



# Make Sure You're Covered in 2018: The DMCA's New Requirement to Qualify for Safe Harbor Protection from Copyright Infringement Claims

Client Advisories

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As of January 1, 2018, to qualify for protection under the Digital Millennium Copyright Act's (DMCA) safe harbor provision, an online service provider (OSP) must register its designated agent, the individual responsible for receiving copyright infringement notices, in the U.S. Copyright Office's new online directory.

## **What is the DMCA safe harbor provision and why is it important?**

The DMCA includes an important safe harbor provision for OSPs that exempts them from copyright infringement liability arising from a third party's actions. Specifically, the DMCA protects OSPs from liability where a third party stores or posts content on the OSP's network or website, or where the OSP operates a search engine or other online directory linking to content.

Under the DMCA, OSPs include entities that provide online services or network access, or the operation of facilities therefore, such as content-sharing websites that permit users to upload or post comments, links, photos, or other content, and entities that transmit, route, or provide connections for digital online communications of online users, without modification to the content of the material as sent or received, such as Verizon, Comcast, and other ISPs.

To qualify for safe harbor protection under the DMCA, an OSP must have a designated agent to receive infringement notices. Contact information for an OSP's designated agent must be on file with the U.S. Copyright Office and must also be available on the OSP's website in a location accessible to the public. The designated agent information must be the same in the Copyright Office's directory and the OSP's website and must be kept up to date.

## **How does the new rule impact OSPs?**

Under the new rule, all OSPs must register their designated agent using the U.S. Copyright Office's new online directory, even if the OSP previously registered a designated agent in the Copyright Office's old paper-based

directory. If an OSP fails to register its designated agent using the new online system, it will lose its safe harbor protection under the DMCA.

The new online registration fee is low, just \$6.00 compared to the old filing fee of \$105.00, and designated agents must be re-registered every three years.

If you need assistance in registering your designated agent using the new online system or if you are unsure of whether you qualify for safe harbor protection as an OSP under the DMCA, we can help.

If you have any questions or would like more information on the issues discussed in this Alert, please contact [Kate A. Sherlock, Esq.](#) in Archer's Haddonfield office at 856-673-3919.

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