
UPDATE January 21, 2020

New Leased Access Contact Information Requirement Now in Effect

Last June, the FCC released a [Report and Order](#) modernizing its leased access rules. In short, the Order eliminated part-time leased access, extended timeframes to respond to requests, and removed obligations to respond to requests that are not bona fide. At the same time, however, the FCC required cable operators to provide potential leased access programmers with contact information for the person responsible for leased access matters.

As of December 2019, this new contact information requirement is now in effect.

Under this new leased access contact information requirement, cable operators must place certain basic contact information on their own websites, or through alternate means if they do not have their own websites. This includes the name or title, telephone number, and email address for the person responsible for responding to requests for information about leased access channels. Further, although the information does not need to be on an operator's main webpage, the contact information must be reasonably identifiable.

Commercial leased access requirements date back to the 1984 Cable Act, which sought to assure access to cable systems by unaffiliated third parties that want to distribute video programming free of the cable operator's editorial control. Accordingly, under the Cable Act and FCC regulations, leased access programmers can obtain valuable and scarce capacity on cable systems. If you have any questions about leased access programming or the new contact information requirement, please contact Bruce Beard at (314) 394-1535 or bbeard@cinnamonmueller.com.

Cox Hit with \$1 Billion Copyright Infringement Verdict

Last December, a jury in the U.S. District Court for the Eastern District of Virginia delivered Cox Communications a huge lump of coal for Christmas – \$1 billion in damages for willfully allowing the mass piracy of over 10,000 plus songs by its Internet service subscribers. Cox plans to appeal the decision. The verdict follows a similar copyright infringement case against Cox back in 2015 (recently overturned in part on appeal and settled for what was termed a “substantial sum”).

For Internet service providers (“ISPs”), this case is a reminder that the Digital Millennium Copyright Act (“DMCA”) provides a means for ISPs to avoid such liability for their end-users infringing actions. As explained below, the court found that Cox failed to take the necessary actions to avail itself of such protection. The case emphasizes the need for ISPs to follow carefully developed DMCA based procedures for handling copyright infringement notices based on the actions of their end-users.

Background. The DMCA creates a “safe harbor” that ISPs can use to protect themselves from liability for copyright infringement by their subscribers. The DMCA provides

“safe harbor” protection if the ISP registers an agent with the Copyright office to receive infringement claims and then takes certain actions upon receipt of the claims. Among other things, in order to fall within the safe harbor, ISPs must adopt and reasonably implement a repeat infringer policy. Under this policy, an ISP must take action against subscribers who repeatedly infringe copyrights by downloading, uploading, or sharing copyrighted works online. Various companies’ police the Internet on behalf of copyright holders looking for infringing uses of copyrighted works including illegal downloads of music or videos. The companies then match the IP Address to an ISP and send an appropriate notice to the ISP.

The Cox Decision. Cox was found to have not properly shielded itself from liability under the DMCA because Cox did not “reasonably implement” its repeat infringer policy because it did not terminate accounts of repeat infringers as required by its own policy. Although the DMCA does not define a “repeat infringer,” Cox was found to have inconsistently implied its 13-point automated system.

Avoiding Liability. The Cox case demonstrates the potential harm ISPs face by failing to properly establish and implement a policy for handling copyright infringement notices regarding their end-users’ conduct consistent with the DMCA. The DMCA provides a roadmap for ISPs to follow and rely on the safe harbor provisions to avoid liability – it is up to the ISP to follow it.

If you have any questions about the DMCA or copyright infringement in general, please contact Bruce Beard at (314) 394-1535 or bbeard@cinnamonmueller.com, or Scott Friedman at (314) 462-9000 or sfriedman@cinnamonmueller.com.

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