

Client Alert

DMCA Amendment Affecting Designated Agent Requires Registration By December 31, 2017

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By: [Karl Rutledge](#) and [Adrienne Brantley](#)

The Digital Millennium Copyright Act (DMCA), among other things, provides a safe harbor from copyright infringement liability for online service providers and website owners that allow third parties to post content onto or through their websites or other online platforms.

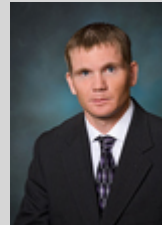
In order to qualify for safe harbor eligibility, a company must register an agent with the Copyright Office who is designated to receive complaints of alleged copyright infringement on behalf of the company (the "Designated Agent"). The Designated Agent is also responsible for maintaining accurate and current agent contact information both on the company website and with the Copyright Office.

Since the DMCA's enactment in 1998, online service providers have used a paper form to designate agents with the Copyright Office. The Office made scanned copies of those paper forms available to the public by posting them on the Office's website. However, last year the U.S. Copyright Office promulgated new regulations affecting the designation of registered agents under the DMCA safe harbor program. These changes are critical to online service providers and website owners that wish to avail themselves of the safe harbor provisions of the DMCA.

Effective December 1, 2016, entities intending to afford themselves the protection offered by the safe harbor provisions of the DMCA must register their Designated Agents through the new online registration system. Equally important, entities that previously registered their Designated Agents via the paper registration regime have until December 31, 2017 to re-register through the online system. ***This means every entity that has previously registered via paper registration must renew their registration online before the end of 2017.*** Failure to register through the new online system by the applicable deadline will result in loss of DMCA safe harbor protection.

Besides this pending deadline, several other important considerations exist. Most importantly, the November 1, 2016, **amendment** to 37 CFR § 201.38, which changed the registration requirements for Designated Agents under the DMCA, also included a renewal requirement. In particular, a designation "expire[s] and become[s] invalid" three years after the initial registration unless the designation is renewed by either amending it to correct or update information or resubmitting the registration information without amendment. 37 CFR § 201.38(a)(4). An entity's failure to renew a Designated Agent's online registration every three years will result in loss of DMCA safe harbor protection.


Contacts



Karl Rutledge, Partner
Las Vegas
702.949.8317
krutledge@lrrc.com



Adrienne Brantley, Partner
Las Vegas
702.474.2664
abrantley@lrrc.com



While the new system will automatically email reminders when it is time to renew a designation, the renewal requirement still creates a substantial liability concern should a registration lapse due to inattention or carelessness. To avoid such lapses, entities (either on their own or via counsel) should consider implementing internal processes to track and meet renewal dates to ensure compliance and protection. In that regard, the new regulations do specify that: in addition to an individual, the Designated Agent may be a specific position or role (*e.g.*, General Counsel or Copyright Manager), a department within the service provider's organization, or be served by a third-party entity (*e.g.*, a law firm).

Should you have any questions regarding the new online registration for Designated Agents under the DMCA or would like to explore our ability to serve as your Designated Agent, please do not hesitate to contact Karl Rutledge at krutledge@lrrc.com or Adrienne Brantley at abrantley@lrrc.com.