

## **DMCA Update: Copyright Office Proposes Changes to Agent Registration System to Qualify for Copyright Safe Harbor for User Generated Content**

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On Sept. 28, 2011, the Federal Register published the Copyright Office's Notice of Proposed Rulemaking ([NPRM](#)) and request for comments on a proposal for a new system to register agents designated to receive take-down notices under the Digital Millennium Copyright Act (DMCA). The DMCA protects online service providers (include website owners) from copyright liability for content created by site users unaffiliated with the service provider if they abide by certain provisions of the Act, one requirement of which is to register an agent to receive notices of alleged infringement from copyright owners. This safe harbor from copyright liability is important to all service providers and website operators who allow "user-generated content" to be uploaded onto their services as, without such protections, potential liability issues would stifle the development of this type of platform.

The NPRM proposes to move to an electronic agent registration system. This system will provide for quicker registration by users, and more accessibility to information by copyright holders. The system will also request verification of the registered information on a regular basis to ensure that it remains accurate. If adopted, this system would also require all current service providers to establish an online account with the Copyright Office and re-register their designated agents. This re-registration would be accompanied by a fee, as would all subsequent updates.

Since the DMCA's enactment in 1998, the registration process has been governed by interim rules. Service providers currently register their agents by means of a paper form whose information is manually entered by the Copyright Office into a list that is available on an official website. From experience, the time from the filing of such a registration to its appearance on the Copyright Office's website can take several weeks or more. The Copyright Office, in the NPRM, states that it has done some informal checks on the information in its database of registered agents, and has found that the list contains duplicate registrations, registrations for companies or sites that are no longer in operation (service providers are supposed to tell the Office when they stop their operations), and many outdated addresses (service providers are supposed to update their agents as employees change, but apparently they sometimes forget).

In making this proposal, the Copyright Office asks for public comment on a number of issues. These include:

- ❖ Should the system be organized based on the name of the service provider, or based on the URLs of the websites registered?
  - If registered by website, are “apps” developed for mobile devices all associated with a readily identifiable URL that a copyright holder will know if it wants to file a take-down notice, or should apps be registered differently?
  - If registered by service provider, should subsidiaries and alternate trade names be all registered in one filing, or should each have to register independently?
- ❖ Should a service provider be able to register an agent who is not an employee (e.g. a law firm or other entity)? The Copyright Office disfavors this approach because such agents may not be diligent in processing take-down notices.
- ❖ Must an individual name be provided, or is an office or title at a service provider sufficient?
- ❖ Should email addresses of the service providers (as well as those of the agents) be provided? Should email addresses be made public in the Copyright Office's database?
- ❖ How should the Copyright Office deal with situations where there are duplicate entries, such as when a seller of a URL does not notify the Copyright Office of its discontinuance of use, and a buyer registers an agent for the same URL?
- ❖ How can the Copyright Office guard against fraudulent registrations?
- ❖ What information should be provided in the registration? (Currently legal name, address, alternate names, phone number and email address of the agent are required)
- ❖ Should the Copyright Office maintain periodic snapshots of its database (“versioning”) so that parties can determine whether a proper agent was designated at various times in the past?
- ❖ The Copyright Office suggests that service providers may need to periodically validate the information that they have on file. How often should such validation be required?

An automated system, where information is easily retrievable, and which automatically reminds service providers to update their information, may provide a real benefit both to copyright holders (who will be able to more easily access the proper person for take-down notices) and service providers (who will be reminded to keep their information current). There remain many questions to be answered before the new system can be implemented. However, with so many businesses now allowing some form of user-generated content, this is an important process with broad impact.

Comments on the Copyright Office's proposal are due on Nov. 28, 2011, and reply comments are due by Dec. 27, 2011. If any of these issues may affect your operations, you might consider filing comments. For more information about this proceeding, or for assistance in filing, please contact any of the Communications attorneys at DWT.

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