

A close-up, black and white photograph of piano keys, showing the repeating pattern of black and white keys. The image is cropped to show only the upper portion of the keys, with a light blue curved line separating it from the dark blue background below.

Protecting Your (Intellectual) Property On the Internet

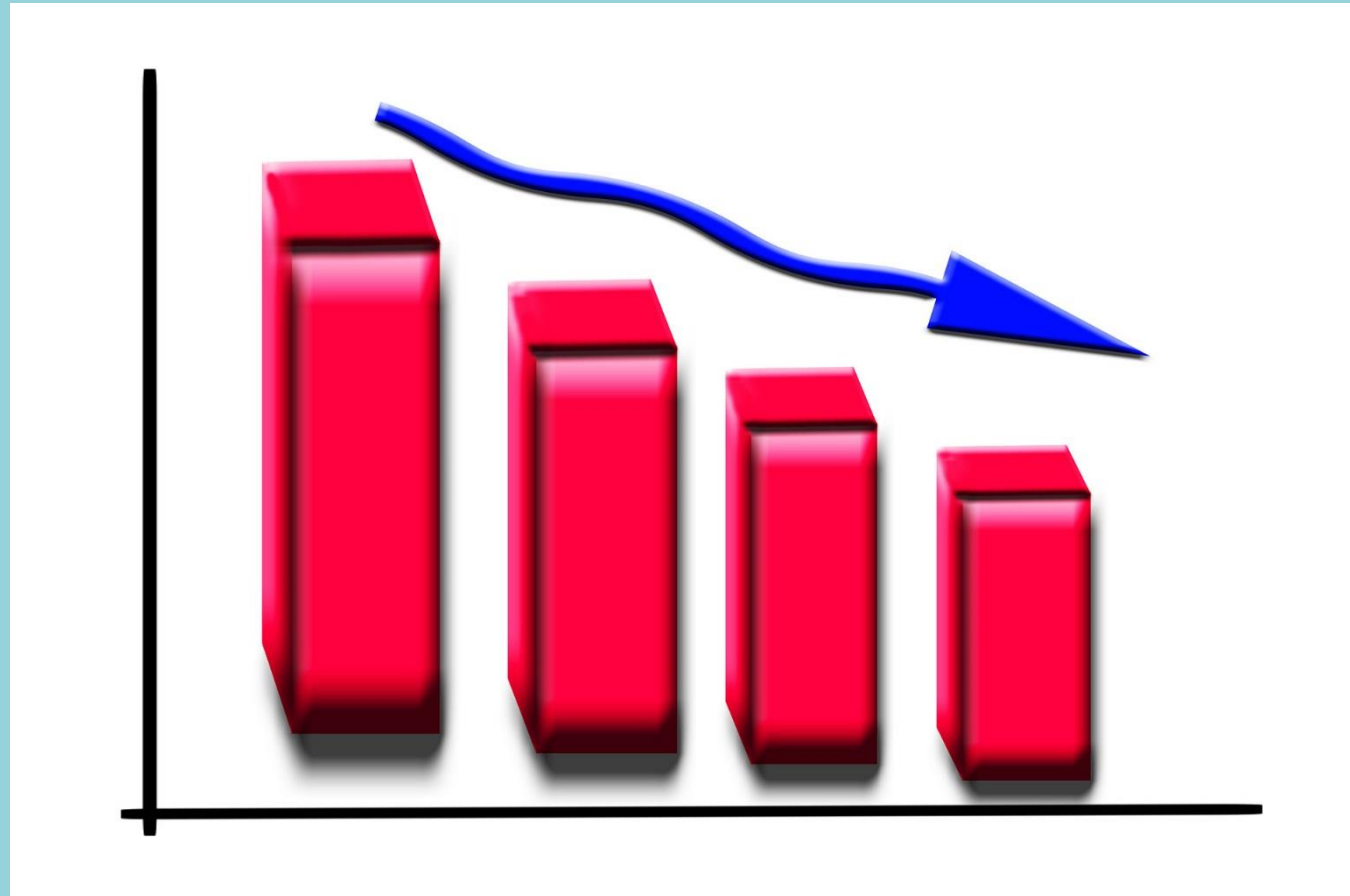
Stephen Carlisle, J.D.
Copyright Officer, Nova Southeastern University



By Frits Ahlefeldt - HikingArtist.com



Since 1996 Global Music Sales have Fallen 62%



1 Out of Every 4 CD's sold on Amazon Is Counterfeit

Source: Digital Music News:<http://www.digitalmusicnews.com/2016/10/31/amazon-counterfeit-cds/>



Main Types of Online Infringement

- Stream Ripping Sites
- Search and Download Sites
- Bit Torrent Indexing and Tracking Sites
- Cyber-Lockers
- YouTube, Facebook, Reddit

® or © ?

Trademarks

Must use standard legal enforcement tactics

- Cease and Desist
- Lawsuits
- Jurisdiction and Venue Can Be Barriers

Copyrights

Does the Website Contain Only User-Generated Content (UGC)?

- YouTube
- Facebook
- Reddit
- Twitter
- Snapchat

Section 512

A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

(A)(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent;

Section 512

or

(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

Takedown: Section 512

(3) Elements of notification.—

(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

The Impact of *Lenz*

You Must Consider
Fair Use Before
Sending a Take Down
Notice

Where Do You Find the Registered Agent?

Going to Facebook you would have to:

- Figure out it's under "Terms and Policies"
- Go to "Community Standards"
- Go to "Protecting Your Intellectual Property"
- Go to "Reporting Copyright Infringement on Facebook"
- Go to "How Do I report Copyright Infringement on Facebook?"
- Then clicking "Form" (and filling it out)

Where You Would Find This Ominous Warning:

Please note that submitting a report of intellectual property infringement is a serious matter with legal consequences. Intentionally submitting misleading or otherwise fraudulent reports of infringement may lead to termination of accounts as well as liability for damages under section 512(f) of the United States Digital Millennium Copyright Act (DMCA) or similar laws in other countries.

<https://www.copyright.gov/dmca-directory/>

The screenshot shows a web browser window with the URL <https://www.copyright.gov/dmca-directory/>. The browser's address bar and tabs are visible at the top. The website's header features the Copyright.gov logo and navigation links: About Us, News, Law and Guidance, Policy Issues, and Contact Us. A search bar is located on the right side of the header.

The main content area of the page is titled "DMCA Designated Agent Directory" and includes a breadcrumb trail: Home / DMCA Designated Agent Directory. Below the title, the page explains the Service Provider Designation of Agent to Receive Notifications of Claimed Infringement. It states that the Digital Millennium Copyright Act ("DMCA") provides safe harbors from copyright infringement liability for online service providers. To qualify for safe harbor protection, certain kinds of service providers—for example, those that allow users to post or store material on their systems, and search engines, directories, and other information location tools—must designate an agent to receive notifications of claimed copyright infringement. To designate an agent, a service provider must do two things: (1) make certain contact information for the agent available to the public on its website; and (2) provide the same information to the Copyright Office, which maintains a centralized online directory of designated agent contact information for public use. The service provider must also ensure that this information is up to date.

The page further notes that in December 2016, the Office introduced an online registration system and electronically generated directory to replace the Office's old paper-based system and directory. Accordingly, the Office no longer accepts paper designations. To designate an agent, a service provider must register with and use the Office's online system.

A "Transition period" section states: Any service provider that has designated an agent with the Office prior to December 1, 2016, in order to maintain an active designation with the Office, must submit a new designation electronically using the online registration system by December 31, 2017. Any designation not made through the online registration system will expire and become invalid after December 31, 2017. Until then, the Copyright Office will maintain two directories of

The right sidebar contains three sections:

- Search the Directories**: Links to "New Directory (Dec 1, 2016 and later)" and "Old Directory (prior to Dec 1, 2016)".
- Access the Registration System**: A link to "Login / Register" with a note: "Click below to sign in to your registration account or to create a new account to submit service provider and designated agent information to the Office."
- Help**: A link to "here" with a note: "If you need help using the directories or the online registration system, have any questions, or encounter any technical difficulties, please visit our help page here, where you can contact the Office, review answers to frequently asked questions, or watch video tutorials demonstrating how to use the new directory and registration system."

The bottom of the sidebar features a "Related Information" section with links to "Frequently Asked Questions", "17 U.S.C. § 512", "37 C.F.R. § 201.38", and "Nov 1, 2016 - Final Rule".

https://www.copyright.gov/onlinesp/list/f_agents.html

The screenshot shows a web browser window with the URL https://www.copyright.gov/onlinesp/list/f_agents.html. The page header features the Copyright.gov logo and the text "UNITED STATES COPYRIGHT OFFICE a department of the Library of Congress". A navigation bar includes links for ABOUT US, NEWS, LAW AND POLICY, PUBLICATIONS, and CONTACT US, along with a search bar labeled "Search Copyright.gov".

Breadcrumbs indicate the path: Home / DMCA Designated Agent Directory / Old Directory / DMCA Agents - Index F.

Old Directory of DMCA Designated Agents 1998-2016

This directory (the "old directory") consists of digital scans of paper forms used by service providers to designate agents with the U.S. Copyright Office to receive notifications of claims of copyright infringement pursuant to [section 512\(c\)](#) of the Digital Millennium Copyright Act ("DMCA") under interim regulations that were in effect between November 3, 1998 and November 30, 2016. On December 1, 2016, the interim regulations were superseded by [new regulations](#) governing the use of a new online registration system through which all DMCA agent designations must now be made. All designations contained in the old directory were made prior to December 1, 2016. If otherwise compliant, a designation in the old directory will continue to satisfy a service provider's obligation under [section 512\(c\)\(2\)](#) to designate an agent with the Copyright Office until December 31, 2017, at which time such designation will expire. Consequently, any service provider having a designation in the old directory, in order to maintain an active designation with the Office, must submit a new designation electronically using the new online registration system by December 31, 2017. For more information please click [here](#).

To search for a service provider's most up-to-date designation, begin by using the new DMCA designated agent directory, available [here](#). The old directory of designated agents should only be consulted if a service provider has not yet designated an agent in the new directory.

Go To: [A](#) [B](#) [C](#) [D](#) [E](#) [F](#) [G](#) [H](#) [I](#) [J](#) [K](#) [L](#) [M](#) [N](#) [O](#) [P](#) [Q](#) [R](#) [S](#) [T](#) [U](#) [V](#) [W](#) [X](#) [Y](#) [Z](#) [Numerals/Symbols](#)

100 per page ▼ Name asc ▼ Filter by Title

Page 1 of 43 1 2 3 4 5 6 7 > »

**Amended Interim Designation of Agent to Receive Notification
of Claimed Infringement**

Full Legal Name of Service Provider: Facebook, Inc.

Alternative Name(s) of Service Provider (including all names under which the service provider is doing business): Facebook.com, Facebook

Address of Service Provider: 1601 Willow Road, Menlo Park, CA 94025

**Name of Agent Designated to Receive
Notification of Claimed Infringement:** Colin Stretch


Full Address of Designated Agent to which Notification Should be Sent (a P.O. Box or similar designation is not acceptable except where it is the only address that can be used in the geographic location):
1601 Willow Road, Menlo Park, CA 94025

Telephone Number of Designated Agent: (650) 543-4800

Facsimile Number of Designated Agent: (650) 560-6293

Email Address of Designated Agent: ip@fb.com

Identify the Interim Designation to be Amended, by Service Provider Name and Filing Date, so that it may be Readily Located in the Directory Maintained by the Copyright Office: Filed March 30, 2012, Facebook, Inc.

 **Signature of the Designating Service Provider:**

Date: 8/25/14

Typed or Printed Name and Title: Colin Stretch
Vice President and General Counsel

Note: This Amended Interim Designation Must be Accompanied by a Filing Fee*
Made Payable to the Register of Copyrights.

*Note: Current and adjusted fees are available on the Copyright website at
www.copyright.gov/docs/fees.html

Mail the form to:
Copyright I&R/Recordation
P.O. Box 71537
Washington, DC 20024

Scanned

SEP 10 2014

Received

AUG 28 2014

Copyright Office

The DMCA Designated Agent Rules Have Changed!

- New Rules effective December 31, 2016:
- Electronic Filing
- Flat Fee (Currently \$6)
- All Existing Registrations Must Be Replaced by December 31, 2017
- Must Be Renewed Every Three Years or Safe Harbor is Abandoned

How Do You Find Them?

- Albumkings
- Domain: Albumkings.com (formerly albumkings.net and albumkings.co)
- Registrant: Whois Privacy Corp., Nassau, Bahamas
- Registrar: TLD REGISTRAR SOLUTIONS LTD
- Hosting Provider: Obfuscated by Cloudflare, U.S.
- Traffic: Global Alexa ranking of 37,978 and the new .com domain is averaging nearly 900,000 monthly visits
- Revenue Sources: Advertising

Good Luck With That One

- Newalbumreleases
- Domain: newalbumreleases.net
- Registrant: Sergey Kobilin, Svetogorsk, Russia
- Registrar: DomainSite.com
- Hosting Provider: WIBO, Czech Republic
- Traffic: Global Alexa ranking of 8,733 with nearly 80 million visits in the last year
- Revenue Sources: Advertising

Jurisdictional Considerations

- With respect to J&B Tours' website, although we have not established a firm rule for personal jurisdiction in the Internet context, other courts have recognized that “the mere existence of a website that is visible in a forum and that gives information about a company and its products is not enough, by itself, to subject a defendant to personal jurisdiction in that forum.” “Though the maintenance of a website is, in a sense, a continuous presence everywhere in the world,” J&B Tours' Internet contacts with Florida were “not in any way ‘substantial.’”
- *Fraser v. Smith*, 594 F.3d 842 (11th Circuit 2010)

Jurisdictional Considerations

- In this case, Lovelady is alleged to have committed an intentional tort against Carman—using his trademarked name and his picture on a website accessible in Florida in a manner to imply Carman's endorsement of Lovelady and his products. The use was not negligent, but intentional. The purpose was to make money from Carman's implied endorsement. The unauthorized use of Carman's mark, therefore, individually targeted Carman in order to misappropriate his name and reputation for commercial gain. These allegations satisfy the *Calder* effects test for personal jurisdiction—the commission of an intentional tort, expressly aimed at a specific individual in the forum whose effects were suffered in the forum. The Constitution is not offended by the exercise of Florida's long-arm statute to effect personal jurisdiction over Lovelady because his intentional conduct in his state of residence was calculated to cause injury to Carman in Florida.
- *Licciardello v. Lovelady*, 544 F.3d 1280 (11th Circuit 2008)



Thanks for Listening

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