

New Copyright Office Electronic Registration System for DMCA Agents – Are You Ready?

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The Digital Millennium Copyright Act (DMCA) sets forth a mechanism through which online service providers can avail themselves of a safe harbor from copyright infringement liability by recording an agent with the Copyright Office and following notice and takedown procedures. 17 U.S.C. 512. The agent's information must not only appear in the Copyright Office's records, but also on the service provider's website. Service providers are required to keep their contact information current.

To date, the Copyright Office has received and processed designations of DMCA agents via paper-based forms. As such, the process has required significant Copyright Office staff hours to scan the paper forms and to keep the online directory updated. Further, an audit by the Copyright Office revealed that a number of agent designations are either out of date or identify companies that no longer exist.

As of December 1, 2016, the Copyright Office will require service providers to register their designated DMCA agents electronically. Paper filings will no longer be accepted. Each designation will become invalid after three years, unless a service provider either: (a) amends the designation to correct or update the information contained in the designation; or (b) resubmits the existing information without amendment. The renewed designation will then be effective for a new three-year term.

Service providers who have already designated agents under the paper-based system will be required to submit new designations through the Copyright Office's online system by December 31, 2017. If they do not do so, their agent designation will expire and they

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will technically no longer be protected under the DMCA's safe harbor provisions.

Information submitted through the online registration system will automatically populate the Copyright Office's new online DMCA agent directory. This will ensure that the public has timely access to the most current information. The online directory will also contain service provider designations dating back up to ten years. The directory will identify whether a designation is active or historical. If there are active and prior designations for a particular entity, only the most recent version of the designation will appear as a search result, but users will be able to navigate to prior versions of the designation.

Because service providers have until December 31, 2017 to file an electronic designation, the public should search the Copyright Office's existing paper-based agent directory and the new online agent directory, because an agent may be validly registered in either directory. If there are any discrepancies, the new online directory will control.

Finally, the fees for the new online registration system will be significantly cheaper than the soon-to-be obsolete paper-based registration system. Previously, the cost to record an agent designation was \$105, plus an additional \$35 fee for each group of ten alternate names used by the service provider. Under the new registration system, recording an agent designation will cost only \$6, with no additional fees for including alternate names in the designation.