

## BROOKLYN LAW SCHOOL DIGITAL MILLENIUM POLICY

**ISSUING AUTHORITY:** The Office of the General Counsel and Chief Compliance Officer, and The Department of Information Technology

**RESPONSIBLE OFFICERS:** Stephanie Vullo, General Counsel and Chief Compliance Officer; and Steven Marks, Chief Information Officer

**DATE ISSUED:** April 15, 2015

**DATE REVISED:** May 20, 2018

**I. PURPOSE OF THIS POLICY:** The purpose of this policy is to make the Law School community aware of its obligations under the U.S. Copyright Act and to address the specific requirements of the Digital Millennium Copyright Act of 1998.

**II. TO WHOM THIS POLICY APPLIES:** This policy applies to all students, staff, administrators, faculty, and guest Users at Brooklyn Law School. It is the responsibility of everyone to ensure compliance with this policy and to report any suspected violations of other Users.

### III. POLICY DEFINITIONS

*Computer* - Any electronic device that has the capability of storing and processing data. Such devices include, but are not limited to, desktops, laptops, tablets, and smartphones; whether such device is personally owned, BLS owned, leased, or sponsored.

*Copyright* - The legal protection for creative or intellectual work or expression of ideas.

*Copyright Infringement* - Reproduction, distribution, public display, or derivation of protected material without the permission of the copyright holder.

*Digital Millennium Act of 1998 (DMCA)* – This Act amends the U.S. Copyright Act to limit liability for service providers regarding copyrighted materials accessed online. The full text of the Digital Millennium Copyright Act of 1998 is available at <https://www.gpo.gov/fdsys/pkg/PLAW-105publ304/pdf/PLAW-105publ304.pdf>.

*Documents* - Written, printed, or electronic matter that provides information or evidence, or which serves as an official record.

*Download/Upload*– Copying or transferring data, images, documents, emails, and any other materials from one computer system to another.

*Electronic Communication* - Communication by electronic device or method, such as email, spam, peer-to-peer file sharing, electronic messaging, or electronic transmission of digitally encoded data.

*Electronic Device*— An electronic device is any device capable of: (1) making or transmitting still or moving photographs, video recordings, or images of any kind; (2) creating, transmitting, or receiving text or data; or (3) capable of receiving, transmitting, or recording sound.

*Fair Use* – “Fair use” is the use of copyrighted materials that does not infringe the rights of the copyright holder. This includes the reproduction of copyrighted material for criticism, news, reporting, comment, teaching, scholarship, or research. The four-part test to determine whether use of copyrighted material is a fair use is as follows:

1. The purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

The text of the Fair Use Doctrine (17 U.S.C. §107) can be found at:

<https://www.gpo.gov/fdsys/pkg/USCODE-2010-title17/html/USCODE-2010-title17-chap1-sec107.htm>.

*Inappropriate materials* - These are materials that are not suitable or proper in the context of interaction and communication at Brooklyn Law School. Such materials include pornography; statements, visuals, or epithets of a discriminatory or harassing nature as defined by the Law School’s non-discrimination, harassment, and sexual misconduct policies;<sup>1</sup> and statements or visuals designed to bully or harass others.

*Service Provider*: An entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a User, of material of the User’s choosing, without modification to the content of the material as sent or received.

<https://www.gpo.gov/fdsys/pkg/PLAW-105publ304/pdf/PLAW-105publ304.pdf>. Brooklyn Law School is considered a service provider under the Digital Millennium Act of 1998.

*User*: Any individual who uses Brooklyn Law School’s internet service or network or Law School-owned computers or electronic devices, including, staff, faculty, students, student employees, visitors, and guests. An individual is deemed a User even if the use of Law School’s network originates from personal, leased, or sponsored devices.

#### **IV. POLICY**

All Brooklyn Law School Users are expected to comply with federal copyright law.<sup>2</sup> Users who copy, upload, download, or distribute copyrighted material through a Law School-owned device (such as a desk-top computer) or from personal, leased, or sponsored devices, while connected to the Brooklyn Law School server, without explicit permission from the copyright

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<sup>1</sup> These policies may be accessed at <https://www.brooklaw.edu/globalelements/footer/policies/policies>.

<sup>2</sup> For more information, please visit the website for the U.S. Copyright Law at [www.copyright.gov](http://www.copyright.gov).

owner or whose use of the copyrighted material does not qualify as fair use, are in violation of the DMCA and Law School policy.

For a list of sources of online content that can be used without infringement, please consult EDUCAUSE at <https://www.educause.edu/focus-areas-and-initiatives/policy-and-security/educause-policy/legal-sources-online>.

## V. PROCESSING AN INFRINGEMENT NOTICE

1. All notices of claimed infringement must be sent to the **designated agent**. The designated agent at Brooklyn Law School is Stephanie Vullo, General Counsel and Chief Compliance Officer, 250 Joralemon Street, Brooklyn, New York 11201, Phone: (718) 780-0605, [stephanie.vullo@brooklaw.edu](mailto:stephanie.vullo@brooklaw.edu).
2. The notice must be in writing and:
  - a. Identify the copyrighted work, 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;
  - b. Describe the material claimed to be infringe;
  - c. Include the contact information of the copyright owner or person authorized to act on behalf of the owner. Such information must include the name, address, telephone number, and email address of the authorized agent;
  - d. Include the physical or electronic signature of the owner or person authorized to act on behalf of the owner of the exclusive right that is allegedly infringed; and
  - e. Certify that the use of the copyrighted material is not authorized by the copyright owner, owner's agent, or law, and attest under penalty of perjury that the agent is authorized to enforce the copyrights alleged to have been infringed.
3. Proper notification of claimed infringement will be investigated by the Law School. Such investigation will include immediate contact with the alleged User, a review of the work, and a review of whether the fair use doctrine applies. The Law School may respond to the notification promptly by removing or blocking access to the material identified in the notification. Once the identified material is removed or blocked, the Law School will promptly notify the complaining party of the removal or blocked access.
4. Users who disagree with the claimed infringement may send a written counter-notice to the designated agent claiming that the copyrighted material was misidentified or mistakenly removed or blocked. The counter-notice must include:

- 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 User has a good faith belief that the material was removed or disabled because of a mistake or misidentification of the material to be removed or disabled; and
- d. The User's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification or an agent of such person.

The designated agent will transfer the notice to the person or entity that claimed infringement. If that person or entity does not respond to the counter-notice or file a lawsuit within ten (10) to fourteen (14) business days, the materials may be restored.

## **VI. SUBPOENAS**

A copyright owner or a person authorized to act on the owner's behalf may, under the DMCA, request the clerk of any United States District Court to issue a subpoena to a service provider for identification of an alleged infringer. Please be aware that the Law School is required to expeditiously disclose the identity of the alleged infringer in response to a properly served subpoena, regardless of whether the Law School responds to the claimed infringer's notification.

## **VII. TERMINATION OF ACCOUNT AND OTHER SANCTIONS**

The following procedures will apply to a User identified as the copyright infringer under this policy:

1. The first time a take-down notice is received, the User will be counseled on the requirements of the copyright law and this policy, and will be asked to abide by such requirements and this policy.
2. The second time a take-down notice is received, the User will be educated once again on the requirements of the copyright law and this policy and may have Law School Internet access suspended for a period. Furthermore, depending on the circumstances, the User may be subject to the appropriate disciplinary procedures depending on the User's status (student, faculty member, staff, visitor).
3. The third time a take-down notice is received, the User's Law School Internet access will be terminated until further notice and disciplinary charges will be pursued.

Please note that the DMCA limits liability for service providers and not individuals. Therefore, in addition to the penalties imposed by the Law School when this policy and the DMCA are violated, individual Users may face civil and criminal penalties under the U.S. Copyright Act. Generally, anyone found liable for civil copyright infringements may be ordered to pay statutory damages of not less than \$750 but not more than \$30,000 per infringement. In addition, a court may award up to \$150,000 per infringement and assess attorney fees and costs. Criminal penalties may include fines up to \$250,000 and imprisonment.<sup>3</sup>

#### **VIII. DISCLAIMER**

This Policy does not form an agreement of any kind and may be altered, modified, or rescinded at the discretion of Brooklyn Law School or as required by law.

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<sup>3</sup> For more information, please visit the website for the U.S. Copyright Law at [www.copyright.gov](http://www.copyright.gov)

