

**UNIVERSITY OF HOUSTON SYSTEM
ADMINISTRATIVE MEMORANDUM**

SECTION: Information Services

NUMBER: 07.A.04

AREA: Computing Services

SUBJECT: Digital Millennium Copyright Act

1. PURPOSE

- 1.1. The Digital Millennium Copyright Act of 1998 (DMCA) is a federal statute that limits an online service provider's liability for copyright infringement claims based solely on the online service provider's automated copying, storing and dissemination functions.
- 1.2. The purpose of this administrative memorandum is to establish the University of Houston System's policy to ensure compliance with the DMCA.

2. DEFINITIONS

- 2.1. Digital Millennium Copyright Act (DMCA): The DMCA provides regulations pertaining to the implementation of the World Intellectual Property Organization's Copyright Treaty and Performances and Phonograms Treaty. It was signed into law on October 28, 1998. Title II of the DMCA limits liability of online service providers for online copyright infringement claims based on the provider's automated copying, storing and disseminating functions.
- 2.2. Online Service Provider: An online service provider is any entity that transmits, routes, and connects users to online communications or provides online or network services, such as storing digital material, caching or providing location tools (directories, hyperlinks, etc).
- 2.3. Agent to Receive Notice of Claimed Infringement: The individual designated to receive statutory notices from copyright owners about infringements and to send statutory notices to affected subscribers.
- 2.4. Counter Notification: Response under right by alleged infringing party that they believe no infringement has occurred. Counter notification that substantially complies with 17 U.S.C 512 (g) (3) initiates a process that forces the copyright claimant to proceed with a court action seeking to restrain the alleged infringement or the University must unlock or replace the materials.

- 2.5. Chief Information Officer: Responsible for all corporate information systems activities including: systems analysis, programming, computer and auxiliary support operations, data, voice and video networks and services, web services, on-line and video education, and security and disaster recovery. Sets policies and procedures, technical standards and methods, and priorities. Manages liaison between information systems and other functions in the university. Reports to senior management on information systems plans, projects, performance and related matters.

3. POLICY

- 3.1. The scope of the DMCA applies to all faculty, staff, student employees and students of the University Houston System as defined below.
- 3.2. The statute provides that faculty and graduate students employed to teach or research shall not be considered “the institution” for online service provider purposes. Faculty member or graduate student knowledge or awareness of his/her infringing activities shall not be attributed to the institution, if the following three important qualifications are met:
 - 3.2.1. The faculty member’s or graduate student’s activities do not involve online access to material that was “required or recommended” within the preceding three years for a course taught by the employee at the institution. The use of email is included in this qualification.
 - 3.2.2. The institution has not, within the preceding three years, received more than two notices of actionable infringement by a faculty member or graduate student.
 - 3.2.3. The institution provides all users of its system or network, informational materials on compliance with U.S. copyright laws.
- 3.3. Every individual is responsible for acting in good faith in reporting copyright infringement activities to the University of Houston System’s Agent, the Vice Chancellor for Information Technology.
- 3.4. The University of Houston System is not required to monitor its services for potential infringements. There is no responsibility for the University of Houston System to seek information about copyright misuse; however, it cannot ignore obvious violations.
- 3.5. The provisions of this administrative memorandum are effective immediately.

4. PROCEDURES

- 4.1. The Vice Chancellor for Information Technology is the University of Houston System's designated Agent to Receive Notice of Claimed Infringement. A copy of this designation must be forwarded to the U.S. Copyright Office. All notices of copyright infringement should be immediately referred to the Vice Chancellor for Information Technology.
- 4.2. The Vice Chancellor for Information Technology will refer all official notifications of copyright infringement to the Chief Information Officer (CIO) or the designate at the respective campuses.
- 4.3. The CIO or campus designate will verify that the notice meets the effectiveness requirements of 17 U.S.C. § 512 (c) (3), including:
 - a. A written communication that includes a physical or electronic signature.
 - b. Identification of the copyrighted work and of the material claimed to be infringing.
 - c. Contact information for the complaining party.
 - d. A statement of good faith belief that the use is not authorized.
 - e. A statement that the notification information is accurate and that, under penalty of perjury, the complaining party is authorized to act on behalf of the copyright holder.
- 4.4. Once effective notice is given, the CIO or campus designate will act expeditiously to remove (take down) or disable access to the material. Typically, take down will occur within the unit that owns or manages the computer resources involved and notification to affected university parties will occur through the normal chain of command.
- 4.5. Once the alleged copyright infringement is removed or access is disabled, the CIO or campus designate will promptly notify the affected user that their materials have been removed or blocked and notify the user of their counter notification rights.
- 4.6. If a counter notification is received from the user, the CIO or campus designate must forward the counter notification to the Vice Chancellor for Information Technology's office.
- 4.7. The Vice Chancellor for Information Technology will provide a copy of the counter notification to the copyright owner that sent the original notice.

- 4.8. The purported copyright owner shall have seven business days to respond and indicate they have filed a court action seeking to restrain the alleged infringement. If the Vice Chancellor for Information Technology does not receive such notice, the material must be unblocked or replaced within 10 to 14 business days of the receipt of the counter notification. Procedurally, the university will unblock or replace affected material as expeditiously as possible.
- 4.9. In the event that a counter notification is not received, infringement will be assumed as a matter of fact. Infringement constitutes a violation of SAM 07.A.02 - The Ethical and Legal Use of Micro/Personal Computer Software. See http://www.uhsa.uh.edu/sam/AM/Am_07a02.htm. In accordance with this policy, the Vice Chancellor for Information Technology may impose limitations on continued use of computing resources by the infringer.
- 4.10. In the event that this is a second infringement by the same person, that individual's account privileges will be revoked, and the Vice Chancellor for Information Technology will undertake disciplinary review which may also lead to expulsion from the university, termination of employment, and/or legal action against the infringer.
- 4.11. A copy of all correspondence/documentation provided to the alleged infringer and the copyright claimant will be forwarded to the Office of General Counsel for review.

5. REVIEW AND RESPONSIBILITY

Responsible Party: Vice Chancellor for Information Technology

Review: Even numbered years, on or before August 31

6. APPROVAL

Approved: Randy J. Harris
Vice Chancellor for Administration and Finance

Arthur K. Smith
Chancellor

Date: March 28, 2001

7. INDEXING TERMS

Chief Information Office
Copyright
License
Online Service Provider

8. REFERENCES

Board of Regents Policy 21.08 - Intellectual Property
Digital Millennium Copyright Act of 1998
System Administrative Memorandum 07.A.02 - Ethical/Legal Use of Micro/Personal
Computer Software