

**Before the
U.S. Copyright Office
Library of Congress
Washington, D.C. 20559**

In the Matter of)	
)	
Designation of Agent To Receive)	Docket No. RM 2011-6
Notification of Claimed Infringement)	
)	

**COMMENTS of
THE ORGANIZATION FOR THE PROMOTION AND
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
THE AMERICAN CABLE ASSOCIATION;
THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE;
THE WESTERN TELECOMMUNICATIONS ALLIANCE;
and
THE RURAL INDEPENDENT COMPETITIVE ALLIANCE**

I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO),¹ the National Telecommunications Cooperative Association (NTCA),² the American Cable Association (ACA),³ the Independent Telephone & Telecommunications

¹ OPASTCO is a national trade association representing approximately 460 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

² NTCA represents more than 580 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers and many of its members provide wireless, cable, Internet, satellite, and long distance services to their communities; each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended.

³ ACA represents nearly 900 small and medium-sized multichannel video programming distributors (MVPDs) that provide video service in aggregate to about 7.6 million subscribers. Most of these providers also provide high-speed Internet access, and telephone service. More than half of ACA's members serve fewer than 2,000 subscribers. These providers deliver service in 49 states and many U.S. territories, often serving the smaller markets and rural areas.

Alliance (ITTA),⁴ the Western Telecommunications Alliance (WTA),⁵ and the Rural Independent Competitive Alliance (RICA)⁶ (collectively, the Associations) hereby submit these comments in response to the Notice of Proposed Rulemaking in the above-captioned proceeding.⁷ The Associations' members are small or mid-sized telecommunications and/or cable television companies that also provide Internet access services that are vital to the economic growth and quality of life of the communities they serve. These companies frequently operate in sparsely populated rural areas that, due to high costs and other factors, are often not attractive to larger service providers.

The Associations believe that online service providers should be permitted to delegate to third parties the authority to maintain and update their contact information in the registry of designated agents maintained by the Copyright Office for the purpose of serving notice of alleged copyright violations on online service providers. The Copyright Office should not require the names of particular individuals that will receive such notifications and should give providers the option of designating this function by position or job title. In addition, related service providers, such as a parent or subsidiary companies, should be permitted to designate a single, joint agent to receive notifications of claimed infringement. Finally, any fees should be

⁴ ITTA is a Washington, DC-based trade association that represents mid-size telephone carriers that provide a broad range of high quality wireline and wireless voice, broadband, Internet, and video telecommunications services to approximately 19 million access lines in 44 states. On average, ITTA's members have deployed broadband to approximately 85 percent of their respective service areas, many of which are located in rural areas with low population densities..

⁵ WTA is a trade association whose membership is comprised of approximately 250 rural telecommunications carriers providing high-quality voice, video and data services throughout rural areas in the 24 states west of the Mississippi River. WTA's members serve some of the most rural and hard-to-serve communities in the country and are on the forefront of bringing 21st Century telecommunications services to rural America.

⁶ RICA is a national association of nearly 80 competitive local exchange carriers (CLECs) that are affiliated with rural ILECs and provide facilities based service in rural areas.

⁷ *Designation of Agent To Receive Notification of Claimed Infringement*, Docket No. RM 2011-6, Notice of Proposed Rulemaking, 76 FR 59953 (2011) (NPRM).

kept to a minimum, and the Copyright Office should consider forgoing fees for routine updates or corrections that involve a *de minimis* cost.

II. ONLINE SERVICE PROVIDERS SHOULD BE PERMITTED TO DELEGATE TO A THIRD PARTY THE RESPONSIBILITY FOR MAINTAINING OR UPDATING THEIR DESIGNATED AGENT INFORMATION

The NPRM notes that the Copyright Office is developing a means for online service providers to designate other parties, such as consultants or law firms, to act as their agent to receive notifications of claimed copyright infringement.⁸ The NPRM also requests comment on whether third-party agents should be permitted to maintain and update the required contact information.⁹ The Associations support this option.

Many of the online service providers represented by the Associations have few employees and operate in sparsely populated areas that often cover large territories. These circumstances may necessitate the delegation of many functions to consultants and other third parties, enabling the local staff to focus on tending to immediate customer needs. While the NPRM expresses concerns about the validity of designation information that is not conveyed by the service provider itself,¹⁰ the third party firms that provide assistance to small and mid-sized online service providers have developed the expertise to accurately and efficiently comply with a variety of regulatory requirements. Furthermore, they have every incentive to do so correctly in order to establish a positive reputation and retain and grow their client base. Therefore, the benefits of allowing these specialized firms to maintain and update the information required by the Copyright Office on behalf of small and mid-sized online service providers outweigh the risks.

⁸ NPRM, p. 59954.

⁹ *Id.*

¹⁰ *Id.*

III. ONLINE SERVICE PROVIDERS OR THEIR THIRD-PARTY AGENTS SHOULD BE PERMITTED TO PROVIDE A TITLE OR POSITION AS THEIR POINT OF CONTACT, RATHER THAN THE NAME OF A SPECIFIC PERSON

The NPRM asks whether an online service provider should submit the actual name of a person who will receive notification of claimed copyright infringement or whether the name of a specific position or title is sufficient for this purpose.¹¹ It is reasonable to permit an online service provider, or its agent, to designate a position or title to receive notice of alleged copyright violations. This option tends to provide for greater continuity and fewer administrative burdens in the event of staff changes. It also reduces the chances that the information maintained by the Copyright Office will inadvertently become outdated. Therefore, the Associations support the option of allowing online service providers or their third-party agents to designate notification recipients by position or job title.

IV. RELATED ONLINE SERVICE PROVIDERS SHOULD BE PERMITTED TO JOINTLY DESIGNATE A SINGLE AGENT TO RECEIVE NOTICE OF CLAIMED COPYRIGHT INFRINGEMENT

The NPRM seeks comment on whether related online service providers (such as a parent and subsidiary companies) should be allowed to jointly designate a single agent to receive notices of alleged copyright infringement.¹² This option should be permitted. The small and mid-sized online service providers represented by the Associations have varying organizational structures, such that filing separate designations for each entity can be burdensome and lead to confusion for users of the registry. Many online service providers are subsidiaries of small or mid-sized telecommunications and/or cable television companies that subsequently entered into the Internet access business. In some cases, the online service provider was formed by a

¹¹ *Id.*, p. 59957.

¹² *Id.*, p. 59958.

consortium of small telecommunications and/or cable providers. In other cases, holding companies were formed to consolidate the administrative operations of a number of small service providers in order to gain economies of scale. In many of these instances, it can be most efficient for all of the related entities to have a single point of contact designated to receive notification.

V. FEES SHOULD BE MINIMAL, AND THE COPYRIGHT OFFICE SHOULD CONSIDER NOT ASSESSING ANY FEE FOR ROUTINE CORRECTIONS OR UPDATES

The Associations appreciate that the Copyright Office will conduct a cost study and publish an additional notice of proposed rulemaking at a later date to seek comment on the resulting fee proposals.¹³ Fees of any kind should be kept as low as possible since, as the NPRM recognizes, this will encourage the timely provision of accurate information.¹⁴ However, given that the directory of designated agents will be updated from paper to electronic submissions,¹⁵ the Associations question whether any fee for the correction of any mistakes or other routine amendments to designations is justified.¹⁶ The Associations suggest that the cost study ascertain whether the cost of making minor alterations to the registry might be *de minimis*. If so, assessing and processing a fee for changes that result in *de minimis* costs could be inefficient and, worse, counterproductive to the Copyright Office's goal of the timely submission of accurate information. Therefore, the Associations request that the Copyright Office consider declining to assess any fees for changes that result in a minimal cost.

¹³ *Id.*, p. 59956.

¹⁴ *Id.*, p. 59955.

¹⁵ *Id.*, p. 59954.

¹⁶ *Id.*, p. 59955.

VI. CONCLUSION

For the reasons outlined above, online service providers should be permitted to delegate to a third party the responsibility for maintaining or updating their designated agent information. Online service providers or their third-party agents should have the option to provide a title or position as their point of contact, rather than the name of a specific person. Related online service providers should be permitted to jointly designate a single agent to receive notice of claimed copyright infringement. Finally, fees should be minimal, and the Copyright Office should consider declining to assess any fee for routine corrections or updates to its registry.

Respectfully submitted,

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