

**LETTER OPPOSING THE INCLUSION OF THE ENTERTAINMENT INDUSTRY PROPOSAL  
ON ILLEGAL FILE SHARING IN THE HEA  
SENT BY  
THE HIGHER EDUCATION MEMBERS OF THE JOINT COMMITTEE**

November 7, 2007

The Honorable George Miller  
U. S. House of Representatives  
House Committee on Education and Labor  
2205 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Miller:

We write as the higher education members of the Joint Committee of the Higher Education and Entertainment Communities to express our grave concerns about a proposal developed by the entertainment industry to include illegal peer-to-peer (P2P) file-sharing provisions in the Higher Education Act (HEA). We strongly urge that the entertainment industry's proposal on illegal P2P file-sharing provisions not be included in legislation to reauthorize the HEA.

This entertainment industry proposal which may be under consideration by the House Education and Labor Committee would establish the Secretary of Education as an agent of the entertainment industry by requiring the Secretary annually to create a list of the 25 colleges and universities with the highest levels of unauthorized peer-to-peer (P2P) file sharing, based on data supplied by the industry. The list of the top 25 violators provides no logical basis for initiating federal action. It does not reflect a universal census of violations, nor even an appropriately designed random sample of violations. Rather, the entertainment industry gets to decide who is a "violation." The entertainment industry assuredly would make these choices to maximize the political and deterrent impact, but the fact remains that the 25 colleges or universities so identified would be designated by the entertainment industry. The Secretary would be required, under the language of the proposal, to act on the entertainment industry's information and direction. This clearly is an inappropriate role for a Cabinet officer of the Federal government.

In addition, the entertainment industry proposal would require targeted schools to impose a "technology-based deterrent" to prevent illegal file-sharing, adequate versions of which experts agree do not yet exist. Further, the proposal is aimed only at colleges and universities—which industry leaders admit are responsible for only a small fraction of illegal file sharing—but not other internet service providers whose networks are associated with most of the problem.

Even more alarming, it is our understanding that the consequences of the Secretary deciding that a targeted institution has failed to prevent illegal file sharing would be loss of Title IV student aid eligibility. Such an extraordinarily inappropriate and punitive outcome would result in all students on that campus losing their Federal financial aid—including Pell grants and student loans that are essential to their ability to attend college, advance their education and acquire the skills necessary to compete in the 21st century economy. Lower income students, those most in need of Federal financial aid, would be harmed most under the entertainment industry's proposal.

The higher education community recognizes the seriousness of the problem of illegal peer-to-peer file sharing and has long been committed to working with the entertainment industry to find a workable solution to the problem; indeed, that has been and continues to be our role as the higher education members of the Joint Committee. Evidence of that commitment is the work of the Joint Committee over the past five years to develop strategies, policies and programs, technologies, and legitimate alternatives for delivery of digital content that will reduce, if not eliminate, illegal file sharing on our campuses. A summary of these initiatives is attached. These efforts have produced positive results, and we are convinced that there is less illegal file sharing activity today than would have existed without the efforts of the Joint Committee.

Unfortunately, illegal P2P file sharing is a widespread societal problem. Nonetheless, we acknowledge that there is a need for universities to continue and to increase their efforts to combat illegal file sharing. Our colleagues on the Joint Committee and throughout higher education are committed to working aggressively toward this end.

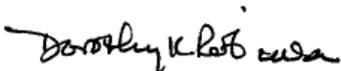
Please note that the Senate-approved HEA reauthorization bill (S. 1642) includes a new provision that requires institutions to inform students of policies and penalties relating to illegal file sharing, as well as the criminal and civil penalties for such illegal activity. The entertainment community proposal discussed above was offered as an amendment when the Senate considered its measure to reauthorize the HEA earlier this year. The amendment was ultimately withdrawn in favor of the aforementioned disclosure requirements. While we believe the HEA is an inappropriate instrument to address illegal P2P file sharing, we believe the Senate provision is a reasonable compromise and it is consistent with our view that colleges and universities should continue to convey the seriousness of this problem to their students.

We urge the Education and Labor Committee to reject the entertainment industry's proposal as it crafts its bill to reauthorize the HEA. The proposal would mandate a completely inappropriate role for the Secretary of Education to single out individual institutions based on information under the control of the entertainment industry, force institutions to seek an unachievable goal of preventing illegal P2P file sharing, and risk the loss of student aid for countless students innocent of any illegal file sharing activity.

Thank you for your attention to our concerns.



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University System of Maryland and Co-Chair,  
Joint Committee on the Higher Education and  
Entertainment Communities.



Dorothy K. Robinson, Vice President  
and General Counsel  
Yale University



John Hennessy, President  
Stanford University



Graham Spanier, President  
The Pennsylvania State University

## HIGHER EDUCATION ACTIONS TO ADDRESS ILLEGAL CAMPUS PEER-TO-PEER FILE SHARING

### History and Past Activities

- Formation of the Joint Committee of the Higher Education and Entertainment Communities: The higher education community joined with the entertainment industry to form the Joint Committee, operating through the support and guidance of the American Council on Education (ACE), the Association of American Universities (AAU), EDUCAUSE, the Recording Industry Association of America (RIAA), and the Motion Picture Association of America (MPAA) *December, 2002*
- Distribution to colleges and universities of Background Discussion of Copyright Law and Potential Liability for Students Engaged in P2P File Sharing on University Networks *August, 2003*
- Joint Committee-sponsored meeting of higher education and entertainment association officials, representatives of entertainment companies and legitimate online digital delivery services to discuss how these sectors can collaborate to reduce illegal and promote legal P2P *June, 2003*
- Report to colleges and universities of results of Request for Information on technologies that may assist in reducing unauthorized P2P file sharing *October, 2003*
- Report to colleges and universities on legitimate online digital content delivery services that could be engaged as alternatives to unauthorized P2P file sharing programs *December, 2003*
- Distribution of University Policies and Practices Addressing Improper Peer-to-Peer File Sharing *April, 2004*
- Collaboration with RIAA to produce and distribute a video on P2P intended for college freshmen orientation *spring, 2006*
- Meeting of university, entertainment industry, and technology vendor officials to examine network technologies to reduce illegal P2P file sharing *October, 2006*
- Distribution of updated paper on legal aspects of campus P2P, Background Discussion of Copyright Law and Potential Liability for Students Engaged in P2P File Sharing on University Networks *November, 2006*
- Joint Committee meeting to assess past work, current challenges, and future steps *November, 2006*
- Letter from ACE President David Ward to college and university presidents and chancellors transmitting an RIAA letter announcing a new round of lawsuits accompanied by a “pre-notice plan” that allows settlement of claims before filing of a lawsuit *February, 2007*
- Two-day workshop of newly formed higher education Technology Task Force, entertainment industry representatives, and commercial vendors on requirements for technological control of illegal file sharing *April, 2007*

- Numerous presentations at higher education association meetings, written communications to colleges and universities, about illegal campus P2P file sharing and reference to resources to address the problem *Ongoing*

### **Current and Projected Activities**

- Conduct survey of colleges and universities to identify effective policies and practices for reducing illegal P2P file sharing, develop updated best practices recommendations for distribution to colleges and universities
- Distribute report of April technology workshop, conduct open vendor briefing to disseminate workshop results to commercial vendors
- Issue a Request for Information from commercial vendors concerning their ability to respond to higher education technology requirements identified in the April workshop, and disseminate results broadly within the higher education, vendor, and entertainment sectors
- Conduct special research and development projects to seek additional technology tools to combat illegal P2P file sharing
- Evaluate existing technologies being used by campuses concerning their strengths and weaknesses, how they can perform separately and in combination, and disseminate results broadly within the higher education community
- Continue to discuss P2P activities and share information through national meetings and written communications