

CAPLAW *e-news brief*

Avoiding Liability for Website Content Posted by Third Parties

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Earlier this year, CAPLAW published an [e-Bulletin article](#) discussing copyright infringement issues that may arise when a Community Action Agency (CAA) employee posts images created by others to the CAA's website. CAAs should be aware, however, that they can also be liable for copyright infringement when third parties who are not affiliated with the CAA upload content to the CAA's website, even if the CAA did not know that the posted materials were infringing or that the materials were there. For example, if a CAA's website has a user forum or blog that allows third parties to upload images or videos, and someone posts material that he or she neither owns nor is authorized to use, the CAA can be liable for copyright infringement as the operator of the website.

Fortunately, Section 512(c) of the Digital Millennium Copyright Act (DMCA) (17 U.S.C. 512(c)) provides a "safe harbor" exemption from copyright infringement that may protect CAAs in this situation. This exemption is available to certain "service providers," including CAAs, who operate websites allowing third parties to post content on their websites. To qualify for this exemption, a CAA must:

- Publicly identify on its website an employee who is designated to serve as the CAA's agent and to receive notices from third parties claiming copyright infringement. Here is a sample notice with the requisite information listed:

Digital Millennium Copyright Act Agent

The agent designated to receive and act on copyright violations under the Digital Millennium Copyright Act (DMCA) is:

[Agent's Name]
[Agent's Title]
[Agent's Address]
[Agent's Telephone No.]
[Agent's Fax No.]
[Agent's E-mail]

- Provide the U.S. Copyright Office with the designated agent's contact information. The CAA may complete the [Interim Designation](#) form available on the [U.S. Copyright Office website](#) and mail it, together with the appropriate fee, to the address indicated on the form. Note that failure to provide this information to the U.S. Copyright Office will disqualify the CAA from claiming the safe harbor exemption.
- Respond promptly to any notices the CAA receives indicating that content on the CAA's website may be infringing an owner's copyright.
- Establish and enforce a policy that terminates the accounts or subscriptions of repeat copyright infringers.

Even if a CAA follows the steps described above, the exemption is not available if the CAA knew or should have known that the posted content was infringing (i.e., if indicators existed that made the infringing content obvious) or if the CAA profited from the posting and was in a position to manage the posting.

Given how difficult and time-consuming it is to monitor content posted to websites for potential copyright infringement issues, CAAs should consider implementing the requirements of the DMCA exemption to protect themselves from claims of infringement. For more information and resources about the DMCA and the safe harbor exemption, please visit the [U.S. Copyright Office's website](#) and read this [legal alert](#) from the law firm, Venable LLP.

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