



Online News Association
Los Angeles, California

Internet Law: A Primer

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August 4, 2010


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- A decorative graphic on the left side of the slide, consisting of a green leaf with visible veins, partially cut off by the edge of the frame.
- October 1994
 - Users postings to a Prodigy bulletin board accused Stratton Oakmont of criminal and fraudulent acts in connection with an IPO:
 - › "major criminal fraud"
 - › "cult of brokers who either lie for a living or get fired"

- 
- › Court found Prodigy could be held liable as the “publisher” of the postings
 - › Efforts to police created obligation to police effectively
 - › Lawyers recommended against policing

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- A large, stylized green leaf graphic is positioned on the left side of the slide, extending from the top to the bottom. It has a curved shape with visible veins.
- Stratton Oakmont wouldn't be decided the same way today
 - Congress intervened to protect nascent Internet; didn't like the advice lawyers were giving
 - Didn't want the law to discourage publishers from exercising responsible editorial judgment

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- A large green leaf graphic is positioned on the left side of the slide, partially cut off by the edge. It has several veins and a gradient from dark green to light green.
- Communications Decency Act
 - › ACLU v. Reno
 - Section 230
 - › “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”

You Can Edit If You Really Want

- Covered claims
 - › Libel
 - › Invasion of privacy
 - › Other torts
 - › Breach of contract
 - › Violation of fair housing laws
 - › Etc.
- Claims outside § 230 immunity
 - › Intellectual property
 - › Federal criminal

You Can Edit If You Really Want

- The sticky advice is wrong
- In the U.S., you can edit if you really want

You Can Edit If You Really Want

- Protected activity
 - › Move for relevance
 - › Remove
 - › Edit for indecency
 - › Edit for length

 - › Edit because you think it's appropriate
 - » Exercise of editorial judgment

The Outer Limits

- Can't edit to insert the defamation or to change the defamatory gist and sting
- “My ex-husband is **not** an alcoholic.”

The Outer Limits

- Roommates.com (9th Cir. April 2008)
 - › Roommate matching service violated federal Fair Housing Act by encouraging users to express discriminatory preferences
 - › Fair Housing Laws

The Outer Limits

“The CDA does not provide immunity for inducing third parties to express illegal preferences. Roommate’s own act – posting the questionnaire and requiring answers to it – are entirely its doing and thus Section 230 of the CDA does not apply to them.”

The Outer Limits

- Court: Roommates invited users to express unlawful preferences
- “By requiring users to provide [information about sex, family status, and sexual orientation] as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information provided by others; it becomes the developer, at least in part, of the information.”

The Outer Limits

Contrast:

Lawyers Committee v. Craigslist


› (7th Cir. March 2008)

UGC Liability

- Practical Advice
 - › UGC may not be the place to take litigation risk
 - › If you limit editing to removing indecency, correcting typos, etc., run less risk of being accused of being publisher
 - » Avoid vulnerability for “tightening” prose to make the ambiguous unambiguously defamatory
 - » Trimming for length can lead to claims that you omitted the exonerating stuff
- Protection is statutory, not Constitutional

You Can Edit If You Really Want

- Congress got this right
- Without Section 230 (and the Safe Harbor provision of the DMCA), the UGC industry wouldn't exist in the litigious U.S. (as we know it)
- Facebook, YouTube

- 
- Section 230 immunity specifically does not apply to claims of copyright infringement
 - To protect service providers against strict liability for infringing content posted by users, Congress enacted the Safe Harbor provision of the DMCA

DMCA Safe Harbor

- To find refuge in the Safe Harbor, online service providers must:
 - › Have no actual or constructive knowledge of that material is infringing
 - › Have no direct financial benefit from the infringement, if the OSP has the “right and ability to control”
 - › Have registered with the Copyright Office an agent to receive notices of infringement
 - › Act “expeditiously” to remove or disable

DMCA Safe Harbor

- To register a designated agent, go to www.copyright.gov

Hot Topics

[Register Online](#)

[Fees Changed Aug. 1](#)

[Section 1201 Anticircumvention Rulemaking](#)

[Facilitating Access to Copyrighted Works for the Blind and Other Persons with Disabilities](#)

[Section 109 Report to Congress on Cable and Satellite Statutory Licenses](#)

[Section 108 Study Group Report](#)

[Orphan Works](#)

What's New

[Register's Testimony: The Proposed Google Book Settlement](#)

[Register's Testimony: Performance Rights and Parity among Music Delivery Platforms](#)

[Request a Search of Copyright Records](#)

About Us

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[Hours, Location, Phone Numbers](#)

[Mail Delivery](#)

[Procedure for Courier Deliveries](#)

[Contact Us](#)

[Legal Notices](#)

About Copyright

- [Copyright Basics](#)
- [Frequently Asked Questions \(FAQ\)](#)
- [Current Fees](#)
- [Taking the Mystery Out of Copyright \(for students and teachers\)](#)

Search Copyright Records

- [Registrations and Documents](#)
- [Notices of Restored Copyrights](#)
- [Online Service Providers](#)
- [Vessel Hull Designs](#)

Publications

- [Circulars and Brochures](#)
- [Forms](#)
- [Factsheets](#)
- [Reports and Studies](#)

Licensing

- [Compulsory and Statutory Licenses](#)

Preregistration

- [Preregistration Information](#)
- [Preregister Your Work](#)

How to Register a Work



How to Record a Document

- [Record a Document](#)

Law and Policy

- [Copyright Law](#)
- [Federal Register Notices](#)
- [Current Legislation](#)
- [Regulations](#)
- [Mandatory Deposit](#)
- [Rulemaking](#)
- [Rulings Regarding the CRB](#)
- [More...](#)

Related Links

- [Patents and Trademarks](#)
- [Copyright Royalty Board](#)
- [More...](#)

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U.S. Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000
(202) 707-3000

Revised: 06-Oct-2009



FEEDBACK



FEEDBACK

Online Service Providers

Service Provider Designation of Agent to Receive Notification of Claims of Infringement

The [Digital Millennium Copyright Act](#), signed into law on October 28, 1998, amended the United States Copyright Act, Title 17 of the *U.S. Code*, to provide in part certain limitations on the liability of online service providers (OSPs) for copyright infringement. [Subsection 512\(c\)](#) of the Copyright Act provides limitations on service provider liability for storage, at the direction of a user, of copyrighted material residing on a system or network controlled or operated by or for the service provider. If, among other things, the service provider has designated an agent to receive notifications of claimed infringement by providing contact information to the Copyright Office and by posting such information on the service provider's publicly accessible website.

[Browse through the OSP directory of designated agents.](#)

The Copyright Office published in [interim regulations](#) the procedure by which a service provider may designate an agent to receive notifications of claimed infringement. The Copyright Office does not provide printed forms for designating an agent, but makes available on this website suggested formats for filing an [Interim Designation](#) or an [Amended Designation](#). An Amended Designation will replace in its entirety an Interim Designation or a prior Amended Designation for the same service provider. You have the option of filling in the blanks while viewing the form online and then printing out and signing the completed form, or downloading or printing the blank form and then completing it. The form must then be mailed or hand-delivered to the Copyright Office.

You may also prepare your own form, but should ensure that it includes all the information required in section [201.38\(c\)](#) or (f), as appropriate, of the interim regulations. Please note that the entire Interim Designation or Amended Designation that you submit will be posted on the Copyright Office's website. If you include extraneous information that is not required by the interim regulations, that information will also be scanned and posted on the website.

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An Interim Designation or an Amended Designation should be accompanied a [fee](#) (an increase since the regulations were published), payable to the Register of Copyrights. If mailed, the designation should be addressed to: Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. A service provider may also file a designation in person by delivering it to the Public Information Office of the Copyright Office, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE, Washington, DC, Monday-Friday, 8:30 a.m. to 5:00 p.m. eastern time, except federal holidays.

The Copyright Office reviews each designation for obvious error (e.g., that the entity listed as the service provider does not name another legal entity as its alternative name) and to ensure that all requisite information has been provided (e.g., full legal name, complete address, signature); it does not substantively examine the designations of agents for accuracy or for compliance with the law or with Copyright Office regulations. The fact that the Office has accepted a designation of an agent and has included it in the Office's directory of agents should not be construed as a judgment by the Office that the designation is sufficient or error-free.

Definition: For purposes of section 512(c), a "service provider" is defined as a provider of online services or network access, or the operator of facilities therefor, including an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

Mail the forms below to:

Copyright GC/I&R
P.O. Box 70400
Washington, DC 20024

To designate an agent:

- [Interim Designation of Agent to Receive Notification of Claimed Infringement](#) (PDF format)

To amend a previously files "Designation of Agent":

- [Amended Interim Designation of Agent to Receive Notification of Claimed Infringement](#) (PDF format)

To see the list of designated agents:

- [Directory of Agents](#)

DMCA Safe Harbor

- Must include contact information for the registered agent on the site
 - › including name, address, phone number and email address of the agent
- Usually handled in the terms of use

Copyright Basics

- Copyright protection was considered so fundamental to fledgling republic that it was baked into the Constitution
 - › "No man but a blockhead ever wrote, except for money ." Samuel Johnson
- To encourage creation, copyright scheme favors creators over acquirers

Copyright Basics

- Copyright isn't something you apply for
 - › Springs into existence upon “fixation”
- Copyright protects expression, not ideas or facts
 - › Databases subject to only thin protection
 - » Based on selection, coordination, and arrangement

Copyright Basics

- Copyright covers works of authorship
 - › Written works
 - › Photographs
 - › Art
 - › Video
 - › Music
 - › Websites
 - › Computer programs
 - › Etc.

Copyright Basics

- Exclusive Rights of Copyright Holder
 - › Right to copy
 - › Right to distribute copies
 - › Right to make derivative works
 - › Right to display
 - › Right to perform
 - › Sound recordings: right to make a digital audio transmission

Copyright Basics

- Employee's works are owned by employer
- But freelancer or blog poster owns his work
- Exclusive rights (ownership or exclusive license) can only be conveyed in writing
- To obtain ownership of copyright as “work made for hire” must have writing and incant magic words

Copyright Basics

- If there's no contract, just an implied license
 - › Scope based on “custom and usage”
 - › Print rights probably don't yet imply web rights and vice versa
 - › And “web” rights may not imply iPhone app rights

Copyright Basics


- Be sure your freelance contracts get you broad rights to publish electronically
 - › Television vs. cable
 - › Web vs. cellphone deck
- Be sure rights aren't geographically limited

Fair Use

- Fair use doctrine balances societal interest in unfettered speech vs. societal interest in protecting creators to encourage creation
 - › 4 Factors:
 - » Purpose and character of the use
 - » Nature of the work in question
 - » Amount and substantiality used
 - » Effect on the market for the original work
 - › No hard and fast rules

Copyright Misconceptions

- “If a work doesn’t bear a copyright notice, it’s in the public domain.”
 - » Don’t assume a work is in the public domain
 - » Include your own notice
 - © [Date] Copyright Owner
- “If it’s not plagiarism, it’s not copyright infringement.”

- 
- Offline businesses have long gathered information on their customers
 - › Credit card companies
 - › Supermarket/drug store discount cards
 - › Promotional contests
 - Efficiency of the Internet has bred discomfort, which is increasingly breeding regulation
 - Privacy is relatively modern construct

Privacy Policy Requirements

- If you collect personally identifying information on residents of California through a commercial website, you must have a privacy policy that complies with the California Online Privacy Protection Act
- Doesn't matter whether you're in CA
- Good news: it's not burdensome

CA Privacy Policy Requirements

- Categories of information collected
- 3rd parties it's shared with
- Notification of changes
- User review mechanism (if you have one)
- Effective date
- Adhere to stated policy

Privacy Policies

- A contract that binds you and favors your users
- Live within your stated policy

Privacy Policies

- Privacy Policy Is Binding
 - › FTC: failure to comply with articulated privacy policy = deceptive trade practice
 - › California law requires adherence
 - › Breach of contract

Privacy Policies

- Typical Disclosures
 - › What's collected
 - › How it's collected
 - › How it's used
 - › Whether it's shared, and with whom
 - › Whether others collect information on site
 - › How information is secured
 - › Answers may not be obvious

Privacy Policies

- Drafting Tips
 - › Maintain flexibility
 - › Don't over-promise
 - › Speak plain English
 - › Specify scope of policy
 - › Revisit your privacy policy regularly

Data Collection & Privacy


- Boucher bill – Discussion draft - 5/4/10
 - › Would require any entity that collects personally identifiable information to:
 - » Display a clearly written privacy policy describing collection, use & disclosure
 - » Offer opt-out consent for 1st-party collection
 - » Offer opt-in consent for sharing with 3d parties (such as ad networks)
 - » Offer opt-in consent for collection of sensitive information


Data Collection & Privacy

- Boucher Bill:
- Would apply offline as well as online
- Would preempt state law
- Would not create a private right of action

Other Privacy Issues

- COPPA prohibits knowing collection of personally identifying information from those under 13
 - › Unless you have prior, verifiable parental consent
 - › Compliance is burdensome
- Security breach notification laws in 30+ states require notice to customers if their PII is compromised

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- From the perspective of a U.S. media lawyer, all other media lawyers are practicing without a net
 - › No one else has Times v. Sullivan
 - › No one else has Section 230 and the DCMA Safe Harbor

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- If you publish anywhere, for all practical purposes, you publish everywhere
 - But you can't look to Singapore law every time you make an editorial decision
 - Some comfort in cases declining to enforce foreign judgments obtained under laws inconsistent with “fundamental” U.S. laws
 - HR 2745: Securing the Protection of our Enduring and Established Constitutional Heritage Act (“SPEECH Act”)
 - › But you should look to the law of countries where your assets are located
 - › And be sure you have libel insurance

Additional Resources

- *Internet Law: A Field Guide* (BNA Books 2008)
- Government Information
 - › Copyright: www.copyright.gov
 - › Privacy, advertising: www.FTC.gov
- Reporters Committee for Freedom of the Press
 - › <http://www.rcfp.org/>
- Berkman Center for Internet & Society (Harvard)
 - › <http://www.citmedialaw.org/legal-guide>



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