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Client Alert: Read This If You Operate a Website with User-Generated Content: Mandatory Registration of a Designated Agent

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Picture this: your company operates a website which allows users to post material such as music, drawings, videos or photographs. One day your company receives a letter alleging copyright infringement and demanding a large sum of money from your company because one of those user-generated posts included copyright-protected materials without the owner's authorization. Or worse, your company is sued for copyright infringement. If your company loses the lawsuit it could be liable for hundreds of thousands or even millions of dollars.

Under U.S. copyright law, use of copyright-protected material on a website without permission from the copyright owner generally constitutes copyright infringement. While it may not seem fair, copyright law not only holds the person who posted the infringing material liable but under certain circumstances may also hold the person or company that contributed or aided in the infringement as liable. Owners of websites with user-generated material could thus be liable for significant monetary damages, including the copyright owner's attorney's fees.

Escaping Liability

The Digital Millennium Copyright Act of 1998 (DMCA) addresses this seemingly unfair situation by providing a "safe harbor" for internet service providers. This mechanism insulates website operators from copyright infringement liability due to content uploaded to their website by a user when certain conditions are met. The website operator must:

- not have actual knowledge of the infringing material;
- remove the material promptly upon receipt of notice of infringement;
- publicly provide contact information for whom infringement notices are to be sent (called a designated agent, typically listed in the

website's terms and conditions);

- not receive a financial benefit from the use of the infringing material; and
- register the designated agent with the copyright office.

These conditions ensure that the website operator is not at fault for the infringing material and is not benefiting from such use before they may be relieved from infringement liability. Also, the conditions provide a method for notifying the website operator of potentially infringing material so such may be promptly removed. However, that last requirement is not so obvious.

Registration of the Designated Agent

Registration of the designated agent with the copyright office is an express condition which must be met (in addition to the above) to absolve the website operator of copyright infringement liability for user-generated content. Failure to register a designated agent with the copyright office *prior* to the alleged infringement voids the safe harbor protections and can expose the website operator to liability discussed above. The designated agent registration must be updated with the copyright office if the contact information changes.

Additionally, any service provider that registered a designated agent with the copyright office prior to December 1, 2016 will lose their safe harbor protections at the end of 2017 unless they electronically re-register in the new directory by December 31, 2017.

Duration and Cost

Registration of a designated agent with the copyright office is valid for three years from the registration or last amendment or resubmission. The filing fee is only \$6 per designation, amendment, or resubmission, which is nominal compared to the monetary damages and attorney's fees it could save your company in the event of a copyright infringement suit concerning user-generated material.

Conclusion

If your company operates a website with user-generated content it may be liable if the content is posted without the owner's consent unless the website operator meets all the conditions for the safe harbor under the DMCA, including registering a designated agent with the copyright office.

If you would like to find out more information or have our attorneys assist with such registration please do not hesitate to contact us.