

Kentucky Wesleyan College

Policy & Procedure Manual

Policy on Response to Allegations of Copyright Infringement

Approval Authority: President

Policy Type: College Policy

Policy Owner: Vice President for Academic Affairs

Responsible Office: Associate Vice President for Information Services & Resources

Revision History

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1. Purpose

The Digital Millennium Copyright Act (DMCA) amends federal copyright law to provide certain liability protections for online service providers (OSPs), including Kentucky Wesleyan College (KWC), when their computer systems or networks carry materials that violate (infringe) copyright law. To qualify for liability protection, the College 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.

2. Scope

This policy applies to the use of KWC computers and networks by all faculty, staff, students, contractors, and guests including personal computers accessing the campus network. This policy the College's response to copyright infringement claims under stipulations of the Digital Millennium Copyright Act and other federal regulations. Nothing in this Policy in any way negates or abrogates applicable law or the KWC intellectual property policies.

3. Policy

All students, faculty, staff, contractors, and guests at KWC must comply with United States copyright law. Copyright is legal protection against copying, distributing, and adapting creative, original intellectual works. This protection is broadly interpreted to cover just about any expression of a creative, original idea rendered in a fixed format. Texts (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 copy all or part of a copyrighted work and distribute, make derivative works, publicly display or publicly perform a copyrighted work only if:

- You have the copyright owner's permission; or

- You qualify for legal exception (most commonly applying to education or under provisions of “fair use”).

Copying, distributing, downloading, and uploading information on the Internet may infringe copyright. Even an unintentional infringement violates the law. Violations of copyright law that occur on or over the College’s networks (including privately owned computers) or other computer resources may create liability for the College and the computer user. Accordingly, infringers are subject to College disciplinary procedures.

4. Annual Notice

Each fall semester, shortly after the beginning of classes KWC’s Agent Designated to Receive Infringement Complaints (hereafter, Designated Agent) shall email, all KWC students, staff, and faculty notification describing institution policies and sanctions related to copyright infringement. This disclosure shall include:

- A statement that unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may result in criminal and civil penalties;
- A summary of the penalties for violation of federal copyright laws;
- A description of KWC policies, including disciplinary actions, with respect to unauthorized peer-to-peer files sharing.

5. Review & Assessment

This policy will be reviewed and its effectiveness assessed every three years by the College’s Designated Agent to receive claims of alleged infringement, the Vice President for Student Services, and the Associate Vice President for Information Services & Resources.

6. Technology-Based Component

The Higher Education Opportunity Act of 2008 (HEOA) and subsequent regulations require the use of a technology-based component. This may include such technologies as bandwidth shaping, traffic monitoring to identify the largest bandwidth users, a vigorous program of responding to Digital Millennium Copyright Act (DMCA) notices from copyright owners, and a variety of commercial products designed to block or reduce illegal file sharing. KWC utilizes bandwidth shaping to virtually eliminate the use of most P2P softwares used in illegal downloading.

7. Alternatives to Illegal Downloading

Having reviewed the legal alternatives to illegal downloading, KWC makes information available to students via the Intellectual Property web site with links from other sources of student information.

8. Related Policies

8.1. Intellectual Property ~ Ownership & Use

9. Procedures

9.1. Notice and Counter Notice When the College Receives an Infringement Claim Concerning Computer System or Network Use by Students in Residence

9.1.1. A copyright owner, or person acting for the owner, must provide the College's Designated Agent with written notice that information residing on the College'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 employed by the College has independent knowledge of a copyright violation on a College computer system or network, the College may have the duty to remove the infringing material, even if there is no "notice" from the copyright owner. Therefore, that person should report the violation to the College's Designated Agent as soon as possible.

9.1.2. Upon receipt by the College's Designated Agent of a complaint meeting the requirements of 17 U.S.C. 512(c)(3), the College will promptly disable access to the allegedly infringing material when able to identify the computer or server containing the allegedly infringing content and its owner from information provided in the complaint.

9.1.3. The College will promptly inform the computer account holder/user that access to the allegedly infringing material has been disabled.

9.2. Response from Student Computer User/Owner

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

9.2.1.1. Infringement of copyright is actionable under paragraph 23 of the [KWC Student Code of Conduct](#) in that it violates this policy, section B.5 of the [KWC Information Technology Appropriate Use Policy](#), and United State copyright law. The level of penalty assigned shall take into consideration that this is a repeat offence. Such penalties shall be consistent with the Student Code of Community Standards 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 College'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.

9.2.1.2. In the case of a first claim of infringing activity against the computer account holder/user, the College's Designated Agent will typically restore access to the network as soon as feasible. The Designated Agent shall notify the complainant and maintain a record of the action. The Designated Agent will also notify the VP for Student Services of the policy violation. A first violation will typically be treated as a Level 1 offense.

- 9.2.1.3. In the case of a second claim of infringing activity against the computer account holder/user occurring subsequent to the restoration of connectivity to the network as described in 8.2.1.2, the Designated Agent may refer the matter to the VP for Student Services. A second violation will typically be treated as Level 3 offense and will include the recommendation that the computer owner lose personal internet privileges for a period of two weeks.
- 9.2.1.4. In the case of a third valid claim of infringing activity against the computer account holder/user, the Designated Agent will refer the matter to the VP for Student Services. A third violation will typically be treated as a Level 4 offense and will include a recommendation that the computer account holder/user be permanently barred from personal computer access to the KWC network.
- 9.2.2. The computer account holder/user may provide the College's Designated Agent with 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).
- 9.2.2.1. The Designated Agent will promptly transmit the content of the counter notice to the claimant and will inform that without further action from the claimant, the removed materials or disabled access will be restored in 10 business days.
- 9.2.2.2. The College 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 original claimant 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 College.
- 9.3. Procedure When KWC has Notice that Material Provided on an Official College Website, Provided in Another Internet Communication on Behalf of the College, or Resident in a Publicly Accessible Computer File on the KWC Network May Infringe on Intellectual Property Rights
- 9.3.1. The College makes every effort to 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.
- 9.3.2. "Official" web sites and communications include those which are funded or otherwise sponsored by the College for a College purpose, or which are created by an employee or agent of the College who is acting within the authorized scope of employment or agency on behalf of the College (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 College networks, computers, and computer systems and accessible to others is also covered by this procedure.
- 9.3.3. The College has "notice" of possible infringement when a third party advises a College official that there is an infringement, or when it appears to a College official

that material is likely to be infringing based on the circumstances (e.g., copies of nationally syndicated cartoons appear on a College web site without any statement of copyright permission). Such notification shall be immediately forwarded to the College's Designated Agent.

- 9.3.4. When the College has notice of a possible intellectual property infringement in official College-provided content, it will in good faith:
 - 9.3.4.1. Contact the operator of the allegedly infringing computer or network to determine if the allegedly infringing material is located on a College resource.
 - 9.3.4.2. Work with the identified operator to determine ownership of the copyright or other intellectual property through consultation with the author of the College content or controller of the College computer, and the party claiming ownership. Appropriate supervisory personnel and the affected Vice President will be notified at this point.
 - 9.3.4.3. If it is determined that the claimant or third party owns the material and the College has not secured permission for use, the College will determine if there is justification for a claim of "fair use."
 - 9.3.4.3.1. If the College finds a sufficient case to claim "fair use," it will so notify the owner.
 - 9.3.4.4. If the identified material is owned by someone other than the computer operator or the College and there is insufficient basis for a "fair use" determination, the College 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 material will be removed.
 - 9.3.4.5. Unauthorized use of copyrighted materials on College computers or networks may violate relevant laws and may constitute inappropriate use of College 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 College administrators.
 - 9.3.5. KWC 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 College's Designated Agent should be advised as soon as there is any notice of possible infringement.
 - 9.3.6. Removal of official College content, especially course materials, can be harmful to academic freedom, to teaching effectiveness, and to the College'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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