



Meta Description: This article examines the facts of the case, including the circumstances that gave rise to the suit, the arguments of the parties in the lawsuit, and the potential fallout for YouTube (or) Google, though they are not the defendants in the suit.

Bungie v Does: False Takedowns Bring YouTube's DMCA Process Under Scrutiny

After a DMCA takedown blitz occurring in early March, *Destiny* fans would have been forgiven for believing that video game publisher Bungie was at it again after a new rash of indiscriminate strikes. Between March 17 and 24, uploads of all kinds from fans were hit with YouTube DMCA notices, causing a near-meltdown in the *Destiny* community and resulting in many fans calling out Bungie.

As it turns out, those notices were fraudulent, according to Bungie. In a [lawsuit](#) filed against ten John Does - whose identities it hopes to expose in the suit - Bungie claims that the takedowns were maliciously executed by external actors. But it doesn't end there. The suit goes ahead and rips into YouTube's DMCA process, alleging that the fake takedowns were only possible due to massive holes in the company's reporting system.



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Although Bungie isn't suing YouTube (or Google), the lawsuit's implications might force a rethink about the company's DMCA process – a subject that has been a sore point for creators over the years.

YouTube's porous copyright reporting system

Bungie's argument is that YouTube's DMCA takedown system is unnecessarily porous, particularly as it potentially allows bad actors to game the system and even sic the law on the actual copyright owner.

Over the course of March 17 to 24, various Gmail accounts, including "damianreynoldscsc@gmail.com" submitted fake takedown requests to Google, claiming that various pieces of content on the platform offended the copyright holder, Bungie's, rights. Google responded positively to the requests, issuing takedown notices against multiple content creators who say their uploads were in line with Bungie terms of use.

Under Bungie's terms, game players may upload certain content they create during gameplay, so long as it does not include protected in-game music, promotional gameplay or other clips emanating from Bungie, or other protected content. But the takedown notices allegedly disregarded these rights exemptions provided by Bungie, and strangely, also affected content uploaded on the official Bungie YouTube account.

The takedown spree spurred considerable outcry against Bungie, which was forced to make a [statement](#) on Twitter emphatically denying responsibility for the DMCA takedowns. "These actions are NOT being taken at the request of Bungie or our partners," said the game publisher in its March 20 statement.

According to the lawsuit filed by Bungie, the takedown requests did not emanate from the vendor it uses for legitimate DMCA claims – CSC Global. As per YouTube standards, which require a valid Gmail account to submit DMCA takedown requests, the vendor created an official email - davidthompsoncsc@gmail.com - which it uses to process legitimate requests. However, bad actors, who were reportedly acting in retaliation to earlier copyright action by Bungie, were able to game the system by simply adopting the same format: first name, last name, csc@gmail.com.

Further, the game publisher claims that the system provides no mechanism for determining whether the person submitting a copyright claim is the lawful owner of the disputed content. This failure allows anyone to submit a claim, so long as they provide token proofs of identity and a valid Gmail account.

Likewise, the system has no procedure to enable copyright holders whose rights have been hijacked to reclaim those rights, according to Bungie. Google required "a



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Byzantine procedural labyrinth ... before it would address the fraud its users were committing, let alone identify who its fraudsters were," says Bungie.

On Bungie's request, Google terminated the fraudulent accounts and reversed all the malicious requests. However, the game publisher says Google refused to provide the fraudulent users' identities unless the copyright holder provided a law enforcement request or civil process.

Bungie alleges that the procedure imposes an unduly bureaucratic process requiring a 'pranked' copyright holder to jump through hoops before conclusively identifying the bad actors. This makes it prohibitively expensive and tasking for a holder to enforce their rights, Bungie claims.

YouTube's case

Copyright law compels publishers like YouTube to take complaints at face value and take down offending material immediately. Copyright holders are entitled to challenge infringing content under the Digital Millennium Copyright Act (DMCA).

That right extends to taking action against individuals who breach their copyright and platforms that encourage such breach. While publishing sites which do not own the content can escape that liability, they have a responsibility to implement measures that prevent infringing actions and act promptly where infringement is alleged.

However, it's questionable whether YouTube appropriately fulfills this responsibility with its currently too-porous system. If the ultimate result of its system is that holders can have their rights hijacked, then there is an argument that YouTube has not done its job properly. Consequently, the DMCA safe harbor provision may operate against YouTube.

On the other hand, there's a valid question whether YouTube can really do anything YouTube to correctly identify copyright holders. How does the publisher go about this? Is it even possible, considering the fact that copyright holders typically do not need to register their rights?

Conventionally, there are certain options available to someone looking to determine copyright ownership. For instance, one may contact the U.S. Copyright Office for information about the copyright status of a work at (202) 707-9100. Likewise, accessing the [Copyright Office Circular 22](#) or executing an [online search](#) can provide some guidance, but will this suffice for the wide-ranging content that Google publishes?

An objective view of the situation reveals these options may be woefully inadequate. The U.S Copyright Office caters solely to works created in the United States, and



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YouTube is a global platform, publishing works from virtually every country. Thus, while the U.S may have a copyright registration office, not every country has one.

Further, YouTube is a global platform, and the steps required to verify the identity of copyright holders would vary per country, making this an arduous process for the publisher to implement. And that responsibility would be massive, considering that, since it is unnecessary to register a copyright, there's potentially hundreds of millions of content on YouTube without official copyright registration.

Potential fallout?

The DMCA's Safe Harbor rules states that a service provider cannot be held liable for copyright infringement if they fulfill all of the following requirements:

- They did not have actual knowledge of the infringement; that is, they were not a party to the infringement - in any way.
- They were unaware of the facts or circumstances from which infringing activity is apparent.
- When they received knowledge or awareness about the infringement, they acted expeditiously to remove or disable access to the infringing material.

In relation to the third requirement, while YouTube responded quickly to the, ultimately false takedown requests, can it be said that YouTube acted expeditiously in favor of the copyright holder? The platform's eventual responsibility is to the actual rights holder, and as Bungie's lawsuit claims, YouTube has not been particularly expeditious in attending to the game publisher's concerns.

Additionally, the alarming porosity of YouTube's copyright raises questions whether YouTube provides any sort of adequate protection to copyright holders as required under the Safe Harbor rules.

Another key factor that might operate against YouTube is their lack of a settled mechanism for copyright holders who had their rights hijacked or suffered impersonation. Perhaps it never even occurred to them that a copyright holder could be impersonated, although that would be a strange argument, considering the notoriety of the platform's copyright complaints system and the many complaints expressed against it over the years.

Then, there's also the question of YouTube's lengthy remediation process that requires a law enforcement request or evidence of a civil suit before providing information about bad actors. While an aggrieved rights holder with the financial backbone of Bungie might have no difficulty in maintaining a civil suit against unknown persons, what about the average creator?



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Overall, YouTube may face serious questions over these issues. Will YouTube see greater scrutiny regarding its copyright reporting system? Could they potentially face a lawsuit under the DMCA's "Safe Harbor" exemption?

Update February 18th 2023

Bungie has made some headway in its effort to hold accountable the malicious DMCA actors sued in the *Bungie v Does* case. After lengthy investigation, the company has filed [a \\$7.6 million lawsuit](#) against YouTube creator Lord Nazo who it alleges issued ninety-six fraudulent DMCA takedowns in the March blitz.

The complaint claims that Lord Nazo, whose real name is Nicholas Minor, issued the fake takedown notices in retaliation against Bungie for DMCA strikes issued against him in 2021.

Minor's YouTube channel was hit with multiple takedown notices in December 2021 for uploading content with Destiny's original soundtracks. The content was ultimately removed by YouTube in 2022.

The lawsuit alleges that Minor hit back by opening two new Gmail accounts impersonating CSC staff, with the false names "Damian Reynolds" and "Jeremy Wiland". He issued ninety-six DMCA notices to other YouTube creators and the Destiny official account and even threatened CSC staff.

"Ninety-six times, Minor sent DMCA takedown notices purportedly on behalf of Bungie, identifying himself as Bungie's "Brand Protection" vendor in order to have YouTube instruct innocent creators to delete their Destiny 2 videos or face copyright strikes," said the complaint.

"Over that weekend, Minor's 'Damian Reynolds' account began sending threatening emails to CSC, with the subject line 'You're in for it now' and telling CSC 'Better start running. The clock is ticking.'"

Bungie conducted the investigation alongside Google. Using data provided by Google, the company traced the IP address associated with the Gmail accounts to Minor. The data also contained a list of each takedown notice issued with the accounts and "a log of each IP address used by Minor in connection with the two accounts."

Considering the onslaught directed at Minor and the collaboration between Google and Bungie, it's probably safe to say Bungie won't be pursuing Google for their porous DMCA takedown process.

On his part, Minor has [denied](#) the complaint filed by Bungie, insisting that he "denies the allegations" of the lawsuit "concerning his conduct and intent." But it looks unlikely



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that he can succeed with his rebuttal, given the strength of the evidence against him. It would be interesting to see how things pan out.



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