

SUL ROSS STATE UNIVERSITY

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SRSU Policy: Digital Millennium Copyright Act (DMCA) Policy

SRSU Policy ID: APM 7.07

Policy Reviewed by: Executive Cabinet

Approval Authority: Chief Information Officer

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Next Review Date: June 13, 2030

The Digital Millennium Copyright Act of 1998 (DMCA) revised copyright law for the digital environment to, among other things, define how alleged copyright infringements are to be handled and establish liability limitations for "online service providers" (OSP). As an OSP, SRSU must act promptly and follow the procedures outlined below in order to comply with the DMCA, facilitate the protection of copyrighted material, and limit the institution's liability in an alleged case of copyright infringement.

Designated Agent

The person designated at SRSU to receive notification of claims of copyright infringements, hereafter known as the "designated agent," is:

Title: Chief Information Officer

Address: PO Box C-81

City, State Zip: Alpine, Texas 79832

Email address: cio@sulross.edu

If anyone at SRSU other than the designated agent receives a notification of claimed infringement, do not accept it. Do not forward the request to SRSU's designated agent since it is the copyright owner's responsibility to follow the notification requirements of the DMCA. You may refer the complaining party to SRSU's Higher Education Opportunity Act page (<http://www.sulross.edu/page/1236/highereducation-opportunity-act>).

Receipt of Notification

Designated agent receives a notification of alleged copyright infringement from the copyright owner or agent authorized to act on behalf of the owner.

Designated agent verifies the completeness of the notification per requirements listed in section 512(c)(3) of the DMCA. The notification should include the following:

- A physical or electronic signature
- Identification of the infringed work
- Identification of the infringed material
- Contact information for the complaining party
- A statement from the complaining party regarding their good faith belief that use of the material is not authorized by law
- A statement of accuracy of the notification.
- A statement (under penalty of perjury) that the complaining party is authorized to act on behalf of the copyright owner.

If the above information is incomplete, the designated agent replies to the complaining party indicating such.

If complete, the designated agent forwards the notice to the Director of Infrastructure Services or verification of infringement.

Verifying Infringement

The Director of Infrastructure Services (DIS) verifies that the infringement notice contains the following information to assist in the investigation:

- File name, URL, etc of the infringing material

- Date and time of infringement (cst/cdt)

- Location (IP address/fully-qualified domain name, etc) of the source of the infringing material

- Or other information "reasonably sufficient to permit the service provider to locate the material"

(DMCA section 512(c)(3)(iii))

DIS verifies the infringement utilizing tools available (ie: appropriate log file, network flow charts, Network Access Controllers, monitoring tools, etc).

DIS will also attempt to identify the location and the owner of the device which is alleged to contain the infringing material using the information provided in the complaint and any other tools available.

Response to Complaining Party

Upon verification of infringement, the designated agent will reply to the complainant via e-mail with the following message: "Thank you for bringing this matter to our attention. We will investigate and take appropriate action according to university policies and procedures."

If the infringement cannot be verified, the DIS will inform (in writing) the designated agent who will then respond to the complainant indicating such.

"Take-Down" of Infringing Material

Upon verification of infringement, DIS will send a request to sysadmin@sulross.edu (system administrators and network staff) requesting that the device hosting the suspected illegal material be blocked from SRSU network access per normal SRSU security procedures, as described in the SRSU Network Management Policy. The reason for the block will be designated as "DMCA notice" in the Change Management console. The request from DIS to sysadmin@sulross.edu should include the IP address, MAC address, NetBIOS name, or any other relevant identification information such as the "ID number" of the owner if known. Network staff will add the blocked computer to the SRSU Outage Dashboard with the explanation.

Notification of "Subscriber" (DMCA term)

Residence Hall (dorms) Student Notification

If the “subscriber” is a student living in an SRSU residence hall or dorm, the DIS will send the following information to the Housing Director and cc the designated agent:

Original DMCA notification

Identification of the computer and individual responsible for the alleged infringement

A representative from Residential Living will send an e-mail or campus mail to the alleged infringer in the format provided in Appendix A, attaching the infringement acknowledgement form (a PDF file) specified in Appendix B.

If the “subscriber” does not choose to submit a counter notification (see below), he/she must print and sign the infringement acknowledgement (see Appendix B) and return it in hard copy to the Residential

Living representative in order to acknowledge the infringement and confirm removal of the infringing materials.

When Residential Living receives the written acknowledgement, they will notify the DIS and the designated agent via e-mail or campus mail and attach a copy of the signed infringement acknowledgement.

The DIS will order the removal of the network block and the resolution will be entered into the Outage Dashboard application.

The Designated Agent will keep a copy of the signed infringement acknowledgement on file in the central OIT office.

Faculty or Staff Notification

Since Fair Use may make use of some copyrighted material legitimate, blocking access to or removal of materials could substantially disrupt teaching or research, handling of infringement notices involving faculty or staff needs to be handled with expedition and care.

The designated agent will send an e-mail or letter in the format provided in Appendix A to the alleged infringer, attaching the infringement acknowledgement specified in Appendix B. A copy of the notification will be sent to the appropriate Dean or Vice President.

If the infringing party does not choose to submit a counter notification (see below), he/she must print and sign the infringement acknowledgement (see Appendix B) and return it in hard copy to the Dean or Vice President who will verify compliance, notify the designated agent, and send a copy of the signed infringement acknowledgement to the designated agent either as an email attachment or via campus mail. The Dean or Vice President or designee will contact the DIS to request removal of the network block and the resolution will be entered into the Outage Dashboard application.

Other Notification

If the identity of the “subscriber” cannot be determined, the sysadmins will leave the network block in place and notify the DIS and the designated agent. The designated agent will respond to the complaining party indicating the network access to the infringing material has been blocked but the identity of the infringer cannot be determined.

Counter Notification

If the alleged infringer believes in good faith that the DMCA notice is in error, they have the right under the provision of the DMCA to submit a counter notification to SRSU's designated agent.

The written counter notification must include the following information:

- The individual's physical or electronic signature
- Identification of the material removed or to which access has been disabled
- A statement under penalty of perjury that the individual has a good faith belief that removal or disablement of the material was a mistake or the material was misidentified;
- The individual's name, address, and telephone number, and a statement that the individual consents to the jurisdiction of the Federal District court (i) in the judicial district where the individual's address is located if the address is in the United States, or (ii) in any judicial district where the service provider may be found if the individual's address is located outside the United States (17 U.S.C. § 512(g)(3)).

Students living in a residence hall will submit the written counter notification to the appropriate person in Residential Living, who will then forward via campus mail to the designated agent. All others will submit the counter notification to their Dean or Vice President who will forward it to the designated agent. Upon receipt of a counter notification, the designated agent will notify the complaining party of such, and the block will be removed 14 business days after receipt of counter notification, unless the complaining party files suit against the individual within 14 days and provided the materials and/or access are not in violation of any University policy.

Repeat Offenders

DMCA states that "repeat infringers" are subject to "termination in appropriate circumstances" (DMCA section 512(i)(1)(A)).

- Repeat infringement by students will be adjudicated by normal SRSU judicial processes.
- Adjudication for faculty and staff repeat infringers will be handled by normal SRSU employee disciplinary processes.

Repeat infringers are subject to the full range of sanctions, including the loss of computer or network access privileges without notification, loss of SRSU network credentials, disciplinary action, dismissal from the University, and legal action.

Appendix A -- Notification letter to send to the individual implicated in the DMCA notice of infringement

<enter current date>

Dear <name>,

You are receiving this letter because Sul Ross State University has received a notice of alleged copyright infringement which has been traced to your computer and/or your SRSU account. A copy of the notice is enclosed below, which references the following copyrighted materials:

<list the materials identified in the complaint>

In accordance with the Digital Millennium Copyright Act (DMCA), Sul Ross State University is required to block access to or remove the offending material(s) upon receiving the copyright infringement notice. Therefore, the computer containing these materials has had its network access blocked and will remain blocked until you respond in writing that you have removed all infringing materials and will not engage in subsequent copyright piracy activities, or you submit a counter notification (see below).

Downloading and distributing copyrighted materials (songs, movies, software, games, etc.) without permission or license from the copyright holder is illegal and also in violation of Sul Ross State University policies: "SRSU Intellectual Property Rights Policy" (www.sulross.edu/pages/3326.asp) and "SRSU Appropriate Use of IT Resources" (www.sulross.edu/docs/policy/apm704.pdf). We therefore expect immediate action to comply.

You must remove the infringing material from your computer, or if you have the legal right to possess the material, disable access to it by others (in other words, cease the illegal distribution activity). Then you must sign the attached infringement acknowledgement statement and return it in hard copy to <fill in the name and contact info of the person who is to receive the signed acknowledgement>.

If you in good faith believe this notice is in error, you have the right under the DMCA to submit a counter notification to SRSU's designated copyright agent, <agent name>.

Once I have received the signed acknowledgment or the counter notification, I will have the network block removed so you can use your computer on the campus network again.

For information on your rights and the requirements of the counter notification, see Section 512 of the DMCA at <http://www.law.cornell.edu/uscode/17/512.html>. For more information about the Copyright Laws, see www.copyright.gov. The full text of the DMCA can be found online at www.copyright.gov/legislation/dmca.pdf.

Your prompt attention to this serious matter is expected. If you have any questions about this letter, please contact me.

Sincerely,

<name and contact information of appropriate authority>

Appendix B -- Infringement Acknowledgement

The following letter must be filled out and signed by the infringing party and sent in hard copy to the individual who sent the original notification (i.e., the person who sent the letter in Addendum A). This letter must be received before the network block will be removed to restore Internet access and before the designated agent notifies the complainant of the action taken.

I, **<print name>**, understand that downloading, copying, sharing or otherwise distributing copyrighted information such as songs, movies, software, games, etc. without express permission of the copyright holder or agent is illegal and in violation of University policy.

I have removed all infringing materials and will not engage in subsequent copyright infringement activities.

I also understand that any subsequent violations of this policy will result in other actions in accordance with SRSU due process.

Signature:

Date:

Sul Ross State University Representative: **<print name>**

Signature:

Date: