

Compliance with the Higher Education Opportunity Act Peer-to-Peer (P2P) File Sharing Requirements

Introduction

H.R. 4137, the Higher Education Opportunity Act (HEOA), is a reauthorization of the Higher Education Act. It includes provisions that are designed to reduce the illegal uploading and downloading of copyrighted material through peer-to-peer (P2P) file sharing. These provisions include requirements that:

- Institutions make an annual disclosure that informs students that the illegal distribution of copyrighted materials may subject them to criminal and civil penalties.
- A plan to “effectively combat the unauthorized distribution of copyrighted materials” by users of its network, including “the use of one or more technology-based deterrents”.
- A plan to “offer alternatives to illegal downloading”.

Copyright Law and Johnson College’s Policy

Copyright law provides protections to creators of works against the unauthorized duplication and distribution of the works. In exchange for these protections, the public is provided with specific rights for “Fair Use” of copyrighted works. More specifics about copyright law and fair use are available at the following sites:

- The US Copyright Office: <http://www.copyright.gov>
- The Copyright Office’s FAQ page: <http://www.copyright.gov/help/faq/>
- The Electronic Frontier Foundation fair use FAQ: http://eff.org/IP/eff_fair_use_faq.php

Since such activity is illegal, it is of course prohibited by the general college policy, and covered by the disciplinary procedures in our student and employee handbooks. In addition, using Johnson College’s network or any other Johnson College technology resource to copy, store, and/or distribute copyright-infringing material is specifically prohibited by the [Acceptable Use Policy](#).

Every user is responsible for his or her own compliance with the law. Using the Johnson College network does not in any way shield you from potential law enforcement actions; users who download or distribute copyrighted works may face civil or criminal penalties in addition to sanctions based on college policy.

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

Copyright infringement is the act of exercising, without permission or legal authority, one or more of the exclusive rights granted to the copyright owner under section 106 of the Copyright Act (Title 17 of the United States Code). These rights include the right to reproduce or distribute a copyrighted work. In the file-sharing context, downloading or uploading substantial parts of a copyrighted work without authority constitutes an infringement.

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.

For more information, please see the Web site of the U.S. Copyright Office at <http://www.copyright.gov>, especially their FAQ's at <http://www.copyright.gov/help/faq>.

Plans to “Effectively Combat” the Unauthorized Distribution of Copyrighted Material

Currently, Johnson College’s firewall, Threat Management Gateway, is used to block all peer-to-peer applications identified by their application signature and/or network traffic. This device is continually monitored and updated regularly to ensure currency. If we observe continued high bandwidth consumption on the Johnson College network, we will contact such users to ensure that their bandwidth consumption is the result of legal purposes only.

Alternatives to Illegal File Sharing

Educause maintains a comprehensive list of [Legal Downloading Resources](#). Members of the Johnson College community are encouraged to take advantage of these legitimate sources of digital content.

Reviewing Effectiveness

Compared to our peers, Johnson College receives remarkably few peer to peer file sharing takedown notices. We will continue to monitor these notices to watch for unexpected increases that would require additional measures.