DECEMBER 31 DEADLINE FOR DMCA SAFE HARBOR COPYRIGHT AGENT DESIGNATIONS

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Intellectual Property Alert

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All companies that conduct business online should take note of an upcoming deadline for "safe harbor" from copyright infringement liability. Online service providers that allow users to store or post content (essentially, any interactive website) must submit new copyright agent registrations using the newly-established U.S. Copyright Office electronic system by December 31, 2017. Failure to do so by that date will prevent online service providers from claiming the safe harbor from copyright infringement liability established under 17 U.S.C. § 512(c) of the Digital Millennium Copyright Act (DMCA).[1]

WHO SHOULD DESIGNATE AN AGENT?

Answer: Any company or other entity that maintains a website with user-generated content, or any content that is provided by anyone other than the entity itself. More specific information follows.

Effective December 1, 2016, the U.S. Copyright Office implemented a new electronic system for the designation of copyright agents, which is replacing the old paper-based system and is required for online service providers to take advantage of the safe harbor from copyright infringement liability under § 512(c) of the U.S. Copyright Act (Title 17). For purposes of § 512, any entity that provides an online service (such as a website, email service, discussion forum, or chat room) generally would qualify as an online service provider.[2] A copyright agent is typically the individual at the online service provider whose contact information is provided in order to receive the various notices provided under § 512, such as notices of infringement. A directory of copyright agents and their contact information is made available by the Copyright Office on its website.[3]

Under the electronic system, all online service providers seeking safe harbor under § 512(c), including those that have previously designated a copyright agent with the Copyright Office, are required to submit new designations through the electronic system. **Entities that designated a copyright agent via the old paper-based system (*i.e.*, prior to December 1, 2016) must submit a new designation through the electronic system by December 31, 2017.** Any designation not made through the electronic system will expire and become invalid after December 31, 2017. Designations also must be renewed at least once every three years. (The paper-based system did not require renewal.)

DESIGNATING A COPYRIGHT AGENT

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Designating a copyright agent through the electronic system requires creating an online account with the Copyright Office and providing information similar to what was required under the paper-based system (*e.g.*, name and address of the service provider and copyright agent contact information), but with some differences. As before, service providers must provide a physical address and cannot use a P.O. Box. However, now a P.O. Box may be used for a service provider's copyright agent. A copyright agent's name does not need to be an individual's name and instead a department within the service provider's organization or a third-party entity is acceptable.[4]

Separate legal entities that wish to take advantage of the safe harbor must each file separate designations for each entity. However, a single U.S. Copyright Office account can be used to register and manage designations for multiple service providers (*e.g.*, a parent company may manage designations for its subsidiaries through a single account, but each must register designated agents separately, for each service provider).

The paper-based system allowed but did not require service providers to include "alternative names," such as names under which the service provider is doing business. Under the electronic system, service providers must list "all alternate names that the public would be likely to use to search for the service provider's designated agent in the directory, including all names under which the service provider is doing business, website names and addresses (*i.e.*, URLs, such as '__.com' or '__.org'), software application names, and other commonly used names." To create an account and designate an agent, visit dmca.copyright.gov/osp/login.html.[5]

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To reemphasize the point stated above, the new electronic copyright agent system will fully replace the paper-based system. Previously filed paper designations will continue to satisfy the service provider's statutory obligations under § 512(c) only until December 31, 2017.

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[1] Section 512(c) of the DMCA provides limitations on service provider liability for storage at the direction of a user of material on a system or network controlled or operated by or for the service provider if, among other things, the service provider has designated a copyright agent with the Copyright Office to receive notifications of claimed infringement, and the service provider posts the copyright agent's relevant contact information in a location accessible to the public (e.g., on the service provider's website).

[2] See 17 U.S.C. § 512(k).See 17 U.S.C. § 512(k).

[3] The new directory is available here: dmca.copyright.gov/osp/.

[4] Additionally, service providers are not required to provide the position, organization, or physical mail address for the individual named as the service provider's primary point of contact for communications with the Copyright Office. Designating a secondary point of contact is also optional. See https://www.gpo.gov/fdsys/pkg/FR-2017-05-10/pdf/2017-09395.pdf.

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[5] For additional information, see generally www.copyright.gov/dmca-directory/ (which contains links to the new directory and FAQs) and www.copyright.gov/rulemaking/onlinesp/NPR/index.html (which contains tutorial videos).

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