

Colorado Mesa University Policy and Plan to Combat Unauthorized Distribution of Copyrighted Material and Peer-to-Peer File Sharing

I. Introduction and Purpose of Policy and Plan:

The Higher Education Opportunity Act (HEOA), enacted August 14, 2008, reauthorized the Higher Education Act of 1965, as amended (HEA). On October 29, 2009 the Department of Education issued final rules to implement the copyright infringement provisions of the HEOA. Under these provisions the University is required to develop a written plan to “effectively combat” the unauthorized distribution of copyrighted material by users of the University’s network without unduly interfering with the educational and research use of the network, and offer alternatives to illegal downloading or peer-to-peer (P2P) distribution of intellectual property.

The purpose of this plan is to implement the HEOA copyright infringement provisions as outlined under 34 CFR Part 668, Student Assistance General Provisions, §§668.14 (b)(30) and 668.43 (a)(10), effective July 1, 2010. These regulations pertain to all users of the University’s network: students, faculty and staff.

Section 668.14(b)(30)(i) outlines four required plan components:

- 1) the use of at least one technology-based deterrent;
- 2) mechanisms to educate and inform the campus community on the appropriate use versus inappropriate use of copyrighted material;
- 3) procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures; and
- 4) procedures for reviewing the effectiveness of the plan.

Section 668.43(a)(10) states the University must inform prospective and enrolled students of institutional policies and sanctions related to copyright infringement, including

- 1) explicitly informing students that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the students to civil and criminal liabilities;
- 2) a summary of the penalties for violation of Federal copyright laws; and
- 3) a description of the University’s policies with respect to unauthorized peer-to-peer file sharing, including disciplinary actions that are taken against students who engage in illegal downloading or unauthorized distribution of copyrighted materials using the University’s information technology system.

II. Definitions:

“DMCA Notice”—a Digital Millennium Copyright Act Notice of Claimed Infringement received from the copyright holder or the agent authorized to act on behalf of the copyright holder identifying details of the copyright infringing activity and the IP address identified with the activity.

"IP address"—An Internet Protocol address assigned to a device attached to a computer network communicating with Internet Protocol used for identification and addressing.

"MAC address"—The Media Access Control address, or unique identifier, assigned to computer network adapter.

"P2P"—Peer-to-Peer file sharing network. Peers function as both clients and servers, providing computer processing, file storage, and network bandwidth. Unlike other Internet traffic, P2P file sharing traffic uses more bandwidth for file transfers than downloading Web pages and sending E-mails.

"system"—a personal computer, notebook, Mac, or Wi-Fi enabled mobile device attached to the network.

"user"—a student, employee, or member of the public that uses a University-owned computer, data store, or campus network (wired or wireless).

III. Policy and Plan to Identify and Curtail Inappropriate File Sharing and Unauthorized Use of Copyrighted Materials:

Colorado Mesa University has developed the following plan to identify and curtail inappropriate P2P file sharing and unauthorized distribution of copyrighted material by users of the University's network without unduly interfering with the educational and research use of the network.

A. Technology-based Deterrents

1. Managing Network Access

Authorized University-owned or registered student computers are allowed on the University's networks. In general, students, faculty and staff are assigned unique logins to access University-owned systems and the campus network. Campus visitors are provided limited guest wireless Internet access with short network lease times and limited bandwidth. Outside groups and individuals needing network access for temporary events are encouraged to use University-owned computers. In rare cases, ad hoc access campus network is granted to a member of the public, but access is only granted for a short, predetermined length of time through registration by Information Technology staff.

Students who use their own computer systems to access the University's networks are required to register their systems by its MAC address. The registration process requires students to authenticate using their University username and password and includes accepting the terms and conditions of the University's Network Use Agreement. All registered non-University-owned computers are assigned a public IP address to efficiently associate Internet traffic with systems and users.

2. Monitoring Internet Traffic

Colorado Mesa University monitors incoming and outgoing Internet traffic to identify the largest users, and potential abusers, of campus Internet bandwidth using a network intrusion detection tool to analyze Internet traffic and confirm the use of P2P software. User traffic patterns are profiled to help identify and preempt illegal file sharing. While there are some legitimate uses of P2P file sharing protocols and networks, in most cases, the repetitive, excessive transfer of outgoing Internet traffic is a good indicator of abusive activity on the network as defined under the Colorado Mesa University Network Use Agreement and Acceptable Use Policy.

Mesa State logs IP addresses from which more outgoing Internet traffic is transferred than incoming traffic over a 24 hour period. An IP address logged more than twice in 30 days is recorded on a summary report. University Network Administrators monitor this report daily for P2P activity. All systems associated with above recorded IP addresses identified as the source of inappropriate network or copyright infringing activity are blocked from accessing the Internet. Systems are quarantined, placed on a separate virtual local area network or wireless subnet where the user is redirected to an informational web page.

3. Responding to DMCA Notices

The University deals promptly with DMCA Notices. Upon receipt of a DMCA Notice, the University blocks the system associated with the IP address identified with the infringing activity from accessing the Internet. Further, student systems are quarantined placed on a separate virtual local area network or wireless subnet where the user is redirected to an informational web page that describes required end-user actions. In the case of a University-owned system, the computer is blocked until IT technicians remediate the system of all unauthorized copies of copyrighted material and P2P software.

DMCA Notices are forwarded to the registered system owner, user, or employee, with a follow-up E-mail describing the copyright infringement. If the recipient of the DMCA Notice believes they have unjustly received the notice, they may provide a counter notice as permitted under Section 512 of the Copyright Law. The registered system owner is required to contact the IT help desk before the block is removed. The IT help desk staff describes the infringing activity to the end-user (including why the activity was inappropriate, and outlines the course of action required to be taken by the end-user, including removing all unauthorized copies of copyrighted works and peer-to-peer software). Further DMCA Notices are met with increasingly severe sanctions as described below, Section III. C. Procedures for Handling Unauthorized Distribution of Copyrighted Material.

DMCA Notices are submitted to the Executive Director for Information and Communication Technology, Colorado Mesa University, 1100 North Avenue, Grand

Junction, CO 81501. The University posts current contact information for the Executive Director on its web page.

B. Mechanisms for Educating and Informing the Campus Community on Appropriate Versus Inappropriate Use of Copyrighted Material

The University supports compliance with copyright law, and takes required actions to educate the University's campus community of copyright law and the liabilities of using copyrighted material inappropriately, including using P2P networks to download and share copyrighted material without permission of the copyright holder. The P2P file sharing and copyrighted material awareness program outlined under this plan specifically addresses online sharing and distribution of copyrighted material, and more specifically, music, movies, games, software, and other literary and artistic works.

1. P2P File Sharing and Copyrighted Material Awareness Program

The University maintains informational Web pages for the campus community on appropriate versus inappropriate uses of copyrighted material, legal alternatives to illegal downloading movies and music, risks associated to illegal file sharing and P2P networks, the Digital Millennium Copyright Act of 1998, and the seriousness of DMCA Notices. This information is accessible at all times to prospective students, enrolled students, employees, and campus visitors.

Information regarding policies and sanctions related to the unauthorized distribution of copyrighted material is provided with the University's annual consumer information notice as defined under §668.41. In addition to the annual consumer information notice, a semiannual consumer information notice of the risks associated with P2P file sharing and unauthorized use and distribution of copyrighted material is e-mailed to all registered students and employees (faculty and staff). The University recognizes the importance of providing refresher correspondence to all campus computer and network users, and believes that well-informed employees further disseminate information on P2P networking and appropriate versus inappropriate use of copyrighted material to their own students, children, friends, and peers.

Upon receipt of a DMCA Notice, each student and employee is provided with information regarding DMCA notices, P2P file sharing, and copyrighted infringement by Information Technology staff. Students receive one-on-one consultation pertaining to the DMCA Notice, copyright law, and required remedial action of copyrighted material and P2P software by an IT staff member.

2. Legal Alternatives

Legal alternatives to unauthorized downloading and P2P distribution of copyrighted material are posted on the University's website. Legal alternatives are in the form of links to music and movie industry associations web pages that outline appropriate

sites to purchase copyrighted material online. The legal alternatives are reviewed annually and updated as needed.

C. Procedures for Handling Unauthorized Distribution of Copyrighted Material

Copyright infringement and illegal use of peer-to-peer file sharing brought to the attention of Colorado Mesa University by copyright owners will result in the end user's system and/or network account being suspended. The end user's infringing activity may be reported to the CMU Student Conduct Officer, or the employee's supervisor and Human Resources as appropriate. Illegally copying or distributing copyrighted material may result in the loss of computer and network access privileges for up to 45 days, and in some cases these privileges may be lost indefinitely. University sanctions for copyright infractions are cumulative for the student's enrollment at CMU.

Copyright Infringement activity and the misuse of the University's network through the use of P2P networks is classified in to three situational areas: student-owned systems registered for use on the University's network, student use of University-owned systems, and employee use of University-owned systems. The following University procedures will be implemented in response to unauthorized distribution of copyrighted material, including disciplinary actions:

1. Student-owned computer registered for use on the University's network

a. Impeding Actions:

- (1) The registered system will be blocked from the University's network and from accessing the Internet;
- (2) An e-mail will be sent to the student forwarding the DMCA Notice of Claimed Infringement;
- (3) The student will be required to contact the IT Help Desk staff. The IT staff member will review with the student the DMCA Notice and/or the prohibited P2P activity on the University's network, the risks and criminal liabilities under Federal law for illegally downloading and distributing copyrighted material, and the required steps to remove all unauthorized copies of the copyrighted works and P2P software; and
- (4) A copy of the DMCA Notice of Claimed Infringement will be provided to the CMU Student Conduct Officer.

b. Disciplinary Actions:

- (1) **First Notice:** The system will be blocked until the owner of the registered system has contacted the IT Help Desk and has taken all required remedial actions. On average, the system is blocked from the network for 1-2 days.
- (2) **Second Notice:** The system will be blocked for a mandatory period of 30 days. The user will be required to meet with the University's Student Conduct Officer. Further University sanctions may be imposed by the Student Conduct Officer in accordance with the Student and Academic Policies Guide.
- (3) **Third Notice:** The system will be blocked for a mandatory period of 45 days and the owner's network privileges may be lost indefinitely. The user will be required to meet with the University's Student Conduct Officer. Further University sanctions may be imposed by the Student Conduct Officer in accordance with the Student and Academic Policies Guide. The student appeal process is outlined in the Student Code of Conduct.

2. Student use of University-owned systems

a. Impeding Actions:

- (1) The system will be blocked from the network and from accessing the Internet until IT technicians remediate the system of all unauthorized copies of copyrighted material and P2P software;
- (2) An e-mail will be sent to the student forwarding the DMCA Notice of Claimed Infringement;
- (3) The student will be required to contact the IT Help Desk staff. The IT staff member will review with the student the DMCA Notice and/or the prohibited P2P activity on the University's network, and the risks and criminal liabilities under Federal law for illegally downloading and distributing copyrighted material; and
- (4) A copy of the DMCA Notice of Claimed Infringement will be provided to the CMU Student Conduct Officer.

b. Disciplinary Actions:

- (1) **First Notice:** The student will be required to contact the IT Help Desk staff, take a copyright quiz administered by the IT staff member, and sign an agreement of understanding within 7 days of the student being notified of the infringing activity. Failure to pass the quiz within the 7 day period will cause the student to lose their University computing and network privileges until

such time as the student successfully completes the quiz and signs the agreement of understanding. After which the student's computing and network account will be reinstated within 24 hours.

- (2) **Second Notice:** The student will lose University computer and network privileges for 30 days. The user will be required to meet with the University's Student Conduct Officer. Further University sanctions may be imposed by the Student Conduct Officer in accordance with the Student and Academic Policies Guide.
- (3) **Third Notice:** The student will lose University computer and network privileges for 45 days and the student's University computing and network privileges may be lost indefinitely. The user is required to meet with the University's Student Conduct Officer. Further University sanctions may be imposed by the Student Conduct Officer in accordance with the Student and Academic Policies Guide. The student appeal process is outlined in the Student Code of Conduct.

3. Employee use of University-owned systems and networks

a. Impeding Actions:

- (1) Unauthorized access or distribution of copyrighted material is considered unprofessional conduct.
- (2) The employee's system will be blocked from the network and from accessing the Internet until an IT technician remediates the system of all unauthorized copies of copyrighted material and P2P software;
- (3) An e-mail will be sent to the employee forwarding the DMCA Notice of Claimed Infringement; and
- (4) A letter describing the copyright infringement or prohibited use of the University's computers and network copy will be sent to the employee, with a copy of the letter sent to the employee's supervisor and the Director of Human Resources.

b. Disciplinary Actions:

The employee's supervisor will be required to review the P2P networking and copyright infringement with the employee. The employee may be subject to disciplinary action in accordance with the *Colorado Mesa University Trustees Policy Manual*, the *CMU Professional Personnel Employee Handbook*, and/or the *State Personnel System Employee Handbook* as applicable.

D. Procedures for reviewing the effectiveness of the plan

The University will evaluate the effectiveness of this plan—to combat unauthorized distribution of copyrighted material and P2P file sharing—annually in two parts. First, the plan will be reviewed to ensure the University is following best practices to curtail the unauthorized distribution of copyrighted material as accepted by copyright owners, recording industry associations, and peer institutions. Advancements in technology will also be considered. The second evaluation criteria will be more outcome-based, although the University realizes that its student population changes each year as new students enroll and campus network users turnover. The University's goal is to reduce the number of legitimate DMCA Notices received annually, and therefore, will analyze a comparison of the number of notices received in relation to the previous year.

IV. References:

Higher Education Opportunity Act (HEOA), August 14, 2008.

Federal Register, Volume 74, No. 161, Friday, Part II, Department of Education 34 CFR Parts 600, 668, 675, et al. General and Non-Loan Programmatic Issues; Proposed Rules, August 21, 2009.

Federal Register, Volume 74, No. 208, Thursday, October 21, 2009, Part II, Department of Education 34 CFR Parts 600, 668, 675, et al. General and Non-Loan Programmatic Issues; Final Rule.

The Digital Millennium Copyright Act (DMCA), 1998.

Colorado Mesa University Student and Academic Policies Guide, Student Code of Conduct, August 10, 2011.

Colorado Mesa University's Network Use Agreement, revised August 10, 2011.