Digital Millennium Copyright Act: New DMCA Safe Harbor Copyright Agent Requirements for Online Services Providers

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On October 31, 2016, the U.S. Copyright Office issued a new rule instituting an electronic system for the designation of copyright agents, which is required to take advantage of the safe harbor from copyright infringement for online service providers under 17 U.S.C. § 512(c). For purposes of § 512, any entity that provides an online service (such as a website, email service, discussion forum, or chat room) generally would qualify as an online service provider. A copyright agent is typically the individual at the online service provider for which contact information is provided in order to receive the various notices provided under § 512.

Under the new system, which takes effect on December 1, 2016, all online service providers seeking safe harbor under § 512(c), including those that have previously designated an agent with the Copyright Office, are required to submit designations through the electronic system. Entities that previously designated a copyright agent via the paper system must submit a new designation through the electronic system by December 31, 2017. Failure to do so will negate the safe harbor from copyright infringement liability established by § 512(c). Designations also must be renewed at least once every three years. (The current paper-based system does not require renewal.) The fee for registration and subsequent renewal(s) is set at US$6 per designation.

Designating an agent through the electronic system requires creating an online account with the U.S. Copyright Office and providing information similar to what is required under the current paper-based system (e.g., name and address of the service provider and agent contact information), but with some differences. As before, service providers must provide a physical address and cannot use a P.O. Box, however, now a P.O. Box may be used for a service provider’s agent. An agent’s name does not need to be an actual individual’s name and instead a department within the service provider’s organization or a third-party entity is acceptable.

Separate legal entities that wish to take advantage of the safe harbor must each file separate designations for each entity. However, a single U.S. Copyright Office account can be used to register and manage designations for multiple service providers (e.g., a parent company may manage designations for its subsidiaries through a single account, but each must register separately).

The current paper-based registration allows but does not require service providers to include “alternative names,” such as names under which the service provider is doing business. Under the new system, service providers must list “all alternate names that the public would be likely to use to search for the service provider’s designated agent in the directory, including all names under which the service provider is doing business, website names and addresses (i.e., URLs, such as “com” or “org”), software application names, and other commonly used names.”

To reemphasize the point stated above, the new DMCA electronic copyright agent system will fully replace the paper-based system. Beginning December 1, 2016, the Copyright Office will no longer accept paper designations. Previously filed paper designations will continue to satisfy the service provider’s statutory obligations under § 512(c) until the service provider registers electronically, or through December 31, 2017, whichever occurs earlier. New designations should be filed on December 1, 2016, or as soon as possible thereafter.
Section 512(c) of the Digital Millennium Copyright Act (DMCA) provides limitations on service provider liability for storage at the direction of a user of material on a system or network controlled or operated by or for the service provider, if, among other things, the service provider has designated an agent with the Copyright Office to receive notifications of claimed infringement, and the service provider posts the agent’s relevant contact information in a location accessible to the public (e.g., on the service provider’s website). For more information on § 512(c), see generally http://www.copyright.gov/onlinesp/.


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