

AMERICAN COUNCIL ON EDUCATION



OFFICE OF THE PRESIDENT

March 11, 2008

The Honorable Edward M. Kennedy
Chairman
Committee on Health, Education, Labor
and Pensions
U.S. Senate
Washington, DC 20510

The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor
and Pensions
U.S. Senate
Washington, DC 20510

Re: The Higher Education Act Reauthorization (H.R. 4137 and S. 1642)

Dear Chairman Kennedy and Ranking Member Enzi:

We are writing to express our support for language in both the House and Senate Higher Education Reauthorization bills that requires colleges and universities to inform their students about campus policies regarding copyright infringement and associated penalties (S. 1642, Sec. 477(1)(A)(v)(P)); H.R. 4137, Sec. 488(a)(1)(D)(P)).

This language would ensure that all colleges and universities inform all students about federal law and institutional policies governing the use of copyrighted material and penalties for their violation—including for unauthorized peer-to-peer (P2P) file sharing— and provide information on institutional procedures for preventing and detecting unauthorized distribution of copyrighted material on the institution's computer networks.

However, we strongly recommend that you reject additional language contained in H.R. 4137 (Sec. 494, pg. 514) that would require institutions to develop plans to provide alternative music and movie services and implement technological measures to deter illegal file sharing.

Colleges and universities take illegal file sharing very seriously. Institutions deal with illegal file sharing through the education of their students, network management, and institutional policy enforcement. Both the House and Senate bills ensure that students will be fully informed of both federal law and institutional policies regarding the illegal use of copyrighted materials as well as the penalties associated with their violation.

However, the House bill goes further in Sec. 494 and requires the development of two “plans”: one “for offering alternatives to illegal downloading” and a second “to explore technology-based deterrents to such illegal activity.” Since the word “plans” is not defined in statute, the Secretary of Education would define the elements of these plans in regulation.

Recent investigations and reports to the Joint Committee of the Higher Education and Entertainment Communities concluded that legitimate online alternatives and technologies designed to deter illegal file sharing are largely ineffective. A widely distributed 2005 study commissioned by the Motion Picture Association of America (MPAA) indicated that 44 percent of its domestic losses due to illegal file sharing were attributable to college students. However, MPAA revealed in January that a re-examination of those data determined that the estimated loss

due to college students was in fact 15 percent, not 44 percent. Moreover, since only 20 percent of college students nationwide reside on campus, only 3 percent of MPAA losses can be attributed to college students using campus networks.

In short, Section 494 of the House bill would impose new costs and regulatory burdens on both the Department of Education and campuses while doing very little to address the problem. Therefore, we ask that the House recede to the Senate with respect to the proposed new Section 494 (pg. 514 through pg. 515, line 18).

The higher education and entertainment communities continue to work together to address the serious problem of illegal file sharing. At the February 8, 2008, meeting of the Joint Committee of the Higher Education and Entertainment Communities, the committee adopted a plan to evaluate current technologies and work with commercial vendors to develop new technologies that might be more effective in deterring illegal file sharing. In addition, the higher education associations that participate in the Joint Committee are updating a 2004 survey about campus practices to combat illegal file sharing in order to develop a set of current best practices to share with the wider higher education community. Through these and related collaborative efforts, we are confident that significant strides to reduce illegal file sharing on campus networks can continue without unnecessary and burdensome federal involvement.

We appreciate your consideration of our views on this important matter.

Sincerely,



David Ward
President

DW\ksm

On behalf of:

American Association of Collegiate Registrars and Admissions Officers
American Association of Community Colleges
American Association of State Colleges and Universities
American Council on Education
Association of American Universities
Association of Community College Trustees
Association of Jesuit Colleges and Universities
EDUCAUSE
Hispanic Association of Colleges and Universities
Internet2
National Association of College and University Business Officers
National Association of Independent Colleges and Universities
National Association of State Universities and Land-Grant Colleges

cc: Senate Committee on Health, Education, Labor and Pensions

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The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

The Honorable Howard P. “Buck” McKeon
Ranking Member
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Re: The Higher Education Act Reauthorization (H.R. 4137 and S. 1642)

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