

Environment and Communications Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Australian Digital Alliance
Inquiry into the Copyright Amendment (Service Providers) Bill 2017
6 March 2018

Please find below responses to the Questions on Notice taken by Jessica Coates, Executive Officer of the Australian Digital Alliance, from the hearing of the Committee held on 6 March 2017. Amended version received 16 March 2018.

QUESTION 1: Hansard page 24 – Senator Steele-John

Senator STEELE-JOHN: Earlier in your opening statement you talked about the fact—it's quite a shocking statistic—that in the last decade we've seen one user generated content platform really come to success in Australia, that being Redbubble. Off the top of your head, can you inform the committee how many similar platforms have been successful within the US and the EU, where these harbours apply, in that same period of time?

Ms Coates: I will have to take that question on notice, but I can certainly say that, as we all know, in the US it would have to be dozens if not hundreds of platforms that have been successful to the level of Redbubble.

ANSWER: We have been unable to identify a complete list of comparative platforms in the time provided, due in part to determining an appropriate definition of “similar platforms” and “successful”. We have, however, found the relevant statistics below.

Considering just print-on-demand platforms, there are at least 6 companies based in the US that are immediately identifiable as competitors to Redbubble (amazon.com, etsy.com, Society6.com, zazzle.com, cafepress.com, threadless.com). These range in success from amazon.com (ranked 11th globally and 5th in the US on Amazon Alexa's website ranking service) and etsy.com (188th globally; 63rd in the US) to cafepress.com (9,904th globally; 2,834th US) and threadless.com (18,076th globally and 6,640th in the US). As a comparison, Redbubble.com is currently ranked 1,341th globally and 578th in the US. If all user-generated-content reliant sites are included, the numbers are extremely difficult to quantify, and include sites such as Youtube.com, ranked 2nd globally.

Of the top 20 global websites according to Amazon Alexa (<https://www.alexa.com/topsites>), 11 can be identified as predominantly reliant on user-generated-content (including both social media platforms and marketplaces). None are Australian-based.

Of all the social networking websites used by Australians¹ surveyed for the [Sensis Social Media Report 2017](#), none are Australian-based.

¹ Top websites were: Facebook, YouTube, Instagram, Snapchat, Twitter, LinkedIn, Tumblr, Google+, Pinterest, Reddit and Vine. See Sensis Social Media Report 2017, p 17.

QUESTION 2: Hansard page 25 – Senator Steele-John

Senator STEELE-JOHN: I'd like to take you to the other side of the process, which is the consumer protection aspect of this expanded framework. You mentioned that quite often, because of this appeals process, there is the likelihood that a take-down notice has been issued that is actually wrong and that this allows some kind of appeals process. Is there any data from the EU or the US on the percentage of appeals that are not upheld but right to be lodged?

Ms Coates: Yes, there is quite a bit of data, but I'll have to take it on notice.

ANSWER: Data on the upholding of counter-notices is not well reported. However, some of the existing data was collected and analysed by The Center for Internet and Society at Stanford Law School as part of its filing in response to the U.S. Copyright Office's 2016 Notice and Request for Public Comment on notice and takedown practice under the Digital Millennium Copyright Act (DMCA). Of the four services that it quotes regarding counter-notice statistics, two state that the counter-notices were upheld one hundred percent, or close to one hundred percent, of the time.

The relevant excerpt, with links to its sources, can be found at <http://cyberlaw.stanford.edu/blog/2017/01/dmca-counter-notice-does-it-work-correct-erroneous-takedowns>.

There is also substantial statistical evidence on the inaccuracy of takedown notices. A good summary of this is provided at [Notice and Takedown in Everyday Practice](#), a major academic research project and report into the practicalities of the DMCA notice and take down process. It finds that approximately 30 percent of notices include inaccuracies. A further summary of its findings is at <https://www.lexology.com/library/detail.aspx?g=021280af-ab64-4860-8906-17c1b78561b4>

Google notes that the vast majority of the removal requests Google receives are legitimate. But illegitimate and mistaken takedown notices are also a fact of life for OSPs like Google. (See [How Google Fights Piracy for examples](#), at 16-18).

Additionally, [Google has noted](#) that “a significant portion of the recent increases in DMCA submission volumes for Google Search stem from notices that appear to be duplicative, unnecessary, or mistaken.... [a] substantial number of takedown requests submitted to Google are for URLs that have never been in our search index, and therefore could never have appeared in our search results. For example, in January 2017, the most prolific submitter submitted notices that Google honored for 16,457,433 URLs. But on further inspection, 16,450,129 (99.97%) of those URLs were not in our search index in the first place. Nor is this problem limited to one submitter: in total, 99.95% of all URLs processed from our Trusted Copyright Removal Program in January 2017 were not in our index.” (at 6-8)

There are also a number of groups that collect examples of inaccuracy of takedown notices, including:

- US-based Electronic Frontiers Foundation maintains a Takedown Hall of Fame

<https://www.eff.org/takedowns>

- Fight for the Future, which runs <http://takedownabuse.org> a campaign website advocating against expansion of the DMCA notice and take down scheme in the US, collects DMCA Horror Stories.