

OF COUNSEL - Autumn 2002
the newsletter of

Northeastern University
Office of the University Counsel

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This issue of Of Counsel is devoted entirely to responses to questions we've received over the last several months from faculty, staff and students. While this edition is lengthier than usual, you have raised questions important to share with the entire University community.

I. Room(s) With A View?

Question 1: My recent coop job was with a charitable organization. The organization would like to hold a fund-raising meeting in Boston, so I offered my former employer our campus as a site. I'm assuming this is okay since I'm also the president of a recognized student activity and can reserve a room under the name of that activity. Right?

Answer: Wrong! First, inviting external parties onto campus for fundraising or other organizing or marketing meetings is a violation of the University's Sales and Solicitations policy, located on page 81 of the Undergraduate and Graduate Student Handbook/Planner 2002-2003. The meeting you've described is "general solicitation," which is not permitted by University policy.

Second, any individual, agency, entity, group and/or organization from outside of the University who wants to use space on campus must reserve the space and pay a rental fee consistent with a schedule of rental rates approved annually by the University's Board of Trustees.

Third, while a recognized student activity may register to use reserved campus space related to its purpose and consistent with Student Activities policies and procedures, an external individual or group cannot use the student activity as a "cover" to access the University's limited amounts of room space. Furthermore, a student activity cannot allow itself to be used as a "cover" to permit external entities to

meet on or use campus space. Again, this is a violation of the Sales and Solicitations policy, which may subject involved students to disciplinary action.

Question 2: Does this also apply to employees? I've noticed several of the classrooms in my department aren't used at night and I'd like to invite my book club from my previous place of employment to meet here. Can I use one of the classrooms?

Answer: The room reservation requirements outlined above do apply to employees. In order to schedule a meeting like the one you've described, you would have to schedule the space and your group would have to pay the applicable rental fee.

If you have any questions about the approved schedule of rental fees, please contact the Office of Administration and Finance, 184 Richards Hall, x2240.

II. Imitation Is Not The Sincerest Form of Flattery

Question 1: I want to set up web sites for my students in my courses for them to obtain course material and to communicate with one another and with me. Are there any legal issues to which I need to pay attention as I set this up?

Answer: There are several issues to consider in designing and making available these sites to students, particularly with regard to privacy.

First, the use of student identifiers, such as social security or University-assigned e-mail addresses, in ways that could reveal such information to other class members or to the public violates provisions of the Family Educational Rights and Privacy Act (FERPA or "the Buckley Amendment). Before soliciting or collecting information, you need to know what information will be collected, what use(s) will be made of the information collected, the person(s) or entities to whom the information will be distributed, and how the information will be secured during submission and storage. Avoid collecting any personally identifiable information.

In setting up e-mail lists, web-sites, chat rooms, or other interactive courseware, you should use masking measures, such as alternative identifiers and blind carbon copies (bcc), that facilitate student interactions while minimizing the risk to an individual student's privacy. We also recommend that you password protect such sites, both in order to insure further the privacy of students, and to protect your own authored material from electronic theft.

In order to protect further your material on the site as well as that of others, we advise you to post appropriate copyright notices on the site. Information Services can provide you, on line, with model language that you can use to protect your own work, and to notify users that other authors' material has been "cleared" for use on your site, or is being displayed as a "fair use" under the terms of the copyright laws.

Finally, please remember that University policy prohibits the posting of commercial links at faculty web-sites or otherwise promoting particular vendors except to the extent necessary to achieve specific course-related objectives.

If you have any questions about the copyright information provided here, please contact the University Copyright Officer, Professor Gerald Herman, at x4441, or University Counsel at x2157. If you have any questions about computer or network security or privacy, please contact Glenn Hill, IT Security Manager, at 403 Richards Hall, x7718.

Question 2: Can I copy material I find on the Internet onto my own web-site or for distribution to others in paper form?

Answer: It is generally not advisable to copy or appropriate electronically transmitted material from the web-sites of others, whether or not a specific copyright notice adheres to the material. First, the copyright law no longer requires a specific notice of copyright (©) in order for materials to be protected and, even where such notice appears, it is often hard to tell whether it applies to the material itself, to its organization and formatting, or to both. Even where specific duplication permission is provided at the site, that is no guarantee that the site itself is the “author” of the material with the resulting right to grant such permission. Beyond this, electronic material is subject not only to copyright and other property law provisions, but also to the Digital Millennium Copyright Act with its anti-tampering provisions. Finally, technology is permitting electronic authors and sites to add “cookies” – electronic tracking impulses – to their data to trace its uses, and complaints – and lawsuits – have resulted from what authors claim are infringing uses.

The law with respect to electronic media and “fair use” is still in its early stages of development and subject to continuing dispute and litigation. In light of this, our best advice is as follows: If you are not certain of the “public domain” or free use status of web-based material, seek permission for any use beyond live display *via* “hot links”. If doubts remain (either with respect to the material itself or because of the wording of the permission you obtain) and you want your electronic presentations to display material from other web sites, it is safest for you to “hot link” to these sites, rather than downloading screen from them. If you want copies of such material for your audiences/participants, provide them with the “URLs” for the sites on which the material sits so that they can gain access to them for themselves. If you have questions about this, please contact the University Copyright Officer, Professor Gerald Herman at x4441 or University Counsel at x2157.

III. HIPAA!!

Question: What is HIPAA and what does it have to do with me?

“HIPAA” is the acronym for the Health Insurance Portability and Accountability Act of 1996. HIPAA is a broad-reaching law that imposes stringent

standards on the privacy, security and electronic transmission of personal health information. HIPAA applies to health care information transactions by health plans, health care clearinghouses and health care providers. HIPAA defines each of these categories very broadly, so several aspects of the University's business may come within its sweep, such as the Lane Health Center, the Center for Counseling and Student Development, self-insured benefit plans and other areas which may have access to and transmit certain personal health information.

Various compliance portions of the statute must be met within certain timelines. Affected areas of the University must comply with the privacy portions of the statute by April, 2003. Currently, a HIPAA audit is ongoing for purposes of meeting compliance deadlines. Should you receive inquiry from our office related to HIPAA's applicability to your department it is imperative that you respond by any timeline we provide. Failure to comply with the statute's provisions includes onerous civil and criminal penalties.

IV. MCAD Issues Sexual Harassment Guidelines

Question 1: My department asked me to sign up for a sexual harassment workshop. Why? Do I have to?

Answer: The Massachusetts Commission Against Discrimination (MCAD) recently issued guidelines for preventing and responding to sexual harassment in the workplace. The guidelines make it clear that an employer's commitment to providing training and an employee's willingness to participate in training on this complex subject may be factors in assessing responsibility in any complaint brought against an employer and/or employee. Therefore, it is essential to demonstrate a willingness to be trained. Please contact the Office of Affirmative Action and Diversity, 424 CP, x2133 to arrange for a sexual harassment workshop for your department.

V. Purchase Orders And You

Question 1: I talked with a consultant about doing some work for my department. Can I just send a requisition to the Purchasing Department for a purchase order to be issued?

No. If you want to retain a consultant to perform services, you *must* have a written contract before a purchase order can be issued. As a matter of fact, all transactions governed by a contract *must* receive prior review by the Office of University Counsel. After this review, the contract is forwarded to one of three senior officials who are authorized to sign contracts: President Richard Freeland, Senior Vice President of Administration and Finance Larry Mucciolo, or Treasurer Joseph Murphy. Once this process is completed, you should include a brief message in your requisition to the Purchasing Department to facilitate a purchase order, e.g., "This transaction is related to a contract which was signed by Joseph Murphy on December 1, 2002." The Purchasing Department can not issue a purchase order without such confirmation.

The content of Of Counsel is general in nature and not intended as individual legal advice. Questions about the content of this newsletter or about individual situations may be directed to the Office of University Counsel, 115 Churchill Hall, x2157.

