

Unauthorized Distribution of Copyrighted Materials

The Higher Education Opportunity Act of 2008 (HEOA) requires institutions of higher education to combat the unauthorized distribution of copyrighted materials by users of the institution's network. In accordance with MTI College's (MTI) efforts to meet the requirements of the HEOA, students and employees are expected to respect and comply with federal copyright and licensing laws, particularly while on the MTI campus. This includes the illegal or unauthorized copy or use of any software, images, music, or other intellectual property such as books or videos.

Under copyright law, it is illegal to download or share copyrighted materials without the permission of the copyright owner. In support of this law, illegal or unauthorized distribution of copyright-protected materials, including unauthorized peer-to-peer file sharing is prohibited on the MTI campus. Peer-to-peer file sharing is the ability to download a computer file by accessing more than one computer at a time. Downloading parts of a file from many different computers on the internet generally allows a user to obtain a file in a shorter period of time than it would take to get the same file from a single location.

While on the MTI campus, an individual's actions when downloading or sharing files using the MTI network are traceable. Students or employees engaging in illegal or unauthorized downloading or use of copyrighted materials using the MTI network, including unauthorized peer-to-peer file sharing, will be subject to disciplinary action including warning, probation, suspension of accounts, and dismissal or termination from the college depending upon the nature and severity of the violation. Violators may also be subject to civil or criminal legal action.

Summary of Civil and Criminal Penalties for Violation of Federal Copyright Laws

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys' fees. For details, see Title 17, United States Code, Sections 504, 505.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense.

Students and employees are encouraged to make use of legal alternatives for downloading or otherwise obtaining copyrighted materials. Such alternatives may include:

- YouTube
- Netflix
- Hulu
- Textbook publishers

- Sacramento County Library (saclib.org)
- EDUCAUSE – “a nonprofit association whose mission is to advance higher education by promoting the intelligent use of information technology” (www.educause.edu) – maintains an extensive list of Legal Sources of Online Content at www.educause.edu/legalcontent.

For assistance, students and employees are encouraged to visit the Learning Resource Center (LRC) or contact the Technical Services Department (TSD).

Procedures:

Employees

- Employee violations of this policy are addressed as follows:
 - 1st occurrence – the supervisor coaches the employee and gives him/her a warning
 - 2nd occurrence – the supervisor notifies the director of education (DOE) or campus director. The DOE or campus director addresses the matter with the employee and determines what disciplinary steps will be taken.
- Disciplinary action ranging from warning, probation, suspension of accounts, and dismissal from the college will be determined at the sole discretion of MTI based on the circumstances.
- Documentation of the violation, discussions pertaining to the violation, and the resulting consequences must be placed in the employee’s personnel file.
- Fair Use of Copyrighted Material
The Copyright Act of 1976 provides certain exceptions for the ‘fair use’ of copyrighted material without the copyright holder’s permission when the material is used for teaching and research purposes. Under ‘fair use’, copyrighted materials may be reproduced or used under certain conditions for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research for educational and research purposes.

There are four factors to be evaluated in determining whether a particular use of a copyrighted work is permitted under ‘fair use’:

- The purpose or character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes – uses in nonprofit educational institutions are more likely to be fair use than works used for commercial purposes, but not all educational uses are fair use.
- The nature of the copyrighted work – reproducing a factual work is more likely to be fair use than a creative work such as a musical composition.
- The amount and significance of the portion used in relation to the entire work – reproducing small portions of a work is more likely to be fair use than large or essential portions.
- The impact of the use upon the potential market for or value of the copyrighted work – uses which have no or little market impact are more likely to be fair than those that interfere with potential markets.

(Source: UC Copyright, www.universityofcalifornia.edu/copyright/fairuse.html)

Students

- Student violations of this policy are addressed as follows:
 - 1st occurrence – the instructor coaches student and gives him/her a warning
 - 2nd occurrence – the department chair coaches the student & notifies the dean. The dean addresses the matter with the student and consults with the director of education to determine what disciplinary steps will be taken.
- Disciplinary action ranging from warning, probation, suspension of accounts, and dismissal from the college, will be determined at the sole discretion of MTI based on the circumstances.
- Documentation of the violation, discussions pertaining to the violation and the resulting consequences are to be made in CampusVue (CV) and placed in the student's file.

Policy Distribution

- The full policy, including suggestions for legally obtaining copyrighted materials, is available to employees in the MTI personnel manual, the faculty procedure manual, and online in the resource section of Moodle.
- The full policy, including suggestions for legally obtaining copyrighted materials, is available to students in the student handbook and online in the resource section of the MTI e-learning website. In addition, it is referenced in the Device Usage Agreement and on course syllabi.
- Illegal downloading and unauthorized distribution of copyrighted materials is addressed with students during new student orientation and as part of the DA104 Essential Computer Concepts and GE201 English Composition courses.
- Information regarding MTI's policies and consequences related to the unauthorized distribution of copyrighted materials is included as part of the consumer information provided to prospective and current students.
- This policy and related procedures are reviewed on an annual basis by the director of education and network administrator as part of the MTI personnel manual review and update. The review includes an assessment of the institution's effectiveness in combating the unauthorized distribution of copyrighted material and a review of the legal alternatives suggested to students for obtaining copyrighted materials.

PacketShaper

MTI utilizes a product called PacketShaper to monitor and control peer-to-peer file sharing. Using PacketShaper, Technical Services Department (TSD) staff can monitor traffic and manage bandwidth for different types of communication. PacketShaper does not, however, identify specific violators. When peer-to-peer file sharing is suspected, TSD can reduce bandwidth to deter students

from downloading large files. The ability to download large files still exists for legitimate purposes (ie for faculty); please refer requests to TSD.

Watchguard

MTI has implemented a Watchguard Firewall through which all data traffic flows. This device allows TSD staff to quickly and easily monitor and disrupt data to ip addresses which are recorded as utilizing excessive amounts of bandwidth. The same interface can be used to disallow traffic either from an individual source or destination indefinitely. This is a first line of defense as it very quickly and easily identifies bandwidth utilization, can be used to instantly turn off the traffic and is most likely to be open in a network administrator's browser when issues occur.

Resources

- US Copyright Office - <http://www.copyright.gov>
- Copyright Frequently Asked Questions - www.copyright.gov/help/faq.
- Copyright Infringement and Remedies - <http://www.copyright.gov/title17/92chap5.html#506>
- IFAP Dear Colleague Letter (DCL ID: GEN-10-08)
<http://www.ifap.ed.gov/dpclletters/GEN1008.html>