



NEW REQUIREMENTS TO MAINTAIN DMCA SAFE HARBOR PROTECTION

You may need to take action to ensure compliance with new regulations issued by the U.S. Copyright Office (USCO). Specifically, if you have previously designated an agent with the USCO for the purposes of the Digital Millennium Copyright Act (DMCA), **you will be required to re-register your agent electronically in order to maintain your DMCA safe harbor protection. In addition, if you are registering an agent for the first time, you must register your agent electronically in order to receive DMCA safe harbor protection.** Whether you are re-registering an agent or registering an agent for the first time, you must renew your registration every three years to maintain this safe harbor protection.

How do I know if this applies to me?

- Do you provide an online service (including any website or app) that allows users to upload, post or store content (e.g. pictures, comments, video, audio)? If so, this applies to you.

What is the DMCA?

- Online "service providers" (OSPs) who allow users to upload, post, or store content can potentially face liability in cases where that content infringes a third party's copyright. However, the DMCA includes a safe harbor provision for such OSPs – including operators of websites and apps – allowing OSPs to limit their liability for copyright infringement resulting from content uploaded by their users.
- To take advantage of this safe harbor, the OSP must, among other requirements, register a designated agent with the USCO to receive notices of alleged copyright infringement.

What is changing?

- Prior to the new regulations taking effect, OSPs registered their designated agents by submitting paper registrations to the USCO. The paper-based system did not require renewals, but did require the designated agent to be a specifically named individual.
- Under the new regulations, each OSP looking to take advantage of the DMCA safe harbor ***must electronically register its designated agent (no longer necessarily an individual) and re-register again every three years.*** This applies to both new registrants and registrants with existing paper registrations.

What do I need to do, and when?

- If you previously registered a designated agent with the USCO, you must re-register your designated agent electronically through the USCO's new online registration system at:

<https://dmca.copyright.gov/login.html> prior to December 31, 2017. You may designate only a single agent. That designated agent may be an individual (e.g., "Jane Doe"), a position or title (e.g., "Copyright Manager"), a department (e.g., "Copyright Compliance Department"), or a third-party service provider (e.g., "ACME Takedown Service"). For more details on how to use the new online registration system, please visit <http://www.copyright.gov/rulemaking/onlinesp/NPR/index.html>.

- You will also need to **renew this electronic registration every three years**. We recommend you set multiple calendar reminders to ensure this does not lapse.
- If you have not previously registered a designated agent, but think that you should, please contact a member of your Gunderson Dettmer team for more information on how to qualify for the DMCA safe harbor. To determine whether you have previously registered an agent, you can search the USCO's directory by visiting http://www.copyright.gov/onlinesp/list/a_agents.html.

What are the consequences of failing to make this filing?

- Failure to register or re-register your designated agent in accordance with the new requirements will deprive you of DMCA safe harbor protection, and accordingly could result in copyright infringement liability for content uploaded to your service by users.

If you have questions regarding this client alert, please contact a member of your Gunderson Dettmer team, particularly any attorney in the Technology/IP group.

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