

DMCA Compliance: Limit Your Copyright Infringement Liability

Q: I hear that the U.S. Copyright Office has some new registration requirements. What are they, and do they apply to my association?

A: The *Digital Millennium Copyright Act (DMCA)* creates procedures to limit liability for copyright infringement by online “service providers,” a term that generally encompasses any entity (for-profit or not-for-profit) with a website. As part of those procedures, the Copyright Office recently introduced (1) a new electronic registration system for online service providers to designate agents to receive notice of copyright infringement and (2) an accompanying electronic directory of designated agent information.

The existence of a registration requirement as a component of the *DMCA*'s liability-limiting mechanisms is not new. Prior to the recent change, the Copyright Office maintained online service providers' designated agent information through paper filings. But a review of those materials revealed that they generally were outdated and inaccurate. The Copyright Office intends to cure that problem by switching to the new electronic system. The underlying function of the modernized registration process remains unchanged: It provides persons, whose copyrighted works are infringed when posted online without their authorization, with a way to identify the responsible party and enforce their rights.

From its inception, the

DMCA has carved out categories of online service providers from liability for particular types of copyright infringement, including businesses that operate a website or other electronic system (such as an email service or a discussion group) to which users contribute their own content. In order to limit an association's potential exposure for copyright-infringing content posted on its systems by third-party users (whom it does not control), the association must designate an agent to receive notice of claimed infringement by (1) posting designated contact information publicly on its website and (2) submitting that same information to the Copyright Office—using the new electronic registration system.

However, these steps alone do not limit liability.

Associations (and all online service providers) also must: (1) enact a policy to terminate the accounts of repeatedly infringing users; (2) accommodate standard technical measures used by copyright owners to identify or protect copyrighted works; (3) not have actual knowledge of infringement or awareness of facts from which infringement is apparent or, upon having such knowledge or awareness, promptly remove the infringing material; (4) not receive financial benefit from the infringement; and (5) promptly remove the offending material upon receiving proper notice of claimed infringement.

A copyright owner claiming infringement of its work must send an online service provider's designated agent a “take-

down notice,” which provides notice of the claimed infringement and demands removal of the allegedly infringing material. To be legally effective, that notice must be in writing and: (1) be signed by a person authorized to act on behalf of the copyright owner; (2) identify the copyrighted work allegedly being infringed; (3) identify the allegedly infringing material; (4) provide the complaining party's contact information; (5) state the complaining party's good faith belief that the use is unauthorized; and (6) state that the notification is accurate and, under penalty of perjury, the complaining party is authorized to act on the copyright owner's behalf. In response to a proper takedown notice, the online service provider must promptly remove the offending material.

If your association has a website or other electronic forum that allows third-party postings, do not wait to take advantage of the *DMCA*'s protections. Take action now to register your designated agent using the Copyright Office's new electronic registration system. The process is simple: Create an online account, and submit current designated agent contact information, including name, organization, physical mailing address, telephone number and email address. All online service providers must register electronically even if they previously registered through the old paper system. Online providers currently registered via paper filing have until December 31, 2017, to submit their information electronically.

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In addition, make sure to periodically renew your association's designation of agent (even if unchanged). The designation expires three years from the initial registration date. If a registration lapses, so does the *DMCA*'s limitation on liability. To ensure your association's registration does not become invalid, you must either submit an amended designation that updates any changed information or resubmit an unchanged designation that confirms its continued accuracy. Either action resets the three-year renewal time-clock. While the new system will generate automatic email reminders of upcoming renewal deadlines, you also should docket all deadlines internally to be safe.

Compliance with the *DMCA*'s requirements is an easy way to limit your association's liability for copyright-infringing user-generated content posted on your website. Take advantage of the *DMCA*'s provisions by registering your designated agent information electronically, maintaining current designated agent information, posting designated contact information on your website, promptly removing infringing material from your website upon notice of claimed infringement and taking action to terminate the accounts of repeat infringers. **fi**

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.