

Online Service Providers – Important Update – Copyright Safe Harbor

Article By:

Sudip K. Mitra

Michael J. Turgeon

As of December 1, 2016, the **Copyright Office** requires that each online service provider designate an agent to receive notifications of claimed infringement as required under the **Digital Millennium Copyright Act ("DMCA")** by the Office's new online system, located [here](#). This online registration system and corresponding electronically generated directory replace the Office's old paper-based system and directory. As a result, the Office will no longer accept paper designations and service providers that appointed agents under the old paper-based system must submit a new designation under the new online system by December 31, 2017 in order to maintain its safe harbor¹ from copyright infringement.

The DMCA includes provisions directed to copyright infringement on the internet, notice and takedown procedures for copyright owners to report claimed infringement and safe harbors from copyright infringement liability for online service providers. Generally, online service providers are considered to be any provider of online services or network access, such as, internet service providers, websites, hosting companies, mobile app publishers, others that allow users to post or store material on their systems, and search engines, directories, and other information location tools, etc.

In order to qualify for safe harbor protection (which is no liability for copyright infringement resulting from its users or user-sourced content), service providers must designate an agent to receive notifications of claimed copyright infringement and, in addition to other statutory requirements, expeditiously remove material identified by a copyright owner claimed to infringe its rights. A service provider must do two things to designate an agent: (1) make certain contact information for the agent available to the public on its website; and (2) provide the same information to the Copyright Office, which maintains a centralized online directory of designated agent contact information for public use. The service provider must also ensure that this information is up to date. The importance of this designation requirement cannot be overlooked as at least one service provider has been denied safe harbor protection for compliance failure. *BWP Media USA v. Hollywood Fan Sites* (S.D.N.Y. 2015).

Any designation not made through the online registration system will expire and become invalid after **December 31, 2017**. Until then, the Copyright Office will maintain two directories of designated

agents: the directory consisting of paper designations made pursuant to the Office's prior interim regulations which were in effect between November 3, 1998 and November 30, 2016 (the "old directory" located [here](#)), and the directory consisting of designations made electronically through the online registration system (the "new directory" located [here](#)). Fees under the new system are nominal, \$6 per designation, including alternate names. Further, the designation must be renewed every three (3) years in order to keep the registry information fresh. The new system is supposed to send reminder emails before the renewal date.

During the transition period, a compliant designation in either the old directory or the new directory will satisfy the service provider's obligation under section 512(c)(2) to designate an agent with the Copyright Office.

¹ Part of the DMCA, the Online Copyright Infringement Liability Limitation Act (OCILLA), 17 U.S.C. § 512, creates a conditional safe harbor from copyright infringement for online service providers and provides strong incentives for cooperative detection and resolution of copyright infringement in

the digital networked environment. By providing a "safe harbor" from copyright infringement liability, OCILLA attempts to strike a balance between the

competing interests by providing greater certainty regarding legal exposure for copyright infringement.

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