

Peer-to-Peer Filing Sharing on Campus Under Fire Yet Again

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When we last reported on the content industry's effort to have Washington regulate college and university campus networks,¹ the education community in September had successfully kept the most burdensome peer-to-peer ("P2P") regulatory requirements out of the final version of the Senate's Higher Education Act reauthorization, the Higher Education Amendments of 2007 (the "HEA Bill"). As predicted, however, the content industry – primarily the Motion Picture Association of America (the "MPAA") – this year renewed its efforts in the House of Representatives to impose new expensive and more stringent burdens on the higher education institutions to halt unlawful P2P file sharing. This time it had better success even though the MPAA admitted that its underlying "factual" basis for imposing the new burdens turned out to be badly flawed.

In the Senate, the MPAA's supporters initially sought to have language included in the HEA Bill that would have required colleges and universities participating in the federal student financial aid programs under Title IV of the HEA to: (1) report on plans and policies to prevent illegal downloading and distribution, (2) review the efficacy of those policies and implement necessary changes; (3) demonstrate they had informed students of the policies; and (4) "provide evidence" to the Secretary of Education that they had "developed a plan for implementing a technology-based deterrent to prevent illegal downloading and distribution of intellectual property." The higher education community effectively lobbied the Senate explaining that the imposition of these financial and resource costs on institutions is unwarranted. As a result, the Senate adopted a provision requiring that institutions must: (1) have policies and sanctions informing students that illegal file sharing was against school policy, (2) summarize penalties for violating copyright law, (3) describe the institution's policies regarding unauthorized P2P use on their network, and (4) describe what the institution does to detect unauthorized P2P on its network.

Undaunted, the MPAA continued its assault on college and university networks before the House Education and Labor Committee. The MPAA convinced Committee Chairman George Miller (D-CA) to insert a new Section 494 in the HEA Bill that passed the House last month. Section 494 requires all institutions participating in the student financial aid programs to: "develop a plan for offering alternatives to illegal download or P2P distribution of intellectual property as well as a plan to explore technology-based deterrents to prevent such illegal activity."

The basis for imposing this burden on colleges and universities was the findings of a May 2006 study entitled "The Cost of Movie Piracy" prepared for the MPAA by L.E.K.

¹ Solomon, K. (2007, Autumn). "[Peer-to-Peer File Sharing on Campus Under Fire Again.](#)" *News & Notes*. Center for Intellectual Property.

Consulting. Rather than circulating the full study, the MPAA began in 2006 distributing PowerPoint slides summarizing the study. In justifying imposing these burdens on the higher education community, the MPAA circulated a subset of those slides claiming that \$579 million of the \$1.3 billion that MPAA member companies' lost in the United States to piracy during 2005 (44 percent of their total U.S. piracy losses) were attributable to unlawful P2P file sharing by U.S. college students. Consequently, MPAA argued, Congress should impose these burdensome requirements on colleges and university campus networks because the institutions were failing to address the issue on their own.

EDUCAUSE and others in the higher education community pointed out numerous flaws in the "study." The first was that the actual study was unavailable for peer review. Indeed, the MPAA had used this study before Congressional bodies in May of 2006, but had never submitted the entire study even though MPAA CEO Dan Glickman promised during a Senate Judiciary Committee hearing on June 21, 2006 to provide a complete copy to then Chairman Arlen Specter (R-PA). The second flaw was that the study was based on interviews with only 200 students on six campuses. It is meaningless to extrapolate from such an insignificant sample the behavior of tens of millions of higher education students at thousands of campuses. The third, and perhaps most significant flaw, was that the slides admitted that they failed to ask students whether they lived on or off campus. This is critical because according to Department of Education data 86.2 percent of students live off-campus² and would not use the network at their campuses for downloading. Thus, even blindly accepting the MPAA conclusions, losses attributable to college campuses networks would be no more than \$104 million.

But the problems with the study went deeper. Without explanation, in January of this year the MPAA admitted that there was a "human error" in the study resulting in actual losses attributable to college students amounting to only 15 percent of MPAA member companies' total piracy losses or \$197 million. But even with this admission of error, MPAA continued to ignore the critical fact that the vast majority of college students use commercial ISPs and not college networks. Thus, even if educators and Congress accepted the MPAA study as valid, total "losses" "attributable" to college networks would be only \$35 million, less than four percent of the losses claimed by MPAA. Of course, since we do not know the study's methodology, and are unable to examine their raw numbers, we are simply taking on faith that the study has any validity whatsoever. This is hardly valid grounds to justify imposing expensive new P2P obligations on institutions when, at the same time, in the same legislation, Congress is trying to restrain the cost of attending a college or university.

The House passed its HEA Bill, the College Opportunity and Affordability Act of 2008, on February 7 with Section 494 intact, the language pushed by MPAA on the basis of its faulty "study." The House and Senate versions of the HEA Bill now must be reconciled by a Senate-House Conference Committee, including the different P2P provisions.

² U.S. Department of Education, National Center for Education Statistics. Table 210: Number and percentage of students enrolled in postsecondary institutions, by level, disability status, and selected student characteristics: 2003-04. Retrieved March 11, 2008, from http://nces.ed.gov/programs/digest/d05/tables/dt05_210.asp.