

## **Implementation at Colby College of Procedures Required by the Digital Millennium Copyright Act of 1998**

As a network service provider for the students, faculty, and staff in our campus community, Colby College must comply with new requirements specified in the Digital Millennium Copyright Act of 1998 (DMCA). This legislation addresses a variety of copyright issues that have arisen as a result of the development of digital communication, including the Internet, and especially how claims of copyright violation are handled by organizations that run networks on which individuals have accounts or individual computers. The act clarifies that copyright applies to electronic media in much the same way that it has long applied to print and other conventional media but makes some changes that are necessitated by the technology.

This document does not provide a discussion of complex copyright issues such as fair use. All members of the Colby community are reminded that copyright protects intellectual and other creative property and the College takes a strong stand against copyright violation. Computer software is usually copyrighted and often has license restrictions that require payment of a fee for its use. Illegally copying such software in violation of its license is software piracy and may result in prosecution. Similarly, audio and video material (Compact Discs, Digital Video Discs, Videotape, MP3 files, etc.) usually have copyright protection. Other digital material, such as text and images that may be accessible on the network, may also be copyrighted and it may be a violation of the copyright to save and use a copy or to make a copy available to anyone else. It is the responsibility of each individual who wishes to copy and use any material to obtain permission from the copyright owner where necessary.

The DMCA also provides penalties for circumvention of technological measures used by copyright owners to protect their works.

The DMCA specifies the general procedures that will be followed by registered network service providers such as Colby College if a claim of copyright infringement is made. The following procedures have been developed to implement the requirements of the DMCA at Colby College:

1. Each network service provider registered under the DMCA designates a contact agent for any copyright claims under the act.
  - Colby's designated contact agent is the Administrative Vice President.
2. Notification of copyright infringement is sent by the copyright owner to the designated agent of the network service provider on which the material resides, specifying the particular elements concerned.
  - A copyright owner seeking to make a claim of copyright infringement for any material residing on Colby's computer network must send notification to Colby's contact agent, the Administrative VP.
3. The act does not require that the contact agent confirm either receipt of the notification or removal of access to the material.
  - The Administrative VP is authorized to provide confirmation of both as appropriate.
4. The account holder or the computer owner is notified.
  - The person responsible (account holder or computer owner) for the material identified in the notice is informed in writing and by e-mail by the Administrative VP that notice has been received and that prompt action is required to comply.
  - The Dir. of Information Technology Services will provide information to the Administrative VP regarding the identity of those involved so that they may be contacted.
  - This information will not be provided to the person originating the notification of copyright infringement or to any other outside entity except under court order or subpoena. This matter will be considered confidential within the College.

- Disciplinary action may be initiated as indicated in the Code of Ethics for Information Technology at Colby College.
5. The network service provider must "promptly" remove or otherwise block access to the material specified in the notification.
    - Upon being informed of notification, the responsible Colby person has 48 hours to remove access to the specified material, as well as any other material that infringes copyright, and must provide in that same time frame written assurance that no other material under his/her control is being made available by them in any way that infringes copyright.
    - If the material is not removed from access by the end of that 48 hour period, the Dir. of ITS will be instructed by the Administrative VP to remove access to the material if it is on a College-administered computer or by removing network access for any other computer on which the material may reside.
    - If the necessary action taken by the Dir. of ITS is to discontinue network access for a College- or personally-owned computer, network access will be restored only upon receipt of a signed statement that the specified material has been removed and that no additional material in violation of copyright is available on that computer.
  6. The account holder or computer owner may file with the original claimant a counter notification in which a right to use the material is claimed.
    - Members of the Colby community are cautioned that filing a counter notification almost inevitably leads to litigation.
    - Colby employees must obtain prior approval from the Administrative VP before submitting a counter notification. The College provides no indemnification for any action in which prior approval by the Administrative VP has not been provided.
    - A copy of any counter notification must be submitted to the Administrative VP, who will notify the Dir. of ITS, who will reinstate access to the material within 10-14 business days, unless there is a court injunction against doing so.
    - Individuals such as students are strongly urged to seek the advice of an attorney before submitting a counter notification. The College will provide no assistance in any ensuing litigation.
  7. A procedure exists by which a copyright owner can obtain a subpoena from a federal court ordering a service provider to disclose the identity of a subscriber who is allegedly engaging in infringing activities.
    - This is the only situation under which the College would provide to any outside entity the identity of any individual alleged to be involved in copyright infringement. Members of the Colby community should be aware, though, that their identities in such situations may be deduced by an outside entity from information readily available on the web or other server.
  8. Legal action may occur between the copyright owner and the alleged copyright infringer even if access to the material has been removed.
    - Account holders and computer owners should be aware that there may be significant civil and criminal penalties for copyright infringement that occurred prior to removal of access.
  9. The network service provider is held harmless for both carrying any material in violation of copyright if it has been unaware of the violation and blocking access to material for which notification has been received.
    - The College, as a network service provider, is protected under the DMCA.
    - The College must take steps to remove material from access if it discovers that it infringes on copyright; disciplinary action may be taken.

- The College does not routinely inspect material made available by individuals and groups through its network to the campus community or the rest of the Internet, although it has a right to do so.
  - College employees are required to abide by copyright restrictions to avoid having themselves and the College as a content provider involved in litigation.
  - Individuals are responsible for the content they provide and are subject to campus disciplinary action as well as prosecution under federal and state laws.
10. The DMCA notes that faculty and other instructors must be particularly careful not to include items that infringe on copyright in required or recommended material in any course they teach.
11. The DMCA requires that the network service provider adopt and reasonably implement a policy of terminating in appropriate circumstances the accounts of subscribers who are repeat infringers.
- The Code of Ethics for Information Technology at Colby College ([www.colby.edu/administration\\_cs/its/policies/index.cfm](http://www.colby.edu/administration_cs/its/policies/index.cfm)) has always prohibited infringement of copyright. Action leading to permanent account or network access termination would be taken under the disciplinary process described there.
12. The College may receive a notification from a copyright owner claiming that copyright infringement has occurred and requesting that the College provide to the account holder or computer owner a “settlement letter” or other proposal to resolve the claim of infringement without litigation.
- The College will make reasonable efforts to identify the account holder or computer owner and, subject to consultation with its attorney, may contact the account holder or computer owner as requested by the copyright owner. The College will not provide the account holder’s or computer owner’s identifying information to the copyright owner without permission or without a court order or subpoena.
  - If the copyright owner thereafter notifies the College that legal action has been commenced, the College will respond as directed by its counsel. If the College is served with a subpoena or court order requiring the disclosure of the account holder’s or computer owner’s identifying information, the College will respond as permitted by law.
  - Court rules of procedure generally prohibit an individual accused of infringing copyright from deleting or destroying evidence, including electronic data, material or communications. Persons accused of infringing copyright are urged to consult an attorney.
13. This document will be reviewed annually or more often as necessary by the Information Technology Committee and, when changes are made, by the College’s attorneys.
14. Questions about the DMCA or the procedures described here should be directed to the Administrative VP or Director of ITS.

## **Related Documentation**

### **U.S. Copyright Office Summary of the DMCA**

<http://lcweb.loc.gov/copyright/legislation/dmca.pdf>

### **Complete Digital Millennium Copyright Act of 1998**

<http://lcweb.loc.gov/copyright/legislation/hr2281.pdf>

### **List of registered agents of network service providers for receiving notification of copyright infringement by account holders:**

<http://lcweb.loc.gov/copyright/onlinesp/list/>

#### Revision history:

First draft by Ray Phillips, Dir. of ITS, July 19, 1999.

Review by Dana Nathanson, of Drummund, Woodsum, & MacMahon.

Second draft by Ray Phillips, Dir. of ITS, Nov. 16, 1999.

Approved by the Information Technology Committee, April 27, 2000

Draft revision April 17, 2001 (grammatical corrections)

Approved by the Information Technology Committee, May 10, 2001

Approved by the Information Technology Committee, May 1, 2002

Approved by the Information Technology Committee, May 5, 2003

Approved by the Information Technology Committee, April 28, 2005

Revised (removed references to Administrative VP and Dir. of ITS position holders and updated URL as needed) and approved by the Information Technology Committee, May 16, 2006

Amended to make corrections in item 4 and insert bullet item 12, reviewed by Drummond, Woodsum and MacMahon, and approved by the Information Technology Committee, May 10, 2007

Approved by the Information Technology Committee, April 29, 2008

Approved by the Information Technology Committee, May 5, 2009