

POLICY REGARDING PEER-TO-PEER FILE SHARING

I. Introduction

The instances of illegal peer-to-peer file sharing on the campus of Fort Hays State University (FHSU) has dramatically increased in recent years. Illegal file sharing undermines the integrity and mission of higher education institutions and potentially subjects students found to be guilty of illegal peer-to-peer file sharing to substantial criminal and civil penalties. The time and energy required of the University and its staff in receiving and responding to allegations of illegal peer-to-peer file sharing is significant. For these reasons, and in light of the passage of the Higher Education Opportunity Act by the United States Congress and signed into law by the President on August 14, 2008, the following is FHSU's policy regarding illegal peer-to-peer file sharing.

II. Policy

It is the policy of FHSU that any illegal peer-to-peer file sharing over the University's network is prohibited.

A. Definition

For purposes of this policy, the term "illegal peer-to-peer file sharing" means providing and/or receiving digital files over a network, where the files are stored on and served by personal computers of the users, without paying for use of the file or receiving permission from the copyright holder for the use of the file. While there are differing circumstances that may render downloading or uploading digital files such as music, movies, and video games legal in a certain circumstance, anytime you obtain (download) and/or share (upload) these files without having paid the copyright holder, you run the risk of violating the law and incurring severe penalties.

B. Civil and Criminal Penalties for Illegal Peer-to-Peer File Sharing

Federal law authorizes a copyright owner to recover civil damages in amounts between \$750 and \$30,000 for infringement. The maximum civil penalty allowed by law is \$150,000.

You can also be prosecuted criminally for copyright infringement. For first offenses alone the maximum sentence could be 5 years in prison and \$250,000 in fines.

C. University's Action Plan Regarding Illegal File Sharing on FHSU's Network

1. Education

Information regarding illegal file sharing is provided to students during freshmen orientation every year. In addition, there are regular education sessions throughout the year in residence halls. Residence hall staff are provided information regarding illegal file sharing every year during training and they in turn provide educational programs to their residents during the academic year. These programs also include discussions of legal alternatives to downloading.

2. Technical Response to Infringement Notification

FHSU utilizes a custom web-based system that requires users to register their computer(s) to their username before they are granted access to the network or Internet. The registration system identifies computers based on their MAC address¹, and each MAC address is assigned a unique IP address² using DHCP³. The DHCP logs contain information for every IP address assigned, including the MAC address associated with each assigned IP and the timestamp for when it was assigned.

After a copyright violation has been received, Computing and Telecommunications Center (CTC) personnel extract certain bits of information from the violation notice, including the IP address and the timestamp. The IP address identified in the violation is extracted from the DHCP server logs on the date of the violation and stored in a file. The MAC address associated with the IP address assigned by the DHCP server is extracted from the file and used to lookup the user who registered with that MAC address. The user's account for each violation is emailed to the University's Assistant Vice President for Student Affairs and General Counsel.

Each account identified in a violation notice is then "blacklisted" on the network. Blacklisting a user means preventing network traversal. The user may connect to the network and obtain an IP address, but cannot reach the Internet or other network resources. When a user is blacklisted, web traffic is redirected to a webpage stating that the user has been blacklisted and should contact the CTC HelpDesk for more information.

3. Student Affairs Response to Infringement Notification

When the Office of Student Affairs is notified by the CTC that a copyright infringement notice has been received, the Assistant Vice President of Student Affairs sends a letter to the student in question, informing him / her that s/he's been accused of violating the University's policy regarding illegal file sharing and consequently the University's Student Code of Conduct. In addition, the letter will have a time, date, and location of a scheduled Student Conference. These Conferences are scheduled outside of the student's class schedule, and may be rescheduled, if necessary. At the Student Conference, the accused will find out in detail the specifics of the complaint.

The purpose of the Student Conference is to see if an agreement can be reached about what happened and what might be an appropriate way to resolve the situation. Therefore, if the Student Affairs staff member and the accused student

¹ A Media Access Control address (MAC Address) is a unique identifier assigned to network adapters by network interface card (NIC) manufacturers.

² An Internet Protocol address (IP address) is a logical identification number assigned to devices in a network utilizing the Internet Protocol for communication.

³ DHCP, or Dynamic Host Configuration Protocol, is a protocol used to assign IP addresses and other network parameters to clients or network devices.

can agree on what happened (i.e., the student admits the violation) and on recommended sanction(s), the matter will be considered initially resolved. When the student completes the sanctions, the matter is then finally resolved.

Typical sanctions for a first violation of copyright infringement include: researching copyright infringement, writing a research paper on the definitions and applications of copyright infringement, conducting an educational session in the residence halls, and/or creating a bulletin board to inform others of copyright infringement. Sanctions increase upon a second violation, and network privileges may be lost for a third violation.

If the accused student does not admit the violation, then the matter moves on to a hearing. The hearing will be scheduled as soon as the Student Hearing Panel can be convened. The Administrative Officer will assemble the Student Hearing Panel, which consists of five students and a Panel Chair. Members of the Hearing Panel and the Chair are selected at the beginning of the Fall semester by a committee comprised of representatives from the Office of Student Affairs and the Student Faculty Court.

The purpose of the hearing is to bring forward any information that is available regarding the alleged violation. To that end, both the person making the complaint and the accused student may have witnesses and physical evidence at the hearing. The members of the hearing panel make a decision based on the information presented at the hearing. They use the "preponderance of evidence" rule - this means that in order for a student to be found in violation, the evidence must convince the hearing panel that it is more likely than not that the student violated the rule or policy. The weight and credibility of the evidence is considered.

The hearing panel will develop appropriate sanctions. Students have the right to appeal the decision. If the student is found in violation and decides to appeal the decision, the appeal goes to Student Faculty Court. An appeal of the Student / Faculty Court decision is also available, and goes to the University President.

4. University's Response to Complaining Agency

Generally, a notification of possible infringement is sent to the University by an agency or association supporting an industry such as the Recording Industry Association of America (RIAA) or the Motion Picture Association of American (MPAA). The University does not respond to the complaining party upon receipt of the initial notification, but rather follows the steps outlined above.

If the University receives further contact from a complaining agency, the University will cooperate with reasonable requests of the agency while all the while complying with the Family Educational Rights and Privacy Act (FERPA) and other applicable state and federal laws. The University does, however, reserve its right to disclose directory or other non-private student information in an attempt to cooperate with the complaining agency. The University also reserves the right to take any appropriate legal action in response to action on the part of a complaining party such as the issuance of a subpoena.

5. Technology-based Deterrents

To reduce the number of violations on our campus network, the CTC has opted to prevent some protocols from serving traffic from our student networks, while rate-limiting other protocols.

By preventing students from serving content via these protocols, we are effectively limiting the ability to accidentally or otherwise distribute copyrighted works. Rate-limiting⁴ assists in this process by significantly reducing the speed at which potential illegal distribution can occur.

More companies are making the move to legal content distribution over BitTorrent. Therefore, we have decided to cap upload speeds via the BitTorrent protocol to 512kbps instead of blocking it outright.

For quality of service purposes, the CTC monitors protocol usage by IP address. There is no retention policy for this data. We have the ability to monitor live traffic, but we do not store this information.

D. Alternatives to Illegal Downloading

The University allows legal downloading on its network and offers the bandwidth necessary to effect this downloading.

A list of sites of where legal music can be obtained can be found at:

http://www.riaa.com/toolsforparents.php?content_selector=legal_music_sites

Live radio can be accessed at www.live365.com.

Numerous sites offer legal downloading and streaming of movies. Those sites can be accessed at:

http://www.mpaa.org/piracy_LegalOpt.asp

However, you should be aware that some sites may claim to be legal when in fact they are not. A list of sites and web addresses that may appear on the surface to offer legal downloading but which may not in reality be able or willing to do so may be found at:

<http://www.cdt.org/copyright/warninglist/>

Adopted by President's Cabinet 12/03/08

⁴ Rate-limiting is another term for bandwidth shaping.