

Safeguarding your Website from Copyright Infringement Claims

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How does material get onto your website?

- You create the content, and you post it.
- You post items other people have created.
- Third party information is posted to your website by others.

You Post Items You Have Created.

- Be aware of situations in which someone you work for, or have worked for in the past, may have a valid claim to content you created.
- Both employees and independent contractors may be subject to “work made for hire” clauses in their contracts, or other contractual constraints on intellectual property ownership.

YOU POST OTHERS' CONTENT
TO YOUR WEBSITE.

- **Always get permission to use the material from the owner of that material.**
- **Get the permission in writing via a verifiable, mutually-executed licensing agreement.**
- **Make sure you understand the limits of your permission to use the content, and comply with those limits.**

- **TIMEFRAME:** Is the license perpetual (without a specific time limit) or for a set time period – e.g., one year from the date of first use?
- **TRANSFERABILITY:** Can you allow someone else to use the license? Or is the license limited to your own use?
- **GEOGRAPHICAL AREA:** Is the license “universal,” or is it limited to a particular geographical region – for example, within the United States?
- **PARTICULAR PURPOSE:** Can you use the content for any purpose, or are your uses limited to, for example, “editorial” purposes, as opposed to advertising?
- **PAYMENT REQUIREMENTS:** Is the license “royalty free” – i.e., free of charge, or are you required to pay for its use?

THIRD PARTIES POST
INFORMATION TO YOUR
WEBSITE

Digital Millennium Copyright Act (“DMCA”)

- Federal law enacted in 1998.
- When requirements are met, safe harbor provisions of DMCA can protect website owners and operators from copyright infringement claims for content posted on their website by third parties.

Situational Requirements for Safe Harbor:

- You cannot post the infringing content yourself.
- You cannot know that the content infringes a copyright, or be aware of facts that would make it obvious that the content infringes a copyright.
- You cannot receive any financial benefit that is directly tied to the infringing content.

Actions You Must Take for Safe Harbor Protection:

➤ **Designate a copyright agent:**

- Fill out form: <http://www.copyright.gov/onlinesp/agent.pdf>
- \$105.00 filing fee

➤ **Post a DMCA Notice on your Website. Recommended: Work with an attorney on getting one drafted.**

➤ **Comply fully and promptly with any DMCA Takedown Notices you receive from anyone claiming a copyright infringement on your website.** Steps for compliance include:

- Remove or disable the allegedly infringing material as quickly as possible.
- Notify the source of the allegedly infringing material (usually the listing agent) of the claim of infringement in case they want to file a counter-notice – i.e., a denial that the material is infringing anyone's copyright.
- If a counter-notice is provided, this must be passed on to the alleged copyright holder.
- If the alleged copyright holder does not file suit within 10 days after being provided a proper counter-notice, the material can be restored.