

# Appendix G: Copyright and Fair Use Policy

Copyright is the ownership and control of the intellectual property in original works of authorship. The laws of the United States (Title 17, United States Code) provide protection to the owner of copyright. This protection is available to both published and unpublished works. Public Law 94-553, section 6, generally gives the owner of copyright the exclusive right to, and to authorize others to: reproduce in copies, prepare derivative works, distribute copies, perform publicly, and display publicly the copyrighted work.

Copyright law governs any print or non-print reproduction of copyrighted material. It is illegal for anyone to violate any of the rights provided by the copyright law to the owner of copyright. One major limitation, however, is the doctrine of "fair use". Whether use of copyrighted materials falls under the "fair use" exception depends on these four factors: purpose of the use, nature of the work, amount of copying, and effect of the copying on the potential value of the work. Another limitation can be a "compulsory license," which permits limited uses of copyrighted works in return for the payment of fees or royalties.

Faculty, staff, and students of the College must comply with the provisions of the state and federal intellectual property laws, such as the Copyright Act. Procedures for obtaining copyright permissions for course materials have been established and should be followed. Copies of this procedure and other information explaining the Copyright Act as it pertains to copying both course materials and material for personal use are available in campus libraries and on the College web page.

## Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of the copyrighted work without authority constitutes an infringement.

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than \$4750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. For details, see Title 17, United States Code, Sections 504, 505.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense.

For more information, please see the Web site of the U.S. Copyright Office at [www.copyright.gov](http://www.copyright.gov), especially their FAQ's at [www.copyright.gov/help/faq](http://www.copyright.gov/help/faq).

## Reporting Copyright Infringement

Under direction of the Digital Millennium Copyright Act (DMCA), the designated agent of the College to receive notice of alleged copyright infringement is the College's Copyright Compliance Officer. For more information on contacting the Copyright Compliance Office, please call 256.549.8333.

# Digital Millennium Copyright Act Policy

## Statement

GSCC complies with the provisions of the Digital Millennium Copyright Act (DMCA) and respects all rights that exist in any material protected by the copyright laws of the United States while also encouraging usage of the material that furthers the educational mission of the College. This site provides guidance to faculty, staff, and students on the usage of copyrighted materials.

Federal law (Title 17 of the US code and the Digital Millennium Copyright Act), contains provisions that prohibit the downloading, uploading, or distribution of copyrighted material in any form without permission or a license to do so from the copyright holder except in accordance with the exemptions provided under the copyright law. Gadsden State neither condones nor supports in any way the use of copyrighted material in ways that are contrary to copyright law. For more information, please read the College's Copyright Policy.

## Designated Agent

In accordance with the Digital Millennium Copyright Act (DMCA), an agent must be designated to receive notification of claimed copyright infringements. Gadsden State's designated agent is Michael Gibson, Public Services Librarian.

## Claims

The DMCA specifies that all infringement claims must be in writing (either electronic mail or paper letter) and must include the following:

- A physical or electronic signature of the copyright holder or a person authorized to act on his or her behalf;
- A description of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- A description of the material that is claimed to be infringing or to be the subject of infringing activity, and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact the complainant, such as an address, telephone number, and, if available, an electronic mail address;
- A statement that the complainant has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in the notification is accurate, and under penalty of perjury, that the complainant is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

## Procedure to Resolve the Matter

### Complaints involving students:

The designated agent will meet with the student whose computer contains the information that is the subject of the complaint. The student will be informed of the College's Copyright, Computer Use, and DMCA policies and asked to produce proof that they have explicit permission or license to use the material in the manner described in the complaint.

If the student does not produce the proper documentation, the student will be instructed to remove the specific material and other similar material from his or her computer. When the student complies with this request, the student will sign a document acknowledging removal of the copyrighted material.

If the student does not comply with the request, access to the student's College's email account and use of the College's computer technology will be blocked and the student will be referred to the Dean of Enrollment and Retention under the Student Code of Conduct and discipline-Non Academic Policy.

### **Complaints involving employees:**

The designated agent will meet with the employee whose computer contains the information that is the subject of the complaint. The employee will be informed of the College's Copyright, Computer Use, and DMCA policies and asked to produce proof that they have explicit permission or license to use the material in the manner described in the complaint.

If the employee does not produce documentation, the employee will be instructed to remove the specific material and other similar material from his or her computer. When the employee complies with this request, the employee will sign a document acknowledging removal of the copyrighted material.

If he/she refused or does not comply with the designated agent's request, the employee's access to or from the employee's College's account or computer will be blocked and the action will be referred to the employee's supervisor or Cabinet Member.

**The designated agent will notify the complainant of how the issue was resolved.**

**The designated agent will retain records for three years from the date of receiving the complaint.**

## **Commonly Asked Questions**

- **How does the Digital Millennium Copyright Act (DMCA) affect me?**

The distribution of copyrighted material from your computer, including music, games, and videos, for which you do not have owner's permission is a violation of federal law (DMCA) and college policy. A purpose of copyrighted law, including the DMCA, is to encourage creative work by giving creators exclusive rights (with some limits) to distribute their products.

- **What do I need to know about downloading music, videos, games, and other media?**

In April, 2003, four college students paid fines ranging from \$12,000-\$17,500 in a settlement of a file-sharing suit brought by the Recording Industry Association of America (RIAA). The RIAA complained that the students were illegally distributing copyrighted music, sharing thousands of copyrighted MP3 music files.

Downloading files puts you at risk personally if you are found to possess copyrighted material that you have not obtained legally. It may also result in harm to your system if you download a malicious computer program disguised as a movie or other media. The widespread use of file-sharing programs to download and distribute media for recreational purposes has generated a high volume of network traffic and damaged the performance of other applications used for college work. To preserve bandwidth, the college uses a technique called "bandwidth shaping" to limit network traffic for specific peer-to-peer programs.

If you are using a peer-to-peer (P2P) file-sharing program (1) or have set up an ftp server, make sure that you are not "serving" copyright-protected materials to the world. If the College is notified by policing organizations such as RIAA, MPAA, or their agents (2) that you are serving copyright-protected materials from your computer, you will be requested to appear at College's Discipline Office to discuss the complaint. Failure to appear could result in deactivation of your college privileges.

- **Is it okay to use a peer-to-peer service legally to download files that aren't protected by copyright?**

Many music, games, and videos downloaded through file-sharing programs fall into the category of copyright infringement. That is, the users downloading the files do not have the permission of the copyright owner. In addition, peer-to-peer file-sharing programs do not determine whether requests for media files are requests for copyright-licensed or freely-sharable materials. This means that if you copy music to your computer from a CD you purchased and are signed on to a peer-to-peer service with file-sharing enabled; you are making the copyrighted music you purchased available to others. YOU are distributing copyrighted material and the copyright owner can hold you liable for a copyright violation.

Copyright owners frequently hire agents to scan college networks for copyright materials that are available to others from computer systems on the college network. The College receives many notices from these organizations alleging copyright infringement. They focus on college campuses because of the high level of file-sharing activity. The DMCA makes Internet Service Providers (ISPs) liable if they do not act to ensure removal of infringing materials when they receive notice of copyright infringement. The college is an ISP for many at the college who use campus network services.

The DMCA provides procedures that may be used by ISPs in dealing with claims of copyright infringement. A member of the college community learns that s/he has been named in a notice of copyright infringement when the college IT account access is denied. The deactivation message contains instructions to contact the campus Discipline Officers to discuss the copyright infringement. Access to a college account is reinstated after the meeting with the college Discipline Officer has taken place and the allegedly infringing material has been removed. The college is sensitive to the academic work that results from deactivating account in response to copyright infringement notices.

- **Does the DMCA make the use of peer-to-peer services illegal?**

It is not against the law or campus policies to use peer-to-peer file-sharing programs or to swap materials that are not copyright-protected. It is against the rules to download and/or distribute copyright-protected material. If you are using a peer-to-peer file-sharing program, make sure that you are not "serving" the copyright-protected materials to the world.

Most file-sharing programs have worldwide file sharing turned on by default when they are installed. If you have copyright-protected materials on your computer, you need to disable file sharing so that the programs are no longer serving these materials from your computer.

There are other good reasons to disable file-sharing. File-sharing sites often covertly package Spyware software that gathers personal information without your knowledge. This means that you may be giving hackers access to your personal files and programs when you use file-sharing services. As stated above, the college network staff restricts P2P traffic to preserve bandwidth for college work.

- **I don't like the DMCA: What can I do?**

There is a great deal of debate about the DMCA and copyright law in the digital age. If you disagree with the law, learn more about it and become involved in trying to change the law. A Digital Media Consumers' Right Act was re-introduced in Congress in January, 2003. This act would make "fair use" exceptions to the DMCA. Supporters of this act include Intel, Verizon, Philips Electronics North America Corporation, Sun Microsystems, Gateway, the Consumer Electronics Association, Computer and Communications Industry Association, the Association for Computing Machinery, the Computer Research Association, and a variety of trade associations representing technology companies, the American Library Association, the American Association of Universities, the National Humanities Alliance, the Digital Future Coalition, the Consumers Union, the Home Recording Rights Coalition, the Electronic Frontier Foundation, Public Knowledge, the National Writers Union, and other organizations representing the public interest and the consumers of digital media.