

MAY 17 2012

UNIVERSITY OF HOUSTON SYSTEM
ADMINISTRATIVE MEMORANDUM

UCC Certified

SECTION: Information Services

NUMBER: 07.A.04

AREA: Computing Services

SUBJECT: Digital Millennium Copyright Act

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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 document is to establish the University of Houston System's policy to ensure compliance with the DMCA.

2. DEFINITIONS

- 2.1. [Digital Millennium Copyright Act of 1998 \(DMCA\)](#): 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). Online service providers include local area network and wide area network servers.
- 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 USC 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 component 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 component 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 of Houston System ~~as defined below~~.
- 3.2. The statute provides that faculty and graduate students employed to teach or conduct 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 e-mail 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 System’s agent, the System Chief Information Security Officer (CISO).
- 3.4. The System is not required to monitor its services for potential infringements. There is no responsibility for the System to seek information about copyright misuse; however, it cannot ignore obvious violations.

4. PROCEDURES

- 4.1. The System ~~Chief Information Security Officer~~CISO is the System's designated Agent to Receive Notice of Claimed Infringement. A copy of this designation must be forwarded to the U.S. Copyright Office. Component universities may choose to designate their own Agent to Receive Notice of Claimed Infringement for their respective component universities, which must be forwarded to the U.S. Copyright Office. All notices of copyright infringement should be immediately referred to the System ~~Chief Information Security Officer~~CISO or **appropriately** designated component university agent.
- 4.2. The System ~~Chief Information Security Officer~~CISO will refer all official notifications of copyright infringement received to the Chief Information Officer (CIO) or ~~the~~ designate at the respective component university.
- 4.3. The CIO or component university designate will verify that the notice meets the effectiveness requirements of 17 USC § 512 (c) (3), including:
 - 4.3.1. A written communication that includes a physical or electronic signature.
 - 4.3.2. Identification of the copyrighted work and of the material claimed to be infringing.
 - 4.3.3. Contact information for the complaining party.
 - 4.3.4. A statement of good faith belief that the use is not authorized.
 - 4.3.5. 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 component university 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 component 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 component university 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 component university designate must forward the counter notification to the ~~Office of the~~ System ~~Chief Information Security Officer~~CISO.

- 4.7. The System ~~Chief Information Security Officer~~CISO 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 System ~~Chief Information Security Officer~~CISO 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 component 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 Personal Computer Software. In accordance with this policy, the~~The System ~~Chief Information Security Officer~~CISO or the Associate Vice Chancellor for Information Technology and ~~Chief Information Officer~~CIO 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 may be revoked, and the Associate Vice Chancellor for Information Technology and ~~Chief Information Officer~~CIO, in coordination with the component university ~~chief information officer~~CIO, may undertake disciplinary review of the case which may also lead to expulsion from the component 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 maintained by the office of the System ~~Chief Information Security Officer~~CISO and forwarded to the Office of ~~the~~ General Counsel for review upon request.

5. REVIEW AND RESPONSIBILITY

Responsible Party: Associate Vice Chancellor for Information Technology

Review: Every ~~two~~ three years; on or before March 1

6. APPROVAL

Approved: Carl P. Carlucci
Executive Vice Chancellor for Administration and Finance

Renu Khator
Chancellor

Date: August 3, 2010

~~7. 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 Personal Computer Software~~

REVISION LOG

<u>Revision Number</u>	<u>Approval Date</u>	<u>Description of Changes</u>
<u>Interim</u>	<u>09/11/2000</u>	<u>Initial version (Interim procedure)</u>
<u>1</u>	<u>03/28/2001</u>	<u>Added Section 2.5 definition for Chief Information Officer. Rewrote Sections 3 and 4 to reflect current operating requirements. Added Section 4.11 on information being forwarded to the Office of Legal Counsel. Changed review period to even-numbered years on or before August 31st. Added VC for Administration and Finance to approval cycle</u>
<u>3</u>	<u>08/03/2010</u>	<u>Applied revised SAM template. The definition of online service provider was updated to include local area network and wide area network servers. Section 4.1 was also updated to allow component universities to designate their own “Agents to Receive Notice of Claimed Infringement.” Changed review period from even-numbered years on or before August 31st to every two years</u>

~~March 14, 2004~~ September 11, 2000; Revised ~~February 28, 2010~~ January 20, 2012

		<u>on or before March 1st. Removed Section 7, Indexing Terms</u>
<u>4</u>	<u>TBD</u>	<u>Applied revised SAM template and added new Revision Log. Removed Section 2.5 on Chief Information Officer. Applied mMinor editorial changes. Changed review period from every two years to every three years on March 1st. Removed Section 7, References.</u>