

December 2017

### INTELLECTUAL PROPERTY LAW ALERT

#### NEW GUIDELINES TO MAINTAIN SAFE HARBOR UNDER THE DIGITAL MILLENNIUM COPYRIGHT ACT

The Copyright Office requires internet service providers to identify a designated agent and to register online with the Copyright Office by **December 31, 2017**, in order to maintain the safe harbor provisions provided under the Digital Millennium Copyright Act.

#### What is the Digital Millennium Copyright Act?

The Digital Millennium Copyright Act of 1998 (DMCA) was created to limit liability for internet service providers who transmit infringing content stored at the direction of or made available by third parties. In order to limit liability, or benefit from the safe harbor, internet service providers are required to register a *designated agent* with the Copyright Office to receive notifications about potentially infringing content. Initially, the Copyright Office permitted internet service providers to register by submitting a paper application. However, now the Copyright Office has switched to an entirely online process in hopes to achieve more accuracy and efficiency. Previously registered internet service providers must re-register online.

#### Who Must Register with the Copyright Office?

The Copyright Office requires any *service provider*, as defined by 17 U.S.C. 512(k)(1), that has previously designated an agent with the Office to register online by December 31, 2017. The copyright law defines service provider as:

"...an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received, or

a provider of online services or network access..." (17 U.S.C. 512(k)(1)).

Thus, a service provider is anyone who owns or hosts a website that allows third party content to be posted, which is not altered. For example, if you own or operate a website that hosts third party content like comments, blogs, videos or music, then you are a service provider, pursuant to the Copyright Act. The term also extends to corporate parents and subsidiaries affiliated with the website host(s) and proprietor(s). Websites that publish only their own creative content are not service providers.

#### What is a Designated Agent?

A designated agent is anyone authorized by the service provider to act on its behalf. The agent can be an employee of the service provider or a third party like a law firm. There is a \$6 fee to designate an agent with the Copyright Office. However, a third party agent can manage multiple service providers under one designated agent's account.

#### How Do I Register With the Copyright Office?

A designated agent may create an online account and register here: <https://dmca.copyright.gov/login.html>. During

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registration, the agent is required to provide contact information for the service provider and two representatives who will serve as primary and secondary points of contact for communications with the Copyright Office. **Registration with the Office must be renewed every three (3) years.**

Please see the Copyright Office's answers to frequently asked questions about the DMCA, designated agents, and the registration process here: <https://www.copyright.gov/rulemaking/onlinesp/NPR/faq.html>.

If you are uncertain whether you are a *service provider* or need a *designated agent*, please contact the attorney named below or your primary Phillips Nizer attorney.

We are available to provide counsel and guidance concerning the most efficient and cost-effective means to comply with this requirement by the Copyright Office, as well as other intellectual property issues.

**Contact:**          Monica P. McCabe                          212.841.0713                          mmccabe@phillipsnizer.com

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