



"I used to do it all myself, but now I have my lawyers handle it."

News for Deans and Department Chairs From the Office of General Counsel

September 2010

The Office of General Counsel at the University exists to protect the University as a legal entity, and to help it advance its goal of academic and professional excellence. One of our aims is to practice preventive law, i.e. identify areas of risk and take steps to minimize the risk rather than waiting until an issue blossoms into litigation or an investigation by a regulatory authority. Deans and Department Chairs who are well versed in the common legal issues that arise in a university setting are best positioned to assist the University in minimizing risk. Please read this newsletter and distribute it to your faculty (and adjunct faculty) as time permits. The Office of General Counsel welcomes questions on legal issues and works with the Provost to ensure a considered response to the panoply of questions that arise in the academic setting.

Copyright

Professors may now, thanks to a Library of Congress exemption to the Digital Millennium Copyright Act (DMCA) extract clips (including bypassing content control mechanisms) from a

lawfully made and acquired motion picture DVD for the purpose of criticism or comment, or if the person circumventing the content controls does so for an educational use or for documentary filmmaking or non-commercial videos. Film and media studies students are covered by this Library of Congress exemption as well. For more on this see [Fair Use Victories on the DMCA](#) at the American University Center for Social Media.

If you have questions about electronic reserves and copyright, see the [Copyright Resources page](#) at the Office of General Counsel. If you are risk averse and want assistance with linking or using copyrighted content, contact Access Services at the library at 5060.

Accessibility for persons with disabilities

A number of changes in disability law are on the horizon. Final rules on physical access to facilities will become effective in about six months. In particular, the federal government, as well as private advocacy groups, such as the National Federation of the Blind have advanced the law on such subjects as online access for those with disabilities, and this affects private universities like The Catholic University of America.

For example, online admissions applications must be accessible to those with visual impairments. The National Federation of the Blind (NFB) filed complaints last spring with the US Department of Justice against nine law schools that did not make their applications accessible after being asked to do so. NFB was also instrumental in the Department of Justice settlement agreements with three universities that resulted from the schools using Kindle DX, a reading device, when blind students who could not access the content.

A proposed rule has been promulgated that will require University web pages to be accessible to those with disabilities. Since many on the faculty are de facto web masters, it is wise to start thinking now about how you build your web pages and how to ensure accessibility. The Center for Planning and Information Technology (CPIT) and the Disability Support Services Office can assist on this particular issue.

Note that at the bottom of every CUA web page, including Blackboard pages, the words *Speech Enabled* appear. The University has purchased a license to a product called Browse Aloud. This software can be downloaded by clicking on *Speech Enabled*. The web page can then be read to you or the text can be enlarged or highlighted. Please let your students know about this option.

Privacy

If you have not yet read the CUA [Student Records Policy](#) please do so prior to accessing any of your students' education records. This policy details all you need to know about the [Family Educational Rights and Privacy Act](#) (FERPA). If you would like more information on this topic, there is an extensive [Q and A online](#).

Per a change to the Student Records Policy, photographs are now considered directory information. This does not mean that you are *required* to give student photographs to anyone. It only means it is permissible, as long as the student has not placed a hold on release of directory information.

Electronic distribution of information has made compliance with FERPA more challenging. If you are sending email to more than one person, and that email contains information that is

personal (such as disability status, grades, etc.) there is a defined process on how this should be accomplished, which is set forth in the above policy.

Discrimination

They say 50 is the new 40 when it comes to age, but the law has not caught up with the times. Once you turn 40 you are in a protected class for purposes the [Age Discrimination of Employment Act of 1967](#). So before you make everyone in your department over 40 redundant, think about it! This fact scenario actually occurred at one small department at a fairly well known university. The memorable line from the court case, which the fired parties won hands down, was the following: "Leaving managers with hiring authority in ignorance of the basic features of the discrimination laws is an extraordinary mistake from which a jury can infer reckless indifference."

When hiring, please consult the [Interview Guidelines on the OGC web page](#). This chart will give you an idea of permissible and impermissible questions. This chart should be reviewed when hiring either faculty or staff.

Policies and Process

If there is a process or a policy (and here at the University we have a number of them) it almost always make sense to follow the policy or process that exists. If someone does not follow the policy or process, there has to be a very good reason for the deviation. So, for example, if there is a failing grade appeal process (and there is) please follow the failing grade appeal process. If you do not do this, and the student who flunked out sues the University, the lawyers are in the awkward position of explaining why the faculty did not follow University process. See <http://policies.cua.edu> for a list of all official University wide policies. Procedures are oftentimes linked from the policy.

A number of policies were amended and new policies added during the past academic year. We would like to bring your attention to the policy titled [Reasonable Accommodations at University Events](#), which requires use of centralized scheduling software for all University events. Note that **all events open to the public must be scheduled in an accessible space**. Who owns intellectual property created at CUA is addressed in the new [Copyright Ownership](#) policy. Please read this policy and address any questions to either the Provost or the Office of General Counsel.

Tip of the season

Your employee ID number grants you free access (click LEXIS-NEXIS on [ALADIN](#)) to all back issues of the New York Times, the Washington Post, the Chronicle of Higher Education and more. So enjoy the news, share the articles with your students (if CUA licenses access, in most instances you can link to it in Blackboard without worrying about copyright issues) and stay current!

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