

A Report to the Subcommittee on Courts, the Internet, and Intellectual Property House Judiciary Committee

By the Joint Committee of the Higher Education and Entertainment Communities
On Progress during the Past Academic Year
Addressing Illegal File Sharing on College Campuses

The 2003-2004 academic year saw significant change in approaches to accessing digital entertainment content on college and university campuses across the country. In light of the Subcommittee's requests for periodic updates, the Joint Committee of the Higher Education and Entertainment Communities is providing this report on the status of efforts to address the opportunities and challenges presented by digital copying and distribution of copyrighted works through peer-to-peer (P2P) file sharing networks and alternative means.

Colleges and universities continue to address these issues in several different ways, adopting new policies as well as technological and educational measures to maintain the integrity of the schools' networks while ensuring a convenient, protected, and legal environment in which legitimate offerings can thrive.

Legitimate Online Services

Colleges and universities have increasingly been offering new services and amenities to their students, such as free newspapers, special phone plans, and access to cable TV. Heeding the call for new sources of legal content, schools this past year began to introduce legitimate music services on campus.

In November of 2003, Penn State University signed an agreement with the now-legitimate Napster for a pilot program. The service offered students free on-demand streaming audio and downloaded songs, with an option to transfer to a CD for an additional fee. The University of Rochester began offering the same service in February of this year. Fees are paid to the on-line services by the universities for this access, and the services then pay royalties to the copyright holders of the music according to negotiated agreements. Napster partnered with IBM on an affordable file server that can locate their entire cache of music on campus, using the university's internal networks and avoiding the need to use external bandwidth. Later this fall, Napster, in partnership with Microsoft, will launch an additional service that will allow students, for an add-on subscription fee, the opportunity to download their music to portable players.

With the success of these programs, many more schools will begin to partner with legitimate music businesses during this new academic year. For example, Napster recently announced agreements to offer similar programs at the University of Southern California, University of Miami, George Washington University, Cornell University, Middlebury College, Vanderbilt, and Wright State University. Additional companies have lined up to offer their services. After a well-received pilot at Yale this past year,

Ctrax is planning to offer its subscription service and download store to at least 20 other schools, including Wake Forest, Tulane, Purdue, and Ohio University. The service works through the university's local area network, and can incorporate features specifically tailored to each school, providing an outlet for locally produced music. Ctrax is based on its popular sister service, Cflix, which provided Yale, Duke, Wake Forest, and the University of Colorado with video-on-demand. The companies will combine their offerings of music and movies, as well as educational media services, under the name Cdigix, and will partner with more schools in the 2004-2005 academic year, including Marietta College, the Rochester Institute of Technology, and others.

This month, MusicRebellion begins offering a pay-per-download service to DePauw University. The service offers an interesting twist in that the price of individual songs will be driven by demand. In addition, students will receive a \$3 credit after completing an "education module," which gives an overview of music and the "ramifications of pirating media." The service is further integrated with the institution by allowing students to submit their own original music, and by donating 1% of sales to DePauw student scholarships.

Also this month, Northern Illinois University launched a service from Ruckus, offering legally downloaded music, streaming movies, and local content; and the University of California, Berkeley, and the University of Minnesota announced partnerships with RealNetworks to give students unlimited access to streamed music at a significantly reduced cost.

Finally, Apple has offered to colleges and universities a site license to its popular iTunes Music Store, and enabled the schools to purchase songs for their students at a discount. This fall, Duke will offer all incoming freshmen an iPod portable music device, enabling students to carry with them downloaded lectures and course materials, in addition to the songs acquired through iTunes.

This means that at least 20 different universities have already signed agreements to legally deliver entertainment content to students. This is an extraordinarily promising trend that will only continue in the coming academic year. These programs have garnered substantial attention and many schools, and even student groups, have formed task forces to determine whether legitimate services on campus are a viable alternative and which services may be right for them. We are even witnessing that some candidates for student government leadership positions are running on platforms that encourage university administrators to adopt on-line music services.

Campus Action Network (CAN), a music industry-wide effort led by Sony BMG Music Entertainment, and supported by other record companies, has worked over the past year to encourage the launch of legitimate music services on campuses around the country. CAN's efforts have been supported by the Joint Committee of the Higher Education and Entertainment Communities, with Co-Chair Graham Spanier making introductions to university presidents for representatives of CAN.

CAN provides universities with introductions, information, and support for a broad array of online music services. To support the launch of online campus music services in the fall of 2004, CAN is working with the services and schools to provide a wide range of campus marketing initiatives, such as on-campus concerts, artist appearances, contests and promotions. CAN is also collaborating with schools to explore how these services can be used for educational purposes.

Educational Initiatives

The 2003-2004 academic year began with many colleges and universities questioning their role in engaging students in a discussion of copyrighted works and the proper use of computer networks. There has been a sea change in perspective, however, and many schools have come to realize that they are uniquely positioned to educate on the value of copyright law and the safeguards it provides to authors, artists, and writers of creative works—works which often come from the school community itself. Messages, in emails and letters, have been sent from the highest administrative levels to ensure that students understand the significance of infringement on campus. These messages have been sent to staff and faculty as well, reminding them that penalties for illegal conduct are not just for students.

Dozens of colleges and universities—Indiana University, Brown University, and Dartmouth College, to name just a few—have made updates to their Acceptable Use policies to acknowledge and reflect the change in application of their school’s resources. These policies can regularly be found online and in hard copy. Information is now more accessible than ever on subjects such as copyright, infringement, P2P file sharing, and the proper use of digital media. Students are also often required to engage in short tutorials and quizzes before acquiring access to networks in order to ensure their knowledge and understanding of appropriate use.

Administrations have distributed notices, posters, and fliers to convey the message that infringement is wrong—and that there are alternatives. Discussions, presentations, and even courses have been offered to engage the academic community in dialogue on these subjects.

Important educational initiatives are emerging from this collaboration between higher education, on-line services, and the entertainment industry. For example, music providers have offered to electronically distribute recordings of college and university orchestras, bands, and choral groups. At Penn State, on-line courses are being developed on topics such as popular culture that have direct links, for educational purposes, to certain recordings. Music students will have on-line access to music instead of having to visit the reserve music room of the library. Other creative uses are emerging.

Enforcement

While educational initiatives have grown, schools have sought to emphasize the importance and seriousness of the message through enforcement. First violations of

computer use policies, including single instances of infringement, have borne penalties ranging from simple warnings to mandatory informational sessions to temporary denial of network access. Second violations have carried stricter penalties, including discontinuance of network access to probation to notation on permanent records. Further violations, while increasingly rare, have carried penalties as serious as expulsion. New and creative means of enforcement are also being presented, such as fining students for notices of infringement.

For those students who have questioned the vigilance of their own schools, this past year has reminded them that responsibility does not wait for graduation. The much-publicized lawsuits by the music industry were brought to campuses as 158 students from 35 universities across the country found themselves accountable for their illegal actions.

Over the 2003-2004 academic year, schools implementing new infringement prevention programs and methods reported significant decreases in illegal file sharing and incidents of discipline for infringement. While several of the measures mentioned here have worked to bring about this change, the publicity of enforcement was often cited as the most important—and effective—element.

Technological Measures

More schools began this past year to complement these programs with different technological measures. Sometimes the call for these additional measures came from the students themselves. In one case, the Student Senate voted to block illegal trading after learning that illegal file sharing was responsible for bringing their university network to a crawl. Suffering from performance and reliability problems, decreased bandwidth, and the spread of viruses, schools have sought to free up their networks for their intended educational purpose.

Many schools—University of California, Berkeley, Penn State University, Vanderbilt University, and Central Michigan University, to name just a few—have limited students' bandwidth to a certain amount per week. When students exceed this limit, they are warned, and their network access is subject to being significantly reduced in speed or ultimately discontinued.

In June of 2003, the University of Florida introduced ICARUS, an application designed to address inappropriate use on the school's network. Since its inception, ICARUS has automatically processed 6,503 Acceptable Use Policy violations, including P2P violations. The system has had only five false positives out of 6,508 detected violations, and none of them was related to P2P activity. The school is now planning to license the system to other schools.

Some schools have complemented their networks with Audible Magic's CopySense system, which weeds out infringing transmissions on P2P networks. With CopySense installed, IT administrators have reported reclaiming half of their network's bandwidth at

significantly reduced costs. One school went from at least one notice of infringement per week to none.

Conclusion

Colleges and universities are collaborative communities. In that spirit, many different segments of academia have contributed their views and perspectives on how higher education should address the issues posed by illegal file-sharing. Each year, university administrations experiment with the offerings and combinations that work best for them. Even more changes are likely in the coming years, based on the experiences gleaned from the efforts now being tried. We welcome these initiatives.