



THE UNIVERSITY OF NORTH CAROLINA  
**ASHEVILLE**

**Policies and Procedures**

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Owner Dept: IP Comm.  
Phone: 6545

**Title: Response to Allegations of Copyright Infringement**

**Purpose:** The Digital Millennium Copyright Act (DMCA) amends federal copyright law to provide certain liability protections for online service providers (OSPs), including the University of North Carolina at Asheville (UNC Asheville), when their computer systems or networks carry materials that violate (infringe) copyright law. To qualify for liability protection, the University is required to have a policy under which the computer accounts of users will be terminated if they repeatedly infringe the copyrighted works of others.

**Scope:** This policy applies to the use of UNC Asheville computers and networks by all faculty, staff, and students including personal computers accessing the campus network. This policy supplements UNCA Policy #79, Copyright Use & Ownership, by addressing the University's response to claims of copyright infringement under provisions of the Digital Millennium Copyright Act. Nothing in this Policy in any way weakens or abrogates applicable law or the UNC Asheville Copyright Use & Ownership Policy.

**Policy:** All students, faculty, and staff at UNC Asheville are expected to comply with United States copyright law. Copyright is legal protection for creative intellectual works, which is broadly interpreted to cover just about any expression of an idea. Text (including e-mail and Web information), graphics, art, photographs, music, and software are examples of types of work protected by copyright. The creator of the work, or sometimes the person who hired the creator, is the initial owner of the copyright.

You may "use" all or part of a copyrighted work only if:

- You have the copyright owner's permission; or
- You qualify for legal exception (the most common exception is called "fair use").  
(see Section 3 of the UNC Asheville Copyright Use & Ownership Policy)

Copying, distributing, downloading, and uploading information on the Internet may infringe the copyright for that information. Even an innocent, unintentional infringement violates the law. Violations of copyright law that occur on or over the University's networks or other computer resources may create liability for the University and for the computer user. Accordingly, infringers will be subject to University disciplinary procedures.

**Definitions:** "Use" of a work is defined for copyright purposes as copying, distributing, making derivative works, publicly displaying, or publicly performing the work.

The University's "**Designated Agent**" is that employee designated by the University to receive and respond to claims of alleged infringement on its computers or networks. The **Designated Agent's** name and contact information is available on the UNC Asheville Intellectual Property/Copyright web site and has been registered with the U.S. Copyright Office.

Procedures:

**1. Notice and Counter Notice When the University Receives an Infringement Claim Concerning Computer System or Network Use by Students**

- 1.1. A copyright owner, or person acting for the owner, must provide the University's designated agent with written notice that information residing on the University's computer systems or networks infringes copyright. The notice must meet the requirements of 17 U.S.C. 512(c)(3). The notice requirement also applies to information in system cache and to information tools (e.g., hypertext links) that infringe copyright.

If a person working for the University has independent knowledge of a copyright violation on a University computer system or network, the University may have a duty to remove the infringing material. This is true even if there is no "notice" from the copyright owner. Therefore, that person should report the violation to the University's **Designated Agent** as soon as possible.

- 1.2. Upon receipt by the University's Agent to Receive Notification of Claimed Infringement (**Designated Agent**) of a complaint meeting the requirements of 17 U.S.C. 512(c)(3), the University will promptly disable access to the allegedly infringing material.
- 1.3. The University will promptly inform the computer account holder/user that access to the allegedly infringing material has been disabled.
- 1.4. Response from Computers User/Owner

- 1.4.1. The computer account holder/user may inform the University's **Designated Agent** that the allegedly infringing material was on the computer and has been removed. Notification must be in writing. E-mail is acceptable.

1.4.1.1. In the case of a first claim of infringing activity against the computer account holder/user the University's **Designated Agent** will typically request the Computer Center to restore access to the network as soon as feasible. The Computer Center will notify the **Designated Agent** of the date the connection is restored. The **Designated Agent** will notify the complainant and maintain a record of the action. Serious or egregious infringement or aggravating circumstances may result in referral of even first claims to a Second Level Conduct Meeting/University Conduct Board within the University Student Conduct System.<sup>1</sup>

1.4.1.2. In the case of a second or subsequent claim of infringing activity against the computer account holder/user occurring subsequent to the restoration of connectivity to the network as described in 4.1.1.1, the **Designated Agent** will refer the matter **Student Code of Community Standards and Citizenship Education Process**.

1.4.1.3. Infringement of copyright is actionable under section VII of the UNC Asheville Student Code of Community Standards and Citizenship in that it violates Title 17 of the United States Code. The level of penalty assigned shall take into consideration that this is a repeat offence. Such penalty shall be consistent with the Student Code of Community Standards and Citizenship, and may include permanent disconnection from the campus network as well

as other penalties including recommendation to the Chancellor of suspension or expulsion. If an assigned penalty involves disconnection from the campus network, the University's **Designated Agent** shall request the Information Technology Services to restore access at end of the period of disconnection. The **Designated Agent** will notify the complainant and maintain a record of the action.

1.4.2. The computer account holder/user may send the University's **Designated Agent** a written statement that the removal or disabling of access was based on a mistake or misidentification. This counter notice must meet the requirements of 17 U.S.C. 512(g)(3).

1.4.2.1. The **Designated Agent** will promptly transmit the content of the counter notice to the person who complained of infringement, and will inform that person that the removed materials or disabled access will be restored in 10 business days.

1.4.2.2. The University will restore the material or access no less than 10 business days and no more than 14 business days from receipt of the counter notice, unless the person who complained of infringement first notifies the **Designated Agent** that the complainant has filed a court action to restrain the computer account holder/user from the infringing activity that was the subject of the original notice to the University.

## 2. **Procedure When UNC Asheville has Notice that Material Provided on an Official University Website, Provided in Another Internet Communication on Behalf of the University, or Resident in a Publicly Accessible Computer File on the UNC Asheville Network May Infringe on Intellectual Property Rights**

2.1. The University must ensure that official web sites, official e-mail, and other official communications and expressions do not violate the intellectual property rights of third parties. The most common intellectual property rights found on the Internet involve copyright and trademark/service marks.

2.2. "Official" web sites and communications include those which are funded or otherwise sponsored by the University for a university purpose, or which are created by an employee or agent of the University who is acting within the authorized scope of employment or agency on behalf of the University (e.g., including but not limited to posting course materials on the web for educational use of enrolled students). Possibly infringing material (e.g., MP3 music, video, games, software) resident on or transmitted via University networks, computers, and computer systems and accessible to others is also covered by this procedure.

2.3. The University has "notice" of possible infringement when a third party advises a University official that there is an infringement, or when it appears to a University official that material is likely to be infringing based on the circumstances (e.g., copies of nationally syndicated cartoons appear on a University web site without any statement of copyright permission). Such notification shall be immediately forwarded to the University's **Designated Agent**.

- 2.4. When the University has notice of a possible intellectual property infringement in official University-provided content or residing on a University network or computer, it will in good faith:
- 2.4.1. Contact the operator of the allegedly infringing computer or network to determine if the allegedly infringing material is located on a University resource.
  - 2.4.2. Work with the identified operator to determine ownership of the copyright or other intellectual property through consultation with the author of the University content or controller of the University computer, and the party claiming ownership. Appropriate supervisory personnel and the affected Vice Chancellor will be notified at this point.
  - 2.4.3. If it is determined that the claimant or third party owns the material and the University has not secured permission for use, the University will determine if there is justification for a claim of “fair use.”
  - 2.4.4. If the University finds a sufficient case to claim “fair use,” it will so notify the owner.
  - 2.4.5. If the identified material is owned by someone other than the computer operator or the University and there is insufficient basis for a “fair use” determination, the University will help to negotiate a permission or settlement if it appears that the content is infringing or if it appears that settlement is preferable to litigating an unclear claim. If permission or settlement is not feasible and it appears that the material is infringing, **the offending material will be removed.**
  - 2.4.6. Unauthorized use of copyrighted materials on University computers or networks may violate relevant laws or constitute inappropriate use of state resources. As such, disciplinary action may be appropriate against the person who posted or otherwise used the infringing content as determined by appropriate supervisors and University administrators. See the “University of North Carolina at Asheville Faculty/Staff Usage Policy for Computing and Networking” ([http://www.unca.edu/compcenter/computer\\_use\\_facstaff.html](http://www.unca.edu/compcenter/computer_use_facstaff.html)).
- 2.5. UNC Asheville seeks to minimize institutional liability and the personal liability of its faculty and staff while providing support for the appropriate use of intellectual property. In the context of copyright and other intellectual property, this means that the University’s **Designated Agent**, General Counsel, or the Vice Chancellor for Academic Affairs should be advised as soon as there is any notice of possible infringement.

Removal of official University content, especially course materials, can be harmful to academic freedom, to teaching effectiveness, and to the University’s educational mission. Responding to claims of infringement is time-consuming and stressful for the parties involved. Therefore, faculty and staff are urged to secure copyright permission, a license, or a legal basis for use of someone else’s intellectual property without permission, before using the material.

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