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## New DMCA Regulations: Existing, New Designated Agents Must Register Online

The U.S. Copyright Office has promulgated new regulations affecting the designation of registered agents under the Digital Millennium Copyright Act (DMCA) safe harbor program which have been implemented as of Dec. 1, 2016. These changes should be noted by certain online service providers and website owners that allow content to be posted by third parties onto or through their websites or other online platforms. Among other changes to the existing requirements, the new regulations specify that:

- (1) the Copyright Office's online system must be used to designate agents to receive notices of alleged infringement;
- (2) existing designated agents must be re-designated through the online system by Dec. 31, 2017;
- (3) designations must be renewed every three years;
- (4) 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
- (5) the designated agent may be a third-party entity (*e.g.*, law firm or other service provider).

## BACKGROUND

The DMCA, among other things, provides a safe harbor from copyright infringement liability for online service providers and website owners that are engaged in specified activities (e.g., storage of material at the direction of a user, system caching, and/or providing information location tools).<sup>1</sup> If, for example, your company is an internet service provider or a company that hosts user-generated content on its website, it may be eligible for the DMCA safe harbor program.

Among the requirements for DMCA safe harbor eligibility is the requirement that a company 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 is also responsible for maintaining accurate and current agent contact information both on the company website and with the Copyright Office. Failure to do so may cause the company to forfeit its eligibility for DMCA safe harbor protections.

Previously, agent registration was processed using paper forms which the Copyright Office scanned and uploaded to its website directory. The regulations required that the designated agent be an individual, but did not clearly specify whether that individual had to be employed by the company seeking immunity or if it could be a third party. Additionally, while companies were responsible for ensuring that the contact information for their designated agent was accurate, once they designated an agent, that designation never expired. Over time, the Copyright Office determined that the directory was inaccurate and out of date, and decided to modernize its process. Noteworthy is the new final rule's<sup>2</sup> proviso that registrations will only be effective for a three-year period, rather than indefinitely.

## NEW PROCEDURES AND IMPLICATIONS

Beginning Dec. 1, 2016, agents can no longer be designated using paper forms and companies must instead use the Copyright Office's new online system. In order to use the new electronic agent registration system, each service provider must first open an account with the Copyright Office. To register, the company submits the designated agent contact information, lists all company names and website URLs that the public may use to find the designated agent in the Copyright Office's directory, and pays a \$6 flat fee (previously \$105). The designated agent can be an individual, a specified position or title within the company (such as General Counsel), a specified department in the company, or a third-party entity (such as a law firm).

Related or affiliated service providers which are separate legal entities must each have a separately registered designation (though such separate designations may be managed by a single user through a single registration account).

Going forward, each service provider must also renew, resubmit or amend (update) each designation every three years from the date of its electronic filing with the Copyright Office. Amending the designation starts the three-year period anew. A service provider failing to renew or update within three years may reactivate its account, but the lapse will be noted in the Copyright Office's directory.

Further information and tutorials on the registration process are available on the [Copyright Office website](#).

## TAKEAWAYS

1. Effective Dec. 1, 2016, the Copyright Office will only process DMCA safe harbor agent designations through its online system. Paper forms will no longer be accepted.

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<sup>1</sup> 17 U.S.C. 512, 17 U.S.C. 512 (c)(2), 17 U.S.C. 512 (c)(3)(A)

<sup>2</sup> <https://www.federalregister.gov/documents/2016/11/01/2016-26257/designation-of-agent-to-receive-notification-of-claimed-infringement#footnote-2-p75695>

2. All previously-filed paper forms will expire on Dec. 31, 2017. Companies that filed DMCA safe harbor agent designations prior to Dec. 1, 2016, must submit new agent registrations electronically with the Copyright Office before Dec. 31, 2017.
3. Designated agents no longer need to be an individual, and can be a specified position or title within the company (such as General Counsel or Copyright Manager) or a department within the service provider's organization;
4. The designated agent may be a third-party entity such as a law firm or other service provider; and
5. The electronically-filed agent designations will only be effective for a period of three years from the date of filing. Although the Copyright Office is obligated to notify companies of their agent designation renewal dates, companies should consider entering the renewal dates in a calendar reminder system themselves.

This *GT Alert* was prepared by **Paul A. "Dash" McLean**, **Marc H. Trachtenberg**, and **Tamara Suden**. Questions about this information can be directed to:

- > [Paul A. "Dash" McLean](#) | +1 650.289.7890 | [mcleand@gtlaw.com](mailto:mcleand@gtlaw.com)
- > [Marc H. Trachtenberg](#) | +1 312.456.1020 | [trachtenbergm@gtlaw.com](mailto:trachtenbergm@gtlaw.com)
- > [Tamara Suden](#) | +1 650.289.7883 | [sudent@gtlaw.com](mailto:sudent@gtlaw.com)
- > Or your [Greenberg Traurig](#) attorney

<b>Albany</b> +1 518.689.1400	<b>Delaware</b> +1 302.661.7000	<b>New York</b> +1 212.801.9200	<b>Silicon Valley</b> +1 650.328.8500
<b>Amsterdam</b> + 31 20 301 7300	<b>Denver</b> +1 303.572.6500	<b>Northern Virginia</b> +1 703.749.1300	<b>Tallahassee</b> +1 850.222.6891
<b>Atlanta</b> +1 678.553.2100	<b>Fort Lauderdale</b> +1 954.765.0500	<b>Orange County</b> +1 949.732.6500	<b>Tampa</b> +1 813.318.5700
<b>Austin</b> +1 512.320.7200	<b>Houston</b> +1 713.374.3500	<b>Orlando</b> +1 407.420.1000	<b>Tel Aviv<sup>^</sup></b> +03.636.6000
<b>Berlin<sup>-</sup></b> +49 (0) 30 700 171 100	<b>Las Vegas</b> +1 702.792.3773	<b>Philadelphia</b> +1 215.988.7800	<b>Tokyo<sup>ⓧ</sup></b> +81 (0)3 4510 2200
<b>Berlin-GT Restructuring<sup>-</sup></b> +49 (0) 30 700 171 100	<b>London<sup>*</sup></b> +44 (0)203 349 8700	<b>Phoenix</b> +1 602.445.8000	<b>Warsaw<sup>~</sup></b> +48 22 690 6100
<b>Boca Raton</b> +1 561.955.7600	<b>Los Angeles</b> +1 310.586.7700	<b>Sacramento</b> +1 916.442.1111	<b>Washington, D.C.</b> +1 202.331.3100
<b>Boston</b> +1 617.310.6000	<b>Mexico City<sup>+</sup></b> +52 55 5029.0000	<b>San Francisco</b> +1 415.655.1300	<b>Westchester County</b> +1 914.286.2900
<b>Chicago</b> +1 312.456.8400	<b>Miami</b> +1 305.579.0500	<b>Seoul<sup>∞</sup></b> +82 (0) 2.369.1000	<b>West Palm Beach</b> +1 561.650.7900
<b>Dallas</b> +1 214.665.3600	<b>New Jersey</b> +1 973.360.7900	<b>Shanghai</b> +86 (0) 21.6391.6633	

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