

Deadline Approaching for Refiling Designated Agent Information Under Digital Millennium Copyright Act

Last November, the U.S. Copyright Office issued its Final Rule regarding designating copyright agents under the Digital Millennium Copyright Act (DMCA) and announced a new electronic system for filing such designations. Starting on December 1, 2016, all online service providers were required use the Copyright Office's new online registration system to submit information regarding their designated copyright agents.

Additionally, all agent designations currently on file with the Copyright Office that were filed prior to December 1, 2016, will expire on December 31, 2017, and will need to be updated. **This means that all service providers who had previously submitted designated agent information using the prior paper filing system must re-register their designated agent's information using the new electronic system by December 31, 2017, to remain eligible for protection under the DMCA's safe harbor provisions.** Other changes to the DMCA designated agent designation process also included in the Final Rule are outlined below.

Background: Designating Agents for Online Service Providers Under the DMCA

The DMCA provides a safe harbor from copyright infringement liability for online service providers that meet certain eligibility requirements. Under the DMCA, online service providers are required to formally designate an agent to receive notifications of copyright infringement claims on their behalf. Contact information for the designated copyright agent must be made available to the public on the service provider's website and must also be recorded and maintained with the Copyright Office.

The Copyright Office is required to maintain a current directory of the designated copyright agents for online service providers. The Copyright Office issued a notice of proposed rulemaking to update relevant regulations in anticipation of a new electronic system for online service providers to submit and maintain the contact information for their designated copyright agent, and a Final Rule was issued on November 1, 2016.

Changes to DMCA Agent Designation Process

- **All Service Providers Must File Designations Using the New Electronic System by December 31, 2017.** Under the new rule, all online service providers must register their designated agent's contact information using the Copyright Office's new electronic system by December 31, 2017. All agent designations currently on file with the Copyright Office remain in effect, but will expire and become invalid as of December 31, 2017.
- **Renewal Required Every Three Years.** As under the old system, service providers will be required to maintain the accuracy of their designated agent's information by providing timely amendments whenever a change occurs. However, under the new system, a service provider's designation will expire and become invalid three years after it is registered with the Copyright Office, unless the service provider renews or updates the registration. Submitting a designation renewal or update through the Copyright Office's online system will begin a new three-year period before such designation must be renewed.
- **Additional Information Required From Service Providers.** In addition to providing their contact information, online service providers will now be required to list all alternate names that the public would be likely to use to search for the provider's designated agent in the Copyright Office's directory. This includes names under which the service provider is doing business, website names and addresses

(including URLs), software application names and any other commonly used names. Another change under the new rule is that when providing contact information, online service providers must now provide their street address and may not list a P.O. Box, except in exceptional circumstances (e.g., where there is a demonstrable threat to an individual's personal safety or security, such that it may be dangerous to publicly publish a street address where such individual can be located) if a waiver is obtained from the Register of Copyrights.

- **Service Providers May Name a Position or Title, a Specific Department Within Their Organization or a Third-Party Entity as Their Designated Agent.** In the past, service providers were required to name an individual (e.g., Jane Doe) as their designated agent. Although the Copyright Office practice in recent years was to accept designated agent filings that used a title in lieu of an individual name, the potential effect of this on the safe harbor was uncertain. Under the new rule, service providers are now specifically permitted to name a specific position or title held by an individual (e.g., Copyright Manager) as their designated agent, or they may name a specific department within their organization (e.g. Copyright Compliance Department) or a third-party entity (e.g., ACME Takedown Service).
- **Required Information for Designated Agents.** As under the old system, service providers must provide the contact information for the designated copyright agent, including the agent's address, phone number and email. Under the new rule, a P.O. Box may now be used for the designated agent instead of a street address. Additionally, the designated agent's organization must now be identified in the registration. For example, if the designated agent is an individual within the service provider's organization, then the agent's organization would simply be the service provider. Alternatively, if the designated agent is a third-party entity or an individual working for a third-party entity, then that entity should be specified as the agent's organization.
- **Fees.** Finally, the Copyright Office has announced a new fee structure for designated agent filings. Under the new rule, the old registration fee of \$105 has been reduced to a flat fee of \$6 per designation. The \$6 fee applies to new designations, as well as amendments and renewals to previously registered designations.

How to Comply With the New Rule

- **Re-register designated agent information by December 31, 2017.** If your designated agent filing was made prior to December 1, 2016, a new designated agent registration using the new online system is required in order to remain eligible for DMCA safe harbor protection. You can ask experienced counsel to do this for you. However, the new system makes it relatively easy to update the designated agent filing on your own by taking the following steps:
 - **Create an account.** Service providers must first create an online account on the Copyright Office's new electronic system by visiting <https://dmca.copyright.gov/osp/login.html>. A single account can be used to register and manage the agent designations for multiple service providers. This account will be the primary point of contact for the Copyright Office regarding the registration account, including confirmation emails and other notices and reminders. You can add a secondary contact, who the Copyright Office may send notices and reminders to, and correspond with in the event that the primary contact cannot be reached, by clicking "Add Secondary Contact." You may want to add your counsel as a secondary contact.
 - **Register service providers.** Once the account has been created with the Copyright Office's new electronic system, you then need to log in and register an online service provider (and designate an agent for that service provider as described below) by providing the required information and paying the \$6 registration fee. Note that service provider registrations must include a physical street address for the service provider—no P.O. Boxes allowed except in exceptional circumstances. Separate legal entities, such as corporate parents and subsidiaries, are considered separate online service providers that must be registered separately in order to take advantage of the DMCA safe harbor.

- **Designate an agent.** Each service provider must designate a copyright agent by name, position or title and provide the agent's required contact information, including their organization, telephone number, email address and mailing address. P.O. Boxes are allowed for designated agents. Note that the DMCA also requires this information to appear on the service provider's website.
- **Renew designations every three years.** Once an agent has been designated, service providers will need to update or renew their designated agent information at least every three years. It will also need to be updated if any of the information changes. Service providers will also need to ensure that their website is updated to reflect any changes to their designated agent or the designated agent's contact information. Each renewal or update will automatically start a new three-year period. The Copyright Office will send out reminder emails to service providers before the next renewal deadline, but consider setting a calendar reminder of this deadline as well.

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