

# What You Need to Know about Copyright Safe Harbor



By Steve Gillen and Sean Owens

If you have clients that operate a website where they allow either contributors or site visitors to post content or comments, there is something you need to know. As the website operator, your client may be liable for any third-party claims that are triggered by what their contributors/users post or say . . . whether or not your client was aware of what their users were doing, and whether or not your client has a click-through agreement or posted terms of use prohibiting what it was their user did.

Allowing user posting and comments can be an effective way to foster engagement and traffic to a website, but it also creates exposure for claims resulting from what your client's users post or say on their site. There are, nonetheless, steps your clients can take to immunize themselves from these claims.

## Safe Harbor Under the Digital Millennium Copyright Act (DMCA)

Under the DMCA, operators of websites that allow user-generated content to be posted are insulated from liability for copyright infringement under certain conditions. In order to qualify for this "safe harbor," the site operator must:

- publish on its site its policy for addressing repeated infringing activity and it must terminate users who are repeat infringers;
- properly comply with a notice of claimed infringement when received, including prompt removal of the accused material;
- notify the user that the material has been removed;
- notify the copyright holder if proper counter-notice is provided by the user;
- restore the removed material if proper counter-notice is provided, and the copyright holder does not file suit within 10 days; and,
- register its takedown agent with the Copyright Office.

Considering the significant potential liability that can arise due to actions by users of your clients' websites, the DMCA provides extremely valuable and cost effective protection to anyone operating interactive websites.

## A New Twist

With respect to the requirement that your client register its takedown agent with the Copyright Office, a recent rule change means **action is necessary** to protect your client from potential liability for copyright infringement. On Dec. 1, 2016, the Copyright Office implemented a new electronic agent registration system. **Even if your client has registered an agent in the past, it must now re-register that agent through the new electronic system.** To avoid a lapse in protection, this new agent registration must occur no later than Dec. 31, 2017. Filing fees have been significantly reduced to \$6 per agent, regardless of how many domain names must be registered for a single company. Under the new system, registrations must be renewed every three years or they will lapse.

If you have clients that have never implemented this protection under the DMCA, now is as good a time as any to register a takedown agent, to set up a system for docketing renewals, and to review your client's implementation of the DMCA takedown procedure to ensure that it satisfies all of the requirements of the law so that the safe harbor is there when and if your client needs it.

---

*Gillen is a partner at Wood Herron & Evans, where he concentrates his practice in publishing, media, and copyrights. He is also chair of the Books Editorial Board of the Intellectual Property Law Section of the American Bar Association. Write or call him if you have an idea for a book. sgillen@whe-law.com or (513) 707-0470. Owens is an attorney at Wood Herron & Evans, where his practice includes all aspects of trademarks, copyrights, and related fields involving media, advertising, privacy, licensing, and the Internet. He can be reached at sowens@whe-law.com or (513) 707-0260*

## Share what you know!

Do you have a niche or area of concentration in your practice? Is there something about it that would be useful to other lawyers? Something that would help them help their clients spot an issue before it becomes a problem? Help them, and at the same time earn some recognition for your practice. We're looking for more insights like this for future issues of the CBA Report — 500 to 800 words — with a little background and a few takeaways. Send your submissions to Aris Yowell, CBA director of communications, at amyowell@cincybar.org.