

ALERT: Re-docking at the Safe Harbor: US Copyright Office Requires Re-Registration for Digital Millennium Copyright Act Safe Harbor

December 6, 2016

On December 1, 2016, the US Copyright Office outlined a new online procedure for websites, hosting companies, mobile app publishers and other internet services that permit user-generated content (service providers) to designate an agent to receive notifications of infringement under the Digital Millennium Copyright Act (DMCA).

Background on Safe Harbor

In 1998, Congress enacted the DMCA to address copyright infringement on the internet, and as part of the law, created a safe harbor from copyright infringement claims against online service providers based on content posted by their users. For a service provider to avail itself of the DMCA safe harbor, it must identify a designated agent for notice both on its own website (for example, in its terms of service) and also with the US Copyright Office (which maintains a directory of agents available to the public). Upon receiving a compliant takedown request from a copyright holder, the online service provider must then expeditiously remove the material identified from the service provider's network or system.

Changes to the Copyright Office's Procedure

Although the new process is online, it requires service providers that have already appointed agents with the Copyright Office to submit an updated designation by December 31, 2017 to maintain their DMCA safe harbor from copyright infringement claims. In addition, re-registration will be required every three years. Under the current regime, service providers have been required to register only once.

To designate an agent under the Copyright Office's new procedure, online service providers must complete registration electronically on the Copyright Office's website, instead of on a paper form mailed to the Copyright Office. Fees will be reduced with the new system. A new flat fee of \$6.00 per designation will replace the old fee structure of \$105.00, plus \$35.00 for each group of up to 10 alternate names of the service provider.

Trap for the Unwary

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According to the Copyright Office, the lack of a re-registration process has led to many inaccurate designations. As a result, designations must now be renewed every three years. While the Copyright Office promises to provide reminder emails ahead of the renewal date, online service providers are strongly advised to create their own process to calendar the renewals so that the designation remains active.

In addition, as noted above, the Copyright Office is further requiring that all online service providers with currently designated agents reappoint an agent under the new electronic system by December 31, 2017.

Finally, keep in mind that the DMCA only protects online service providers from infringement claims based on user-generated content posted on their websites and services. Infringement claims arising from an online service provider's own actions remain actionable.

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