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| RESEARCH ARTICLE

## Regulation of Copyright Translation of Literature on Digital Platforms: A Comparative Study

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| ABSTRACT

The emergence of digital literature as an object of digital copyright is one of the phenomena of the development of information technology. However, unlimited access to digital containers can make it easier for someone to misuse a work of digital literature against rights. Each country, through its national laws, then tries to provide legal protection for the parties, including the United States through the Digital Copyright Millennium Act (DMCA) and Indonesia through the Copyright Act 2014 (UHC). This research will discuss the regulation of digital literature translation contained in the DMCA and UHC. This research is juridical-normative with the case, statutory, and comparative approaches, whose data collection is done through a literature study. The results of the study concluded that, *First*, the DMCA has comprehensively regulated the provisions of digital copyright so that it has provided legal certainty. In contrast, the UUHC has not been regulated completely, so it does not provide legal certainty. *Second*, the DMCA and UUHC are still unable to accommodate the ideal legal protection of digital literature, and *Third*, the provisions of the DMCA and UUHC also still do not provide legal benefits from the regulation of digital copyright.

| KEYWORDS

DMCA, Digital Literature, Notice and takedown, *Safe harbor*, UUHC

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### 1. Introduction

The rapid development of information technology impacts almost every aspect of people's lives. This has caused a cultural shift where activities that are usually done offline can now also be done online through the internet network. The internet is one part that cannot be separated from the development of information technology. Along with its development, the utilization of the internet by the public is increasing. Various kinds of information, including news, music, videos, science, and even copyrighted works, can be found easily on the internet.<sup>1</sup> Internet media can be said to be a digital information provider that has unlimited access and information.

The development of information technology is closely related to Intellectual Property Rights (IPR), especially copyright. The container for the fixation of ideas and creativity that originally only used paper or traditional media can now be done in digital form. This move towards digital platforms makes it easier for creators to publish and reproduce their creations on the internet. However, unlimited access to digital platforms can make it easier for someone to misuse copyrighted work spread on the internet. The practices of storing, distributing, and utilizing digital works on the internet are sometimes done with no regard to the protection of copyright and the owners of digital works themselves.<sup>2</sup>

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<sup>1</sup> Moch Zairul Alam, "Comparison of the Protection of Technological Control Means of Creation according to Copyright Provisions in Indonesia and the United States", *Legal Spirit*, Volume 2, No. 1, 2018, p. 99. 99.

<sup>2</sup> Budi Agus Riswandi, *Doctrine of Copyright Protection in the Digital Era*, FH UII Press, Yogyakarta, 2016, p. 154

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One of the works that are vulnerable to rights infringement in the digital dimension is digital literature. Referring to Article 40, paragraph (1) letter of the UHC, digital literature is one of the works protected by the UHC. Digital literature, also known as electronic literature, is a term for written works that require the use of digital computing. Digital literature emerged as a form of *postmodern literature* that grew out of technology, subjectivity, and poetics from the mid-twentieth century.<sup>3</sup> Digital literature as written works can be translated into other languages according to legal procedures, which will produce new works of translation. This then causes translated works to deserve copyright protection independent of the copyright of the original work because it is recognized as having its own level of originality.<sup>4</sup>

Arrangements related to copyright, as stipulated in the UUHC, should have provided legal certainty regarding copyright protection against digital literature that is used illegally for the interests that harm the creator. However, it is not uncommon to find actions that have the potential to violate the rights of the creator, one of which is the act of web-based novel translation carried out by MTLNovel. MTLNovel is a service provider that translates novels from the source language to the target language using *machine translation*.

In order to overcome the abuse of copyrighted works spread on the internet, copyright regulation continues to evolve. As an effort to legally protect digital literature, both the United States and Indonesia continue to reform the law, among others, through the DMCA and UHC, as well as other related regulations regarding copyright protection in the digital dimension.

This research will discuss digital copyright protection, focusing on the act of translating digital literature by internet service providers. The analysis covers Indonesian copyright protection and provides a comparison with the DMCA. In addition, this research also provides the implications of the DMCA and UHC regulation on the act of digital literature translation by internet service providers such as MTLNovel.

### 1.1 Problem Formulation

1. How is the regulation on the translation of copyrighted digital literature works based on the *Digital Millennium Copyright Act* and Law No. 28 of 2014 on Copyright?
2. What are the legal implications of the regulation of translation of copyright of digital literature works based on the *Digital Millennium Copyright Act* and Law No. 28 of 2014 on Copyright?

## 2. Research Methods

The research method used is juridical-normative research by conceptualizing law as a norm, including values and existing positive laws. The research *approach* taken is a statutory approach (*statute approach*), *comparative approach*, and *case approach*. Legal materials in this research use primary, secondary, and tertiary data. Primary legal materials refer to statutory legal instruments relating to digital copyright, such as DMCA and UHC. While secondary legal materials are obtained from books, journals, previous research, and news, and tertiary data is obtained from dictionaries, such as the Big Indonesian Dictionary. The data collection technique used is a literature study or *library research* by reviewing journals, legal research results, and literature related to research issues.

## 3. Research Results and Discussion

### A. Regulation of Translation of Digital Literature under DMCA and UHC

In principle, copyrighted works in traditional form do not necessarily lose copyright protection when converted into digital form.<sup>5</sup> Furthermore, copyright holders have economic rights to the literary works they create. One of the economic rights in question is the right to translate<sup>6</sup> and make derivatives of an existing work/creation.<sup>7</sup>

The provisions related to digital copyright are then specifically regulated through the DMCA and the UHC, which will be explained below.

### 1. Rules in the DMCA

There are three important parts of the DMCA relating to digital copyrights: the *anti-circumvention provisions*, the *online service provider liability (safe harbor)*, and the *takedown notice*.

<sup>3</sup> Jessica Pressman, *Digital Modernism: Making It New in New Media*, Oxford University Press, New York, 2014, pp. 2.

<sup>4</sup> Maimunah, "Legal Protection of Translators' Rights in Book Publishing Agreement", *Thesis*, University of North Sumatra, Medan, 2011, p. 28. 28.

<sup>5</sup> Evelyn Angelita P. Manurung, "Legal Protection of Copyright on Digital Copyright Works in Indonesia", *Premise Law Journal*, Volume 1, Number 2, 2013, pp. 9.

<sup>6</sup> Article 9 paragraph (1) UUHC

<sup>7</sup> 17 U.S.C. Section 106

**a. Anti-Circumvention Provisions**

Furthermore, in *Section 1201 (3)(A)* it is explained as follows, "to descramble a scrambled work, to decrypt an encrypted work, or otherwise, to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner".<sup>8</sup>

17 U.S.C. *Section 1201* then divides *anti-circumvention* offenses into three types: basic, restraint of trade, and additional infringement provisions. The basic provision prohibits a person from preventing security technology that effectively controls access to a copyrighted work, the restraint of trade applies to circumventing security technology that controls access to a copyrighted work, while the additional infringement provision applies to circumventing protection against security technology that protects the rights of the copyright holder.<sup>9</sup> More specifically, *Section 1201* divides security technologies into two categories, namely measures that prevent unauthorized access to copyrighted works and measures that prevent unauthorized copying of copyrighted works.<sup>10</sup>

**b. Online Service Provider Liability (safe harbor)**

The DMCA defines a service provider as "an entity offering the transmission, routing, or providing of connections for digital online communications, between, or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received".<sup>11</sup> The service provider referred to herein is a service provider in the form of online (internet) or network access and includes any form of service provider described in *Section 512(k)(1)(A)*.<sup>12</sup>

In order to avoid liability for infringement on a website, each service provider must have an employee who is registered with the United States Copyright Office as a "registered agent"<sup>13</sup>, and the service provider must also be unaware that the conduct constitutes infringement.<sup>14</sup> *Section 512* contains several categories of protection for the extent to which internet service providers should be liable for digital copyright infringement, namely:<sup>15</sup> (1) internet service providers are not liable for material uploaded by others on their sites unless they receive credible notice or clear evidence of infringement; (2) reproduction by transmission, including *caching*, excludes internet service providers from liability; and (3) the *takedown notice* provision requires internet service providers to act quickly and efficiently.

Furthermore, *Section 512(c)* requires service providers to: (1) receive no financial benefit directly attributable to the infringing activity; (2) have no knowledge of the existence of infringing material or knowledge of any fact or circumstance that would make infringing material obvious; and (3) upon receipt of a *takedown notice from the* copyright owner or their agent, the service provider acts as soon as practicable to remove the material deemed infringing, if the service provider wishes to be free of payment of infringement relief.

As mentioned above in point (3), when an internet service provider receives a *takedown notice*, the service provider must do the following: (1) remove the material concerned immediately; (2) notify the alleged infringer that the material has been removed; and (3) forward notification of any response from the alleged infringer to the original complainant. If, after 10-14 days, the complainant has still not notified the service provider that it has filed a lawsuit, then the service provider must return the disputed material.<sup>16</sup>

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<sup>8</sup> Budi Agus Riswandi, *Op. Cit.* p. 21.

<sup>9</sup> Christine Jeanneret, "The Digital Millennium Copyright Act: Preserving the Traditional Copyright Balance", *Fordham Intellectual Property, Media, and Entertainment Law Journal*, Volume 12, Number 1, 2002, pp. 165-166.

<sup>10</sup> *Ibid.* p. 166.

<sup>11</sup> 17 U.S.C *Section 512(k)(1)(A)*

<sup>12</sup> 17 U.S.C *Section 512(k)(1)(B)*

<sup>13</sup> 17 U.S.C *Section 512(c)(2)*

<sup>14</sup> 17 U.S.C *Section 512(c)(1)(A)(i)*

<sup>15</sup> Anggara Hendra Setya Ali, et al, "Liability of Internet Intermediaries in Copyright Infringement: Comparison between the United States and India", *Proceedings of the 2nd<sup>nd</sup> International Conference on Law, Economic, Governance*, Semarang, 2021.

<sup>16</sup> Jennifer M. Urban and Laura Quilter, "Efficient Process or Chilling Effects - Takedown Notices under Section 512 of the Digital Millennium Copyright Act", *Santa Clara High Technology Law Journal*, Volume 22, Issue 4, 2006, p. 625. 625.

### c. Takedown Notice

The *notification and takedown* are at the core of the operation of the DMCA and are one of the key points of compromise between the parties. The *takedown notice* also aims to make "service providers and copyright owners work together to detect and address" copyright infringing sites before the material (copyrighted work) is distributed too widely.<sup>17</sup>

In order to meet the formal requirements, the notice must contain six specific elements, namely:<sup>18</sup> (1) the signature of a person authorized to act on behalf of the copyright holder (whether in physical or electronic form); (2) identification of the copyrighted work that is allegedly infringing; (3) identification of where the infringing material is located; (4) information that enables the service provider to contact the complainant (such as name, address, telephone number, email address); (5) a "good faith belief" that the material is not authorized by the copyright owner, agent, or law; and (6) a statement that the notification is "accurate/true, and under penalty of perjury, that the complaining party is authorized to act on behalf of" the copyright holder.

Users can also object to the deletion by sending a "*counter notification*". 17 U.S.C. *Section 512(g)(3)* details four steps that a user must take to send a *counter notification* to a service provider, namely:<sup>19</sup> (1) a physical or electronic signature of the user; (2) identification of the material that has been removed or to which access has been disabled and the location where the material appeared before it was removed or access to it was disabled; (3) a statement under penalty of perjury of the user's actual good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and (4) the subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of the Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside the United States, for any judicial district in which the service provider may be found, and that the user will accept service of process from the person who provided the notice under subsection (c)(1)(C) or an agent of such agent.

## 2. Regulations under the UHC

As with the provisions related to security technology contained in the DMCA, the UHC has been able to elaborate on the norm through the Explanatory provisions of Article 52, where what is meant by "technological means of control" is any technology, device, or component designed to prevent or restrict acts that are not authorized by the creator, copyright holder, owner of related rights, and/or that are prohibited by law. Furthermore, Article 52 of the UHC states that: "any person is prohibited from **damaging, destroying, eliminating, or making non-functional the means of technological control** used as a protector of creation or related rights products as well as the safeguard of copyright or related rights, except for the **interests of national defense and security**, as well as **other reasons in accordance with the provisions of laws and regulations, or other agreements**". It is explained that what is meant by means of production and/or storage of data based on information technology and/or high technology, among others, are optical disks, servers, *cloud* computing, secret codes, *passwords*, *barcodes*, *serial numbers*, *decryption* technology, and *encryption*.<sup>20</sup>

As for the *safe harbor*, the UHC has not regulated the provision, but the limitation of liability of service providers from copyright infringement can refer to Article 43 letter d of the UUHC.<sup>21</sup> However, this provision is considered to be vague in regulating the *safe harbor* standard.<sup>22</sup>

Then, in order to prevent copyright infringement through information technology-based means, the UHC also regulates the regulation of copyright content in information and communication technology through Articles 54-56. Article 54 of the UHC explains that the government is authorized to do the following:

- a. Supervision of the creation and dissemination of content infringing copyright and related rights;
- b. cooperation and coordination with various parties, both domestic and foreign, in preventing the creation and dissemination of content infringing copyright and related rights; and

<sup>17</sup> Bruce Boyden, "The Failure of the DMCA Notice and Takedown System: A Twentieth Century Solution to a Twenty-First Century Problem", *Center for the Protection of Intellectual Property*, 2013, pp. 2.

<sup>18</sup> 17 U.S.C. *Section 512(c)(3)(A)(i)-(vi)*.

<sup>19</sup> 17 U.S.C. *Section (g)(3)(A)-(D)*.

<sup>20</sup> Explanation of Article 53 paragraph (1).

<sup>21</sup> Article 43 letter d of the UHC "the creation and dissemination of copyright content through information and communication technology media that is non-commercial and/or benefits the creator or related parties, or the creator states no objection to the creation and dissemination."

<sup>22</sup> Agung Kurniawan Sihombing, et al, "*Comparison of Digital Copyright Protection on Over the Top (OTT) Streaming Content Media in Indonesia and the United States*", *PJH*, Volume 8, Number 2, 2021, p. 202. 202.

- c. supervision of the act of recording using any media of creations and related rights products at the performance venue.

Furthermore, related to the *takedown notice*, Article 56 states that the minister who organizes government affairs in the field of telecommunications and informatics can close the content or user access rights that violate copyright based on reports of alleged digital copyright infringement. Provisions related to the technical implementation of this regulation are not further regulated in the UHC but are stipulated by a joint regulation of the minister and the minister whose duties and responsibilities are in the field of communication and informatics.<sup>23</sup>

Based on the explanation above, both Indonesia and the United States have regulated *anti-circumvention* or safety technology facilities. However, 17 U.S.C. *Section 1201 (b)(1)* expressly regulates the prohibition of importing goods or equipment that function to damage or make the created means of safety technology non-functional. In contrast, Indonesia, through the UHC, does not regulate the import, production, and marketing of tools used to damage technological control facilities. The absence of this provision can be considered a shortcoming, as the importation and trade of devices aimed at damaging or rendering non-functional security technology is one of the main avenues for digital copyright infringement issues.<sup>24</sup>

Then, regarding the *safe harbor*, the DMCA has regulated in detail regarding this provision to understand the limitations of internet service providers' liability through 17 U.S.C. *Section 512* against infringements that occur on their platforms. On the other hand, the *safe harbor* provision in the UHC can only refer to Article 43, but the provision is considered vague in regulating the standard of responsibility of service providers. However, provisions related to the *safe harbor* can be found in the Minister of Communication and Information Circular Letter Number 5 of 2016 concerning Limitations and Responsibilities of Platform Providers and *Merchants for Electronic Commerce in the Form of User Generated Content* (SE 5/2016).

However, UGC platform providers, as referred to in SE 5/2016, only refer to *e-commerce* service providers.<sup>25</sup> The same can also be found in the Minister of Communication and Information's Circular No. 3/2016 on Internet Application and/or Content Service Providers (Over the Top) (Circular 3/2016), which only refers to Over the Top service providers. Because of this, the provisions regulated through SE 3/2016 and 5/2016 can only be applied to specific internet service providers in the form of *e-commerce* and *Over the Top* and do not have a legally binding force.<sup>26</sup>

Law Number 19 of 2016 concerning Electronic Information and Transactions (UU ITE) also regulates the implementation of electronic systems through Article 15, which:

- 1) Every Electronic System Operator must operate the Electronic System reliably and safely and is responsible for the proper operation of the Electronic System.
- 2) Electronic System Operator is responsible for the Implementation of its Electronic System.
- 3) The provisions as referred to in paragraph (2) shall not apply in the event that it can be proven that the occurrence of force majeure, error, and/or negligence of the Electronic System user.

Furthermore, regarding *takedown notices* or procedures for closing or terminating access, In this case, the DMCA has required internet service providers to provide a means of reporting content that violates copyright law through *takedown notices*.<sup>27</sup> However, in the UHC, the regulation related to content takedown is only briefly explained in Article 56, paragraph (2), where content takedown can only be done through the ministry. As for the technical implementation, the UHC does not fully regulate it. However, such provisions can be found in the Joint Regulation of the Minister of Law and Human Rights and the Minister of Communication and Information Technology Number 14 the Year 2015, Number 26 the Year 2015 on the Implementation of Closing Content and/or Access Rights of Users of Copyright Infringement and/or Related Rights in Electronic Systems (Joint Ministerial Regulation 14/15, 26/15).

Article 2 states that copyright infringement in electronic systems can be reported to the minister who organizes government affairs in the field of law<sup>28</sup>, and the report can be made by: (a) the creator; (b) the copyright holder; (c) the owner of related rights; (d)

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<sup>23</sup> Article 56(2).

<sup>24</sup> Agung Kurniawan Sihombing, et al, *Op. Cit.* p. 202.

<sup>25</sup> Roman letters II. A. SE 5/2016.

<sup>26</sup> See Law Number 12/2011 on Legislation.

<sup>27</sup> 17 U.S.C. *Section (c)(2)*.

<sup>28</sup> Article 2 paragraph (1) of Joint Ministerial Regulations 14/15, 26/15.

the licensee of copyright or related rights; (e) the national collective management institution or collective management institution; (f) an association that has been authorized; or (g) any other party that has been authorized.<sup>29</sup>

Furthermore, Article 3 stipulates that reports can be made electronically or non-electronically<sup>30</sup> with the following requirements: (1) identity of the reporter; (2) proof of rights to the creation and/or related rights product; (3) website address; (4) type and/or name of the content that violates copyright and/or related rights; (5) type of violation; and (6) other information related to content that violates copyright and/or related rights.

From this, it can be seen that closure or termination of access can only be done through the ministry, which then has to go through a verification process by several ministries and institutions related to copyright and/or related rights.<sup>31</sup> The process will certainly take a relatively long time and be ineffective.<sup>32</sup>

For the act of translating digital literature, both DMCA and UHC, along with other relevant national regulations, have accommodated the protection of digital copyright objects. Protection of digital literature can be done by applying provisions related to security technology. *Watermarking* itself is the act of embedding information secretly into a data source so that its existence is hidden.<sup>33</sup> In addition to *watermarking*, protection can also be done through *access control*. Through this method, digital literature can be protected, for example, by encrypting the data so that it can only be accessed by authorized users.<sup>34</sup> Protection can also be done through an *effective licensing mechanism*. A license, in this case, consists of the transfer of limited rights to digital literature for specific use under defined and stated terms and conditions.<sup>35</sup>

In the context of digital literature disseminated through internet service provider platforms, this issue can also be examined using the *safe harbor* doctrine under both the UHC and DMCA. If there is infringing material, in order to be free from liability, the service provider must not directly derive financial benefit from the infringing material<sup>36</sup>, in this case, a digital literature work. In addition, service providers must also provide a means to report suspected infringements of literary works on their pages.<sup>37</sup>

Any digital literature that is suspected of infringing copyright can be reported to the appropriate authorities, whether the act is dissemination, piracy, or even unauthorized translation. Under the DMCA, reports can be made directly to the service provider under the corresponding terms of 17 U.S.C Section 512(c)(3)(A)(i)-(vi). Unlike the United States, in Indonesia, the report is addressed to the relevant minister, not the service provider. This refers to Article 56 of the UHC, where implementing provisions regarding reporting procedures can be found in Joint Ministerial Regulations 14/15, 26/15.

## B. Implications of Regulating Translation of Digital Literature under DMCA and UUHC

The existence of digital literature as a digital work created and enjoyed through the internet makes it one of the copyright objects that are vulnerable to infringement. Infringements against digital literature are not only limited to distribution and piracy but even unauthorized translations, as done by MTLNovel.

MTLNovel is a website that translates RAW novels or novels that are still in their original language and have never been translated at all. MTLNovel as a *translation* site has its own uniqueness, namely the use of *machine translation* (MTL) or automatic translation machines so that they can translate novels faster than human translation. The novels translated by MTLNovel range from novels

<sup>29</sup> Article 2 paragraph (2) of Joint Ministerial Regulations 14/15, 26/15.

<sup>30</sup> Article 3 paragraph (2) of Joint Ministerial Regulations 14/15, 26/15.

<sup>31</sup> Article 8 of Joint Ministerial Regulations 14/15, 26/15.

<sup>32</sup> Syarafina Ramadhanty, et al, "The *Safe Harbor* Doctrine: Efforts to Protect Copyright Content in User Generated Content Platforms", *Legality: A Journal of Law*, Volume 12, No. 2, 2020, pp. 271.

<sup>33</sup> Khwarizmi Maulana Simatupang, "Juridical Review of Copyright Protection in the Digital Realm", *Scientific Journal of Legal Policy*, Volume 15, No. 1, 2021, pp. 74.

<sup>34</sup> *Ibid.*

<sup>35</sup> Dimitrios K. Tsohis, Theodore Papatheodorou, "Copyright Protection and Management of Digital Cultural Objects and Data", Paper presented at *The Annual Conference of the International Documentation Committee of the International Council of Museums 2008*, Athens, 2008, pp. 9.

<sup>36</sup> 17 U.S.C. Section 512(c).

<sup>37</sup> 17 U.S.C. Section 512(2).

to web novels<sup>38</sup> and even *light novels*<sup>39</sup>. The reason behind the creation of the MTLNovel website is that there are few (or no) manual translators and the slow translation process.<sup>40</sup> Because of this, MTLNovel took the initiative to automatically translate novels with the help of machine translation so that fans can enjoy novels more quickly.

The act of translation performed by MTLNovel is included in one of the economic rights of the creator or copyright holder that is protected by law.<sup>41</sup> Both through Article 9 of the UUHC and 17 U.S.C. *Section 106*, it is stated that a person must obtain permission or license from the copyright holder to perform actions that are included in economic rights, one of which is translation. Translations as derivative works are actionable if not authorized by the original copyright holder.<sup>42</sup> From there, the act of translation by MTLNovel has the potential to violate copyright because it needs to be reviewed whether the content distributed on the site is licensed or not.

One of the digital literature on the MTLNovel website is a Chinese novel entitled *Heaven's Official Blessing* by Mo Xiang Tong Xiu. This novel was first published in 2017 by the Chinese digital literature publishing site Jinjiang Literature City.<sup>43</sup> Seven Seas Entertainment was the first publishing company to obtain a license to publish, distribute, resell, and translate *Heaven's Official Blessing* into English.<sup>44</sup> Apart from that, there is still no other official license to translate *Heaven's Official Blessing* into English. In this case, MTLNovel does not have a license to perform translation actions (including distribution, announcement, and communication of works) of *Heaven's Official Blessing* on their website.

Then, based on their website description, MTLNovel is one of the internet service provider sites referred to in the DMCA. Thus, MTLNovel being an internet service provider, also means that it is not necessarily subject to copyright infringement under the *safe harbor* doctrine. Instead, MTLNovel acts as a guardian to minimize the entry of copyright infringing content on their site—if copyright infringement occurs; the common practice is to *takedown* or *shut down* the allegedly infringing content.

However, this does not mean that MTLNovel can completely escape the responsibility of internet service providers. Pursuant to the provisions of the DMCA, service providers may not receive any economic benefit directly attributable to infringing activity and cannot be held liable if they were not aware of the infringing material or aware of facts or circumstances that would make the infringing material obvious.<sup>45</sup> However, MTLNovel, in the act of translation, consciously curates which copyrighted works to be translated and obtains economic benefits through donations to <https://ko-fi.com/mtlnovel>. This is certainly very detrimental to copyright holders and contrary to the *safe harbor* doctrine so as to make MTLNovel a subject of copyright infringement and can be held liable for copyright infringement.

In addition, from the above explanation, we can also analyze the implications of the regulation of digital literature translation in both DMCA and UHC. First, in the context of the *safe harbor*, although the UHC seems to have a similar arrangement through Article 43 letter d and the ITE Law, these provisions do not discuss the limitation of liability at all. The limit of liability is also determined entirely on the evidence in court as to the extent of the electronic system operator's liability for copyright-infringing content.<sup>46</sup> Ultimately, the provisions contained in the ITE Law emphasize the obligations of service providers only, without providing

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<sup>38</sup> Refers to novels published *online* on websites or apps. See Kompas.com, "The Difference between Novels, Light Novels, and Web Novels", available at <https://entertainment.kompas.com/read/2022/10/10/173718366/bedanya-novel-light-novel-dan-web-novel/>, last accessed on October 10, 2022 at 19.00 WIB.

<sup>39</sup> Refers to light novels from Japan. It is usually written in hiragana or light kanji and takes the form of a printed book. See *Ibid*.

<sup>40</sup> MTLNovel, available at <https://www.mtlnovel.com/about-us/>, last accessed on October 10, 2022 at 19.05 WIB.

<sup>41</sup> Article 9 of the UUHC and 17 U.S.C. *Section 106*.

<sup>42</sup> Erik Ketzan, "Rebuilding Babel: Copyright and the Future of Machine Translation Online", *Tulane Journal of Technology & Intellectual Property*, Volume 9, 2007, p. 20. 20.

<sup>43</sup> Jinjian Literature City, available at <http://www.jjwxc.net/onebook.php?novelid=3200611&chapterid=8>, last accessed on October 11, 2022 at 14.00 WIB.

<sup>44</sup> Seven Seas Entertainment, available at <https://sevenseasentertainment.com/2021/08/04/seven-seas-licenses-three-blockbuster-chinese-novel-series-from-mo-xiang-tong-xiu-the-scum-villains-self-saving-system-grandmaster-of-demonic-cultivation-and-heaven-officials-blessing/>, last accessed on October 10, 2022 at 22.00 WIB.

<sup>45</sup> 17 U.S.C. *Section 512(c)*.

<sup>46</sup> Agung Kurniawan Sihombing and Muhammad Nur Mahatmanta, "Safe Harbor 4.0: Exemption of Platform Providers Liability under Indonesia Cyber Laws", available at [https://www.researchgate.net/publication/341829320\\_SAFE\\_HARBOR\\_40\\_EXEMPTION\\_OF\\_PLATFORM\\_PROVIDERS\\_LIABILITY\\_UNDER\\_INDONESIA\\_N\\_CYBER\\_LAWS](https://www.researchgate.net/publication/341829320_SAFE_HARBOR_40_EXEMPTION_OF_PLATFORM_PROVIDERS_LIABILITY_UNDER_INDONESIA_N_CYBER_LAWS), last accessed on October 11, 2022 at 22.00 WIB.

legal protection for them. The provisions in SE 3/2016 and 5/2016 also specifically refer only to *e-commerce* and *Over the Top* service providers, thus not protecting all internet service providers.

Unlike the UHC, 17 U.S.C. Section 512(k)(1)(B) gives a broad definition to any online service provider, including those described in *Section (k) (1) (A)*. This *safe harbor* then limits liability to internet service providers that have taken preventive measures. Preventive measures here refer to the use of control tools to anticipate violations, providing notifications to users not to upload unlawful content, providing a means of reporting from the aggrieved party and immediately following up on the report by closing access/deleting the content, prohibiting the doctrine of *willful blindness* (the service provider seems to turn a blind eye to the violation that occurs), and not reaping profits directly from the violation.<sup>47</sup> These steps are intended to free the service provider from liability for violations that it did not know about.

Through this *safe harbor* provision, internet service providers can host and transmit user-generated content without the fear of unknowing copyright liability.<sup>48</sup> The case between Universal Music Group (UMG) Recording Company and Veoh Network<sup>49</sup> exemplifies the importance of *safe harbor* protection for service providers. In this case, the court found that Veoh had demonstrated that when it became aware of allegedly infringing material (whether through DMCA notices, informal notices, or other means), it promptly removed the material, and UMG failed to challenge it. As such, the court held that Veoh had met its duty of compliance with 17 U.S.C. *Section 512(c)*, thereby obtaining protection under the *safe harbor* doctrine.<sup>50</sup>

Second, in the context of *takedown notices* and removal of content on the internet, the UHC has regulated these provisions through Articles 55 and 56. When compared to the *takedown* procedure stipulated by the DMCA, there are still some provisions that are not regulated or not appropriate to be implemented, such as the implementing party that conducts the *takedown notice*, the absence of *counter notice procedures*, and the party authorized to report alleged violations. The first difference is that Indonesia, through UUHC, appoints the minister to shut down the content<sup>51</sup>, while the DMCA appoints an implementing agent in the form of a *registered agent who is registered* as an employee at the US Copyright Office. This UHC provision is considered ineffective because, in the implementing regulation, the removal through the minister must go through several stages of procedures, including the report stage, verification, recommendation, and then the closure of the site / and or content.<sup>52</sup> In addition, the provision is difficult to implement because, in general, content that has the potential to infringe copyright is located on sites or digital *platforms* hosted by service providers. The Minister does not have access to remove the content and can only give a closure order to the service provider, which is also very detrimental to the service provider and service users.<sup>53</sup>

The second difference is that there is no *counter-notification* procedure. The absence of this means of counter-notification may deprive the complained party of protection from wrongful removal and hinder the principle of *free speech*, as adopted in the DMCA.<sup>54</sup> The counter-notification by the alleged infringing user serves as a means of defense if the user believes that he/she is innocent.<sup>55</sup> The third difference is that Article 55 of the UHC states that anyone can report suspected violations, so this provision can be misused by irresponsible parties in bad faith. This will be very detrimental to service providers and content creators/copyright holders if the reporting party has no connection with the copyright holder or related rights.<sup>56</sup> This provision is different from the DMCA, where the authority to complain is given to the copyright holder or the party authorized to represent him/her, thus preventing abuse of rights by irresponsible parties.

<sup>47</sup> Syarafina Ramadhanty, et al, *Op. Cit.* pp. 271-272.

<sup>48</sup> Eduardo Berton and Sophia Sadinsky, "The use of the DMCA to stifle free expression", *Revista de Derecho, Comunicaciones y Nuevas Tecnologías*, No. 13, 2015, pp. 15.

<sup>49</sup> UMG Recordings, Inc. v. Veoh Networks Inc., available at <https://casetext.com/case/umg-recordings-inc-v-veoh-networks-inc-2>, last accessed on October 11, 2022, at 22.00 WIB.

<sup>50</sup> Jay T. Westermeir, "Recent "Safe Harbor" Rulings in the United States", Finnegan, available at <https://www.finnegan.com/en/insights/articles/recent-safe-harbor-rulings-in-the-united-states.html>, last accessed on October 11, 2022 at 22.00 WIB.

<sup>51</sup> Article 56 paragraph (1) UUHC

<sup>52</sup> Akhmad Munawar and Taufik Effendy, "Efforts to Enforce Copyright Infringement Law according to Law Number 28 of 2014 concerning Copyright", *Al'Adl*, Volume VIII, Number 2, 2016, p. 131. 131.

<sup>53</sup> Gilbert El Falah, "Juridical Review of Notification and Removal of Content on the Internet related to Copyright Protection Articles 55 and 56 of Law Number 28 of 2014 concerning Copyright (Legal Comparative Study of the 2014 Copyright Law with the U.S. Digital Millennium Copyright Act 1998)", *Thesis*, Brawijaya University, Malang, 2019, p. 80. 80.

<sup>54</sup> Michael S. Sawyer, "Filters, Fair Use & Feedback: User-Generated Content Principles and The DMCA" *Berkeley Technology Law Journal*, Volume 24, No 363, 2009, pp. 391.

<sup>55</sup> Gilbert El Falah, *Op. Cit.* , p. 76.

<sup>56</sup> *Ibid.* p. 74.



Based on the previous explanation, it is known that the legal implications of the DMCA and UHC arrangements can be seen in three aspects, namely, legal certainty, legal protection, and legal expediency. First, regarding legal certainty, it can be seen that the digital copyright regulations contained in the DMCA are more complete than the UHC. The consequences of things or circumstances that have not been regulated can cause the emergence of legal uncertainty (*rechtsonzekerheid*).<sup>57</sup> This indicates that the DMCA has comprehensively regulated digital copyright arrangements have provided legal certainty, while the UHC has not fully regulated digital copyright, so it has not been able to provide legal certainty.

Second is the aspect of legal protection. While the DMCA has comprehensively regulated digital copyright and has provided legal certainty, it does not really solve the core problem of copyrighted content being shared without permission but only provides "some protection" for copyright holders.<sup>58</sup> This is because the material that has been removed for alleged infringement through a *takedown notice* can easily be re-uploaded by the infringing party elsewhere, perhaps even on the same platform. This is also the case with the concept of content removal/closure under the UHC. In the end, copyright holders have to guess where the next infringing party will appear.<sup>59</sup> Furthermore, in the UHC, the absence of a *safe harbor* provision that provides legal protection for the service provider for copyright infringement has not been able to protect the relevant parties if there is an infringement that occurs against the will and knowledge of the organizer. So, in this case, both the DMCA and the UHC are still unable to accommodate the ideal legal protection of digital literature and the act of translation therein.

The third is the aspect of legal expediency. The theory of legal expediency proposed by Jeremy Bentham carries the concept that the regulated/imposed punishment must consider the aspect of expediency for the violating subject, in this case, to prevent future crimes from being repeated and to provide a deterrent effect and deterrence so as to create a sense of satisfaction for the violated party or others.<sup>60</sup> As explained earlier, the content removal provisions stipulated in the DMCA and UHC have not been able to create a deterrent effect, as infringers still easily re-upload infringing content even though the content has been removed. This can also lead to repeat offenses which is contrary to the aspect of legal expediency. Moreover, the DMCA provision also grants unilateral power to copyright holders, who act without judicial oversight. This can result in the removal of content regardless of whether it was used in a lawful manner or not, as well as the burden of proof placed on the user to provide justification. In other words, service providers that are subject to DMCA *takedown notices* are, in many cases, shutting down material deemed infringing before being proven innocent.<sup>61</sup> This can lead to abuse of the *takedown notice* tool and create a *chilling effect*.<sup>62</sup> The provision is certainly very detrimental to copyright holders and does not present an aspect of expediency in practice.

Regardless, the United States, through the DMCA, has successfully combined the concepts of copyright protection and the digital world. Although Indonesia regulates similar provisions, the UHC has not been able to accommodate copyright protection in the digital dimension. The UHC itself still focuses on conventional copyright protection, so there is still a need for other implementing regulations to complement it. Ultimately, Indonesia needs to continue to adapt its copyright laws and regulations to technological developments and inventions, especially in the digital era. Indonesia's copyright legal framework cannot fully rely on the ITE Law, especially with the inadequate provisions on copyright protection under it.<sup>63</sup> This is consistent with Danrivanto Budhijanto's opinion that cyber law is a new legal regime whose provisions need to be regulated specifically (*sui generis*), including in copyright issues.<sup>64</sup> Therefore, the legal gap in digital copyright protection in digital literature translation still needs to be improved. Such improvements can be made through cooperation between platform stakeholders, the government, and internet service users.

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<sup>57</sup> Gamal Abdul Nasir, "Legal Vacancies and the Acceleration of Community Development", *Replik Law Journal*, Volume 5, No. 2, 2017, p. 175. 175.

<sup>58</sup> Stephen McLeod Blythe, "Freedom of Speech and the DMCA: Abuse of the Notification and Takedown Process", *European Intellectual Property Review*, Volume 41, Issue 2, 2019, pp. 76.

<sup>59</sup> Amir Hassanabadi, "Viacom V. YouTube-All Eyes Blind: The Limits of the DMCA in a Web 2.0 World", *Berkeley Technology Law Journal*, Volume 26, No 405, 2011, pp. 406.

<sup>60</sup> Frederikus Fios, "Jeremy Bentham's Legal Justice and its Relevance for Contemporary Legal Practice", *Humaniora*, Volume 3, No 1, 2012, pp. 304-305. 304-305.

<sup>61</sup> Stephen McLeod Blythe, *Op. Cit.* p. 75.

<sup>62</sup> The *chilling effect* is the restriction of a person's legal rights due to legal regulations that authorize service providers to notify and remove content that infringes copyright, but excessive enforcement without further investigation has the potential to violate a person's *free use* and *free speech*. See Gilbert El Falah, *Op. Cit.* , p. 66.

<sup>63</sup> Natasha Noor, "Copyright Law in Protecting Creators' Exclusive Rights in the Creative Industry: A Comparative Study", *The Lawpreneurship Journal*, Volume 1, Issue 2, 2021, pp. 212-213.

<sup>64</sup> Danrivanto Budhijanto, *Cyberlaw and the Industrial Revolution 4.0*, Logoz Publishing, Bandung, 2019, pp. 2-3.

### 3. Conclusion

1. The DMCA essentially regulates three main points of digital copyright protection, namely, *anti-circumvention provisions*, *internet provider liability (safe harbor)*, and *takedown notification*. *Anti-Circumvention* in *Section 1201* protects digital literature from unauthorized access and copying; *safe harbor* protects internet service providers from liability for infringement of infringing translations of digital literature; and *takedown notification* is an effort to protect digital literature that is infringing translated and uploaded on digital platforms. Similar provisions are regulated by UHC through Article 52 related to security technology, while the *safe harbor* is not regulated by UHC, but the exemption of service providers' responsibility can refer to Article 43 letter d of UHC. Furthermore, provisions on content removal are regulated through Articles 54-56 of the UHC, as well as joint ministerial regulations as implementing regulations.
2. The implications of the DMCA and UHC arrangements for digital translation activities are; First, regarding the *safe harbor* doctrine, the UHC is still very vague in regulating the protection of internet service providers. This may cause service providers that offer web/app-based digital literature platforms to be very vulnerable to copyright infringement liability by users of their platforms; Second, related to the UHC's *takedown notice* provisions, the administrative examination must be ineffective - this process will take a relatively long time and is considered not optimal in carrying out the *takedown notice* provisions as regulated by the DMCA. The provisions of the DMCA and UHC also have implications for legal certainty, legal protection, and legal expediency. The DMCA has comprehensively regulated the regulation of digital copyright and has provided legal certainty, while the UHC has not regulated full digital copyright, so it has not been able to provide legal certainty. Then the DMCA and UHC are still not able to accommodate the ideal legal protection of digital literature and the act of translation in it. This is reflected in the provisions of the DMCA and the UHC that do not really solve the core problem of copyrighted content being shared without permission and the absence of the *safe harbor* doctrine in the UHC. In addition, the provisions of the DMCA and the UHC are still unable to provide legal expediency from their digital copyright arrangements.

#### 3.1 Advice

1. That the UHC still does not comprehensively accommodate the provisions of *anti-circumvention*, *safe harbor*, and *takedown notice* as regulated by the DMCA. There is a need for legal reforms related to digital copyright protection more clearly in Indonesia, especially regarding the limitations of the responsibility of internet service providers, including site/application-based digital literature services and more appropriate content closure procedures, so that they can be applied appropriately and effectively.
2. The legal awareness of internet service users still needs to be improved. Such awareness needs to be built in order to create a healthy ecosystem in the realm of digital copyright. Even though the regulation of copyright is well designed, if the legal awareness of the community is still very low and gives an apathetic response, then legal protection will only be a utopia.
3. In addition, cooperation between platform stakeholders, the government, and users is also needed to provide more comprehensive regulations for the protection of digital literature and the act of translation therein to ensure that in the future digital copyright protection is based on binding positive law.

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