

OITP Intellectual Property Fact Sheet FAQs About OSP Registration

What's it all about?

Organizations that provide people with access to the Internet have become increasingly concerned that they could be liable to legal action in cases where their users post, download, or otherwise use material that might infringe copyright law, particularly a copyright owner's right to control copying and distribution of its work. Under a doctrine known to lawyers as "vicarious infringement," an organization that facilitates on-line access could be held liable even if it has nothing to do directly with posting the infringing material. On the other hand, providers can also face liability from the other direction. The proprietor of a Web site that is taken down or blocked because it contains suspect material may feel that he or she has been aggrieved and may take action against the service provider.

The "OSP" provisions in Title 2 of the Digital Millennium Copyright Act (DMCA) offer limited protection, a so-called "safe harbor," from such liabilities if an organization takes certain steps, including registering with the Copyright Office and responding to infringement complaints in very specific ways.

What is an OSP?

At first glance one might think that the term "OSP," or "On-Line Service Provider," as used in the law simply refers to what are sometimes called "Internet Service Providers"—America On Line, Prodigy, AT&T, and so on. Those companies are certainly included, but the definition is much broader, and intentionally so. In fact, an OSP is defined in the law, not as an institution as such, but in terms of conduct or services it provides. For any organization, some services it offers may fall under the definitions, others may not. The services an organization provides are what count, not its categorization or industry sector. Only very specific services are protected under the DMCA.

The law defines four types of services that qualify for protection:

- Transitory communication
- System caching
- Storage of information on systems or networks at the direction of users, and
- Information location tools, links, pointers, and the like.

These services are defined in broad, general terms, and many libraries that provide public Internet access would technically qualify for the OSP protections in the law.

Must my library register?

No. Registration is strictly voluntary. An organization such as a library can choose to register and claim the protection offered only if it is in its best interest to do so.

What do I gain by registering?

You get some protection from potentially very stiff penalties imposed by copyright law for violations of owner's rights. These penalties can include injunctive relief, damages incurred by the owner or so-called "statutory" damages of \$500-\$20,000 per work infringed, plus attorneys fees of the copyright owner. Given the scale of the on-line environment—millions of sites and perhaps thousands of works distributed every day—these statutory damage claims could be staggering!

The new OSP regime offers a limitation on liability that is an insurance policy against money damage claims. Since, as an access provider, you would have no way of knowing in general what works have been cleared for Internet use, this protection could be of real

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value.

Additionally, if a registrant complies in good faith with the rules, the OSP law will give a so-called “Good Samaritan immunity” from liability to subscribers and others who might claim injury due to the OSP's actions. Finally, there are special rules that immunize some higher education institutions from actions of their faculty and graduate students.

What do I lose by not registering?

You forgo the specific protections offered by the OSP section of the DMCA. But, an organization still has all the legal defenses it had available prior to passage of the new law. Choosing not to register is not an admission of guilt, nor does it waive any existing user rights and exemptions that exist under copyright law.

What does “registration” mean?

Registering entails: (1) designating a person at your institution as agent to receive complaints of infringement, (2) posting that name on your Web site, and (3) sending it to the Copyright Office along with a registration fee. The Copyright Office in turn will pose the information on its Web site.

What then?

If you are registered, an aggrieved party claiming infringement must send you a notice specifying the offending site and describing the nature of the infringement. When you receive such a notice, to insure “safe harbor” protections, you need to undertake an elaborate sequence of actions and notifications within very specific time limits. You must take down or block access to a site, notify the operator of the potentially offending site of your action, and, then, based on the response from the operator, possibly restore access to the site. Also, your system may not unreasonably interfere with technological protections, such as passwords or access requirements, that providers may use to control the use of their materials.

Am I obligated to do all that when I register?

No, again, it is a voluntary regime. If you follow it, you will gain the Title 2 protections, but it is not mandatory that you do so. You might feel that the notice doesn't comply with the requirements of the DMCA, which spells out in some detail what the notice should contain. You might conclude that the situation can be resolved in a less rigorous, bureaucratic way that is more sensitive to the details of the particular case. For these or for other reasons, you may chose not to respond. If so, you will lose Title 2 protections.

Do I need to monitor my Web site for copyright infringement?

No. The new law makes clear that, registered or not, you are not required to monitor your services for potential infringement, nor do you have to seek out information about copyright misuse. However, should you learn facts, formally or informally, in a way that provides you with knowledge of or a reason to suspect infringement you should take appropriate action.

Should I register?

This is the \$64,000 question that must be addressed individually by institutions, particularly in the public library community. (Many university and research associations have flatly recommended that, because of the general scale and scope of campus and laboratory Internet activities, all members should register.) The decision should be carefully made after consultation among an organization's management, librarians, technologists, and, of course, legal counsel. It is basically a risk decision. What is the likelihood of facing a legal threat? How useful are the OSP provisions in defending against the threat? What are the costs, in terms of administrative overhead, of formally responding to complaints? Does the library already have effective policies and procedures for dealing with complaints that are more appropriate to its needs and clientele?

For further information:

Copyright Office Web site: (<http://lcweb.loc.gov/copyright/>)

OITP Web site: (<http://www.ala.org/oitp/copyright.html>)