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Policy Name: Copyright Infringement Notifications & Takedown Procedures under the Digital Millennium Copyright Act/Higher Education Opportunity Act **Policy Number:** J-3

Functional Area(s) Responsible: Information Technology

Owner(s) of Policy: Information Technology

Most Recent BOT Approval Date: March 2011

Most Recent Review Date: Spring 2023

Most Recent Review/Revision Type: none minor/non-substantive substantive/extensive

Policy Statement:

FLCC will manage its computing resources to ensure compliance with Federal Copyright Law and related legislation. Copyright infringement involving the College's IT resources is prohibited. Persons who are found to violate the copyright may have their access to Finger Lakes Community College computer systems and communication networks suspended or terminated.

Reason(s) for Policy:

Employees & students need to be aware of the rights of copyright owners. This policy establishes formal compliance with the Digital Millennium Copyright Act and the Higher Education Opportunity Act.

Applicability of Policy:

All users of FLCC network resources.

Definitions:

None

Related Documents:

- United States Copyright Office: <http://www.copyright.gov/>
- The Copyright Clearance Center: <http://www.copyright.com/>
- The TEACH Act: <http://guides.lib.utexas.edu/copyright/teachact>
- FLCC Meder Library's Reference area has additional information on federal copyright law
- FLCC Network Usage Policy
- Digital Millennium Copyright Act
- Higher Education Opportunity Reauthorization Act

Procedures:

Federal Copyright Law and Finger Lakes Community College policy prohibit the copying and/or distribution of copyrighted material without the permission of the copyright owner. Copyright infringement involving the College's IT resources is prohibited under the Network Use, Student Computer Use, E-mail, and Employee Desktop Computer Use Policies. Peer-to-Peer file sharing is not allowed under the Network Use Policy except when IT installed or authorized.

Notification and Takedown Procedures for Copyright Materials Alleged to Reside on FLCC IT Resources

For those cases where the copyright owner or representative claims a copyright infringement due to the existence of copyrighted material which resides on FLCC-owned IT resources, or is being made available/transferred on FLCC networks, the following procedure applies.

Complaint Notice Procedures for Copyright Owners

Notice of alleged copyright infringement to the Designated Agent concerning information residing on Finger Lakes Community College's computer systems or communications networks must contain the following:

- A description of the works claimed to be infringed.
- A description of the location of the allegedly infringing material sufficient for the Designated Agent to find the works.
- Sufficient information to enable the Designated Agent to contact the complaining party.
- A statement that the complaining party believes in good faith that the use of the material is not authorized by the copyright owner, the owner's agent, or the Copyright Act.
- A signed statement that the information provided by the complaining party in the notice is accurate and, under penalty of perjury, that the complaining party is the copyright owner of one or more of the exclusive copyright rights or is authorized to act on behalf of the copyright owner of one or more of the exclusive copyright rights.
- A physical or digital signature of the owner of an exclusive copyright right or the owner's authorized agent, which accompanies the statement.

Designated Agent

Contact information for the Designated Agent registered with the United States Copyright Office for Finger Lakes Community College is available at:

<https://dmca.copyright.gov/osp/publish/history.html?search=FLCC&id=4572543fe78574758c1a80a7c95b2dc4>

Alleged Infringing Site Take Down Procedures

When properly notified of the potential copyright infringement, the Designated Agent will make a reasonable effort to contact the site or page owner of the materials in question. There will be an attempt to secure the voluntary take down of the work, but, if the materials in question are not voluntarily taken down, then Finger Lakes Community College will immediately disable access to the work unless it is immediately determined by the Designated Agent that the use of the material is lawful under copyright law. The owner of the site or page of the alleged infringing material may exercise their counter notice procedure rights as set forth below. The Designated Agent may, but is not required to, undertake to determine if the material in question complies with copyright law.

Counter Notice Procedures

After voluntary take down or if the site is involuntarily disabled, the owner of the site containing the allegedly infringing material may provide counter notification to the Designated Agent. Also, Finger Lakes Community College may, but is not required to, provide counter notification to the complaining party on its behalf or on behalf of its employee and student after voluntary take down or if the site is involuntarily disabled.

Counter notices can claim only that either the copyright owner is mistaken and that the allegedly infringing material is lawfully posted, or that the allegedly infringing material has been misidentified. A counter notice asserting that the allegedly infringing material is fair use of the complaining party's work is an example of a counter notice claim that the copyright owner is mistaken in characterizing the material as infringing. Various Finger Lakes Community College officials may be consulted in arriving at a fair use determination.

Counter notices to the Designated Agent must contain the following:

- A physical or digital signature of the site or page owner that contained the allegedly infringing material (the "Page Owner").
- A description of the materials removed and its location before it was removed.

- A statement that the Page Owner believes in good faith that the material was removed by mistake because the material is not infringing or that the material was misidentified.
- Sufficient information to enable the Designated Agent to contact the Page Owner (e.g., name, address, phone number, e-mail address), and the consent of the Page Owner to the personal jurisdiction of the federal district court with proper subject matter jurisdiction for any court actions arising from the infringement.
- A statement that the Page Owner will accept service of process from the complaining party.

Access to the materials in question will be restored within 10 to 14 business days after the date the Designated Agent receives the counter notice unless the Designated Agent first receives a notice from the complaining party that an action has been filed seeking a court order to restrain the Page Owner.

The Designated Agent will promptly send a copy of any substantially conforming counter notice to the complaining party indicating that the site will be restored within 10 to 14 business days unless the Designated Agent receives a notice of court action.

Procedures Relevant to Copyright Materials Alleged to be available via FLCC Network Resources

In the case of copyright materials identified as being offered or available through FLCC’s network resources (for example through peer to peer file sharing techniques), the College has taken a number of steps to promote effective copyright protection. Peer to peer file sharing is disallowed except for legitimate, IT-authorized purposes by the Network Use Policy. The College requires authenticated access to its network, monitors network traffic and manages bandwidth allocation. In response to the Higher Education Opportunity Act (2008), the College provides notification to users of the potential financial liability of copyright infringement. It additionally notifies users of its policies and potential disciplinary action regarding inappropriate use of its networks and other IT resources as regards copyright infringement.

Notification Procedures

In the event that a copyright holder or authorized representative detects an instance of copyright infringement utilizing the FLCC network, the above notification procedure may be utilized with notice sent to the College’s Designated Agent registered with the US Copyright Office. Alternatively, notifications may be sent to the College’s registered EDU domain contacts (see below). Infringement notifications should identify the work infringed, date and time of the alleged infringement, IP address, IP port, and additional information useful in enabling verification of the infringement and user ID. In addition, the notice must include a good faith statement that this action represents unauthorized copyright infringement, and that the complaining party is the copyright holder or designated representative for the copyright holder(s) of the infringed material.

Technical contact:

Network Administrator
 Finger Lakes Community College
 3325 Marvin Sands Drive
 Canandaigua, NY 14424
 (585) 785-1445
 Brian.Caraway@flcc.edu

Administrative contact:

Chief Information Officer
 Finger Lakes Community College
 3325 Marvin Sands Drive
 Canandaigua, NY 14424
 (585) 785-1300
 Edward.Kelty@flcc.edu

“Take Down” Procedures

Personally owned devices utilizing the wireless network

In those cases where the College is able to verify and identify the access to the network corresponding to the information provided in the infringement complaint, IT will notify the user via e-mail and inform them of the complaint and potential consequences. The user will be referred to the judicial process and offered the opportunity to dispute the complaint and meet with IT personnel. In the event of a second occurrence, IT will disable the user’s

wireless account, refer the individual again to the judicial process and require an individual meeting with the user before considering the reestablishment of wireless access

College-owned systems wired to the network

In those cases where the College is able to verify and identify the access to the network corresponding to the information provided in the infringement complaint, IT will remove the system from network access until it has restored the software load to its original state. IT will follow up to identify the policy infractions involved and take action accordingly.

Forms/Online Processes:

None

Appendix:

None