



AIS Newsletter: Issue 2018-Q2

DMCA: Using The Law As A Tool To Combat Contract Cheating

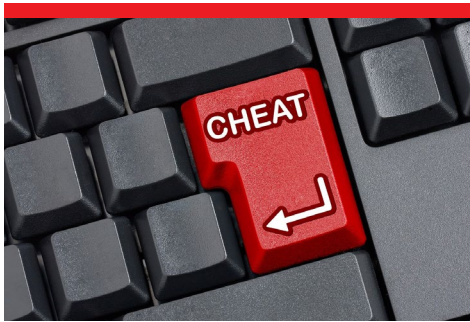
By Justin Coon

Editor's note. Welcome to the second issue of the AIS Newsletter! Our aim is to alert you to topics and issues we encounter while working with your students in the Academic Integrity Seminar (www.IntegritySeminar.org).

In the current issue below, we explore an important legal resource for combating contract cheating: the Digital Millennium Copyright Act. Your guide will be Justin Coon, an AIS tutor and a practicing attorney with experience in the private legal sector, federal legislature, and federal executive branch. He is currently an attorney with the U.S. Army Medical Research & Materiel Command, where he advises the Army on medical product development and acquisition. Justin received his J.D. from Duke University and his B.A. and B.S. from the University of Maryland, where he was the Chair of the Student Honor Council. All views expressed here are his own and do not represent the views of the U.S. Government, nor do they constitute legal advice.

Feel free to share the AIS newsletter with your colleagues. We also value your thoughts and feedback. Please send all questions and inquiries to contact@integrityseminar.org.

DMCA: Using the Law as a Tool to Combat Contract Cheating



■ Yes, it is this easy

Hold on tight! We're about to delve into one of the darkest corners of the web: contract cheating websites. These sites are a bane for instructors at all levels of education, providing an easy means of plagiarism for students willing to pay for answers. Fortunately, there are some ways to blunt their effect, including one important tool available under the Digital Millennium Copyright Act (DMCA). Perhaps best known for its role in the removal of YouTube videos, college instructors may be able to use the DMCA, in consultation with their institution's legal counsel, to protect their assignments and make it harder for students to use contract cheating websites. Before delving into the details of DMCA, let's start with a little background about contract cheating sites and how they function.

Contract Cheating Websites: What We Know

By design, contract cheating websites keep a low profile - students typically discover these sites by word of mouth or as the result of targeted web searches. A [recent article](#) published in the International Journal for Educational Integrity sheds some light on how these websites function. The authors define "contract cheating" as follows:

Contract cheating occurs when a student procures a third party (who knows about and benefits from the transaction) to produce academic work (that is usually, but not always assessable work) that the student then submits to an educational institution as if it were their own. It constitutes a form of plagiarism: presenting someone else's words and/or ideas as your own without appropriate attribution.

Ellis, Zucker, Randall: The Infernal Business of Contract Cheating: Understanding the Business Processes and Models of Academic Custom Writing Sites, Int'l J. for Educational Integrity, 2018 14:1.



The bad guys, raking it in

Based on their survey of several contract cheating websites, Ellis et al. conclude that contract cheating sites "appear to be well established and mature," and that "there is a substantial market that is feeding this industry." Id. Although there are no good measures of market size - because this is essentially a black market - there are indications that it could be worth several hundred million dollars per year in the United States, if not more. For comparison, [the Telegraph](#) cited a recent U.K. study which estimated that 20,000 students per year (and possibly up to 50,000) used contract cheating websites, and placed the U.K. market value at £ 100 million. Regardless of the exact numbers, in both the U.S. and the U.K., contract cheating is a large and growing business, and is readily available to any student who is willing to pay.

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Strategies to Mitigate Use of Contract Cheating Sites

Ellis, Zucker, and Randall recommend three strategies to mitigate the use of contract cheating sites: (1) using a web search tool to find assignment text that has been copied onto the contract cheating websites; (2) limiting the time span between release of the assignment and the due date, thereby minimizing the timeframe for students to purchase papers; and (3) making it easier for students to report academic violations of peers, as they may be in the best position to know if any fellow students are using these services. Id. The International Center for Academic Integrity has also published a [toolkit](#) with additional strategies to combat contract cheating.

At AIS, we encourage universities to foster an environment where students hold each other to the community's standards of academic integrity (which may boost the effectiveness of strategy 3). In addition to the strategies listed above, to protect our seminar materials and ensure that students are not using contract cheating services when they are enrolled in our seminar, we also use a fourth strategy: sending DMCA takedown notices to contract cheating sites that post AIS assignments.

DMCA Basics

The DMCA (Pub. L. 105-304, amending Title 17 of the U.S. Code) was enacted in 1998, primarily to address how copyright law applies on the internet and to harmonize U.S. law with international standards. The [U.S. Copyright Office](#) administers the DMCA, and it provides [this summary](#) of the law. While a full discussion of the DMCA is beyond the scope of this newsletter, there are a few basics that will help us understand how it can work to our advantage.

Before the DMCA, there was uncertainty about whether web hosting companies were liable for information posted on websites they host that infringes on the copyright of a third party - often material that the web host did not know existed, or did not know to be infringing. Section 230 of the Communications Decency Act (47 U.S.C. § 230), passed in 1996, protected web hosts from some types of liability, but left the door open for copyright infringement actions. Two years later, Title II of the DMCA resolved this issue by limiting the liability of web hosting services, provided that they take certain measures to mitigate and remove infringing material. The most important requirement, for our purposes, is that the web host receives and properly responds to takedown notices related to content it hosts.

A DMCA takedown notice is a request, filed by the copyright holder or someone authorized to act on their behalf, for a website to remove material that infringes on the owner's copyright. The basic mechanics of the DMCA takedown notice process, listed in 17 U.S.C. § 512, are as follows:

1. The copyright owner becomes aware of infringing material posted online.
2. The copyright owner sends a takedown notification (containing specific information and statements required by 17 U.S.C. § 512(c)(3)) to the web hosting company.
3. If the service provider promptly removes the content, the service provider is exempted from certain liability.

The DMCA outlines further processes that allow the poster of the content to dispute the removal, and the DMCA also directs the course of any eventual litigation to decide whether the material is infringing. But for our purposes, we'll focus just on the initial DMCA notice - which often results in removal of the infringing material. As noted above, web hosts have an incentive to cooperate with this process because it limits their liability for infringing material.

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How Takedown Notices Can Take Down Contract Cheating Websites

Without delving too much into copyright law, original assignments developed by a teacher are usually subject to automatic copyright protection. Thus, when a third party who does not hold the copyright posts an assignment without the copyright owner's permission, it has most likely infringed on the copyright. Note that the only item that infringes is the assignment itself; while an answer posted online may constitute or facilitate plagiarism, the answer itself does not infringe on the teacher's copyright.

Put another way, if you discover that someone has posted an assignment without the author's permission, it may be time to think about sending a takedown notice.



Your copyright will blossom like a beautiful flower

We highly recommend that you consult with your institution's legal counsel before filing a takedown notice.

There are several legal issues to consider before filing a takedown notice, mostly centered on the nature of the material that is posted online and the content of the notice. Two of the key issues you and your counsel will have to sort out are:

1. Who owns the copyright? The DMCA requires the submitter to include a statement, under penalty of perjury, that it is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. For assignments posted by a professor, the DMCA notice will likely be filed by either the individual professor or by a representative of the institution.
2. Does the material that is posted actually infringe on the holder's copyright, or is it subject to one of the copyright infringement exceptions, such as fair use? If the material isn't infringing, you cannot file a takedown notice. In some cases, the party who posted the material may have a passable fair use argument - for example, if the material was posted to a non-commercial site, for academic purposes. But in most instances when an assignment is shared with a for-profit contract cheating site, the fair use exception will not apply.

Our Experience with Takedown Notices, Plus Some Tips

At AIS, we have successfully used takedown notices to remove our assignments from contract cheating websites that offer to sell answers to our seminar. In addition to other plagiarism detection tools, we have found takedown notices to be a useful measure, with 2/3 of offending websites removing AIS material after receiving our initial DMCA takedown request.

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However, we have identified two limitations of DMCA notices. First, while the DMCA provides a relatively easy method to request removal of infringing material, web hosts may not always comply. Some web hosts, for example, are located in foreign countries and may have little concern for U.S. laws, and others are simply



This is how you'll feel after a successful DMCA takedown. Yeah!

not responsive until the DMCA process is elevated to litigation. A second downside is that even if a web host responds favorably by removing your material, it may reappear on the same site again - either posted by the same user, or by another one (the "whack-a-mole" game). Your only recourse is to file another DMCA notice.

In spite of these shortcomings, we have found that most web hosts will honor a valid takedown request, and the process is quick enough to be worthwhile, even if it isn't perfect.

Practical tips to increase the chances of a successful takedown:

1. Consider adding a statement to your syllabus asserting that the material is protected by copyright and all rights are reserved. While this statement has little legal effect (since an original syllabus is automatically copyrighted), some web hosts may be more inclined to remove your material if you cite an affirmative copyright statement in your takedown notice. And, perhaps, some users of these sites might think twice before posting your syllabus.
2. Run regular searches using Google or another search engine for unique portions of course assignments, using quotation marks to ensure the results contain all of the words in the same order.
3. Be sure to send the DMCA notice to the right person. A good first step is to see if the website has a dedicated email address to receive DMCA notices - or even a fillable DMCA form. One example is Coursehero.com, which has [a dedicated page](#) (including a fillable form) explaining how they handle the DMCA process.
4. Make sure your takedown notice contains all of the required elements (see [17 U.S.C. § 512\(c\)\(3\)](#)). Also see guides about DMCA notices (including more practical tips) available [here](#) and [here \(including a template DMCA notice\)](#).
5. Be prepared to follow up with a second notice if the first one is ignored. In addition to your original point of contact, you may want to try the site's Designated Agent, required by law and listed in [this database](#) maintained by the U.S. Copyright Office.

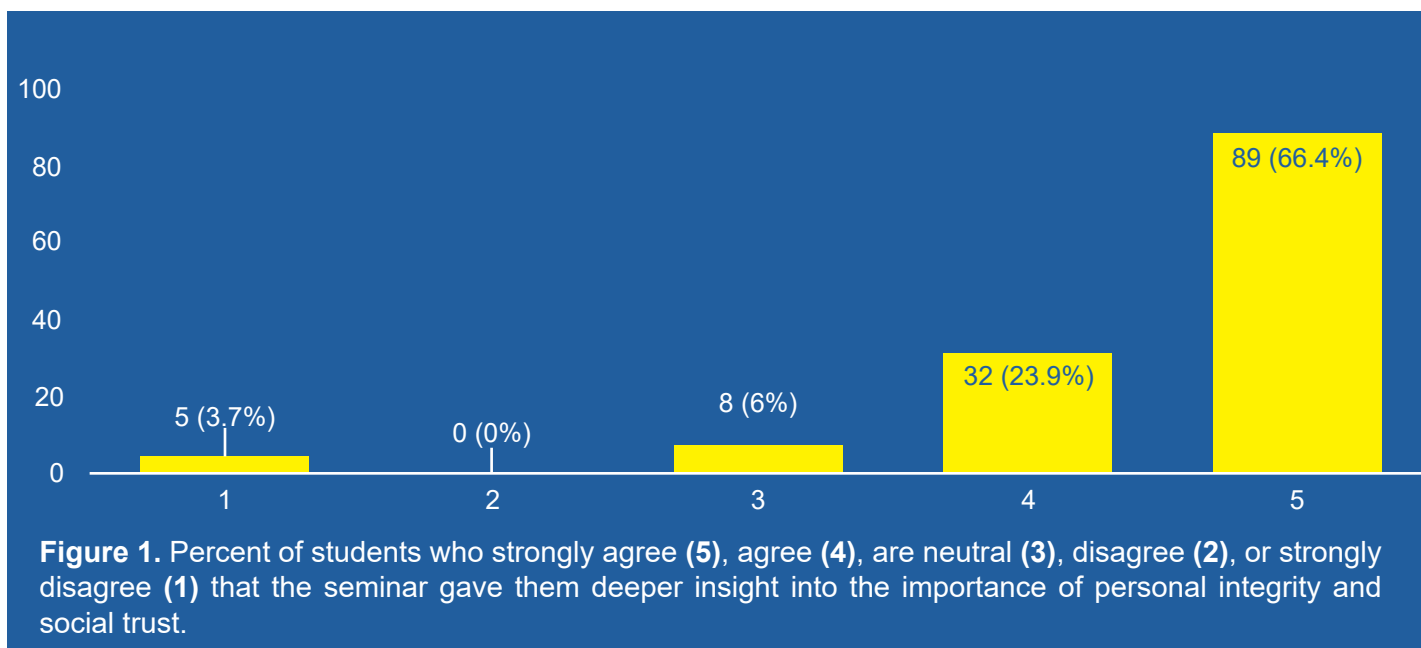
Readers: Tell us about DMCA at your institution! Have you used DMCA takedown notices? If so, we would love to know your experience! Send an email to contact@integrityseminar.org to share the good, the bad, and any tips for success.



Survey Preview: Early Results from 2018 Student Surveys

Administrator and student feedback is important to AIS. We use feedback to guide our selection of seminar readings and refine assignments with the goal of improving student engagement. We've been collecting student feedback since our inception but recently revamped our methods to systematically collect anonymous feedback from students across all schools. AIS has received **141** responses since January--an impressive 16% response rate given the voluntary nature of the survey, and a sample size that gives us confidence that these findings are broadly representative of how students who complete the survey feel about the seminar.

We will highlight the full range of findings in an upcoming AIS newsletter, but we are especially pleased with student perspectives on the critical issue of overall seminar effectiveness. Thus far, over 90% of respondents agreed (66% "strongly") that "The seminar gave me deeper insight into the importance of personal integrity and social trust." (**Figure 1**). We think that's a remarkable outcome for a required educational intervention that entails significant reading, thinking, and writing.



We also give students the opportunity to provide open-ended feedback about the part of the seminar they found most helpful. Here's a sampling of comments we've received thus far:

- "I thoroughly enjoyed this course and would've enjoyed taking it even if it was not mandated."
- "I thought that it was nice to see from other angles. Not just, "Cheating is bad," but also inferring the meaning of something to sort of draw a bigger picture. (The Darwin exercise, changing the Constitution, Google's Code of Conduct, etc.)"
- "The opportunity that it gave me to write out my feelings and my ideas. It allowed me to learn more about myself as well as exercise my writing abilities."