

Online Registration of DMCA Agents Becomes Mandatory

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Since its enactment in 1998, the Digital Millennium Copyright Act (DMCA) has provided internet service providers (ISPs) a safe harbor which shields them from copyright infringement liability when the ISP has no actual knowledge of the infringement and implements a proper "take down" policy. The safe harbor is a critical liability shield for ISPs which allow the posting of third-party content by users.

As one of the requirements for eligibility for the safe harbor, ISPs must designate an agent to receive notifications of copyright infringement claims. The DMCA agent, often counsel, monitors, investigates and responds to copyright infringement notifications.

ISPs are required to supply a full legal name of the ISP, a physical street address (not a post office box) for the ISP, and any alternate names of the ISP, as well as the name, organization, physical mailing address (street address or post office box), telephone number, and email address of the designated agent.

In order to designate an agent, an ISP must:

1. provide the DMCA agent contact's information to the public on the ISP's website (typically by including a designated DMCA section in the website Terms of Use); and
2. provide the same information to the Copyright Office, which maintains an online directory of designated agent contact information for public use.

ISPs must ensure that the information provided to the Copyright Office and the public is up-to-date and regularly maintained. An ISP's designation will expire and become invalid three years after it is registered with the Copyright Office. It is important to document and track designation renewal dates.

In December 2016, the Copyright Office introduced a new online registration system and directory for DMCA agents, which is intended to replace the paper records used since 1998. Accordingly, the Copyright Office no longer accepts designations of DMCA agents by paper submission. In order to designate an agent, an ISP must use the Copyright Office's new online system.

This online designation requirement affects not only new DMCA agent designations, but also any ISP that has previously submitted a designation by paper. **All ISPs that have designated an agent with the Copyright Office by paper must submit a new designation electronically using the online registration system by December 31, 2017.** Any designation not made through the online registration system will expire and become invalid after December 31, 2017, **including paper designations made prior to December 1, 2016.**

Additionally, as part of the new registration process, ISPs are now required to list any alternative names which the public might use when searching for a DMCA agent in the Copyright Office online directory. The Copyright Office's new online directory is searchable by name only (not available as a browseable list), so registered companies must include both their full corporate names and any brand or d/b/a names to ensure that the public can find the contact information of the DMCA agent through the Copyright Office system. Related companies that are separate legal entities, such as a parent and subsidiary, are considered separate service providers that must be registered separately.

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We strongly encourage ISPs to review internal and external policies for DMCA compliance issues and to register or re-register using the Copyright Office's online DMCA agent designation system as soon as possible.

For further information on copyright and DMCA issues, please contact Randy Friedberg (friedbergr@whiteandwilliams.com; 212.714.3079) or another member of our Intellectual Property Group.

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