

November 10, 2017

Re: The Digital Millennium Copyright Act
Recent Amendments and an Important Deadline

Dear MLS PIN Participant:

Toward the end of 2016, the United States Copyright Office amended the regulations under the federal statute known as the "Digital Millennium Copyright Act" (the "DMCA" or the "Act"). The amendments (which I'll call "the 2016 regulations") establish an electronic system for the naming of a so called "Designated Agent" under the Act and require the electronic registration of a Designated Agent by any online "service provider" that wants to claim – or maintain - the protections available to it under the Act's "safe harbor" provisions. Because the 2016 regulations impose a compliance deadline of December 31, 2017, and because they affect PIN and may affect your brokerage firm and its agents, it's important that you and your legal counsel consider the 2016 regulations should your firm seek to claim – or maintain - the Act's "safe harbor" protections.

I. Background

If all the conditions of the DMCA are satisfied, Section 512 of the Act limits the monetary liability of defined online "service providers" faced with claims of copyright infringement from third parties.

In practical terms, Section 512 means that the operator of a website that merely displays material posted to it by its users, and does so without modification – think of Facebook, as an example - can be protected from monetary liability to a third party that claims something a user posts to the operator's website infringes a copyright owned by that third party.

In October of 2015, I wrote to you and to each of PIN's other "Participant" brokerage firms about actions that PIN had taken to afford itself the "safe harbor" protections under the DMCA. One of those actions was naming me as PIN's so called "Designated Agent" to receive notices from third parties claiming that material on a PIN website infringes the claimant's copyright.

My 2015 letter advised you that the Copyright Office had then recently begun to allow multiple listing services to amend their Designated Agent filings to identify the service's Designated Agent as the Designated Agent not only of the service itself, but also of each of its users – that is, its Participants. In August of 2015, as a courtesy to its Participants, PIN filed such an amendment, registering me as the Designated Agent for your firm and for each of PIN's other Participant brokerage firms. As an additional courtesy, PIN paid all of the required fees for that filing.

My 2015 letter offered several cautions: the naming of a Designated Agent is only one of the steps required for protection within the DMCA's "safe harbor" and the registration of PIN's Designated Agent as your Designated Agent would be an effective step only for infringement claims arising out of information posted on PIN's websites and not on your own websites or those of your agents. Given these limitations, I advised you in my letter that you

should consider with your own legal counsel the other steps necessary under the DMCA to qualify your firm – and possibly your firm’s agents – for the “safe harbor” protections of the Act.

II. The New Electronic Filing Environment; the Deadline for Compliance

The central purpose of the 2016 regulations is to eliminate the Copyright Office’s current paper-based method of registering a Designated Agent under the DMCA and to replace it with an online electronic registration system.

Following the effective date of the 2016 regulations, the Copyright Office will no longer accept new Designated Agent registrations on paper or paper amendments to previous Designated Agent registrations. A “service provider’s” previously existing paper registration will continue to be effective only until the earlier to occur of (a) the “service provider’s” electronic registration of a Designated Agent using the Copyright Office’s new online electronic system and (b) December 31, 2017. After December 31, 2017, all prior paper filings will be invalid and only those registrations made through the new online system will satisfy the Act’s requirement for registering a Designated Agent with the Copyright Office.

III. The 2016 Regulations - Changes That May Affect Your Firm

PIN has looked carefully at the 2016 regulations and will register its Designated Agent electronically with the Copyright Office before the December 31, 2017 deadline.

Based on its analysis of the 2016 regulations, however, PIN has concluded that, with the new electronic registration, PIN will register its Designated Agent only for itself. That is, following the electronic registration, PIN’s Designated Agent will no longer serve as the Designated Agent for your firm or for any of PIN’s other brokerage firm Participants. Two provisions in the 2016 regulations motivated this change. First, the regulations mandate that separate legal entities – such as PIN itself and your firm - are considered separate “service providers” under the DMCA and that each “service provider” must have its own separate designation. Second, the regulations state that only a single agent may be designated for each “service provider”.

What does this change by PIN mean for your firm? If your firm, in the past, has relied on PIN’s Designated Agent as the Designated Agent for your firm under the DMCA, it will now be necessary for your firm to register its own Designated Agent through the new Copyright Office electronic filing system. Although that electronic registration must be completed no later than December 31, 2017, I strongly recommend that, if your firm plans to register, you complete the registration as promptly as possible.

Because PIN’s electronic Designated Agent registration will supersede and invalidate its existing paper registration, both for itself and for the Participants for which it also has registered, PIN will defer its electronic registration until December 20, 2017. That deferral should give you and PIN’s other Participant firms adequate time to effect your own electronic Designated Agent registration and minimize possible gaps in its Participants’ eligibility for the DMCA’s “safe harbor” protection.

IV. How to Proceed

As I have already recommended, you should seek advice from your firm’s own risk advisers and legal counsel on how the firm may want to proceed under the DMCA, and specifically how it may timely comply with the new electronic registration requirements for Designated Agents under the 2016 regulations. Compliance with the DMCA by your brokerage firm – and by its agents - is entirely your firm’s responsibility and the responsibility of those agents. PIN does not have or assume – and you agree that neither you nor your firm shall have or assert against PIN - responsibility or liability of any kind related to infringement claims arising from your firm’s property

listings or from the listings of any of your firm's agents.

As a courtesy in helping you and your advisers understand the DMCA and the 2016 regulations, here are some links you may find useful:

A video from the National Association of Realtors® on "Changes to the DMCA Safe Harbor":
<https://www.nar.realtor/videos/window-to-the-law-video-changes-to-dmca-safe-harbor>

The "DMCA Designated Agent Directory" from the U.S. Copyright Office website:
<https://www.copyright.gov/dmca-directory/>

The Final Rule from the Federal Register (81 FR 75695) on the "Designation of Agent To Receive Notification of Claimed Infringement": <https://www.federalregister.gov/documents/2016/11/01/2016-26257/designation-of-agent-to-receive-notification-of-claimed-infringement>

The text of the DMCA from the U.S. Copyright Office website:
<http://www.copyright.gov/title17/92chap5.html#512>

The U.S. Copyright Office's summary of the DMCA:
<http://www.copyright.gov/legislation/dmca.pdf>

I hope this letter is helpful to you. While, as noted, your firm's compliance with the DMCA is entirely your own responsibility, if you or your advisers have any questions about the matters addressed in this letter, please call either John Breault at 800-695-3000, x7106, or me at 800-695-3000, x7120.

Sincerely,



Kathleen E. Condon
President and CEO