



CURRENT ISSUES IN COPYRIGHT - 2017

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THE US CONSTITUTION AUTHORIZES COPYRIGHT

ART. I, SEC. 8 OF THE US CONSTITUTION
EMPOWERS CONGRESS:

“TO PROMOTE THE PROGRESS OF SCIENCE
AND USEFUL ARTS, BY SECURING FOR LIMITED
TIMES TO **AUTHORS AND INVENTORS** THE
EXCLUSIVE RIGHT TO THEIR RESPECTIVE
WRITINGS AND DISCOVERIES.”



COPYRIGHT PROTECTS CREATIVE PROPERTY



copyright

all rights reserved

- UNDER 17 U.S.C. § 102 PROTECTS
 - **ORIGINAL WORKS OF AUTHORSHIP;**
 - FIXED IN ANY TANGIBLE MEDIUM OF EXPRESSION, NOW KNOWN OR LATER DEVELOPED, FROM WHICH THEY CAN BE PERCEIVED, REPRODUCED, OR OTHERWISE COMMUNICATED, EITHER DIRECTLY **OR WITH THE AID OF A MACHINE OR DEVICE.**
- WORKS OF AUTHORSHIP INCLUDE THE FOLLOWING:
 - LITERARY WORKS
 - MUSICAL WORKS (INCLUDING ANY ACCOMPANYING WORDS)
 - DRAMATIC WORKS (INCLUDING ANY ACCOMPANYING MUSIC)
 - PANTOMIMES AND CHOREOGRAPHIC WORKS
 - PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS
 - MOTION PICTURES/OTHER AUDIOVISUAL WORKS
 - SOUND RECORDINGS
 - ARCHITECTURAL WORKS

COPYRIGHT AND INTERNET SERVICE PROVIDERS

- “DIGITAL MILLENNIUM COPYRIGHT ACT” BECAME LAW IN 1998; LIMITS ONLINE INFRINGEMENT LIABILITY FOR INTERNET SERVICE PROVIDERS
- USE OF COPYRIGHTED MATERIALS ON THE INTERNET (INTERMEDIATE OR TEMPORARY NETWORK STORAGE IN THE COURSE OF TRANSMITTING, ROUTING OR PROVIDING CONNECTIONS; SYSTEM CACHING, DIRECTORIES, LINKING) MAY VIOLATE SOME OF THE EXCLUSIVE RIGHTS OF COPYRIGHT.
- A “**SERVICE PROVIDER**” MAY HAVE LIABILITY FOR SUCH USE, UNLESS IT QUALIFIES FOR “SAFE HARBOR” PROTECTION UNDER THE DMCA AND IS DEFINED AS (VARIOUSLY):
 - 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, OR THE OPERATOR OF FACILITIES THEREFOR, INCLUDING AN ENTITY DESCRIBED ABOVE.

QUALIFYING FOR DMCA “SAFE HARBOR” PROTECTION

- SAFE HARBOR RULES ARE CODIFIED AT 17 U.S.C. § 512
- ASSUMING SERVICE PROVIDER MEETS THE CRITERIA FOR SAFE HARBOR PROTECTION, IT MUST:
 - **DESIGNATE AN AGENT TO RECEIVE NOTIFICATIONS OF CLAIMED INFRINGEMENT;** AND
 - ACT EXPEDITIOUSLY TO REMOVE, OR DISABLE ACCESS TO, INFRINGING MATERIAL ONCE MADE AWARE THAT THE MATERIAL IS INFRINGING (“NOTICE AND TAKEDOWN”)
 - ADOPT, REASONABLY IMPLEMENT, AND INFORM SUBSCRIBERS OF A POLICY THAT PROVIDES FOR THE TERMINATION IN APPROPRIATE CIRCUMSTANCES OF SUBSCRIBERS AND ACCOUNT HOLDERS OF THE SERVICE PROVIDER’S SYSTEM OR NETWORK WHO ARE REPEAT INFRINGERS
 - ACCOMMODATE AND NOT INTERFERE WITH STANDARD TECHNICAL MEASURES USED BY COPYRIGHT OWNERS TO IDENTIFY OR PROTECT COPYRIGHTED WORKS.

DESIGNATING AN AGENT


- DESIGNATE AN AGENT TO RECEIVE NOTIFICATIONS OF CLAIMED INFRINGEMENT THROUGH THE COPYRIGHT OFFICE'S NEW PROCEDURE
 - BEGAN AS OF DECEMBER 1, 2016; GRACE PERIOD TO TRANSITION THROUGH DECEMBER 31, 2017
 - ONLINE SYSTEM REPLACES OLD PAPER SYSTEM; SERVICE PROVIDERS CAN USE A LAWYER OR OTHER REPRESENTATIVE TO COMPLETE THIS REGISTRATION
 - PROVIDE THE AGENT'S NAME, ADDRESS, PHONE NUMBER, EMAIL ADDRESS AND OTHER CONTACT INFORMATION THE REGISTER OF COPYRIGHTS MAY DEEM APPROPRIATE.
- MAKE THE AGENT'S NAME, ADDRESS, PHONE NUMBER, AND EMAIL ADDRESS AVAILABLE ON THE ORGANIZATION'S WEBSITE
 - USUALLY INCLUDED IN THE "LEGAL" SECTION OF AN ORGANIZATION'S WEBSITE.

DESIGNATING AN AGENT, CONT'D

WEBSITE: [HTTPS://DMCA.COPYRIGHT.GOV/OSP/LOGIN.HTML](https://dmca.copyright.gov/osp/login.html)

- SERVICE PROVIDER CAN DESIGNATE AN EMPLOYEE OR THIRD PARTY (SUCH AS A LAW FIRM) TO ACT FOR IT IN DESIGNATING AN AGENT
- A SINGLE ACCOUNT WITHIN THE SYSTEM CAN BE USED TO MANAGE DESIGNATED AGENTS FOR MULTIPLE SERVICE PROVIDERS
- NEW FEE IS \$6/DESIGNATION, AMENDMENT, OR RESUBMISSION; NO FEE FOR ALTERNATE NAMES (I.E., OTHER NAMES THE PUBLIC WOULD USE TO SEARCH FOR A SERVICE PROVIDER'S DESIGNATED AGENT, SUCH AS TRADE NAMES, DOMAIN NAMES/URLS, AND NAMES OF SOFTWARE APPS)
- OLD FEE FOR PAPER FILING WAS \$105 + ADDITIONAL FEES FOR ALTERNATE NAMES

DMCA DESIGNATED AGENT DIRECTORY – LOGIN PAGE

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Privacy Act Notice

Section 512 of title 17 of the United States Code authorizes the Copyright Office to collect the personally identifying information (PII) requested by this system in order to maintain a directory of designated agents under the Digital Millennium Copyright Act ("DMCA"). PII is any personal information that can be used to identify, contact, or trace an individual, such as names, addresses, and telephone numbers. By providing PII, you are agreeing to the routine use of such PII to establish and maintain a public record, including the Office's public indexes, the Office's public website, and Office search reports prepared for the public. The effect of not providing the PII requested is that it may delay processing of your designation or could affect the legal sufficiency of your filing, a determination that would be made by a court of law.

NOTICE AND TAKEDOWN: COPYRIGHT OWNER NOTIFIES SERVICE PROVIDER OF CLAIMED INFRINGEMENT

- COPYRIGHT OWNER SENDS QUALIFYING NOTIFICATION CONTAINING THE ELEMENTS DESCRIBED IN THE STATUTE:
 - SIGNATURE (PHYSICAL OR ELECTRONIC) OF A PERSON AUTHORIZED TO ACT ON THE COPYRIGHT OWNER'S BEHALF;
 - IDENTIFICATION OF THE COPYRIGHTED WORK ALLEGED TO HAVE BEEN INFRINGED OR (WHERE MULTIPLE WORKS AT A SINGLE ONLINE SITE ARE COVERED BY A SINGLE NOTIFICATION) A REPRESENTATIVE LIST OF SUCH WORKS;
 - IDENTIFICATION OF THE MATERIAL THAT IS CLAIMED TO BE INFRINGING (OR TO BE THE SUBJECT OF INFRINGING ACTIVITY) AND THAT IS TO BE REMOVED OR HAVE ACCESS DISABLED, INCLUDING INFORMATION REASONABLY SUFFICIENT TO PERMIT THE SERVICE PROVIDER TO LOCATE THE MATERIAL;
 - INFORMATION REASONABLY SUFFICIENT TO ALLOW THE SERVICE PROVIDER TO CONTACT THE COMPLAINANT (SUCH AS ADDRESS, TELEPHONE NUMBER, AND, IF AVAILABLE, AN EMAIL ADDRESS);
 - A STATEMENT THAT THE COMPLAINANT HAS A "GOOD FAITH BELIEF" THAT THE USE COMPLAINED OF IS NOT AUTHORIZED BY THE COPYRIGHT OWNER, ITS AGENT, OR THE LAW (E.G., NOT A "FAIR USE"); AND
 - A STATEMENT THAT THE INFORMATION IN THE NOTIFICATION IS ACCURATE AND, UNDER PENALTY OF PERJURY, THAT THE COMPLAINANT IS AUTHORIZED TO ACT ON BEHALF OF THE COPYRIGHT OWNER.

NOTICE AND TAKEDOWN: SERVICE PROVIDER ACTS EXPEDITIOUSLY TO REMOVE MATERIAL THAT IS CLAIMED TO INFRINGE

- SERVICE PROVIDER “RESPONDS EXPEDITIOUSLY” TO REMOVE OR DISABLE ACCESS TO THE MATERIAL THAT IS CLAIMED TO INFRINGE
- SERVICE PROVIDER TAKES REASONABLE STEPS TO NOTIFY ITS CUSTOMER (SUBSCRIBER) OF THE REMOVAL

NOTICE AND TAKEDOWN: COUNTER NOTIFICATION PROCEDURE

- SERVICE PROVIDER REPLACES/CEASES DISABLING ACCESS TO THE MATERIAL UPON RECEIPT OF A “COUNTER NOTIFICATION” FROM CUSTOMER
- COUNTER NOTIFICATION MUST CONTAIN ALL OF THE STATUTORY ELEMENTS:
 - SIGNATURE (PHYSICAL OR ELECTRONIC) OF SUBSCRIBER (CUSTOMER);
 - IDENTIFICATION OF THE MATERIAL THAT HAS BEEN REMOVED/TO WHICH ACCESS HAS BEEN DISABLED, TOGETHER WITH THE LOCATION AT WHICH THE MATERIAL APPEARED BEFORE IT WAS REMOVED/ACCESS WAS DISABLED;
 - STATEMENT UNDER PENALTY OF PERJURY THAT THE SUBSCRIBER HAS A “GOOD FAITH BELIEF” THAT THE MATERIAL WAS REMOVED/DISABLED DUE TO A MISTAKE OR MISIDENTIFICATION OF THE MATERIAL TO BE REMOVED/DISABLED; AND
 - SUBSCRIBER’S NAME, ADDRESS, AND TELEPHONE NUMBER;
 - STATEMENT THAT (I) SUBSCRIBER CONSENTS TO THE JURISDICTION OF THE FEDERAL DISTRICT COURT FOR THE JUDICIAL DISTRICT IN WHICH SUBSCRIBER’S ADDRESS IS LOCATED, OR IF OUTSIDE OF THE UNITED STATES, FOR ANY JUDICIAL DISTRICT IN WHICH SERVICE PROVIDER MAY BE FOUND, AND (II) SUBSCRIBER WILL ACCEPT SERVICE OF PROCESS FROM THE COMPLAINANT OR ITS AGENT.

REPEAT INFRINGERS

- “REPEAT INFRINGER” IS NOT WELL-DEFINED; KEY IS TO IMPLEMENT AND ENFORCE A STANDARD POLICY:
 - PROVIDE NOTICE TO THE SUBJECT
 - PROVIDE INFORMATION TO ALLOW THE SUBJECT A MEANINGFUL OPPORTUNITY TO PROVIDE COUNTER-NOTICE

(ABOVE STEPS COULD BE SIMILAR TO THE “NOTICE & TAKEDOWN” PROCEDURE ABOVE.)

- DO NOT TERMINATE ACCOUNT UNTIL SUBJECT HAS HAD MEANINGFUL OPPORTUNITY TO RESPOND TO NOTICE(S) OF INFRINGEMENT
- CONSIDER IMPLEMENTING SYSTEM FOR TRUSTED CUSTOMERS, WHERE SUCH CUSTOMERS RECEIVE ADDITIONAL PROTECTIONS AGAINST A TAKEDOWN FOR REPEAT INFRINGEMENT.

STANDARD TECHNICAL MEASURES

- TECHNICAL MEASURES THAT ARE USED BY COPYRIGHT OWNERS TO IDENTIFY OR PROTECT COPYRIGHTED WORKS AND
 - HAVE BEEN DEVELOPED PURSUANT TO A BROAD CONSENSUS OF COPYRIGHT OWNERS AND SERVICE PROVIDERS;
 - ARE AVAILABLE TO ANY PERSON ON REASONABLE AND NONDISCRIMINATORY TERMS; AND
 - DO NOT IMPOSE SUBSTANTIAL COSTS ON SERVICE PROVIDERS OR SUBSTANTIAL BURDENS ON THEIR SYSTEMS/NETWORKS.
- TO DATE, NO CONSENSUS HAS EMERGED