

Cornish College of the Arts and the Higher Education Opportunity Act (HEOA) – Compliance to Requirements Regarding Copyright Infringement and Peer-to-Peer File Sharing

Information Technology Department
1000 Lenora Street, Seattle WA 98121
it@cornish.edu

PREAMBLE

The Higher Education Opportunity Act (HEOA) of 2008 instituted several provisions towards reducing illegal downloading and uploading of copyrighted works through peer-to-peer sharing (P2P).

The Information Technology Department has taken steps to comply in good-faith to these new provisions. The three general requirements outlined through these provisions are as follows:

1. An annual disclosure to students describing copyright law and campus policies related to violating copyright law.
2. A plan to effectively combat the unauthorized distribution of copyrighted materials by users of its network, including the use of one or more technology-based deterrents.
3. A plan to offer alternatives to illegal downloading.

Additionally, this Policy intends to mitigate the College's potential exposure to security risks and liabilities associated with the exploitation of P2P applications to illegally use, distribute and/or store copyrighted materials on the College's Network.

TABLE OF CONTENTS

- 1.0 Policy Statement
- 2.0 Application
- 3.0 Definitions
- 4.0 Prohibited Activity
- 5.0 Procedures For Combating Unauthorized P2P File Sharing
- 6.0 Educate and Inform The College Community
- 7.0 Enforcement
- 8.0 Enforcement Procedures For Handling Unauthorized P2P File Sharing
- 9.0 Amendments
- 10.0 Responsibility
- 11.0 Periodic Review

Appendix A – Sample Annual Notice

Appendix B – Frequently Asked Questions

Appendix C – Summary Of Penalties For Violation of Federal Copyright Laws

Appendix D – Legal Alternatives for Downloading or Otherwise Acquiring Copyrighted Material

1.0 POLICY STATEMENT

The College is committed to preventing, in so far as practicable, the misuse of the College's Computer Network and other Information Technology Resources, including but not limited to, the unauthorized distribution of copyrighted material by Users of its Computer Network. The College intends to maintain the integrity of its Computer Network, without unduly interfering with educational and research use, by utilizing the methods described in Section 7.0 of this Policy.

2.0 APPLICATION

2.1 Individuals. This Policy applies to all individuals (students, faculty, staff, College volunteers, contractors, consultants and other members of the public) who use the College's Network and/or Information Technology Resources ("Users").

2.2 Resources. This Policy also applies to the College's Network and all other College Information Technology Resources; any other information technology resource made available to the College community through a College vendor-sourced network; and other electronic device regardless of ownership when such device is actively using the College Network or is otherwise interfacing with a College Information Technology Resource. The physical location of any computer or other device is irrelevant to whether or not a violation of this Policy exists.

3.0 DEFINITIONS

The terms below shall have the meaning ascribed next to each:

- (a) *College Computer* - Any computer that is owned, leased or rented by Cornish College of the Arts, whether such computer is located on or off College premises.
- (b) *College Network* - Any part of the College's data, voice or video network physically located on any College owned, leased, or rented property or located on the property of any third party with the permission of that party. This includes devices on such network assigned any routable and non-routable IP addresses and applies to the College's wireless network and the network serving the College's student residence halls, and any other vendor supplied network made available to the College community.
- (c) *Digital Millennium Copyright Act (DMCA)* - A federal law passed in 1998 that revised copyright law for the digital environment to, among other things, define how alleged copyright infringements are to be handled and establish liability limitations for "online service providers."
- (d) *DMCA Notice* - DMCA or copyright infringement notices are warnings issued from the copyright holder or a representative of the copyright holder. These copyright holders have identified computers on the College's Network as having potentially violated the DMCA and issue warnings regarding the particular infringement to the College.
- (e) *IT*-The College's Division of Information Technology.

(f) *Information Technology Resources* - The College Network and all College computers and computer components, electronic storage devices, wiring, and electronic transmission devices owned, leased, rented or operated by the College or and all College owned or licensed software.

(g) *Peer-to-Peer (P2P)* - A network environment where participants share their resources (such as files, disk storage, or processing power) directly with their peers without having to go through an intermediary network host or server.

(h) *Peer-to-Peer File Sharing Applications* - Programs or services that use P2P technology to share music, movies, software, or other digitally stored files.

4.0 PROHIBITED ACTIVITY

4.1 Violations. It is a violation of this Policy to use the College Network or any Information Technology Resource of the College to distribute, download, upload, stream, scan, store or share any material including software, data, document, sound, music, video, picture, design, graphic, game, or any other electronic file when:

(a) the file is copyrighted but distribution to the User has not been authorized by the copyright owner;

(b) the intended use under the relevant circumstances is specified as illegal by any federal or state law, statute, regulation, proclamation, order, or decree;

(c) the User's intent is deployment or introduction of any virus or mal ware on any Information technology Resource.

4.2 Circumvention Prohibited. Users of the College's Information Technology Resources shall not attempt to circumvent, bypass, defeat, or disrupt any device, method, or technology implemented by the College for the purpose of implementing this Policy.

5.0 PROCEDURES FOR COMBATING UNAUTHORIZED P2P FILE SHARING

5.1 Technology-Based Deterrents

(a) *Use of Deterrents.* The Director of Information Technology utilizes technology-based deterrents to combat the unauthorized distribution, downloading, uploading, streaming, scanning, storage or sharing of copyrighted material by Users of the College's Network, and periodically confers with the President's Executive Team to ensure that all such technology-based deterrents employed by the College do not unduly interfere with legitimate educational and research uses of the College's Network.

(b) *Types of Deterrents.* At least one technology-based deterrent will be in use at all times with respect to the College's Network. As determined appropriate from time to time by the Director of Information Technology, technology-based deterrents may include, but are not limited to, one or more of the following:

1. Bandwidth shaping
2. Traffic monitoring

3. Accepting, aggressively pursuing and responding to DMCA notices
4. Using commercial product(s) to reduce or block illegal file sharing.

5.2 Directive Authority. For the purpose of implementing this Policy, the Director of Information Technology maintains directive authority over all vendors to the College, including those vendors who supply internet services to student housing, to direct that such vendors use appropriate deterrents to reduce or prevent illegal file sharing and other violations of this Policy. When exercising such directive authority, the Director of Information Technology shall consult with the appropriate contract administration officer of the College and ensure that all corrective actions are taken in accord with relevant contract documents.

6.0 EDUCATE AND INFORM THE COLLEGE COMMUNITY

6.1 Mechanisms. The College employs, at a minimum, the mechanisms described in Sections 7.2 and 7.3, regarding enforcement, for educating and informing the College community about the appropriate and inappropriate uses of copyrighted material.

6.2 Institutional Information for Students. The College makes readily available to enrolled and prospective students the College's policies and sanctions related to copyright infringement, including: (i) a statement that explicitly informs its students that the unauthorized distribution of copyrighted material, including peer-to-peer file sharing, may subject the student to civil and criminal liabilities; (ii) a summary of the penalties for violation of Federal copyright laws; and this Policy. The disclosure required by this Section 7.2, regarding enforcement, shall be made in the following manner:

(a) Enrolled Students -- The Office of the Student Affairs is responsible for disseminating annually a notice (of the general nature as set forth in Appendix A to this Policy) to enrolled students regarding the institutional information described in this Section. The methods of dissemination of the Notice may include the College web pages, e-mail, orientation presentations, student publications, publication in the Student Handbook and the Compass portal.

(b) Prospective Students -- The Division of Enrollment Management will post or link a copy of the institutional information on the Admissions web portal for review by prospective students.

6.3 Educating the Campus Community. Other members of the Campus community shall be provided institutional information as follows:

(a) The Library will post and maintain the College's Copyright Guidelines and this Policy on its webpage.

(b) The Information Technology Department will publish and maintain a webpage devoted specifically to this Policy and P2P file sharing. Such webpage shall contain a list of FAQs and How-To Guides that instruct the campus community which details a summary of penalties for violation of Federal copyright laws; a summary of the results from the periodic review of the effectiveness of the College's plans to prevent the unauthorized distribution of copyrighted materials by Users of the College's network; and a list of legal alternatives for downloading or otherwise acquiring copyrighted material. The College reserves the right to block the use of any application on the College's Network when it has a reasonable basis to conclude that such application is being used for improper purposes in violation of this Policy.

6.4 Summary of the Penalties for Violation of Federal Copyright Laws. The Director of Information Technology and the Dean of Student Affairs annually publish a summary of the penalties for violation of Federal copyright laws (the "Summary") found in Appendix A. Dissemination of the Summary shall be as follows:

- (a) The college is responsible for including the Summary in the annual Notice to enrolled students;
- (b) The Director of Information Technology is responsible for posting the Summary on the IT web page dedicated specifically to the Peer to Peer policy.

7.0 ENFORCEMENT

7.1 Generally. The College's Network, Computers and other Information Technology Resources are not to be used for any illegal purpose including, but not limited to, illegal file sharing. Accordingly, to preserve network security and reliability, the College reserves the right in all instances, and upon its reasonable suspicion, to block access from and to its network of any IP address associated with illegal activity and/or to disconnect any User from the network who can be traced to illegal activities, including illegal P2P file sharing. An infringing User bears legal and financial responsibility for events or activities resulting from or associated with his or her own misuse of P2P applications and any other illegal activity conducted by or through the College's network.

7.2 Students. Faculty and Staff. In addition to barring access to network resources, a student, faculty or staff member who violates this Policy may also be subject to other appropriate discipline, up to and including termination of employment and/or expulsion. No final adverse action may be taken pursuant to this Section, however, with respect to any employee or student of the College unless such employee or student is afforded a meaningful opportunity to contest the adverse action, as further described in Section 8.0, regarding enforcement procedures.

7.3 Contractors. Vendors. Consultants. Volunteers and Others. Any party external to the College, including but not limited to, College contractors, consultants, or vendors found to have violated this Policy may be held in breach of contract and, in such event, may be subject to such sanctions and damages as may be allowed under the contract and/or applicable law including, but not limited to, ineligibility to be considered a responsible source for subsequent contracting with the College. Other parties who violate this Policy but who do not have a contractual relationship with the College (including volunteers) may be barred from any subsequent use of a College Information Technology Resource.

7.4 Criminal and Civil Liability; Reporting to Government Authorities. In addition to the actions described in Sections 7.1, 7.2, and 7.3, the unauthorized acquisition or distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject culpable individuals to civil and criminal liabilities. To the extent required by federal or state law, or when the College otherwise deems it to be in its best interest, the College will report certain illegal activities to designated law enforcement agencies without prior warning or notice to the infringing User.

8.0 ENFORCEMENT PROCEDURES FOR HANDLING UNAUTHORIZED P2P FILE SHARING

8.1 Alleged Violations. Alleged violations of the Digital Millennium Copyright Act (DMCA) shall be received by the IT's Director of Technology for the Receipt of a Claimed Infringement ("Designated

Agent"). IT responds to all DMCA notices. The receipts of such notices are to be logged in and tracked by IT. IT staff will then attempt to identify the suspect computer(s) and User(s). In the case of suspected offenders who are students, if successful identification is made, a copy of the notice and name of student(s) identified shall be referred to the Office of the Dean of Students in accordance with Section 8.2(b). In the case of successfully identified faculty or staff, the notice and name of the staff or faculty member(s) and relevant identifying information shall be referred to the employee's supervisor. In circumstances when criminal activity is suspected, the Director of Information Technology shall consult with the Office of Legal Affairs and the College Department of Public Safety before notifying any party.

8.2 Students.

(a) Generally -- In accordance with those procedures specified in the *Student Handbook*, the Office of the Dean of Student Affairs shall conduct disciplinary proceedings involving students alleged to have violated this Policy.

(b) DMCA -- Violations of the DMCA by students shall be resolved as follows:

(1) Upon receipt of an alleged violation of the DMCA, the Designated Agent shall identify the person associated with the IP address cited in the Claim. If the identified person is a college student, IT shall notify the Office of the Dean of Students Affairs. The Dean of Student Affairs will notify the student of the claim. Students who receive such notices must respond to the Dean's notice within the period of time specified by the Dean of Student Affairs, but in no event later than 3 school days after the notice of claim is received by the student. IT shall request such students to acknowledge the notice and state whether they have received their own copy of the DMCA claim. If this is a first offense and the student acknowledges a violation of this Policy by admitting to the claim, he/she will be asked to stipulate in writing that he/she will comply with this Policy in the future. If the Office of the Student Affairs does not receive such an acknowledgement and stipulation within the prescribed time period, or if the student challenges the validity of the claim, the Dean will initiate disciplinary proceedings.

(2) A second offense of this Policy will become a part of the student's disciplinary record in accordance with sanctions outlined in the Student Handbook Code of Student Conduct Procedures found in Appendix A, Article III.

(3) A third or fourth violation of this Policy may result in sanctions which may include fines and/or a disciplinary probation period or expulsion in accordance with sanctions outlined in the Student Handbook Code of Student Conduct Procedures found in Appendix A, Article III.

In any situation listed in (1) through (3) of this subsection, the College may suspend the rights of access to the College's network pursuant to Section 7.1 pending the final disposition of the disciplinary matter.

8.3 Faculty/Staff.

As provided for in relevant provisions of the *Faculty/Administration Manual*, Human Resources (HR) shall conduct disciplinary proceedings involving faculty alleged to have violated this Policy. Disciplinary proceedings alleging violations of this Policy by staff shall be conducted in accordance with relevant provisions of controlling law and, to the extent applicable, the College's Code of Conduct and Disciplinary Actions and the College's *Grievance Procedure*. The College may suspend the rights of

access to the College's network pursuant to Section 8.1 pending the final disposition of any employee disciplinary action.

8.4 Subpoena.

The College will timely comply with all valid subpoenas seeking the identity of a person alleged to have misused the College's Information Technology Resources for illegal purposes.

9.0 AMENDMENTS

This Policy may be amended in accordance with the College's *Campus Wide Policy Making Procedures*.

10.0 RESPONSIBILITY

The IT Department of the College shall be responsible for the maintenance of this Policy

11.0 PERIODIC REVIEW

The Cornish College of the Arts HEOA plan is reviewed annually to determine whether any regulatory changes need to be incorporated into the plan. Regular feedback is solicited to determine whether materials covered or questions included need to be amended to better educate the Cornish College community on copyright and file sharing.

Appendix A - (SAMPLE) ANNUAL NOTICE

Cornish College of the Arts Policy on Peer-to-Peer (P2P) File Sharing

All members of the Cornish College of the Arts community are required to follow the College Policy on Peer-to-Peer File Sharing. This Policy covers all electronic means to transmit, disseminate or store copyrighted materials including e-mail, web pages, and peer-to-peer file sharing software. The Policy also applies to all computers and applications utilizing the College network. Please be sure that you have rights for any material you are making available or sharing on the College network.

The unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject you to disciplinary action as well as civil and criminal liabilities. A detailed description of the College's policies concerning disciplinary actions for the unauthorized downloading and unauthorized distribution of copyrighted material is set forth in the Student Handbook. Students risk losing their computer access privileges due to multiple violations of the policy. With regard to faculty, a detailed description of the College's policies concerning disciplinary actions for the violating federal law is set forth in the Faculty and Administrative Manual.

A summary of the current civil and criminal penalties for violation of federal copyright laws is as follows:

- 1. The infringer may be required to pay the actual dollar amount of damages in an amount equal to the profits gained from the infringement or, alternatively, pay what are termed "statutory damages". Statutory damages can range from \$750 to \$30,000 for each work infringed, unless the court finds that the infringement was willful. In such cases, the maximum penalty is increased to \$150,000.*
- 2. The court may also award attorney fees and court costs, issue an injunction to stop the infringing acts and impound the illegal works.*
- 3. The infringer can be sent to jail for up to 10 years.*

Under the law, it is not necessary to establish that the infringer made a profit from the infringement in order to establish liability for the infringement. Therefore, liability can be imposed for common illegal peer to peer file sharing, for example the improper downloading of music and video files, even if the infringer has not gained a profit from the illegal activity. For Users who distribute any quantity of copyrighted materials, or advertise their services to Users even though they receive no financial benefit, they may also be subject to criminal investigations and incarceration.

The link for the full text of Chapter 5 of the Copyright Law of the United States of America. "Copyright Infringement and Penalties" can be found at <http://www.copyright.gov/title17/92chap5.html>.

Appendix B - FREQUENTLY ASKED QUESTIONS**Q. Is there a way to download digital works lawfully?**

A. Many companies sell electronic access to digital works, and you can purchase works through these vendors. There are also works in the public domain that are lawful for you to download, but you must still be careful to avoid unintentionally downloading unlawfully.

Q. Is it safe to use these companies?

A. Many of these companies are perfectly safe. Unfortunately, some of them appear to be operating lawfully, but are not. Carefully research the company before you use its services.

Q. Am I able to use my peer to peer on the College network for legitimate purposes?

A. No. There are many lawful and legitimate uses for P2P software; however, technology is in place that prohibits use of peer to peer sharing on the campus network.

Q. Is it a violation of College policy to upload and download?

A. No. There are many lawful and legitimate uses for uploading and downloading using P2P technology. However, *how* and *what* you upload and download that may violate College policy or the law. If you feel your use of P2P technologies is lawful and legitimate, and does not excessively consume Cornish resources, including, but not limited to bandwidth, uploading and downloading may be permissible upon request. Since the educational use of information technology resources is of the highest priority, Cornish Information Technology will address your usage on a case by case basis.

Q. If my use of P2P software on my computer is legitimate and lawful, how can I avoid the risks?

A. If you use it, by definition, you are taking some risk. To mitigate the risk, you should understand how the technology works, monitor your use carefully, and learn about the laws and policies that govern its use. You can find the basics about federal law here:

<http://www.educause.edu/Resources/Browse/HEOA/34600>

Q. Why does the College care about unlawful downloading of copyrighted material?

A. It is a violation of College policy and U.S. Copyright Law to engage in copyright infringement, including using P2P software to download copyrighted works.

Q. Will the College be required to share any collected information with the Recording Industry Association of America (RIAA) ?

A. Ordinarily, no. But the RIAA has filed and continues to file lawsuits against people it alleges have infringed the copyrights of its members. As part of their lawsuits and pursuant to a valid subpoena, the College can be compelled to produce information about individual users.

Q. Will I be in trouble with the College if it is alerted that I have illegally downloaded copyrighted works more than once?

A. Very likely. Our intention is to respond educationally after the first documented improper download. Should you be directly connected to subsequent illegal downloads your computing privileges can be suspended and a disciplinary case opened. Be careful that your activities do not lead to unpleasant and possibly costly consequences.

Appendix C - SUMMARY OF PENALTIES FOR VIOLATION OF FEDERAL COPYRIGHT LAWS

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

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.

Appendix D - LEGAL ALTERNATIVES FOR DOWNLOADING OR OTHERWISE ACQUIRING COPYRIGHTED MATERIAL

Many institutions, national associations, and commercial entities have developed and maintain up-to-date lists of legal sources for downloading or otherwise acquiring copyrighted material. Below the College references such entities and lists they maintain for the convenience of the College community.

EDUCAUSE

<http://www.educause.edu/legalcontent>

EDUCAUSE is a nonprofit association whose mission is to advance higher education by promoting the intelligent use of information technology.

RIAA

http://www.riaa.com/toolsforparents.php?content_selector=legal-music-services

The Recording Industry Association of America (RIAA) is the trade organization that supports and promotes the creative and financial vitality of the major music companies.

MPAA

<http://www.mpa.org/contentprotection/get-movies-tv-shows>

The Motion Picture Association of America, Inc. (MPAA), together with the Motion Picture Association (MPA) and MPAA's other subsidiaries and affiliates, serves as the voice and advocate of the American motion picture, home video and television industries in the United States and around the world.