
DMCA Safe Harbor: Registration Time

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Any company with a designated agent under the Digital Millennium Copyright Act (DMCA) must re-register its agent through the U.S. Copyright Office's new online system before December 31, 2017.

- Under a final rule issued by the U.S. Copyright Office effective December 1, 2016, all DMCA designated agent registrations previously filed with the Copyright Office will expire on December 31, 2017.
- To preserve potential safe harbor eligibility under the DMCA after that, online service providers are now required to re-register their designated agents through the Copyright Office's website by the end of 2017 (and to renew that filing every three years thereafter).

The DMCA, enacted in 1998, provides a safe harbor to online service providers against copyright infringement liability for infringing material posted by users of the service provider's service. A "service provider" potentially protected by this safe harbor is defined very broadly in the statute as any "provider of online services or network access." In general, this includes the operator of any website, social media platform, mobile app, blog, portal, game, or other digital service that enables user-posted content or communications.

For an online service provider to qualify for the safe harbor in the event it is sued for copyright infringement arising from user-posted content, several requirements must have been met by the service provider. For example, it must have adopted and reasonably implemented a policy for termination of repeat infringers. And it must have posted the DMCA designated agent and certain associated information on its website in a location accessible to the public.

But another requirement—the one amended by the new final rule—is that the service provider must have submitted information regarding its DMCA designated agent to the Copyright Office, for access by the public in a directory hosted on the Copyright Office's website. Before December 1, 2016, this meant submitting the required information to the Copyright Office on a paper form, either as a printout submitted via regular mail or as a scanned document submitted via email. Commencing on December 1, 2016, online service providers may only submit the required information through the Copyright Office's new online system—available [at this link](#).

In a move disfavored by some observers, as part of this roll-out the Copyright Office has decided to obligate all online service providers to register again with the Copyright Office through the new online system. Commencing January 1, 2018, any DMCA designated agent filing made to the Copyright Office through the former paper process before the date of this alert will no longer satisfy the safe harbor's requirement that the designated agent be registered with the Copyright Office. That is, any online service provider that does not re-register on the new online system will lose the safe harbor protection after December 31, 2017. At least the new rule establishes a 13-month transition period for companies to re-register their designated agents: from December 1, 2016 to December 31, 2017. So there is plenty of time to comply. (And the new registration fee is only \$6 per designated agent.)

In short: if you have registered a DMCA designated agent with the Copyright Office, you need to go to the Copyright Office's website before the end of 2017 to register your agent again through the new online system. And although the Copyright Office promises to send automated reminders to all who register through the new system, going forward you'll need to renew (and update as needed) that registration every three years. For additional information and tutorials provided by the Copyright Office regarding this topic, you may visit [this link](#).

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or one of the attorneys below.

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