

STEPHEN F. AUSTIN

STATE UNIVERSITY

Office of the General Counsel

POLICY SUMMARY FORM

Policy Name: Digital Millennium Copyright

Policy Number: 9.3

Is this policy new, being reviewed/revised, or deleted? Review/Revise

Date of last revision, if applicable: 4/15/2015

Unit(s) Responsible for Policy Implementation: General Counsel

Purpose of Policy (what does it do): Policy establishes the manner in which the university processes the receipt of DMCA complaints

Reason for the addition, revision, or deletion (check all that apply):

☒ Scheduled Review ☐ Change in law ☐ Response to audit finding

☐ Internal Review ☐ Other, please explain:

Please complete the appropriate section:

Specific rationale for new policy:

Specific rationale for each substantive revision: Members of the Complaint Resolution Team updated to reflect current position titles.

Specific rationale for deletion of policy:

Additional Comments:

Reviewers:

Anthony Espinoza, Chief Information Officer
Damon Derrick, General Counsel

Digital Millennium Copyright

Original Implementation: July 27, 1999

Last Revision: ~~April 14, 2015~~ April 24, 2018

The Digital Millennium Copyright Act (DMCA) creates a liability limitation for Internet service providers (ISP) for certain copyright infringements created on-line. The university serves as an ISP for faculty, staff, and students. The DMCA establishes procedures whereby, upon receipt of proper complaints, the university will block access to or take down allegedly infringing material and notify the Web page owner of the complaint. Repeat infringers will be subject to termination of Internet service by the university. It is the policy of the university to comply with these safe haven procedures created by the DMCA.

Definitions

A. Registered Agent

The university general counsel shall be designated as the registered agent for receipt of DMCA complaints.

B. Complaint Resolution Team

The complaint resolution team may include the following positions: ~~manager of systems, assistant systems manager~~ *information security officer*, library director, associate library director for information service, university webmaster, director of student rights and responsibilities, director of student activities, and general counsel.

C. Official Complaint

An Official Complaint consists of the following:

1. Must be signed or contain a digital signature by the owner of the copyright or the authorized agent;
2. Description of works claimed to be infringed;
3. Description of location for alleged infringing works;
4. Sufficient information to contact the complainant;
5. Statement of good faith belief that the use is not authorized by the owner/agent; and
6. Statement that the information in the notice is accurate and, under penalty of perjury, the complainant is authorized to act on behalf of the owner.

Initial Review of an Official Complaint

Upon receipt of a DMCA complaint, complaint resolution team members shall be responsible for assessing the complaint and determining the exact location of the alleged infringing material. Assessing the complaint would include a determination of whether the complaint contains all

necessary elements, and whether the complaint involves the university in its role as an ISP or the university (and its employees) acting as a content provider. If the complaint is deficient, a notice of deficiency shall be returned to the complainant with a courtesy copy forwarded to the alleged infringer. No complaint will be deemed official, requiring take down procedures, unless all elements of a proper complaint are included.

University as Content Provider

If a determination is made that the DMCA complaint involves the university as a content provider, and not an ISP, careful consideration will be given to fair use exemptions under the Copyright Act. Appropriate university officials will be notified to handle the matter in a way similar to the way any claim of copyright infringement is handled.

The DMCA specifically defines when faculty or graduate students alleged infringement on-line is or is not attributable to the institution as a content provider. Infringing activities shall not be attributed to the institution if:

- A. Such faculty members' or graduate students' infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding three-year period, for a course taught at the institution by such faculty member or graduate student;
- B. The institution has not, within the preceding three-year period, received more than two official DMCA complaints about the alleged infringer; and
- C. The institution provides to all users of its system or network informational or network informational materials that accurately describe, and promote compliance with, the laws of the U.S. relating to copyright. See university policy, Copyrighted Works Reproduction (9.2).

University as ISP

If the university is acting as an ISP, take down procedures will be automatically initiated once an official complaint is received. The complaint resolution team will notify the person responsible for the server to specifically locate the alleged infringing material and identify the individual who may be responsible for the infringing material.

Faculty/Staff: The person responsible for the server will forward the complaint and identity of the faculty/staff member to the general counsel. The general counsel will notify the dean or director to whom the faculty/staff member reports. The dean or director shall immediately confer with the alleged infringer and attempt to secure a voluntary take down or deletion of the alleged infringing material. Such voluntary take down must be confirmed by the dean or director. If these procedures

cannot be completed expeditiously or voluntary take down cannot be secured, the dean or director will immediately coordinate with the person responsible for the server to take down the alleged infringing material. The dean or director will notify the general counsel when the alleged infringing materials have been removed, and may impose disciplinary action in accordance with Faculty Code of Conduct (7.11), Discipline and Discharge (11.4), or other applicable university policy.

Students: The person responsible for the server will forward the complaint and identity of the student who may be responsible for the infringing material to the Office of Student Rights and Responsibilities. The Office of Student Rights and Responsibilities will attempt to secure the voluntary take down or deletion of the alleged infringing material and may impose disciplinary action pursuant to the Student Code of Conduct (10.4).

Counter-Notices

If the alleged infringer believes the official complaint is in error or that the complainant is not the official copyright holder or agent, he or she can submit a counter-notice containing the following elements:

- A. A physical or electronic signature of the alleged infringer;
- B. Identification of the removed material and the location at which it appeared;
- C. A statement under penalty of perjury that the alleged infringer has a good faith belief that the material was removed because of mistake or misidentification; and
- D. The alleged infringer's name, address, telephone number, consent to the jurisdiction of the federal court in which their address is located, and that they will accept service of process from the official complainant.

Upon receipt of the counter-notice, the university shall immediately forward it to the complainant with an explanation that the university shall restore access to the materials at issue within 10-14 days, unless notice is received that court action is pending.

Repeat Infringers

In addition to any other discipline that may be imposed, the university may terminate internet service to repeat infringers who receive more than two complaints in a three-year period. Repeat infringement shall constitute misuse of university computers and network systems under university policy, Computer and Network Security (14.2). Sanctions procedures under that policy will be followed.

Cross Reference: Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998); Copyrighted Works Reproduction (9.2); Computer and Network Security (14.2)

Responsible for Implementation: General Counsel

Contact for Revision: General Counsel

Forms: None

Board Committee Assignment: Academic and Student Affairs