

**Policy Title:** Copyright Protection Guidelines

**Policy Type:** Technology                      **New/revised:** Revised

**Old Policy #:** Intellectual Property Rights

**Approval level:**  Board of Trustees  
 President  
 Vice President  
 Other (specify here)

**Purpose:** The [Digital Millennium Copyright Act \(DMCA\)](#) amends federal copyright law to provide certain liability protections for online service providers 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.

The objectives of this policy are to minimize liability while also providing support for the activities of faculty and staff. In the context of copyright and other intellectual property, this means that the Chief Information Officer should be advised as soon as possible of any suspected infringement. As is feasible, the Chief Information Officer will work with the university content provider to establish any defenses; however, if there is inadequate information to provide a defense, or it appears that no defense exists, the best route to minimize university damages will be prompt removal of the allegedly infringing material.

**Policy:**

Compliance with federal copyright law is expected of all students, faculty, and staff at East Tennessee State University. "Copyright" is legal protection for creative intellectual works, which is broadly interpreted to cover almost any expression of an idea. Text (including email and web information), graphics, art, photographs, music, and software are examples of types of works protected by copyright. The creator of the work, or sometimes the person who hired the creator, is the initial copyright owner.

You may "use" all or part of a copyrighted work only if (a) you have the copyright owner's permission (in writing—either email or letter), or (b) you qualify for a legal exception (the most common exception is called "fair use"). "Use" of a work is defined for copyright purposes as copying, distributing, making derivative works, publicly displaying, or publicly performing the work.

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 as well as the computer user. Accordingly, repeat infringers are subject to the appropriate disciplinary review procedures as set in forth disciplinary policies for students, faculty, or staff. Violations of law may also be referred for criminal or civil prosecution.

The University has a legal duty to insure that official web sites, official email, 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.

"Official" web sites and communications include those that 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., posting course materials on the web for educational use of enrolled students).

Removal of official university content, especially course materials, can be harmful to academic freedom, to teaching effectiveness, and to the University's educational mission. Therefore, faculty and staff are encouraged to secure copyright permission, a license, or a legal basis for use of someone else's intellectual property before using the material.

## **Procedures**

### Notice and Counter Notice for material that may infringe on Intellectual Property Rights

Notice: A copyright owner, or person acting for the owner, must provide the University's designated agent, the Chief Information Officer, with written notice that information residing on the University's computer systems or networks is an infringement of the copyright. The notice requirement also applies to information in system cache and to information location tools (e.g., hypertext links) that infringe copyright.

[Note: 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 Chief Information Officer as soon as possible.]

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).

When the University has notice of a possible intellectual property infringement in official university-provided content, it will in good faith:

- Attempt to establish who truly owns the copyright (or other intellectual property) through consultation with the author of the University content and the party claiming ownership.
- Attempt to determine if any legal defense (e.g., "fair use") exists to allow the material to be used by the University.
- Attempt 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 University will promptly remove the material and the designated agent will notify the computer user and the person who complained of infringement.

- Determine if any disciplinary action is appropriate against the person who posted infringing content. In the case of repeated infringement or bad faith infringement, disciplinary action may include suspension or termination of computing privileges, disciplinary review, termination of employment, and/or legal action.

## **The TEACH Act**

The Technology, Education, and Copyright Harmonization Act (TEACH) of 2002 updated federal copyright law to facilitate digital education use of materials without requiring copyright permission, subject to several conditions. TEACH says it is not copyright infringement for teachers and students at an accredited, nonprofit educational institution to transmit performance and displays of copyrighted works as part of a course if certain conditions are met. If these conditions cannot be met, permission from the copyright holder must be obtained.

What is permitted: Performances of non-dramatic literary works or performances of non-dramatic musical works or performances of reasonable portions of any other work or display of any other work in an amount comparable to that typically displayed in a live classroom setting.

What is not permitted: Digital education works (works produced or marketed primarily for performance/display as part of mediated instructional activities transmitted via digital networks) or unlawful copies (copies you know or reasonably should know were not lawfully made or acquired).

When can copyrighted materials be used: By, at the direction of, or under the actual supervision of an instructor, and as an integral part of a class session, and as part of systematic mediated instructional activities, and directly related and of material assistance to the teaching content.

How can the materials be used: Transmission made solely for and reception limited to (as technologically feasible) students enrolled in that course, and downstream controls instituted: technological measures that reasonably prevent retention in accessible form for a class session and unauthorized further dissemination in accessible form, and no interference with the copyright holder's technological measures that prevent such retention and dissemination.

Institutional requirements: The institution must promulgate copyright policies and provide information about copyright and promote copyright compliance and provide notice to students that course materials may be copyrighted.

Questions regarding this policy and notice of any possible infringement should be directed to:

**Karen D. King, Ph.D.**

Chief Information Officer  
Information Technology Services  
East Tennessee State University  
Box 70728

Johnson City, TN 37614  
423.439.7000

**Notes:**

Approved: Information Technology Governance Council  
Reviewed: February 2017

3/24/2017 – approved by the Board of Trustees.