

New Requirements for Copyright Safe Harbor

December 7, 2016

The federal Digital Millennium Copyright Act (“DMCA”) provides safe harbors from copyright infringement liability for online service providers that are engaged in specified activities and that meet certain eligibility requirements. A “service provider” is broadly defined 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” and “a provider of online services or network access, or the operator of facilities therefore.” See 17 U.S.C. 512. This definition encompasses traditional Internet service providers as well as those businesses that provide a website that allows users to post or display material, which includes, for example, blogs, message boards, and photo uploads.

To be eligible for safe harbor protection, a service provider must designate an agent to receive notifications of claimed copyright infringement by making contact information for the agent available to the public on the website, and providing such information to the U.S. Copyright Office. The Copyright Office, in turn, is required to maintain a “current directory” of agents that have been designated by online service providers.

Since the DMCA’s enactment in 1998, online service providers have designated agents with the Copyright Office using a paper form, and the Office has made scanned copies of these filings available to the public by posting them on the Office’s website. This paper-based system, however, has proven inefficient and expensive for service providers and the Copyright Office.

The Copyright Office has now announced that, effective as of December 1, 2016, **all** service providers (including those that have already filed designations with the Copyright Office) must electronically register an agent to receive notices of copyright infringement under the DMCA. The electronic filing system will replace the current paper-based system, and the Copyright Office will not accept paper filings after December 1, 2016. Service providers have until **December 31, 2017** to re-register electronically, otherwise they will be disqualified from the DMCA’s safe harbor protection.

We encourage any individual or business using or operating a website that hosts user-generated content to electronically register their Copyright Office agent designations in advance of the December 31, 2017 deadline.

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If you have any questions related to this article or would like additional information, please contact your attorney at Neal Gerber Eisenberg, any attorney in the Intellectual Property & Technology Transactions practice group, or the authors.

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