

Regulatory Changes Affecting All “Service Providers” – 12/31/17 Deadline

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The U.S. Copyright Office has imposed new requirements on service providers in order to maintain safe harbor protection under the Digital Millennium Copyright Act (“DMCA”). Service providers who don’t meet these requirements will lose the safe harbor protections afforded by the DMCA. The deadline to comply with these requirements is December 31, 2017.

DMCA and the Safe Harbor

The DMCA was enacted by U.S. Congress in October 1998 with the purpose of addressing certain intellectual property issues in the wake of the Internet. Among the DMCA’s key provisions is “safe harbor” protection, designed to shield companies from liability for infringement due to content posted by a user on the company’s website, provided that the company qualifies as a “service provider.”

The law is ever-changing in the U.S. regarding internet site liability for service providers and there are some instances in which the DMCA safe harbor will not protect DMCA compliant service providers from claims. To date however, companies should be able to manage risk by:

- adhering to mandatory DMCA requirements, including: (a) providing required contact information for a registered agent to the U.S. Copyright office and on the company’s website; (b) establishing a repeat-infringer policy which includes potential termination of use of site, the terms of which are communicated to users; (c) expeditiously removing content in response to DMCA takedown notices; and (d) not interfering with standard technological measures used by content owners to identify and protect copyrighted works;
- removing any specific content which the company knows is infringing or which should be apparently infringing based upon facts or circumstances known to the company;
- not exerting material control or supervision over the user’s (infringing) conduct (if any);
- not receiving financial benefit directly attributable to the uploading or display of content by users.

Rule Changes

The new rules change how online service providers designate registered agents with the U.S. Copyright Office. The rule changes are intended to streamline the process for registering an agent and make it easier for the public to search for designated agent information. Key elements of the

new rules include:

1. The existing paper registration system will be replaced by online registration.
2. All paper registrations will become invalid on December 31, 2017. All service providers, including those already registered, will need to re-register via the online system, available at <https://dmca.copyright.gov/osp/login.html>, before that date.
3. Service providers must supply the physical street address, not a post office box, of its designated agent. A post office box may be used only in exceptional circumstances, such as where it is dangerous to publicly publish a street address, and with prior written approval of the Copyright Office.
4. Registrations must be renewed every three years. Expired registrations can be renewed at any time.
5. Any amendment or update to a registration restarts the three year clock.
6. The registration fee has been reduced from \$105 to a flat rate of \$6 per agent designation. The same fee applies to amendments and renewals.

Service providers who want to obtain or maintain safe harbor protection, and have not yet complied with the new requirements, should register their designated agents as soon as possible prior to the December 31, 2017 deadline and utilize docketing reminders to ensure future renewal deadlines are not missed.

The text and U.S. Copyright Office Summary of the changes can accessed here:

<https://www.federalregister.gov/documents/2016/11/01/2016-26257/designation-of-agent-to-receive-notification-of-claimed-infringement>