

September 2017

Notice and Takedowns: Limit the Risk of Copyright Infringement on Your Website

By: Melodie A. Virtue

GSB Contact:



Melodie A. Virtue
Washington, D.C.
mvirtue@gsblaw.com
202.298.2527

You may think that if someone posts material on your website without your knowledge or permission, that's not your problem, but you would be wrong. If you allow others to post comments or to upload materials such as photos, text, video or sound clips to your website, you could be held responsible for their actions unless you take certain steps to mitigate your risk.

Bottom line: you are responsible for what's on your website, even if someone else put it there without your knowledge or permission. Headlines regularly announce settlements being squeezed out of companies for using photographs that were posted without permission. If you don't have that photographer's permission, then you may be looking at a lawsuit for copyright infringement with possible six-figure statutory damages, plus the other side's attorney fees. Beware: copyright owners who are seeking to capitalize on their work will use web-crawling software that can troll websites looking for unauthorized uses of copyrighted material.

BEIJING

NEW YORK

PORTLAND

SEATTLE

WASHINGTON, D.C.

Fortunately, there is a way you can protect yourself without having to either screen every post before it's put up on the website, or eliminate third-party content entirely. The Digital Millennium Copyright Act provides a "safe harbor" to protect you from liability in these circumstances, *but you must follow these steps exactly in order to benefit from it:*

1. Post in a prominent location on your website the name, postal address, telephone number and e-mail address of the person who will be your "agent to receive notice of claimed infringements."
2. File a "designation of agent to receive notice of claimed copyright infringement" with the U.S. Copyright Office in Washington, DC. The form must be filed electronically through the Copyright Office at <http://www.copyright.gov/dmca-directory/> and renewed every three years. You must also keep that information up to date in case the agent's contact information changes. If you previously filed a hard copy of the notice with the Copyright Office, you must file online by December 31, 2017.

This Memo is published by Garvey Schubert Barer. It contains information necessarily of a general nature that cannot be regarded as legal advice. The firm will be pleased to provide additional details and to discuss matters contained in this memo as they may apply in specific situations.

September 2017

3. On your website, direct any copyright owner or person acting for a copyright owner who believes that your website includes a work that is an infringement of that owner's copyright to file a "takedown notice" with your designated agent. The takedown instructions can be posted on your website as a link to your Copyright Policy on your home page, which could redirect the user to a copyright section within the Terms of Use for your website. Notice and takedown procedures are provided in a sample Copyright Policy attached to this Memo. If you receive a notice, tell the person complaining that you will promptly comply with any valid takedown notice that your agent receives and remove the material that is claimed to be infringing on their copyright.
4. When your copyright agent receives a takedown notice, promptly remove the material claimed to be infringing from your website so that no one other than you may access it (while being careful to ensure that the original page is preserved).
5. In addition, you should advise website users of your general policy against their posting material that infringes someone's copyright and advise them that users who repeatedly violate this policy will lose their right to post comments on your site.
6. Finally, if in looking over comments posted on your website, you see material that appears likely to be infringing someone's copyright, don't wait to receive a "takedown notice." Go ahead and take it down.

If you follow these guidelines, you should be able to avoid the expense and risk of being involved in litigation over alleged copyrighted infringement that is precipitated without your knowledge by one of your website's users.

Garvey Schubert Barer Communications, Telecom & Media Group

Colin B. Andrews
candrews@gsblaw.com
202-298-1736

John Crigler
jcrigler@gsblaw.com
202-298-2521

Brad Deutsch
bdeutsch@gsblaw.com
202-298-1793

Aaron Edelman
aedelman@gsblaw.com
202-298-1738

Judy Endejan
jendejan@gsblaw.com
206-816-1351

Arthur H. Harding
aharding@gsblaw.com
202-298-2528

Erwin Krasnow
ekrasnow@gsblaw.com
202-298-2161

Lawrence M. Miller
lmiller@gsblaw.com
202-298-2534

Steve Schaffer
sschaffer@gsblaw.com
202-298-2535

Melodie A. Virtue
mvirtue@gsblaw.com
202-298-2527

September 2017

SAMPLE COPYRIGHT POLICY

If you are a copyright owner or an agent of the owner and believe that any content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act (“DMCA”) by providing our Copyright Agent (identified below) with the following information in writing (see 17 U.S.C 512(c)(3) for further details):

1. Identify the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works on our site;
2. Describe where the allegedly infringing content is located on our site (e.g., the link);
3. Provide us with information to contact you, such as an address, telephone number, and, if available, an email address;
4. Include a statement that you have a good faith belief that use of the identified content is not authorized by the copyright owner, its agent, or by law;
5. Make your statement under penalty of perjury stating that the information in the notice is accurate, and that you are the copyright owner or are authorized to act on behalf of the copyright owner; and
6. Include an electronic or physical signature on the notice.

Our designated Copyright Agent to receive notifications of claimed infringement is [name, postal address, phone number, fax number, email address].

If you fail to comply with all of the requirements of this section, your DMCA notice may not be valid.

Counter-Notice. If you believe that your content that was removed is not infringing, or that you have the authorization to post and use that content from the copyright owner, the copyright owner’s agent, or pursuant to the law, you may send a counter-notice containing the following information to our Copyright Agent:

1. Identify the copyrighted work that has been removed and its location (the link) prior to removal;

September 2017

2. Make a statement under penalty of perjury that you have a good faith belief that the copyrighted work was removed as a result of mistake or a misidentification of the content;
3. Provide your name, address, telephone number, and e-mail address;
4. Include a statement that you consent to the jurisdiction of the federal court in [insert state where you, the website owner want to litigate the question, if it comes to that], and a statement that you will accept service of process from the person who provided notification of the alleged infringement; and
5. Include your physical or electronic signature on the counter-notice.

If a counter-notice is received by the Copyright Agent, we may send a copy of the counter-notice to the original complaining party informing that person that we may re-post the removed copyrighted work in 10 business days. Unless the copyright owner files an action seeking a court order against us, the removed Content may be re-posted in 10 to 14 business days or more after receipt of the counter-notice at our sole discretion.