

Office/Contact: Division of Technology and Security

Source: SDBOR Policies 7.1 and 3.4.1, 17 U.S.C. Section 512(c) as amended

Link: <https://public.powerdms.com/SDRegents/documents/1727287>;

<https://public.powerdms.com/SDRegents/documents/1680638>;

<https://www.law.cornell.edu/uscode/text/17/512>

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## **SOUTH DAKOTA STATE UNIVERSITY Policy and Procedure Manual**

**SUBJECT:** Digital Millennium Copyright Act

**NUMBER:** 7:3

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### **1. Purpose**

This policy and its procedures address University compliance with the Digital Millennium Copyright Act (“DMCA”) and specifically 17 U.S.C. Section 512(c) as amended.

### **2. Policy**

- a. The University respects the rights of copyright holders, their agents, and representatives, and implements appropriate policies and procedures to support these rights without infringing upon the legal use, by individuals, of those materials. All individuals who use University Information Technology resources are responsible for their compliance with applicable copyright laws, SDBOR and University policies, and other applicable provisions.
- b. Where University employees and agents have knowledge or awareness of specific, copyright-infringing material, or where they are subjectively aware of facts that make the material’s specific copyright infringement obvious to a reasonable person, and that material is located on University Information Technology resources (including, but not limited to, University Official Websites per University Policy 7:14), they must report this information to the DMCA Agent. Under appropriate circumstances, the Vice President for Technology and Security, or designee, may terminate authorization of users of its system or network who are found to intentionally or repeatedly violate the copyright rights of others.
- c. The University’s designated, registered DMCA Agent shall receive all claims of infringement under the DMCA. Claims may come from inside or outside the University. The DMCA Agent shall promptly acknowledge receipt of each infringement claim, process, investigate, and take appropriate actions under the DMCA.
- d. The DMCA Agent shall coordinate activities, keep required records, and assure proper adjudication of incidents in conformity with SDBOR and University policies and procedures and applicable legal provisions.
- e. The University will use a three pronged approach to address DMCA related activities. The University will: 1) provide annual disclosures to students about copyright law, policies, and penalties, as well as education on DMCA issues; 2) use reasonable measures to prevent inappropriate use of peer-to-peer (P2P) programs and software, including technology

methods; and 3) annually suggest lawful alternatives for obtaining electronic copyrighted materials.

### 3. Procedures

- a. Notice of alleged electronic copyright infringement originating at the University should be properly sent to the University's designated DMCA Agent, or successor agent:

SDSU Information Security  
South Dakota State University  
Morrill Hall 208, Box 2201  
Brookings, SD 57007  
(605) 688-4988  
[sdsu.security@sdstate.edu](mailto:sdsu.security@sdstate.edu)

- b. DMCA notices of alleged infringement must contain:

- i. A physical or electronic signature of the copyright owner, or their authorized representative, of an exclusive right that is allegedly infringed.
    - ii. Identification of the copyrighted work(s) claimed to have been infringed and its owner.
    - iii. Description of the material that is claimed to be infringing desired to be removed or access disabled, and information reasonably sufficient to permit the University to locate the material.
    - iv. Information reasonably sufficient to permit the University DMCA Agent to contact the complaining party, such as an address, telephone number, and electronic mail address.
    - v. 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.
    - vi. A statement that the information in the notice 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.

- c. Response to Bona Fide Notices

Failure to include information required by this policy and applicable law in the notice of alleged infringement may result in a delay of the processing of the DMCA notification. The University reveals names of alleged offenders only when provided a valid subpoena. Upon receipt of a notice the DMCA Agent, or designee, will:

- i. Assess the DMCA notice to ensure it conforms to the statutory requirements.
  - ii. Attempt to identify the individual(s) responsible using the internet location of the allegedly infringing materials and determine if this is the first or repeated related

notice.

- iii. Direct prompt removal of material or removal of access to the material claimed to be infringing.
  - 1. The DMCA Agent shall take steps to ensure this take-down will impact essential University activities as little as possible in effecting immediate compliance, and will arrange that University agents will promptly restore the material or activity, upon proper compliance with the terms of DMCA regarding put-back procedures.
  - iv. Take reasonable steps to notify the user promptly of the take-down. This notice will specify information required to make a counter-notice and other information explaining applicable due process rights.
  - v. Upon identification of reasonable facts to pursue discipline, the DMCA Agent, or designee, will process the information through the applicable process, including but not limited to the Student Conduct Code or applicable employment disciplinary process for determination of responsibility. The individual's supervisor or student life official will be notified of the alleged copyright violation notice.
- d. If an individual is certain they are legally using the material, they may file a counter-notice. Counter-notices may only be sent on behalf of the individual user in two situations: 1) the copyright owner is mistaken and the work is lawfully posted, or 2) the work has been misidentified.
  - i. Counter-notices must contain:
    - 1. The name, address, phone number, and physical or electronic signature of the individual filing the counter notice;
    - 2. Identification of the material and its location before removal;
    - 3. A statement under penalty of perjury that the material was removed by mistake or misidentification; and
    - 4. Consent of the individual filing the counter-notice to local federal court jurisdiction.
  - ii. Counter-notices involving consent to legal process on behalf of the University must be authorized and consented to by the University President.
- e. Upon receipt of any DMCA-related subpoenas requesting identifying information, the DMCA Agent will confirm the validity of the subpoena with the University's Office of General Counsel. Following confirmation, the DMCA Agent will identify the responsible user; provide a timely response to the requestor with the requested identifying information, if it is available; and inform the responsible user that the University has responded to a subpoena request, which identified them as being associated to an alleged copyright violation.

- f. Under the DMCA, the University will not be liable to the individual using electronic information for any harm they might suffer because of its actions in disabling access so long as it:
  - i. Takes reasonable steps to notify the individual about the allegations in a conforming notice that was received;
  - ii. Promptly sends a copy of any substantially conforming counter-notice to the complainant indicating that it will restore access in 10 business days; and
  - iii. Restores access to the allegedly infringing work within 10 to 14 business days after the day it receives the counter-notice, unless it first receives a notice from the complainant that they have filed an action seeking a court order to restrain the page owner.
- g. If the University receives notice that the complainant has filed an action seeking a court order to restrain the individual user, the University will not repost the allegedly infringing work. It will forward the notice to the page owner and to the University's Office of General Counsel or SDBOR General Counsel for response as appropriate.
- h. In accordance with University Policy 7:5, Acceptable Use of Information Technology Systems, use of the SDBOR or University's information technology systems is a privilege and requires that users act responsibly. Further, users found to have engaged in copyright infringement following due process may be denied access to the University's information technology systems definitively and referred for disciplinary action in accordance with the applicable SDBOR and University policies.
- i. Students held responsible for DMCA infractions under the Student Conduct Code may be assessed the following sanctions in addition to others available under the code from the Office of Student Affairs:
  - i. First infraction: Assessment of a \$25.00 fine and required participation in a DMCA educational awareness program.
  - ii. Second infraction: Assessment of a \$50.00 fine and a 3-day suspension of University internet connectivity.
  - iii. Third infraction: Assessment of a \$100.00 fine and permanent loss of their University internet connectivity.

#### 4. Responsible Administrator

The Vice President for Technology & Security, or designee, is responsible for the annual and ad hoc review of this policy and its procedures. The University President is responsible for formal policy approval.

SOURCE: Approved by President on 10/29/2015. Revised; Approved by President on 02/06/2020. Revised 01/31/2024 (clerical).