

Copyright Infringement

University Operations – Information Services

EWU Policy 203-02

Authority: EWU Board of Trustees

Effective July 29, 2016

Proponent: Chief Information Officer

Purpose: This policy prescribes standards for informing university members of copyright infringement issues and for managing possible violations of related policy or federal law.

History: This policy revises and supersedes the previous version dated June 29, 2010. It was adopted by the EWU Board of Trustees on July 29, 2016 and is effective as of that date.

Applicability: This policy applies to all users and subscribers of computing networks and equipment owned or operated by Eastern Washington University.

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CHAPTER 1 – INTRODUCTION

1-1. General

Eastern Washington University respects the copyrights of those involved in creating and distributing intellectual material, including music, movies, software, and other literary and artistic works. The purpose of this policy is to address copyright infringement through a combination of education and enforcement. This policy establishes standards for the use of university computing networks and equipment in order to prevent infringement of copyright protection.

1-2. Policy

Eastern Washington University prohibits copyright infringement, including the violation of trademark, patent, trade secret or other intellectual property protections. No person shall use university owned or operated networks, computing systems, equipment, or storage media in any manner that violates legal safeguards provided for copyrighted and licensed works. By using a university network, computer system, or equipment, users agree to comply with this policy, as well as state and federal laws.

1-4. Sanctions and Penalties

Copyright infringement is illegal and is subject to criminal and civil penalties. In addition to legal action, users who violate this policy are also subject to disciplinary action by the University which may include termination and/or expulsion. Users may also have their access to EWU networks, computing systems, equipment, and storage media limited or revoked.

1-5. References

- Title 17, United States Code, Copyright
- Public Law 110-315, Higher Education Opportunity Act

- RCW 42.52, Ethics in Public Service
- EWU Policy 901-02, Appropriate Use of University Resources
- Technology Education and Copyright Harmonization Act, 17 U.S.C. §§ 110(2), 112(f)
- Digital Millennium Copyright Act, 17 U.S.C. § 512

1-3. Network and System Monitoring

Eastern Washington University reserves the right to monitor its computer systems, networks, equipment, and storage media for compliance with this policy, at any time, without notice, and with or without cause. Additionally, the University reserves the right to delete from its network, computer systems and storage media, or restrict access to, any seemingly unauthorized copies of copyrighted materials it may find, at any time and without notice.

CHAPTER 2 – INFRINGEMENT AND FAIR USE

2-1. Copyright Infringement

Under U.S. Copyright Law, copyright protection pertains to “original works of authorship fixed in any tangible medium of expression...” and includes the following:

- a. literary works;
- b. musical works, including any accompanying words;
- c. dramatic works, including any accompanying music;
- d. pantomimes and choreographic works;
- e. pictorial, graphic, and sculptural works;
- f. motion pictures and other audiovisual works;
- g. sound recordings; and
- h. architectural works.

The owner of copyright has exclusive rights to reproduce, perform, display and/or prepare derivative works of the copyrighted work, and to distribute copies of the

copyrighted work to the public by sale or other transfer or ownership, or by rental, lease or lending.

Copyright infringement is the violation of any of a copyright owner's exclusive rights. Examples of copyright infringement include, but are not limited to:

- a. Copying the contents of someone else's webpage or use of video clips or sound recordings without permission.
- b. Copying, downloading, or uploading of copyrighted materials (i.e. music) to other media (i.e., CD's, storage media and networks) from peer-to-peer networks that are not licensed or otherwise legally authorized to distribute copyrighted materials..
- c. Unauthorized duplication, distribution or use of someone else's intellectual property, including computer software. This includes offering unauthorized copies of computer programs or providing links to such programs. It also includes offering or sharing, in any manner, software product serial numbers or activation or registration codes.
- d. Unauthorized duplication and distribution of sound recordings (e.g. MP3).
- e. Unauthorized use of any copyrighted names, text or images.

2-2. Fair Use

- a. Generally, a person must obtain a copyright owner's permission before reproducing copyrighted material. There is an exception for educational, instructional, research, scholarship and similar activities that fall within the legal doctrine of "fair use." In order to determine whether use of a work is fair use, courts conduct a fact-specific inquiry. The first step in making the fair use inquiry is determining whether reproducing the copyrighted material is for purposes of criticism, comment, news reporting, teaching, scholarship or research. If the use falls within one of these categories, the next step is to weigh the following factors: the purpose and character of the use, including whether the material is used for nonprofit educational purposes rather than making a profit and whether the work is used in a substantially transformative way so as to create a new product;
- b. the nature of the copyrighted work (factual vs. creative, published vs. unpublished);
- c. the amount and substantiality of the work used in relation to the copyrighted work as a whole ; and
- d. the effect of the use upon the potential market for or value of the copyrighted work.

The factors should be weighed to balance the interests of an author/inventor's copyright ownership and society's interest in the free flow of information. If you are unsure whether something may fall within the "fair use" doctrine, you should seek assistance from an EWU Librarian- or visit the U.S. Library of Congress' website, www.copyright.gov. In almost all cases, making copies for the purpose of personal entertainment does not qualify as fair use.

Further information on Fair Use is available through EWU libraries

2-3. TEACH Act

The TEACH Act of 2002 provides educators of accredited nonprofit educational institutions the right to digitally transmit certain works the instructor would play during a face to face class. Before transmitting or displaying any copyrighted materials in an online course, faculty should check with Eastern Online to ensure such use falls within the parameters of the TEACH Act. Courses utilizing copyrighted material under the TEACH Act should be accessible only to students registered in the course, along with appropriate faculty and staff, and the images must be reasonably technologically protected to prevent retention and further dissemination by the student after logging out of the online class session. Online courses utilizing copyrighted materials will include a notice to students, such as: "Images on this page are protected by copyright, and are only for the use of students enrolled in this course for purposes associated with this court and may not be retained or further disseminated."

Further information on the TEACH Act extensions to Fair Use is available through EWU Libraries.

CHAPTER 3 – INFRINGEMENT DETERRENCE

3-1. Deterrence

Eastern Washington University shall employ a variety of methods to deter copyright infringement, including both technological and educational approaches. Any red flags will be addressed and dealt with appropriately.

- a. Technological Deterrents: EWU uses technologies such as bandwidth shaping and traffic monitoring as part of its effort to identify and deter copyright infringement activities.

- b. Education and Awareness:

- (1) Annual Notice: The Office of Information Technology, in cooperation with the Office of Records and Registration, shall annually notify each student and each faculty and staff member of institutional policies and sanctions related to copyright infringement. An example notification is provided at appendix B. At a minimum, the disclosure shall include:

- (a) a statement explaining that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to criminal and civil penalties.

- (b) a summary of the penalties for violation of federal copyright laws.

- (c) a description of the institution's policies, including disciplinary actions, with respect to copyright infringement

- (d) descriptions of appropriate vs. inappropriate use of copyrighted materials

(2) Web Information: The university website shall include information on copyright infringement including the information in this policy and related materials. The site shall also provide a link to a list of legal alternatives for downloading or otherwise acquiring copyrighted material as compiled under section 2-4 of this policy.

(3) Residence Halls: In addition to the provisions of this policy, students living in residence halls are also accountable for complying with the *Acceptable Use Policy for Internet Use in the Eastern Washington University Residence Halls*, which is available through the Residential Life web site.

3-2. Digital Millennium Copyright Act (DMCA) Notices

a. Designated Agent: If any copyright owners believes EWU users are infringing on copyright protected work, they may send a notice to EWU's designated agent at:

Chief Information Officer

102 Huston Hall

Cheney, WA 99004

Phone: (509) 359-2099

E-mail:

Notification of claimed infringement must contain the information required by and otherwise comply with the DMCA, section 512(c). All DMCA notices received by EWU shall be directed to the Chief Information Officer for investigation and follow up as deemed necessary.

b. Response to DMCA notices: EWU shall respond to DMCA notices of suspected copyright violations in a cooperative and timely manner. All claimed infringements that comply with the DMCA notice requirements will be immediately investigated. EWU will take appropriate action to curb and eliminate any copyright infringement.

3-3. Legal Alternatives

To the extent practicable, EWU shall offer legal alternatives for downloading or otherwise acquiring copyrighted material as deemed appropriate by the institution. The Office of Information Technology shall periodically review legal alternatives for downloading or otherwise acquiring copyrighted material and will make the results of such review available to students through the university website.

3-4. Review

The Office of Information Technology shall review this policy and related procedures annually. The annual review shall address overall plan effectiveness using relevant assessment criteria

APPENDIX A – PROCEDURES

REVISED: JUNE 29, 2010

A-1. Reports

All DMCA infringement notices and related correspondence received by any university office or department shall be immediately forwarded to the chief information officer in Huston Hall.

All reports of suspected copyright violations shall also be directed to the chief information officer.

A-2. Investigations

Upon receipt of a DMCA infringement notice or other report of suspected copyright infringement, the CIO will take appropriate measures to review the allegation.

A-3. Actions

If it is reasonably likely that a violation did occur, the CIO shall take appropriate action to deter further violations. Such actions may include one or more of the following:

- a. Inform the violator of this policy, copyright laws, and possible sanctions
- b. Suspend or restrict access to EWU networks
- c. Initiate a formal investigation pursuant to EWU Guideline 401-01, Investigations
- d. Refer the incident to the Office of Student Rights and Responsibilities for action relative to a violation of the Student Conduct Code
- e. Refer the incident to the employee's supervisor for further action
- f. Take other action as deemed appropriate

If the incident was investigated in response to a DMCA notice, the CIO shall keep the reporting organization informed of EWU activities taken in response to the notice.

A-4. Disciplinary Procedures

In cases where sanctions or other disciplinary procedures are in order, the CIO shall coordinate with the Dean of Students or the employee's supervisor (as appropriate) to determine appropriate sanctions and to enforce such sanctions.

APPENDIX B – SAMPLE NOTIFICATION

REVISED: JUNE 24, 2010

This is an example of an annual notification. The contents of this email/letter will satisfy the requirements of this policy and federal laws regarding annual notification of copyright compliance, copyright infringement, peer-to-peer networks, and fair-use. This information may be provided in a different format (i.e. brochure, newsletter, etc) so long as it contains the specific information required by Section 3-1 and 34 CFR §§ 668.14(b)(30), 668.43(a)(10).

To the campus community,

This email is being sent to all students, faculty, and staff at Eastern Washington University to provide information about the lawful use of copyrighted materials on EWU's computing networks and in EWU facilities, as well as to provide information about the consequences of illegally uploading, downloading, and sharing music and movies.

This letter is not intended to be a comprehensive treatment of the copyright laws; it is intended to provide you with basic information to help you understand what constitutes copyright infringement. You are urged to print a copy of this letter and read it carefully.

Over the past few years, many students nationwide have ignored the information provided to them about the consequences of copyright infringement and, as a result, have been sued and have paid thousands of dollars in financial settlements for infringing on the copyrights of music and movie companies.

EWU prohibits any infringement of intellectual property rights by any member of the EWU community. It is against EWU policy to participate in the violation of the intellectual property rights of others. EWU's Appropriate Use policy and Copyright Infringement policy can be found at www.ewu.edu/policy.

Risks of Copyright Infringement

Contrary to what many people believe, U.S. federal law treats the unauthorized uploading, downloading, or sharing of copyrighted material as a serious offense that carries serious consequences. Any EWU computer account holder who infringes copyright laws risks a lawsuit by the copyright holder, loss of access to the EWU computer system, and disciplinary action by EWU.

In recent years, copyright holders and their trade associations—especially the Recording Industry Association of America [RIAA] and the Motion Picture Association of America [MPAA]—have aggressively pursued copyright holders' rights and have been increasingly focused on university students. In some cases, the cost of settlement has ranged from approximately \$3,000 to \$8,000 or more for the initial offense, which may have been no more than the download of a single song, to upwards of such amounts for subsequent offenses. You also risk a possible criminal record by participating in infringing behavior. In December 2008, the RIAA announced a change in strategy and said that it would begin to work with ISPs to combat illegal file sharing.

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

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 \$750 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, especially their FAQ's at www.copyright.gov/help/faq.

Understanding Copyright Infringement

EWU is committed to the education of its students. Over the past few years, EWU has increased its efforts to make students aware of the policies that govern the use of its computing facilities and systems and to encourage the responsible use of EWU computing resources. These efforts include providing information about copyright laws.

In order to protect you and the university from legal actions, we want to help you better understand the acts that constitute violations of federal copyright law. If you use EWU's network to access, download, upload, or otherwise share copyrighted materials without permission, without making a fair use, or without falling under another exception under copyright law, you are likely infringing copyright laws.

In general, copyright infringement occurs whenever someone makes a copy of any copyrighted work, such as songs, videos, software, cartoons, photographs, stories, or novels, without permission (i.e., a license) from the copyright owner and without falling within the specific exceptions provided for under the copyright laws. These exceptions include, without limitation, "fair use," which is briefly described below, and provisions of the Audio Home Recording Act, which allow for noncommercial copying of lawfully acquired music onto recordable compact discs (CD-Rs).

P2P File Sharing and Copyright Infringement

Peer-to-peer (P2P) computing is a powerful technology that has many uses. P2P networks can be used to share and exchange music, movies, software, and other electronic materials. The use of P2P networks to upload, download or share copyrighted material, such as movies, music, and software, can violate the rights of copyright owners.

In the P2P file-sharing context, infringement may occur, for example, when one person purchases an authorized copy and then uploads it to a P2P network. When one person purchases a CD, creates an MP3 or other digital copy, and then uses a P2P network to share that digital copy with others, both the individual who makes the file available and those making copies may be found to have infringed the rights of the copyright owner(s) and may be violating federal copyright law.

Although some artists and smaller labels release music under generous licenses, all major labels consider sharing MP3 files of their music over P2P networks as copyright infringement.

EWU advises all computer account holders to use extreme caution when installing P2P software and to read all user agreements carefully beforehand. Make sure that you read all available documentation from the P2P software provider and understand how the P2P software is configured and operates.

Some P2P programs have default settings that index the files on your computer and make music or film files that you have legitimately acquired available to other users of the P2P network without your being aware of the activity. In such cases, you may unwittingly participate in copyright infringement. In this context, not being aware that your computer is making files available to other users may not be a defense to copyright infringement.

You are responsible for all activity that transpires through your computing account and the devices that are registered to you.

Organizations such as the RIAA and the MPAA monitor P2P networks, obtaining "snapshots" of users' Internet protocol (IP) addresses, the files that users are downloading or uploading from their P2P directories, the time that downloading or uploading occurs, and the Internet service provider (ISP) through which the files travel.

Copyright owners have been known to target both those who upload music over the P2P network and those who download from the network. In addition to monitoring networks and obtaining IP address "snapshots," copyright owners have been known to use P2P networks themselves, uploading copyrighted content while keeping a legal record of the downloading actions of other users.

Once an IP address and other information have been obtained, the RIAA, MPAA, and other copyright owners and their representatives can file a "John Doe" lawsuit and issue a subpoena to the ISP demanding the identity of the user connected to that IP address.

Copyright Infringement Notifications

As an ISP for its students, faculty, and staff, EWU receives notices from the RIAA and MPAA identifying the IP addresses of EWU account holders believed to be sharing copies of copyrighted music and videos without authorization. EWU reserves the right to demand that the infringing conduct cease immediately; where necessary, EWU will revoke the identified individual's access to the EWU computer system. In serious situations, further disciplinary sanctions may also be appropriate.

The RIAA or MPAA has often presented an option for the alleged illegal file sharer to settle the lawsuit out of court for some amount of money. If the user is determined to have infringed copyrights, whether through P2P networks or other means, and has not settled, he or she may also be subject to sanctions such as monetary damages and the required destruction of all unauthorized copies. In certain circumstances, federal authorities can criminally prosecute copyright infringement. By participating in illegal file sharing, you may be subject to a lawsuit even after you have destroyed any illegal copy or copies of copyrighted material that were in your possession. For more information about the different types of notices related to copyright infringement, see www.ewu.edu/its/copyright/notifications.

Fair Use

Copyright law provides no blanket exception from liability for university students based solely upon their status as students. There are limited circumstances where use of copyrighted materials without permission is allowable. One of these circumstances is under the legal doctrine of "fair use," such as for purposes of news reporting, criticism, commentary, or teaching. Whether use of copyrighted material without permission is "fair use" depends on a very detailed, case-by-case analysis of various factors. For a better understanding of these factors, please visit the U.S. Library of Congress website, www.copyright.gov.

There Is an Alternative: Legal Downloading

For legal alternatives to copyright infringement and more information about copyright compliance, see www.ewu.edu/its/copyright/resources.

When you buy music or movies online or buy a CD or DVD, it is important to understand the answers to the following questions:

1. What permissions come with the product? These range from very broad Creative Commons permissions, which allow for redistribution under certain conditions, to very restrictive requirements, which allow play on only one machine, or allow only streaming, etc. It is incumbent upon you to understand the permissions.
2. What digital restrictions, if any, are used with the product? Many services use digital rights management (DRM) technology to control the use of the music or other digital works they sell. DRM usually reflects the permissions and can range from allowing unlimited burns to CD to preventing any copying at all. DRM models can also limit what kind of devices you can play the music on. DRM with a subscription-based model may render the music unplayable if the subscription is not maintained. Some services do not use DRM.

In conclusion, you need to be aware that sharing music, videos, software, and other copyrighted material may be a violation of law and can expose you and those with whom you share materials to civil and criminal penalties. Please be responsible in your use of copyrighted materials.