

## UND Digital Millennium Copyright Act (DMCA) Procedures

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### I. DMCA Takedown Notices

**These are notices of alleged copyright infringement, and they typically come from the Recording Industry Association of America (RIAA) or the Motion Picture Association of America (MPAA), but could be from any valid copyright holder. In order to proceed with the below procedures, the notice must contain the necessary information as required by the DMCA.**

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1. The UND Information Technology Security Officer (ITSO) receives a notice (typically these are forwarded from the North Dakota University System (NDUS) ITSO through Remedy). If the notice comes from a source other than the NDUS ITSO, the UND ITSO will create a Remedy ticket for the notice.
2. The UND ITSO will forward the ticket to the Information Technology Systems and Services (ITSS) helpdesk
3. The ITSS helpdesk will identify the owning organization (the college, school, or department which provides support for users on the network where the alleged infringing activity occurred) and forward the ticket to the appropriate organizational contact for further identification.
4. The owning organizational contact will identify the alleged infringer (name, location, email address, and hardware address of system) associated with the Internet Protocol (IP) address identified in the notice. The contact will then document the Remedy ticket and forward the ticket to the UND ITSO. If the individual cannot be identified, the ticket should be documented appropriately and forwarded to the UND ITSO. The owning organization will have two business days to forward the ticket back to the UND ITSO.
5. If a first violation, the UND ITSO will send an email to the alleged infringer notifying of the alleged copyright violation. The email will contain the infringing copyrighted material and the time of the infringement as noted in the takedown notice. It will also include information on how the individual can get assistance removing infringing material. The alleged infringer will have three business days to remove the copyrighted material and respond to the UND ITSO. If the alleged infringer believes the identification was based on a mistake or misidentification, they will need to respond to the UND ITSO within three business days. If the owner believes they have permission or authority to use the material, they must notify the UND ITSO within three business days, and then will be required to draft a response to the ITSO as detailed in section **V. Fair Use Response**. If a response is not received within three business days, the ITSO will give the

authorization to disable network access to the system and will notify the helpdesk and the owning organization of the disabled system, and authorization will not be granted to enable access until a response is received. If a response is received, the ITSO will notify the source of the takedown notice (typically the NDUS ITSO), and no further action will be taken against the infringer other than the ITSO documenting the incident.

6. If a second violation, the UND ITSO will immediately give the authorization to disable network access to the system and will notify the helpdesk and the owning organization of the disabled system. The UND ITSO will send an email and a written letter to the alleged infringer identifying the infringing copyrighted material and the time of the infringement as noted in the takedown notice. The alleged infringer will have three business days to remove the copyrighted material and respond to the UND ITSO. If the alleged infringer believes the identification was based on a mistake or misidentification, they will need to respond to the UND ITSO within three business days. If the owner believes they have permission or authority to use the material, they must notify the UND ITSO within three business days, and then will be required to draft a response to the ITSO as detailed in this document, section **V. Fair Use Response**. If a response is not received within three business days, the individual will be referred for potential disciplinary action ([Student Conduct Administrator](#) for students, and supervisor, Dean or Department heads for faculty and staff). Upon receipt of the response from the individual, the ITSO will give the authorization to enable network access. If it is determined the individual was indeed infringing, they will be required to complete the *DMCA and Copyright Educational Program* administered by the ITSO.
7. If a third violation, the UND ITSO will immediately give the authorization to disable network access to the system and will notify the helpdesk and owning organization of the disabled system. The alleged infringer will be sent an email notification and a written letter and must remove the copyrighted material, or contact the ITSO if the owner believes the identification was based on a mistake or misidentification. If the owner believes they have permission or authority to use the material, they must notify the UND ITSO, and then will be required to draft a response to the ITSO as detailed in this document, section **V. Fair Use Response**. If it is determined the individual was indeed infringing, they will be immediately referred for potential disciplinary action ([Student Conduct Administrator](#) for students; supervisor, Dean or Department head for faculty or staff). Access to the UND network by the computer referenced in the complaint will be blocked pending the outcome of the disciplinary procedures.
8. For a first, second, or third violation, an individual may respond to the email or letter from the ITSO and make a claim that the alleged infringement did not occur, was based on a mistaken identity, or that they believe they have permission or authority to use the material. The ITSO will work with general counsel, Network Services, and any other relevant departments or individuals to make a determination as to whether or not the individual is in violation of the DMCA. If the individual disagrees with the determination, they can make a written appeal to the Chief Information Officer (CIO) or an individual designated to act on behalf of the CIO.

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## **II. DMCA Preservation Notices**

**These notices typically come from the RIAA, and have similar information in them as Takedown notices, however these are not requesting the University to remove the infringing material, but to provide notification that a subpoena may be served on an infringer and asks the university to preserve all documents and identifying information regarding the alleged infringer.**

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1. UND ITSO receives a notice (typically these are forwarded from the NDUS ITSO).
2. The UND ITSO will work the owning organization to identify the individual and then the ITSO will send an email to the affected individual as a courtesy notification.
3. UND logs will continue to be retained according to the UND records retention schedule.

4. No information about the alleged infringer will be released until the University is given a valid subpoena.

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### **III. DMCA Pre-Litigation/Early Settlement Letters**

**These notices typically come from the RIAA, and have similar information in them as Takedown or Preservation notices, however in this case, the RIAA is asking the University to forward the letters to the alleged infringers so they may have the opportunity to contact the RIAA and settle the claims prior to the RIAA filing a law suit.**

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1. UND ITSO receives an email asking to forward the Pre-Litigation letter(s) (typically these are forwarded from the NDUS ITSO)
2. The UND ITSO will work the owning organization to identify the individual(s) and then the ITSO will forward the Pre-Litigation letter(s) as an email attachment to the affected individual(s).
3. UND logs will continue to be retained according to the UND records retention schedule.
4. No information about the alleged infringer will be released until the University is given a valid subpoena.

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### **IV. DMCA Subpoenas**

**These typically will come from the RIAA, have similar information in them as other notices, but the subpoena will be issued by a court asking the University to turn over information about the alleged infringer to the RIAA or its agent.**

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1. UND ITSO receives (is served) the subpoena asking to identify and turn over information regarding an alleged infringer.
2. The UND ITSO will contact the Office of General Counsel. The Office of General Counsel will verify the validity of the subpoena and if it is valid, the Office of General Counsel will work with the ITSO to identify the individual(s), notify them, and give them adequate time to respond prior to releasing the information requested in the subpoena.

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### **V. Fair Use Response**

**The DMCA Section 512 (g)(3) requires that a counter claim of copyright infringement provide certain information specified below. DMCA Section 512 (f) defines penalties for knowingly misrepresenting a counter claim.**

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1. Individuals who believe they have permission or authority to use the material must first notify the UND ITSO, and will be required to submit a counter claim response. A counter claim response citing fair use doctrine or permission to use copyrighted material(s) needs to be mailed or faxed to the NDUS DMCA designated agent and needs to include the following elements:
  - a. A physical signature
  - b. Identification of the material that has been removed, blocked, or has been claimed to infringe copyright. This information will normally be included in the notice sent from the DMCA agent or ITSO.
  - c. A statement under penalty of perjury that the subscriber has a good faith belief that the material(s) is/are being used under Fair Use doctrine or with permission from the copyright holder or that it was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
  - d. The individual's name, address, and telephone number, and a statement that the individual consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the individual's address is outside of the United States,

for any judicial district in which the service provider may be found, and that the individual will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

2. Individuals can use the [UND DMCA Counter Claim form](#) in order to create a counter claim response. Type the required information in the designated fields, print the form, sign it, and fax it or send it through the mail to the NDUS DMCA designated agent.

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## VI. Related Documents / Policies

- [UND DMCA Policy](#)
- [North Dakota Higher Education Computer Network \(HECN\) DMCA Policy](#)
- [HECN DMCA Designated Agent](#)
- [UND Student Acceptable Use Policy](#)
- [UND Code of Student Life](#)
- [UND Records Retention Schedule](#)
- [NDUS Procedure 1901.2 Computer and Network Usage](#)
- [Digital Millennium Copyright Act of 1998 Summary](#)
- [U.S. Code Title 17 – Copyrights](#)

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## VII. Effective Dates

Last Modified: April 15, 2008

Effective: May 28, 2009

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## VIII. Contacts

Contact	Phone
UND IT Security Officer (ITSO)	777-3587
NDUS IT Security Officer	701-231-7385
UND Helpdesk	777-2222
Office of General Counsel	777-6345
Housing/ResNet	777-3424
Aerospace Helpdesk	777-4357
School of Medicine and Health Sciences Computer Services	777-5046
College of Business Helpdesk	777-2244