



# THINK FORWARD

## CRITICAL DMCA SAFE HARBOR DEADLINE FAST APPROACHING

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Recent changes to the U.S. Copyright Office's rules relating to the safe harbor provisions of §512 of the Digital Millennium Copyright Act ("DMCA") will soon require internet service providers to take proactive steps in order to maintain the protections afforded under the Act. 17 U.S.C. § 512. On December 1, 2016, when the new rules went into effect, the U.S. Copyright Office began phasing out its paper filing system in favor of a new electronic directory of agents designated to receive notices of copyright infringement under the DMCA. The new rules require all service providers seeking safe harbor from monetary liability under section 512 of the Act to electronically register and re-designate their DMCA Agents—even those already registered under the preexisting paper filing scheme—prior to the December 31, 2017 deadline. Service providers failing to adhere to the electronic registration requirements imposed by the new rule will lose their safe harbor protection under the DMCA.

Accordingly, service providers seeking to avail themselves of the protections afforded under the DMCA safe harbor rule must ensure that they create an electronic account and electronically register their DMCA designated agent with the U.S. Copyright Office's new electronic DMCA Designated Agent Directory no later than December 31, 2017.

### The DMCA Safe Harbor Rule

The DMCA safe harbor rule is relevant to any entity or natural person operating a website or providing online services that allow third parties to post content to their site (e.g., photos, media, links or comments). When a copyright owner's work is being infringed on or through a service provider's service or website, the copyright owner may send a notification of claimed infringement (often referred to as a "takedown notice") to the service provider's designated agent ("DMCA Agent"). Section 512 of the DMCA provides a safe harbor from monetary liability for compliant service providers that expeditiously remove or disable infringing content after proper notice from copyright holders of the nature and location of infringing content to the service provider's registered DMCA Agent. This important safeguard insulates service providers from claims of direct and secondary liability for acts of copyright infringement committed by third parties utilizing their services. In order to take advantage of the protections afforded under the DMCA safe harbor rule, however, service providers are required to designate an eligible DMCA Agent to receive infringement notices, and to provide contact information for their DMCA Agent on their website and the Copyright Office's new searchable DMCA Designated Agent Directory.

### Complying With The December 31, 2017 Changes To The DMCA Safe Harbor Rule

The following steps are critical to ensuring compliance with the December 31, 2017 changes to the DMCA Safe Harbor Rule:

- **STEP 1: Create an electronic account on the DMCA Designated Agent Directory.** The new rules require service providers or their authorized representatives to create an electronic account on

the U.S. Copyright Office's online DMCA Designated Agent Directory on or before **December 31, 2017**. The registration form to create an electronic account on the new directory is [available here](#). There is no charge for creating an account and a single account can be used to designate DMCA Agents for multiple service providers (e.g., a law firm acting as the DMCA Agent for multiple related entities or websites, or the DMCA Agent of a parent company also serving as the designated DMCA Agent for all subsidiary company websites).

- **STEP 2: Designate an eligible DMCA Agent.** The DMCA safe harbor rules now allow for greater flexibility, broadly defining the types of DMCA Agents eligible for designation. Service providers or their authorized representatives may now designate as their DMCA Agent: (1) a natural person; (2) a specific position, job title or department within an organization (e.g., Director of IT, Compliance Department or DMCA Agent); or (3) a third-party (e.g., a law firm, vendor or parent company). While a single DMCA Agent may serve as the designated agent for multiple service providers, each service provider may only designate one DMCA Agent.
- **STEP 3: Resubmit all active DMCA Agents previously designated by paper filing.** All DMCA Agent designations previously submitted through the now defunct paper filing system will expire on December 31, 2017. Failure to re-designate existing DMCA Agents will result in lapse of their designation and loss of DMCA safe harbor protection. Therefore, service providers must resubmit the contact information for their DMCA Agent through the electronic DMCA Designated Agent Directory prior to the **December 31, 2017 deadline**.
- **STEP 4: Renew all DMCA Agents every three years.** Additionally, DMCA Agent designations must now be renewed every three years. Under the old rule, once registered, designated DMCA Agents remained effective on the Copyright Office's directory indefinitely. Each electronically filed designation, amendment or resubmission, resets the three year renewal period for the relevant DMCA Agent.
- **STEP 5: Pay the Flat Fee.** The fee structure under the new rule has been simplified. There is now a flat fee of \$6.00 per DMCA Agent designation, amendment or resubmission.
- **STEP 6: Confirm Registration.** The responsibility to ensure compliance with the DMCA safe harbor rule falls squarely on service providers. Accordingly, after creating an electronic account and designating a DCMA Agent, service providers should conduct a search of the Copyright Office's online DMCA Designated Agent Directory ([available here](#)) to confirm compliance with the **December 31, 2017 deadline**.

### Contact Us

If you would like additional information regarding any of the issues addressed in this IP Alert, including compliance with the upcoming **December 31, 2017 deadline**, please contact one of the authors or the Brinks, Gilson & Lione attorney with whom you typically consult.