

Website Operators Must Use New Online System to Qualify for DMCA Safe Harbor

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On December 1, 2016, online service providers (including most website operators, cloud service providers and online communication services) must qualify for the Digital Millennium Copyright Act (“DMCA”) safe harbor by using a new online system to register and maintain a designated agent to receive copyright infringement notices. Providers that previously submitted designations using paper forms must register in the new online system no later than December 31, 2017. Paper forms will not be accepted by the United States Copyright Office after the new electronic system launches on December 1, 2016.

Pursuant to §512(c) of the DMCA, online service providers are not liable for copyright infringement claims related to content posted by their users if the provider fulfills certain requirements, including filing with the United States Copyright Office an address to which copyright owners can send copyright infringement claims or takedown notices. In the past, providers could file designations with the United States Copyright Office by mailing a paper form. Beginning December 1, 2016, all designations must be submitted and maintained only in the United States Copyright Office’s new online system. Providers that fail to submit designations in the new online system will be ineligible for the copyright infringement safe harbor provided by §512(c) of the DMCA, and thus may be liable to copyright owners for any infringing content posted by users.

To comply with the new requirements, online service providers must create an account at dmca.copyright.gov on or soon after December 1, 2016. The new account must be used to provide the name, address, phone number, and email address of the agent designated to receive notices of copyright infringement on the provider’s website. Designations must be renewed every three years.

Filing a designation with the United States Copyright Office is only one of the requirements of the DMCA’s safe harbor, and all online service providers — particularly operators of interactive websites that allow users to post or store their own content — must take care to comply with all of the safe harbor conditions. Providers that fail to qualify for the safe harbor can be liable for copyright infringement if their users post or store infringing content using the provider’s website or service, even if the provider isn’t aware of the infringement.