

# Fayetteville State University

## Information Technology & Telecommunication Services

### DCMA - Digital Millennium Copyright Act

In 1998, the U.S. Congress passed into law the Digital Millennium Copyright Act (DMCA), which implements two 1996 World Intellectual Property Organization (WIPO) treaties and addresses a number of significant copyright-related issues.

Title II of the DMCA establishes certain requirements for Online Service Providers (OSP) concerning copyright infringement violations including: 1) registration of an agent with the U.S. Copyright Office; 2) development and posting of updated copyright policies; 3) adoption of "[notice and takedown](#)" procedures for alleged copyright infringing materials; and 4) accommodation and non-interference with standard technical measures utilized by copyright owners to identify and protect their works. Title II, Section 512 addresses the issue of erroneous notifications from copyright holders by establishing certain safeguards. Individuals are given the opportunity to respond to a copyright infringement notice and takedown by filing a counter notification. The DMCA specifies that all notices of copyright infringement from copyright holders be in writing and be in the proper form of a DMCA notice.

Under DMCA, FSU is considered an OSP for its students, faculty and staff. DMCA requires the university to expeditiously respond to complaints it receives of copyright infringements. When notified, under penalty of perjury, by a copyright owner of infringing materials on a computer attached to the university network, FSU will take immediate action to block network access to the computer and notify the owner of the computer. Network access will be restored after the infringing material is removed from the computer or within 14 days after receiving a proper counter-notification, unless the copyright owner files an action seeking a court order against the computer owner. A second violation will result in loss of access to the University network for three years. Additionally, as an OSP, FSU may be served with a subpoena for the identity of the owner of a computer determined to contain infringing materials. FSU will comply with a lawfully issued subpoena that meets the requirements of the DMCA. Violation of the DMCA can result in severe civil or criminal penalties.

Action taken by the University to remedy and/or discipline an individual for a copyright violation does not preclude the copyright holder and/or the authorities from seeking civil legal remedies and/or criminal prosecution for copyright infringement. Federal law specifies that injunctions and orders to impound infringing materials may be entered by federal courts. Violators are subject to civil liability for litigation costs and attorney fees. Violators are also subject to liability for either the profits they earned from the infringement plus the actual damages suffered by the copyright owner, or statutory damages of \$750 to \$30,000 for each work infringed. Where the court finds that the infringement was willful, civil statutory damages may be increased to up to \$150,000.

Under certain circumstances, violators can also face criminal penalties up to \$2,500, and/or imprisonment for up to 10 years (17 U.S.C. 501-511; 18 U.S.C. 2319). Additionally, anyone who helps or makes it possible for another person to infringe upon a copyright may also be held liable under a legal doctrine known as "contributory infringement (*Sony Corp. v. Universal Studios*, 464 U.S. 417, 435, 104 S.Ct. 774, 785, 78 L.Ed.2d 574 (1984))."

By far the greatest cause of copyright infringements is the use of peer-to-peer (P2P) file sharing services, such as Gnutella and BitTorrent, for sharing music and movies. Although the use of P2P file sharing is not illegal in and of itself, using it to share copyright protected files is, unless the person doing the sharing has express permission from the copyright owner. Generally, the P2P file sharing programs install the software and automatically share downloaded files with other Internet users. Copyright owners and their agents use automated methods to actively scan the Internet to detect computers that are illegally sharing copyrighted files.

A statutory limitation to the Copyright Act of importance to nonprofit educational institutions is Section 107, the doctrine of "fair use." Under this doctrine, limited use of copyrighted material is allowed without prior permission of the copyright owner if certain criteria are met. Section 107 lists purposes for which the reproduction of a particular work may be considered "fair," and presents factors to be considered in determining whether or not a particular use is fair.

FSU has reviewed legal alternatives for downloading or otherwise acquiring copyrighted material and has determined that EDUCAUSE offers the best [legal alternatives](#).

Pursuant to the requirements of the Higher Education Opportunity Act of 2008 (HEOA), FSU monitors the efficacy of its plans to combat the unauthorized distribution of copyrighted materials on its network on an annual basis. Based on this analysis, FSU may modify this plan to improve effectiveness.

Additional information concerning copyrights may be obtained at the following sources:

- [FSU Policies and Procedures to Meet Digital Millennium and Higher Education Opportunity Act Requirements.](#)
- [FSU Copyright Ownership and Use Policy.](#)
- [FSU Notice and Takedown Procedures.](#)
- [FSU DMCA Frequently Asked Questions.](#)
- [UNC Primer on Copyright Ownership and Use](#)
- [Fair Use of Copyrighted Materials \(U.S. Copyright Office\)](#)
- [Digital Millennium Copyright Act of 1998 \(U.S. Copyright Office Summary\)](#) (pdf: requires a reader such as [Adobe Reader](#))
- [Digital Millennium Copyright Act of 1998 \(U.S. Copyright Office\)](#) (pdf: requires a reader such as [Adobe Reader](#))
- [U.S. Copyright Office](#)