

PUBLICATION

Get Thee to the Copyright Office: Take Steps Now to Preserve Your DMCA Safe Harbor Protection

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The U.S. Copyright Office announced yesterday its new online registration system for designated agents. Online service providers designate agents to receive notifications of claimed copyright infringement. As of December 1, 2016, the Copyright Office no longer accepts paper applications for agent designation. Service providers who previously designated agents in the existing directory have until December 31, 2017 to register in the new online directory.

Online service providers, including websites and online platforms that allow users to store material on their systems, risk liability for direct or contributory copyright infringement from third party materials posted by users without permission. Since users often do not understand or care about copyright law, an unwary service provider (who often appears to have deeper pockets) may have a rude awakening when it finds itself the sole defendant in a copyright litigation over unauthorized photos or other user generated content posted on its website by a user.

Congress passed the Digital Millennium Copyright Act ("DMCA") to balance the rights of copyright owners with the needs of online service providers in the face of rapidly developing technology. The DMCA provides a safe harbor from copyright infringement liability in [17 U.S.C. 512](#) for qualifying service providers who agree to remove copyright infringing content and eject infringing users from their platforms. The DMCA safe harbor protects burgeoning technology such as streaming music platforms. In order to qualify for DMCA safe harbor protection, a service provider must have an appropriate copyright policy in its terms of use, designate an agent to receive notifications of claimed copyright infringement, register the designated agent with the Copyright Office, and understand and comply with the DMCA notice and take down procedures.