

I'm Sarah Morehouse from the Empire State College Online Library. This podcast will explain the Digital Millennium Copyright Act, which is a piece of copyright law that affects online and computer-based higher education.

Each new generation of technology has made copying and sharing copyrighted works easier, faster, and cheaper, which makes infringing copyright easier. The DMCA was passed in 1998 to provide a way for copyright law to cope with computers and the Internet.

The anti-circumvention provision of the DMCA makes it illegal to attempt to break or get around Digital Rights Management in order to access or copy a work.

Digital Rights Management, also known as DRM, is any hardware or software feature that is meant to keep people out of something or keep them from copying it. It can be a username and password or IP recognition on a library database, region encryption on a DVD, or copy protection of any kind.

Every few years, the Librarian of Congress rules on exemptions to the DMCA anti-circumvention rule. That means that the exemptions change every few years, and you will need to check back to see if what you want to do is legal at the time you want to do it.

The most recent ruling allows college film studies professors to circumvent DRM on DVDs in order to create movie clips to use in the classroom, as long as those uses would be legal under Educational Use or Fair Use. Documentary and non-commercial filmmakers can also circumvent DRM on DVDs in order to use their contents in their films in ways that would be legal under Fair Use.

It is also legal to circumvent the DRM on an e-book so that a blind or low-vision person can access it using a read-aloud function or screen-reader. This is only allowed if there isn't a screen-reader accessible edition of the e-book already on the market. If you think your use qualifies for one of the DMCA exemptions, you should ask a librarian to make sure. Go to <http://www.esc.edu/askalibrarian>.

That's all for the anti-circumvention provision.

Another part of the DMCA is called safe harbor. Safe harbor offers some protection for Internet service providers, like colleges and universities, against liability for what their users do on their networks.

Without safe harbor, if one of our users, including faculty, staff or students, put up infringing content using our network, the college would be liable. With safe harbor, the infringing user is liable, but the college is not.

In exchange for this protection, the college has to abide by certain rules. Mainly that means that

the college has to follow DMCA takedown procedures.

First, we have to take down any infringing content that we find ourselves. We don't have to actively monitor our web space, but if we do become aware of something, we have to remove it. In a way, this is a good thing, because if we find infringing content, we can talk with the person who posted it and work with them to remove it without taking down the whole web page for weeks.

And second, if someone who's not employed by the college finds infringing content, they issue a DMCA takedown notice to the vice president of the Office of Integrated Technologies, who is our officially designated copyright agent.

The DMCA notice includes four elements. One, the person issuing the notice provides their name, address and an electronic signature. Two, they identify the infringing content and the URL of the page where it was found. Three, they state that they have a good faith belief that the materials are posted illegally. And four, they swear that their statements are accurate and, under penalty of perjury, that they either are the copyright owner, or are authorized to act on their behalf.

As soon as the copyright agent receives the DMCA takedown notice, the allegedly infringing content has to be taken down immediately. The copyright agent isn't allowed to investigate whether there's any merit to the claim. There is no due process. In some cases, this means that legitimate content gets taken down.

You do not get any advance warning that your content is being taken down. The copyright agent notifies you as soon as possible, but the content may be already down by the time you hear about it. Also, in some cases it's necessary to take an entire web page or web site down because there's no way to go in and remove just the piece of content that is infringing.

If your content is taken down because of a DMCA notice, you have the option of defending yourself by issuing a counter-notice. But if you do, you may have to go to court to defend your use of the allegedly infringing material. You could face civil and criminal penalties and court fees. Before issuing a counter-notice, talk to a lawyer. If the legal advice you receive suggests that you would have a good case, then you can issue your counter-notice, which you send to the college's copyright agent.

The counter-notice has these four elements: One, your name, address, phone number and signature. Two, the identification of the content and its URL before it was taken down. Three, you have to swear under penalty of perjury, that the content was not infringing, and the person who issued the takedown notice was mistaken. And four, you have to state your consent to local federal court jurisdiction.

The library's copyright information web site has a link to a DMCA Counter-notice Generator, but

remember to talk to college counsel before making use of it.

After the college's copyright agent receives your counter-notice, they send it on to the person who issued the DMCA takedown notice. That person has 14 days to start a lawsuit against you. If they do not, then the college has to put the content back up. But in the mean time, it has been down for more than two weeks.

Another thing to take into consideration is that the DMCA also requires that the college terminate the computer accounts of users who are repeat offenders. So it's important to get a license to use content when you need to, and when you use Fair Use, adhere to the guidelines and don't take big risks.

If you are worried that a colleague has posted infringing content, find a polite way to ask them whether they have a license or have talked to the library about whether it's fair use. Let them know that the library can help look for a legal way to provide access to the content, or similar content that's not under the same restrictions.

This concludes the Digital Millennium Copyright Act podcast. Check out the Empire State College Online Library's other copyright podcasts and our copyright information web site. If you have any questions, you can ask them by going to <http://www.esc.edu/askalibrarian>.