

**NOTICE OF PROPOSED RULEMAKING REGARDING 37 CFR PART 201:  
DESIGNATION OF AGENT TO RECEIVE NOTIFICATION OF CLAIMED INFRINGEMENT**

**SUBMISSION OF THE RECORDING INDUSTRY ASSOCIATION OF AMERICA  
IN RESPONSE TO REQUEST FOR COMMENT**

Introduction

The Recording Industry Association of America (“RIAA”) submits these comments in response to the Copyright Office’s request for public comment concerning its Notice of Proposed Rulemaking regarding the designation of DMCA Agents. The RIAA is a trade association representing the major record companies in the United States. RIAA members include Universal Music Group, Sony Music, EMI Music North America and Warner Music Group. Together these companies produce, manufacture or distribute the vast majority of sound recording products sold in the US. In connection with their businesses, each company maintains many websites for their labels and recording artists that make use of copyrighted music and artwork. In addition, these companies enforce their rights against online enterprises that make unauthorized use of their copyrights. Accordingly, the RIAA and its members are in the position of website operators who register DMCA agents as well as users who rely on the accuracy of the Online Directory of Registered Agents to obtain the names of registered agents on whom we serve DMCA notices.

In this regard, we wish to note that the DMCA requires that a service provider’s registered agent be listed both with the Copyright Office and on the relevant website. We do not see the Copyright Office’s role with respect to maintaining a directory of agents as merely providing an alternative way of finding contact information for such agents. While many service providers operate legitimate businesses, entities that lack a legitimate business purpose may seek to operate anonymously while simultaneously seeking to take advantage of the DMCA safe harbors. The Office can play an important role in the overall structure of the DMCA by ensuring that any service providers who wish to enjoy the benefits of the DMCA accurately and openly identify themselves and their agents so that a proper notice may be sent to them as needed and they can be found for purposes of enforcing copyright interests.

We hope these comments are useful to the Copyright Office given our experience in this area. We have attempted to respond to the issues raised by the Office in the order in which they are listed in the Notice of Proposed Rulemaking.

Electronic Filing

- The RIAA agrees with the discussion in the Notice of Proposed Rulemaking to the effect that only an employee of the service provider should be permitted to file a designation or make changes to it. However, we note that the text of the proposed rule does not make this result as clear as would be desirable, because proposed Section 201.38(c)(6) and (8) appear to contemplate that persons with appropriate authority, who may not necessarily be employees of the service provider, will submit agent designations. We believe that the risks of allowing a third party representative other than an employee to submit or alter a designation of agent outweigh the benefits. While in many situations allowing third parties to change the designation might help keep the database up to date, in other situations it might result in inaccuracies such as when there is a dispute or the outside representative fails to make a requested change. And although the service provider would theoretically retain liability for the accuracy of the information, we are concerned about a possible

### Periodic Validation

- We agree that periodic validation of the information is essential to the accuracy of the Directory. We believe that validation every two years is the appropriate timeframe.
- As to whether prior versions of a designation should be available online, we believe this is a useful feature which certainly outweighs any possible confusion users might suffer by misreading outdated information. However, if including prior versions would significantly add to the cost of maintaining the database, we would urge the Copyright Office to consider having just the most recent prior version available online and the remainder archived. Alternatively, we would support a system in which the prior versions were maintained in a separate database that account holders could access separately, perhaps for an additional fee if necessary.
- The RIAA agrees that the Copyright Office should collect the e-mail information of the service provider and the designated agent, and that the agent's email address must be included in the Directory. If the individual employee responsible for completing the designation is different than the email for the service provider itself, we believe it would be best if that individual's email were also listed in the Directory. As discussed above, we do not believe individuals other than the service provider (or its employees in the case of a corporation) should be permitted to fill out the designation and therefore there should be no need to collect a third party's email. If the Copyright Office decides it will permit third parties to complete the designation for a service provider, certainly the email address of the third party should be included in the Directory.

### Amending a Designation

- The RIAA believes that charging a fee to amend the designation will discourage timely updating of information. We believe the best solution is not to charge any fee for amending the designation but rather to have the Copyright Office recoup its costs through the fees for initial designation and periodic validation. Alternatively, the Copyright Office might charge the same fee for an amendment as the periodic validation, but to "reset" the 2-year clock for the next validation whenever an amendment is made. This will help ensure that the service provider is not incentivized to wait for its next validation date to make needed changes.

### Overlapping Designations

- As discussed below, the RIAA supports organizing the Directory as it is done currently, by service provider rather than by website. To the extent this results in overlapping designations, we believe there are solutions. First, corporations with identical names in different locations would of course list their address in their designation. Where the Directory lists two service providers with identical names, a user will have to open both entries to determine which is the relevant one. This is not a terribly great burden.
- As for the problem of a service provider changing ownership, we suggest that the Copyright Office send an email to the current service provider whenever anyone attempts to register an agent under an existing service provider's name, asking the existing service provider whether its designation should be deleted. Whenever a service provider is being acquired, the existing service provider will simply opt to have its listing deleted. Where the existing service provider does not agree that its

## Content

- The RIAA agrees that email addresses should continue to be displayed in their standard format (e.g. [johndoe@yahoo.com](mailto:johndoe@yahoo.com)) and not typed out (e.g. "johndoe at yahoo dot com") as that is the least likely to inject typographical mistakes in the Directory. Today most corporations and individuals employ spam filters which eliminate some of the problem of email harvesting and therefore we do not believe we should take unusual steps to combat this problem in the Directory.

## Service Provider Identity and Alternative Names

- The RIAA wishes to suggest that the Copyright Office take this opportunity to improve the utility of the Directory in this area. As the Copyright Office is aware, entities that lack a legitimate business purpose will frequently mask the true nature of their corporate ownership with layers of shell corporations. This entirely circumvents the purpose for which the DMCA demands the "service provider" be identified. We therefore urge the Copyright Office to require the service provider to disclose any shareholders or related groups of shareholders (such as a family) with a majority ownership of the service provider; and any persons or entities with a controlling interest in or decision making power over the service provider.

## Agent's Identity

- We disagree with the Copyright Office's proposal that service providers be permitted to designate an employee by title such as "DMCA Agent" or "General Counsel". As noted above, the purpose of the designation is more than a secondary way of obtaining the contact information for the registered agent. It is the mechanism that ensures such information is accurate and that the service provider has not supplied bogus information. We would therefore urge the Copyright Office to maintain the requirement of listing the agent's actual name. Even for pure efficiency reasons, we do not believe that permitting designations by title would improve the system. While this might seem to be a reasonable way to hedge against employee turnover, in our experience, emails sent to corporate titles often go to a general mailbox and are ignored. We believe that the best choice to ensure that DMCA notices reach a live individual is to require that they be sent to an email address for which a particular employee has responsibility. The burden of amending designations when the designated agent is no longer employed by the service provider will be lessened if a fee is not charged for amendments, as discussed above.
- In addition, we urge the Office to specify that the person named as agent must be someone who is authorized to accept service of process on behalf of the service provider, to avoid any doubts that the database can be relied upon for enforcement of copyrights in circumstances contemplated by Section 512.
- The RIAA agrees that permitting multiple agents would complicate the Directory and make it unclear who is the proper agent.

### Contact Information for the Service Provider

- We wish to urge the Copyright Office to continue to require service providers to supply a true company name and an actual physical address from which the company conducts its operations. One of the biggest problems facing the owners of copyrights who wish to enforce their rights is that the information provided by the service providers is not accurate and the information cannot be used to locate the service provider to serve a subpoena. Accordingly, we suggest that the Copyright Office require proof of the business address of the service provider, perhaps by requiring the entity to scan a piece of business correspondence and attach it to the designation as a PDF.

### Service Provider's and Agent's Address

- The RIAA believes it is essential to require registered agents to provide a street address rather than a post office box number as their physical addresses. This better insures that the agent is a real person and the information supplied is reliable. We find the concern expressed by Copyright Office for the agent's privacy, where an agent only has a single home address, to be misplaced. In cases in which the designated agent is an individual with only a home address, the individual is either the sole owner of the service provider (in which case he must supply his physical address as part of the service provider details) or he is an employee or consultant for a very small corporation that has no central office. That is precisely the situation in which a physical address should be supplied to ensure respect by the registered agent for DMCA notices and the rights of copyright owners. In addition, concerns for privacy should not outweigh the primary purpose of the registry, which is to ensure accurate and real information be supplied.

### Related Service Providers

- The RIAA believes that while grouping related service providers together on one registration might be efficient for those providers, on balance the accuracy of the Directory is better preserved by continuing to require each separate corporate entity to file its own designations.

### Possible Alternative Organizing Principle

- The RIAA does not favor a switch to registration by website. Many large companies including the RIAA members host hundreds of websites. Maintaining accurate designations for each of these sites and paying the related fees for the initial designation and periodic validation would increase exponentially both the possibility of error and the cost of designation. We believe the current system of registration by service provider to be perfectly adequate. However, we suggest that the service provider be required to list at least its main company websites by name in a separate field in the designation so that the Directory can be searched both by service provider name and by website.
- Continuing to require designation by service provider will also eliminate the issues raised by the Copyright Office associated with different subdomains being used by different service providers and the issue of mobile applications. In both instances, where a service provider wishes the protection of a DMCA safe harbor, it must (among other requirements) register under its company name.