

Did We Designate a DMCA Agent for Our Website Yet?

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Under the Digital Millennium Copyright Act (DMCA), a "service provider" (as defined by the DMCA) has a safe harbor against liability for copyright infringement if, *inter alia*, the service provider has designated a DMCA agent to receive notifications of claimed infringements. The DMCA describes how a service provider designates the DMCA agent with the U.S. Copyright Office, and requires that the service provider post the contact information for the agent on its website. In the case of *Oppenheimer v. Allvoices, Inc.*, the plaintiff, a professional photographer, alleged copyright infringement by the defendant. The defendant is an online service provider that publishes various audiovisual content. Certain of the infringement claims were based on publications by the defendant in February 2011. The defendant did not complete its DMCA agent registration until March 15, 2011. Nonetheless, the defendant asserted that the safe harbor applied to all of the alleged infringements. The United States District Court for the Northern District of California held that the defendant "may not invoke the safe harbor ... with respect to infringing conduct that occurred prior to Allvoices designating a DMCA-related agent with the Copyright Office." There is no question that **service providers should promptly designate their DMCA agents** and take all other steps to fall within the applicable DMCA safe harbors, to the extent they have not done so already.

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