

NO TIME LIKE THE RIGHT TIME* – TO UPDATE YOUR DMCA SAFE HARBOR COPYRIGHT AGENT REGISTRATION

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All companies that conduct business online should take note of a potential upcoming renewal deadline for the "safe harbor" from copyright infringement liability. Online service providers seeking safe harbor under 17 U.S.C. § 512(c) of the Digital Millennium Copyright Act (DMCA) [1] must designate a copyright agent with the U.S. Copyright Office and renew that designation at least once every three years. Failure to do so will negate the online service provider's ability to claim the safe harbor from copyright infringement liability under § 512(c). Many companies renewed their designations between December 1, 2016, and December 31, 2017, using the U.S. Copyright Office's new electronic filing system. For those that did, the three-year renewal deadline may be approaching.

As we previously wrote, [2] the U.S. Copyright Office recently implemented a new electronic system for the designation of copyright agents. This electronic system, which became effective December 1, 2016, and replaced the old paper-based system, is required to be used by all online service providers to designate copyright agents and take advantage of the safe harbor from copyright infringement liability under § 512(c). 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. A copyright agent is typically the contact at the online service provider for receipt of the various notices provided under § 512, such as notices of copyright infringement.

Service providers that designated a copyright agent via the old paper-based system (i.e., prior to December 1, 2016) were required to submit a new designation through the electronic system by December 31, 2017, or their designation would expire and become invalid after December 31, 2017. [3] Service providers must also renew their designation at least once every three years, either by amending it to correct relevant information or resubmitting it without amendment to confirm the designation's continued accuracy. For those that filed using the new electronic system (i.e., between December 1, 2016, and December 31, 2017) and have not renewed their designation since then, the three-year renewal deadline would fall between December 1, 2019, and December 31, 2020, depending on when the designation was originally registered with the U.S. Copyright Office. Failure to renew by the applicable deadline will prevent the service provider from claiming the safe harbor from copyright infringement liability established under § 512(c).

To check the effective date of your copyright agent designation, search the public directory of copyright agents here: <https://dmca.copyright.gov/osp/>, or log into your account here: <https://dmca.copyright.gov/osp/login.html>.

NOTES

* See The Blues Project, "No Time Like the Right Time" (1966 sound recording – https://www.youtube.com/watch?v=--S8Zjl8_hM) (composed by A. Kooper).

[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 U.S. 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). The other criteria are spelled out in the statute:

"A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

(A)(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity."

[2] December 31 Deadline for DMCA Safe Harbor Copyright Agent Designations,

<http://www.klgates.com/december-31-deadline-for-dmca-safe-harbor-copyright-agent-designations-10-16-2017>.

[3] If you did not renew your old paper-based designation using the new electronic system, your filing expired and you should consider filing immediately.

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