

Higher Education Opportunity Act

Copyright related requirements

CELTT Presentation to Deans and Vice Chancellors, Spring 2010

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1965 Higher Education Act signed into law

2008 Higher Education Opportunity Act reauthorizes HEA

October 2009 DOE released final requirements re: implementation

July 1, 2010 new requirements took effect

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Annual Disclosure to Students

- ❑ informs students that unauthorized distribution of copyrighted material may subject the students to civil and criminal liabilities
- ❑ provides a summary of the penalties for violation of Federal copyright laws
- ❑ describes the institution's policies with respect to violations including disciplinary actions

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DOE Responsibility

- ❑ develop a summary of the civil and criminal penalties for violation of Federal copyright laws
- ❑ include as part of the Federal Student Aid Handbook that an institution may use to meet this requirement

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Date: Mon, 04 Oct 2010 17:21:53 -1000
From: UM Information Technology Services <announce@HAWAII.EDU>
Subject: 2010 Official Notice Regarding Copyright Violations

In accord with the U.S. Higher Education Opportunity Act of 2008, the University of Hawaii is now required to provide this annual notification regarding copyright violations.

Unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject you to personal civil and criminal liabilities. This may include downloading, uploading or sharing of music, videos, games, software or books for which you do not have permission. Illegal sharing of copyright materials also violates UM policy EE.210: Use and Management of Information Technology Resources.

The University of Hawaii encourages the use of legal alternatives to unauthorized downloading. EDUCAUSE has compiled an extensive list of such alternatives, many of which are free, and maintains it at: <http://www.educause.edu/legalcontent>

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.

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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 <http://www.copyright.gov> especially their Frequently Asked Questions (FAQ) at: <http://www.copyright.gov/help/faq>

It is the policy of the University of Hawaii to investigate complaints of copyright violation filed in compliance with the Digital Millennium Copyright Act. The University uses the following procedures:

- * The infringing computer will be blocked immediately from accessing the University of Hawaii's network.
- * If the computer associated with the copyright violation activities can be linked to an individual or responsible authority, they will be notified that:
 - all unauthorized copies of any copyrighted materials must be removed immediately; and
 - the user must contact and meet with a campus representative or the UM Information Security Officer & sign the UM Copyright Notification Letter.
- infringing users are advised that their actions may also have violated the University of Hawaii Systemwide Student Conduct Code or other applicable policies and disciplinary action may be taken.
- * If the complaint is found to be a REPEAT OFFENSE, in addition to receiving another copyright infringement notice, an official complaint will be filed with the appropriate Dean and/or Director requesting disciplinary action and sanctions in accordance with University due process. This complaint may appear on the individual's permanent University records.

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Institutional Requirements

- develop and implement a plan to combat unauthorized distribution of copyrighted material
- consider technology-based deterrents
 - *bandwidth shaping*
 - *traffic monitoring*
 - *accepting and responding to DMCA notices*
 - *a commercial product designed to reduce or block illegal file sharing*

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Institutional Requirements

- mechanisms for informing its community about appropriate versus inappropriate use of copyrighted material
- procedures for handling unauthorized distribution of copyrighted material, including disciplinary procedures
- procedures for periodically reviewing the effectiveness of the plans to combat infringement

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Institutional Requirements

- periodically review the legal alternatives for downloading or otherwise acquiring copyrighted material
- make available the results of the review through a website or other means
- offer legal alternatives for downloading or otherwise acquiring copyrighted material

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DOE Expectation

- individual institutions, national associations, and commercial entities will develop and maintain up-to-date lists that may be referenced for compliance with this provision

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File Sharing @ UH

Are you downloading and/or sharing music, movies, TV shows, or software using P2P software such as BitTorrent, LimeWire, eDonkey? **Do you have legal permission to do so?** If the answer is "NO" or if you're not sure, **STOP IMMEDIATELY!** Downloading or sharing copyrighted information (music, movies, TV shows, software, etc.) without permission is **ILLEGAL**, and in violation of University policy ([§ 2.210 Use and Management of Information Technology Resources](#)).

Unauthorized downloading and distribution of copyrighted material (songs, movies, software, games, etc.), including unauthorized peer-to-peer file sharing, is in violation of Federal Copyright Laws and may subject you to civil and criminal liabilities.

From the U.S. Department of Education:

Summary of Civil and Criminal 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 Frequently Asked Questions (FAQ) at www.copyright.gov/faq.

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If you are found to be violating any copyrights, you may be subject to both civil and criminal penalties (up to \$150,000 per item infringed upon plus any attorney and court fees) in addition to any UH disciplinary sanctions.

The University of Hawaii investigates all copyright violation complaints.

The suspected computer will be blocked immediately from accessing the University of Hawaii's network.

If the computer associated with the copyright violation activities can be linked to an individual, the individual will be notified by campus authorities describing the infringement activity and stating that:

- unauthorized downloading and distribution of copyrighted materials is illegal and in violation of UH policy ([§ 2.210 Use and Management of Information Technology Resources](#))
- all unauthorized copies of any copyrighted materials must be removed immediately
- the user must contact and meet with the campus representative or the ITS Security Officer & sign the [UH Copyright Notification Letter](#).
- if the user is a student, the student is advised their actions also violated the [University of Hawaii Systemwide Student Conduct Code](#).

If the complaint is found to be a **REPEAT OFFENSE**, in addition to receiving another copyright infringement notice, an official complaint will be filed with the appropriate Dean and/or Director requesting disciplinary action and sanctions in accordance with University due process. This complaint may appear on the individual's permanent University records.

Legal File Sharing Alternatives

There are many alternatives to illegal file sharing. In addition to borrowing materials from the University of Hawaii's libraries & public libraries, numerous legal and commercial options exist.

EDUCAUSE has compiled an [extensive list](#) of legal online content complete with links to these resources.

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The Implications

- ❑ Aligns with our mission to create responsible global citizens
- ❑ Presents an opportunity to better educate the community about
 - copyright
 - respect for intellectual property

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The Implications

- ❑ The requirement to periodically assess our plans affords the chance to evaluate new technology developments.
- ❑ Resources need to be directed to compliance
 - tools
 - time and effort – to develop policies, plans, and create documentation

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Role Models for Compliance

HEOA Role Models

As specified by Congress and the Department of Education, colleges and universities have a great deal of flexibility in determining how they will comply with the HEOA. Compliance strategies will also change as technology and business models evolve and as experience accrues. There is thus no one-size-fits-all approach, now or in the future. Instead, EDUCAUSE has identified a range of campuses to serve as role models and case studies, whose choices can help inform peer institutions. We appreciate their willingness to act as leaders in this important work. For further information, contact [Steve Sworona](mailto:Steve.Sworona@edUCAUSE.org).

- [Bowler University](#)
- [Bowling Green State University](#)
- [Cornell University](#)
- [Illinois State University](#)
- [Pomona College](#)
- [Reed College](#)
- [South Texas College](#)
- [Texas State University-San Marcos](#)
- [University of California, Los Angeles](#)
- [University of Delaware](#)

We are also maintaining a list of [HEOA compliance pages from other campuses](#).

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Resources

- ❑ <http://www.educause.edu/HEOA>
- ❑ <http://www.educause.edu/Resources/Browse/LegalDownloading/33381>
- ❑ <http://www.educause.edu/blog/sworona/189008>

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