**Archives at NCBS**

**Notice and takedown policy**

V2. January 30 2023

Hannah James Louwerse, Archives at NCBS

1. **Introduction**

A notice and takedown policy plays an important role in the managing of a digital archive as it allows people to hold the Archive accountable for any online archive material found to violate someone’s rights. This document outlines the process of handling a takedown complaint and contains the basic conditions in which material should be taken down or restricted. Archives at NCBS is committed to making archival material available online and the aim should be to keep material online where possible, but this cannot come at the expense of another’s rights. It is important to be reminded this is simply a guide to approaching notice and takedown complaints. The use of notice and takedown has evolved over the years and will continue to evolve, so it is advised to handle complaints on case-by-case basis.

1. **History of notice and takedown**

Although starting off as a route to regulate copyright violation online, “notice and takedown” processes have become necessary in a variety of circumstances. They began as part of the Digital Millennial Copyright Act (DMCA) of 1998, to help remove content online deemed illegal due to copyright violations. However, DMCA and notice and takedown then started to be, arguably, incorrectly used to censor information through copyright complaints (Cobia, 2008). Notice and takedown processes were then used to remove personal data online as the “Right to Be Forgotten” became increasingly used in legal cases to remove information from the internet (Dressler & Kristof, 2018). The majority of literature on notice and takedown discusses the removal of information in online news articles or content from various platforms like YouTube. The situation becomes more complicated in the context of online archives because the main service of archives is to make information publicly available, preferably as objective as possible. The approaches to notice and takedown is therefore not consistent across archives with many approaching complaints on a case-by-case basis (Dressler & Kristof, 2018). In addition to complaints about copyright, personal data, or defamation many archives are also increasingly having to handle issues around contextualising culturally sensitive material, which some people may object to having available on the internet.

1. **Complaints**

When someone finds material on the Archive website which they feel violates their rights they can send a letter/email of complaint to the Archive. They must include their contact details, information about the material in question, and the reason of their complaint. The reason for their complaint may include but is not limited to copyright violation, defamation, obscenity, culturally sensitive content, and personal data. It also might be the case the complainant made a complaint about material that was put online in error (see section 4).

Upon receiving a complaint, if the complaint is valid, the complainant must be sent a receipt via email or letter. It should also include an explanation of the notice and takedown review process (outlined below in section 5). The material in question should also be removed off the website until the matter is resolved and replaced with a statement explaining how access to the material is being reviewed after a complaint.

1. **Complaints about errors**

If it transpires the complaint is about material that should have been put online, the complaint can be resolved without a review process. The material is swiftly removed, and the complainant is sent an email or letter acknowledging their complaint and explaining how the material has been removed.

1. **Review process**

If it is a valid complaint, it has been acknowledged, and the material taken offline the review process starts. It is important to document this process thoroughly to use as future reference for other cases. It is advised to have a group of people review the complaint instead a single person. This is common practice in various institutions, such as The National Archives in the UK, who have an official Takedown panel. The review process is about negotiating a balance between the Archives’ mission to make material available and the complaint’s rights. The negotiation process only ends when both parties are happy with the outcome (Section 9.)

1. **Reviewing copyright complaints**

The Archive will always try to obtain a copyright license, but there may be circumstances where copyright was not acquired by mistake or, despite efforts, the copyright holder was not found making the material an “orphan work”. The term “orphan work” refers to material where the original creator is not contactable or not known. By putting the orphaned material online, the Archive risks violating copyright. However, the notice and takedown policy creates a channel for the copyright holder to contact the Archive directly if copyright violating material is found on the online archive.

The complainant must first prove they are the rights holder by providing relevant evidence. Some institutions advise contacting the donor of the material to see if they have any information which will help clarify the situation. If the complainant is the copyright holder, the opportunity is there to rectify the matter by drawing up a copyright agreement, which all parties are comfortable with.

In more complicated cases, for example the complaint is about the copyright of an image used inside an archived newspaper article, it is the newspaper’s publisher who are at fault not the archive. Another complicated example is where a complaint has been made about copyright because material published in the archive is the same as material published elsewhere, say a book. The debate then becomes about who published the material first (Dressler & Kristof, 2018).

1. **Reviewing personal data complaints**

Although the Right to Be Forgotten has been used in various court cases, it becomes a bit more complicated when it is placed in the context of archives. Archives are responsible for keeping history and allowing people to access history. The removing or censoring of elements of history is not considered ethical practice. The reviewing of complaints about personal data therefore become a balancing act between the Archive’s responsibility to history and a person’s right to be forgotten.

There are however a couple of ways people have thought of how to handle personal data in archives. Firstly, you should consider if access to the information in question would threaten the person’s safety, for example social security numbers, home addresses etc. If so, the information should be removed. A second question to ask is whether the information can be found anywhere else online. In the case the information is available somewhere else the removal of the information within the Archive does not help the person in their right to be forgotten (Dressler & Kristof, 2018). If the information in question does not threaten the person’s safety but is only found in the archive the decision comes down to the negotiation between the ones reviewing the complaint and the complainant. There are a range of outcomes the Archive can use to make the complainant more comfortable with the situation (See section 9).

1. **Reviewing complaints around defamation, obscenity, or cultural sensitivity**

The Archive cannot be held responsible for defamatory or obscene language within material since they are only the ‘host’ of this material and not the creators. The Archive can, however, offer to add contextual information to the archival material, if necessary, to enhance the historical context of the material.

A similar approach can be taken to cases of culturally sensitive information. Many institutions, especially in Australia and Canada have made an effort to help contextualise archival material about indigenous and aboriginal people.

1. **Outcome options**

There are variety of options available to help the negotiation process. In cases of copyright, it is easy to get correct paperwork in place to retain online access. When it comes to removing online information, this can be done fully or partially, depending on what the parties agree on. Another option is to remove the material from Google searches therefore limiting one of the pathways people can reach the information.

In cases of removal a return date should be agreed upon by both parties, especially in cases where the information is helpful for the context. Any removal of information should be recorded on the website, communicating the status of the material to any interested party.

1. **Reclosure of material**

Although unlikely, it is possible a person makes a complaint triggering the notice and takedown process and the matter is extreme enough to constitute the reclosure of material within the entire archive. This might be due to the material containing information about someone who is still alive and continued online access would be unlawful or unfair to them, or a change in the law which means legally the material needs to be closed. Or the material was made accessible in error and removal is required to rectify a mistake.

In the case of a reclosure, release dates must be agreed upon by Archives at NCBS and the complainant. The two parties must also negotiate on whether it will be a full or partial closure.

1. **Statement for on website**

Notice and takedown policy

How to request the removal of material from the Archives at NCBS website

Archives at NCBS is committed to making archival material available online. This is done in good faith and every effort has been made to identify and contact the rights holders. However, sometimes material published online may be in breach of copyright laws, contain sensitive personal data, or include content that may be regarded as obscene or defamatory.

If you are concerned you have found material about you on our website for which you have not given permission, is obscene or defamatory and in terms of copyright law is not covered by a limitation or exception, please contact us with the following information

* Your contact details (including email address and phone)
* Details that describe the material (title, collection name, number of items, etc.)
* The exact and full URL where you found the material
* The reason for your request including but not limited to copyright law, privacy laws, data protection, obscenity, defamation etc.
* If the request relates to copyright, provide proof that you are the rights holder

Contact Details:

Archives, National Centre for Biological Sciences (NCBS)  
Tata Institute of Fundamental Research  
GKVK Campus, Bellary Road, Bangalore - 560065  
Karnataka, India.  
Phone: +91-80-2366-6011

Email: [archive@ncbs.res.in](mailto:archive@ncbs.res.in)

Notice and Takedown policy

Once you have contacted us, we will implement our “Notice and Takedown” policy as follows

1. We (Archives at NCBS) will acknowledge your complaint by sending you a receipt by email or letter and make an initial assessment of the validity and plausibility of the complaint.
2. Upon the receiving of a valid complaint the material will be removed from the Archives at NCBS website pending an agreed solution
3. If necessary and possible, we will contact the contributor who deposited the material and inform them their donated material is the subject of a complaint and the specifics of the allegation
4. We will make the effort to ensure the issue is swiftly resolved and all involved in the dispute are satisfied with one of the following outcomes:
   * The material is returned to the Archives at NCBS website unchanged
   * The material is replaced on the Archives at NCBS website changes
   * The material is permanently removed from the Archives at NCBS website

If the complainant and the other parties are unable to agree a solution, the material will remain unavailable on the Archives at NCBS website until a time when a resolution has been reached.

**9. List of other takedown policies**

* <https://www.nationalarchives.gov.uk/legal/takedown-and-reclosure-policy/>
* <https://www.bl.uk/about-us/terms-and-conditions/websites-and-online-services>
* <https://www.ucl.ac.uk/library/ucl-digital-collections/takedown-policy>
* <https://meap.library.ucla.edu/about/take-down-requests/>
* <https://library.stanford.edu/using/special-policies/takedown-protocol-sensitive-information-stanford-digital-collections>
* <https://splc.org/2020/08/responding-to-takedown-demands/>
* <https://microform.digital/boa/general-takedown-policy>
* <https://www.law.cornell.edu/uscode/text/17/512>

**Bibliography**

Cobia, J. (2008) The Digital Millennium Copyright Act Takedown Notice Procedure: Misuses, Abuses, and Shortcomings of the Process, 10 MINN. p. 387 [J.L. Sci. & TECH]

Dressler, V. & Kristof, C. (2008) "The Right to Be Forgotten and Implications on Digital Collections: A Survey of ARL Member Institutions on Practice and Policy" in College & Research Libraries [Online], 79.7 972. [Accessed on: Web. 27 Jan. 2023]