



02.320

**RESPONSE POLICY AND PROCEDURES TO DIGITAL
MILLENNIUM COPYRIGHT ACT (DMCA) COPYRIGHT
INFRINGEMENT NOTIFICATION AND/OR SUBPOENA**

Authority: Chancellor

History: Reformatted July 11, 2005; effective November 9, 2003

Source of Authority: 17 U.S.C. §512

Responsible Office: Information Technology Systems Division

I. Purpose

The university complies with the provisions of the Digital Millennium Copyright Act (“DMCA”). Owners of copyrighted works, or persons authorized to act on their behalf, who claim copyright infringement must notify the designated agent (<http://www.uncw.edu/www/copyright.html>) of the University of the alleged infringement. The designated agent of the university is registered with the U.S. Copyright Office and contact information for the designated agent is included on the university’s web site. Under the DMCA, the infringement notification must include specific elements in order for the claim to be valid (See “Elements of Notification”). A subpoena may also be issued to require the university to identify the alleged infringer.

II. Procedure

Upon receipt of an infringement notification or a subpoena, the designated agent will determine whether the claim or subpoena meets the required elements of notification and is valid. If so determined, the university will proceed as follows:

- A. Takedown -- If, upon investigation it is determined that infringement exists, the work or works will be removed or blocked immediately and the infringer will be referred to the Office of Dean of Students or appropriate dean or director for counseling and/or disciplinary action. If infringement is difficult to ascertain, the university will, through the Office of the Dean of Students (or appropriate dean or director in the case of faculty or staff), contact the alleged infringer and review the work(s) in question to determine who truly owns the copyright or to determine whether a defense (e.g. fair use) applies or whether permission can be obtained. If in that case, a reasoned decision cannot be made, the designated agent will confer with the university’s Office of General Counsel for review and determination. If it is determined that the work(s) comprise infringement, the work(s) will be removed or blocked immediately and the infringer will be referred to the Office of Dean of Students or appropriate dean or director for counseling and/or disciplinary action. Repeat offenders will be subject to having their accounts terminated.

- B. Putback -- In every case where works claimed to be infringing are removed, or where access is blocked to the works, instructions on filing a counter notice will be provided to the alleged infringer (See "Contents of Counter Notification"). A counter notice is a statement, under penalty of perjury, that the computer account holder/user has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled. If a counter notification is filed, the designated agent will determine whether it contains the elements required by the DMCA. If the counter notification is valid, the designated agent of the university will provide the person who provided the notification of infringement with a copy of the counter notification, and inform that person that the university will replace the removed material or cease disabling access to it in 10 business days. The university will replace the removed material or enable access to it not less than 10, nor more than 14 business days following receipt of the counter notice, absent notification that an action seeking a court order has been filed by the person who submitted the original notice of infringement.

III. Elements of Notification

To be effective, a notification of claimed infringement must be a written communication provided to the university's designated agent that includes substantially the following:

- A. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- B. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- C. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.
- D. Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.
- E. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- F. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

IV. Contents of Counter Notification

To be effective, a counter notification must be a written communication provided to the university's designated agent and include substantially the following:

- A. A physical or electronic signature of the subscriber.
- B. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
- C. A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
- D. The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of U.S. District Court for the Eastern District of North Carolina and that the subscriber will accept service of process from the person who provided notification or an agent of such person.