

CLIENT ALERT: ACTION NEEDED BY ORGANIZATIONS WHOSE WEBSITES ALLOW USER POSTINGS

Intellectual Property & Technology Alert
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Practices & Industries

Intellectual Property & Technology

Businesses and nonprofits that operate a website or other online presence (mobile app, blog, portal, game, etc.) where users may post content (for example, in a user forum) will need to take action in 2017 in order to obtain or preserve their protection under the Digital Millennium Copyright Act (DMCA) safe harbor from copyright infringement liability.

Since its inception in 1998, the DMCA safe harbor, 17 U.S.C. 512(c), has offered a liability shield for an organization in connection with copyright infringing materials posted by website visitors, provided that the organization takes the necessary steps under the safe harbor rules. In the past, those steps included three things. First, the organization needed to publish contact information (typically in a website's Terms of Use) so that copyright owners knew whom to contact when requesting a takedown of infringing material posted by a user. Second, the organization was required to mail or otherwise transmit to the U.S. Copyright Office an Agent Designation form listing the contact person to receive takedown requests for specified websites. Third, when a designated agent received a valid takedown request, the agent needed to act promptly in taking down the infringing materials, following the steps set forth in the DMCA rules.

Starting December 1, 2016, the second requirement has changed. The Agent Designation system now requires an online submission via the Copyright Office website. Moreover, any organization that previously designated an agent must resubmit the Agent Designation through the new online registration system by December 31, 2017. Failure to resubmit a designation will cause the previous designation to expire, resulting in a loss of the safe harbor protection.

The new online registration fee is \$6 per agent designation. A designation lasts for three years and then must be renewed. Amendments, which may be filed at any time, restart the three-year renewal deadline.

The Copyright Office final rule requires organizations to include in the Agent Designation all alternate names that the public is likely to associate with the organization, such as d/b/a names, website names and addresses, and software application names. In addition, the final rule requires related companies such as



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parent and subsidiary to register separately, although a single registration account (login ID and password) may be used.

There are many instances in which existing Agent Designation forms contain nonfunctioning contact information or outdated lists of website addresses. Erroneous information undermines the protections afforded by the DMCA safe harbor. Therefore, the new online registration system provides a good opportunity for organizations to update their agent information and the list of websites and names linked to that designation.

In addition, organizations should take the opportunity to review and update their website Terms of Use and Privacy Policies. It is important that these documents are updated to match an organization's current operations, as well conforming to the latest data privacy laws.

Please contact one of the attorneys listed below or any other member of our Intellectual Property group to obtain assistance with the DMCA safe harbor requirements and updating your organization's Terms of Use and Privacy Policy documents.

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