

Copyright Office Issues Important Rule On DMCA Agent Registration

There would be no Internet as we know it were it not for the Digital Millennium Copyright Act (“DMCA”) notice-and-takedown system. Because of the risk that users might post copyright-infringing material, Youtube would have no videos, Amazon and Tripadvisor would have no user reviews and online forums would be almost nonexistent.

The DMCA avoided this by providing website owners with a legal safe harbor for copyright-infringing user-generated content (“UGC”). A site owner will not be liable for UGC if it has complied with the DMCA. And therein lies the rub. The DMCA requires that a web site meet certain conditions – some easy, some more difficult. Much ink has been spilled by the courts and litigants attempting to define and apply these conditions.

However, until now one condition has been easy to satisfy: the website owner must register an “agent” with the Copyright Office – someone a copyright owner can write to and request a “take down” of an infringing work. Incredibly, until now this system has been paper-based. Website owners must mail paper forms to the Copyright Office, which scans and posts them. (Google “DMCA

agents index” to see for yourself.) Once an agent was registered, the website owner was done, as long as the contact information didn’t change. It was a “set it and forget it” system.

That is no longer true. At long last the Copyright Office is transitioning the agent system from paper to electronic. And, after much bureaucratic hemming and hawing, the Office has issued a final rule terminating all existing (paper) registrations, effective December 31, 2017. The new rule requires website owners to reregister by that date, and to reregister every three years thereafter. Forget, and the site forfeits its DMCA safe harbor protection.

The takeaway: if you own or operate a website that allows user-generated content be sure to reregister electronically by the end of 2017, and to renew your registration every three years. Fail to do this and you run a serious risk.

Warning: the DMCA is a highly complex law. If you operate a website that allows UGC consult a knowledgeable attorney to ensure you are compliant.

This advisory is for information purposes only, and does not constitute legal advice. If you would like to discuss the Digital Millennium Copyright Act, please contact Lee Gesmer or Joe Laferrera at (617) 350-6800 or email us at lee.gesmer@gesmer.com or joe.laferrera@gesmer.com.



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