SoCallInternetLawyer.com). You don't have to be from Southern California to work with him, but he is somebody who's great, and who has helped me out quite a bit. And if you want to check him out, again, [SoCallInternetLawyer.com](http://SoCallInternetLawyer.com).

And hey, really quick, if you need to designate a DMCA agent for a website or an app or something like that, like Richard was saying, you can go to his website [DMCAAgentService.com](http://DMCAAgentService.com). Not an affiliate link or anything like that, just want to help him out because it can help you out too. This is where you designate a DMCA agent for a website or app, if you don't prefer to use your name or phone number or email address publicly. Again, that's [DMCAAgentService.com](http://DMCAAgentService.com).

Hey guys, thank you so much for coming in today. I appreciate it. We got a lot of great stuff coming your way. I cannot wait to share the upcoming information with you, and in order for me to make sure that I get it to you, make sure if you haven't done so already, please subscribe to the show. All you have to do is, whether on your device or online, just head over to iTunes or Stitcher or Google Play, and just subscribe to the show, and if you leave a review, that's just a bonus and I read all of them, from all the different countries, and I just thank you so much for all your honesty and your feedback.



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So, one more time, thank you so much, and again my name is Pat Flynn. I'm here to help you make more money, save more time, and help more people too. Cheers, and I'll see you the next episode.

Bye for now.

Announcer: Thanks for listening to the Smart Passive Income podcast at [www.smartpassiveincome.com](http://www.smartpassiveincome.com).



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