

VPS Consulting Memo

Digital Millennium Copyright Act (DMCA) & Copyright Infringement

RENEW DMCA AGENT DESIGNATION TO RECEIVE NOTIFICATIONS OF CLAIMED INFRINGEMENT.

Summary

Overview

On December 19, 2019, a jury awarded Sony \$1 billion in damages against Cox Communications after ruling that Cox failed to protect its network against copyright infringement by the ISP's subscribers. Generally, ISPs are allowed safe harbor under the Digital Millennium Copyright Act (DMCA). However, an earlier court opinion concluded that Cox had not 'reasonably implemented' a policy for terminating repeat infringers, and therefore, was not protected by the DMCA. VPS recommends reviewing and following your company's policies. This court ruling demonstrates how vital it is to abide by those policies.

Background

The DMCA was signed into law in October of 1998. Title II of the DMCA creates limitations on the liability of online service providers for copyright infringement when engaging in certain types of activities. For a service provider to be eligible for the limitations afforded in Title II of the DMCA, they must (1) adopt and reasonably implement a policy of terminating, in appropriate circumstances, the accounts of subscribers who are considered repeat infringers; and (2) must accommodate and not interfere with 'standard technical measures' which are measures copyright owners use to identify or protect copyrighted works.

Updating Agent Designation

In December 2019, the U.S. Copyright Office issued a reminder that some Internet providers must renew their designation of an agent to receive notices of claimed copyright infringement. ISPs are required to designate a DMCA agent in order to qualify for “safe harbor” from the copyright liability if a subscriber uses the ISP’s network to infringe upon a copyrighted work. ISPs must update their DMCA agent designation every three years. Several court opinions have found ISPs ineligible for safe harbor because the ISP changed their DMCA agent but did not update the ISPs website or the Copyright Office’s database.

Additional Information

To update your registration, visit:

<https://www.copyright.gov/dmca-directory/?locId=blogcop>

For information on this issue or if you would like VPS guidance, please contact these members of the Vantage Point Solutions consulting team:

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