

Got a Website or an App? Take Action to Protect Yourself!

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The U.S. Copyright Office has announced a new electronic filing system for registering websites, apps, and other online platforms for “safe harbor” protection from copyright infringement liability. The new system becomes effective December 1, 2016. If your or your company’s website or app—like most online platforms—provides links to material on other websites, or if your website or app hosts material submitted by users, this is a very important development and you will want to consider taking action to protect yourself.

Section 512 of the Digital Millennium Copyright Act (“DMCA”) provides safe harbors from copyright infringement liability for online service providers (including website and app operators) when certain eligibility requirements are satisfied. For example, the safe harbors may protect website operators from copyright liability in situations where the website operator is not aware that a hyperlink included on its website is directed to infringing content hosted on another site. For websites that host content or other material submitted by its users, the safe harbors may also protect the website operator if the operator is not aware that a particular item of such user-submitted content infringes copyright.

Among several other requirements and conditions, an online service provider seeking to avail itself of the DMCA safe harbors is required to designate an agent to receive notifications of claimed copyright infringement by making contact information for the agent available to the public on its website and by providing such information to the Copyright Office. A service provider that fails to maintain current and accurate information, both on its website and with the Copyright Office, may lose the safe harbor protections.

Until now, agent designations were required to be filed with the Copyright Office on a paper form either in hardcopy, or as a scanned submission of the paper form via e-mail. The Copyright Office then maintained the agent designations as PDFs and posted them on the Copyright Office website. The new electronic filing system significantly updates this process and will fully replace the paper-based system.

Beginning December 1, 2016, service providers must use the new online registration system to electronically submit service provider and designated agent information to the Copyright Office. The new system will be available on the Copyright Office’s website.

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If you have never filed designated agent information with the Copyright Office for your online platform, you should consider taking action immediately. Even if you have previously designated an agent using the paper process, you are required to submit a new designation using the online system within one year—i.e., by no later than December 31, 2017.

As under the old system, service providers will be required to keep their designations current and accurate by timely updating information in the system when it has changed. Additionally, agent designations will expire and become invalid three years after registration. Accordingly, you must plan to renew your designations every three years. Be aware of this “gotcha”—if you don’t timely renew, you risk losing the DMCA safe harbor protections.

As under the prior system, there is a fee to file an agent designation with the Copyright Office. However, the Copyright Office has reduced the fee from \$105 (plus an additional fee of \$35 for each group of one to ten alternate names used by the service provider), to a flat fee of \$6 per designation—whether registering a new designation, or renewing, amending, or resubmitting a previously registered designation.

The Copyright Office will maintain agent designation information in a public, searchable directory. Members of the public will be able to access the directory through the Copyright Office’s website and can search the directory either by service provider name or alternate name to obtain contact information for a designated agent. The search results will show not only service provider names and alternate names matching the search query, but will also indicate whether the agent designation is still active.

Again, the agent designation filing is only one of many conditions and requirements that a service provider must satisfy to be entitled to the DMCA safe harbors. The applicability of the DMCA safe harbors is heavily dependent on the type of material and content provided by an online service provider, the practices and procedures of the provider, and other particular circumstances.

Please contact us if you have any questions or would like more information about the DMCA safe harbors and the new designated agent registration system.

PEOPLE

Coe W. Ramsey

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