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Response to Department of Commerce request for comment  
Docket No. 100910448-0448-01

I am writing to express my views on how copyright and rights holder's protections are reflected in sections of the Higher Education Act regarding intellectual property enforcement on college and university campus networks, and its effect on innovation in educational communities. I am an undergraduate student at Bennington College, Vermont.

Additions to the 2008 reauthorization of the Higher Education Act encouraged institutions of higher education to take steps toward "[developing] plans to effectively combat the unauthorized distribution of copyrighted material," and "[offering] alternatives to illegal downloading or peer-to-peer distribution of intellectual property." Unauthorized copying on university and college networks is a prevalent problem, and encouraging these institutions to develop plans for notification and prevention of illegal file sharing is one method that will potentially address this problem. However, the existing means for doing so have several flaws that can result in the stifling of innovation on university and college campuses.

#### Existing Technologies are Expensive and/or Ineffective

While large universities may be able to, with little impact on their overall budgets, implement system-wide network filtering and provide legal alternatives to unauthorized file sharing, these tasks place burdens on smaller institutions. As a result, scarce educational funding,

particularly the funding allocated to college and university IT departments, is diverted toward efforts that are irrelevant to the purposes of higher education. In a 2007-2008 study, private institutions were reported to spend over \$100,000 a year on anti-peer-to-peer (P2P) software licensing fees, as well as over \$300,000 a year in hardware and other direct costs.<sup>1</sup> Additionally, it was reported that “in public doctoral universities IT personnel spent, on average, 779 hours (approximately 19 person-weeks or roughly two-fifths of a person-year) on P2P issues.”<sup>2</sup>

While anti-P2P software limits the ease with which peer-to-peer file sharing can normally be done, there are simple workarounds to these restrictions. Users can encrypt their Internet traffic, making peer-to-peer file sharing activity indistinguishable from other network activities, thereby subverting the anti-P2P restrictions; many popular peer-to-peer software programs incorporate this technology. Additionally, there are many other methods of unauthorized copying that are in common use, such as sharing files via CDs and external storage devices. Even if institutions succeeded in reducing illegal peer-to-peer activity through the installation of expensive preventative software, intentional infringers could easily resort to many other file-sharing methods that they have at their disposal.

The use of filtering technology carries with it even more issues. While institutions would still be spending excessive amounts of money on ineffective solutions, filtering technologies have the potential to mistakenly block *non-infringing* content. This can be the case when fair uses of copyrighted material, or use of public domain content, are identified by filters as resembling copyrighted material and therefore restrict its use. No filtering systems as of yet are

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<sup>1</sup> Green, K. 2008. The Campus Costs of P2P Compliance. [http://www.campuscomputing.net/sites/www.campuscomputing.net/files/Green-P2PCompliance-Oct08\\_6.pdf](http://www.campuscomputing.net/sites/www.campuscomputing.net/files/Green-P2PCompliance-Oct08_6.pdf)

<sup>2</sup> Ibid.

perfect, so it is inevitable that legal, educational content, essential to innovation, would be blocked as a result of the implementation of such systems. Given the current weaknesses of anti-P2P and filtering technologies, the federal government should not consider it important to encourage institutions of higher education to adopt ‘technology-based deterrents’ against file sharing. Instead, the IT departments of these institutions could be giving more energy to projects that involve improving the use of technology as an educational aid, and other initiatives that will benefit students rather than punish them.

### Restricting Peer-to-Peer Software Inhibits Innovation

Potential solutions such as system wide network filtering, or the restriction of peer-to-peer software, inhibit innovations that rely on open networks or peer-to-peer software. The Electronic Frontier Foundation writes that:

...both Google and Yahoo! were founded by Stanford University students who had access to an open, unfettered campus network that allowed them the freedom to write and deploy their own indexing and search applications using university networking resources.<sup>3</sup>

By creating environments that restrict extended and legal use of networks, institutions limit the abilities of students to produce technological innovations that are reliant on these freedoms for development.

There are many legitimate uses of peer-to-peer software that contribute to innovative software development, research, and the sharing of legal educational content. Much scientific data and many public domain movies, songs, and software programs are made available through

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<sup>3</sup> Electronic Frontier Foundation. 2005. When Push Comes to Shove: A Hype-Free Guide to Evaluating Technical Solutions to Copyright Infringement on Campus Networks. <http://www.eff.org/wp/when-push-comes-shove-hype-free-guide-evaluating-technical-solutions-copyright-infringement-campu>

the use of peer-to-peer software. One example is NASA's World Wind program, released in 2005, which used peer-to-peer technology to make available large collections of data associated with the program. Without this technology, the bandwidth costs would have been too great for the data to be made available. To restrict access to peer-to-peer technology is to restrict access to public domain content that is only available through these technologies.

### Colleges and Universities are Not Branches of Law Enforcement

The policy gives educational institutions the agenda of enforcing laws that have nothing to do with the safety and well-being of students, while offering these institutions no benefit in return for their enforcement of intellectual property law. Copyright enforcement should not be put on the table as a condition for federal funding, because it ensures that the funding provided to American colleges and universities is vulnerable to issues that are irrelevant to any educational purposes.

Colleges and universities should not take on the dual role of serving the educational needs of their students through digital technologies, while also monitoring and enforcing for infringement through these technologies. This creates a situation in which students' perceptions of their academic freedom are limited. There are countless instances today in which internet users are falsely accused of infringement, resulting in removal of content, or punishment by their Internet Service Provider. To assign the task of intellectual property enforcement to the university is to make students vulnerable to these sorts of injustices. Additionally, there is no recommendation in the Higher Education Act that universities establish processes for contesting false accusations. The potential of falsely accusing students, as well as teachers, is likely, as there

are many academic activities they engage in that could be misidentified as infringing activities, such as downloading scientific data with peer-to-peer software, downloading snippets of songs for artistic work, or reproducing copyrighted articles for class on short notice. Making universities bodies of enforcement limits student and teacher comfort with engaging in non-infringing activities. This is detrimental to academic freedom, and will discourage innovation that relies on the exercise of these freedoms.

### Conclusion

As a student, I am concerned not only with the current atmosphere surrounding intellectual property enforcement in educational environments, but also with the future of this enforcement. Leading up to the reauthorization of the Higher Education Act, there was massive lobbying from the private sector to increase universities' role in enforcing counter-infringement measures. Thankfully, there were also strong lobbying efforts against this by educational unions and other groups. However, I am wary of what universities might be required to do in the future, pending subsequent reauthorizations of the act, as a result of aggressive private sector lobbying. It seems the goal for many private sector institutions, like the RIAA or the MPAA, is not to improve the quality of higher education in this country, but to rally university assistance in squeezing profit from students.

I have outlined the disadvantages for students when universities adopt or are forced to adopt an agenda of intellectual property enforcement. In the current economy, the IT departments of educational institutions cannot afford to divert significant funding toward developing ineffective solutions to fighting and discouraging infringement. Instead, this funding should be

used to improve the use of technology as a resource for higher education. Also, many technology-based deterrents, as a side effect of their use, inhibit non-infringing educational activities that are easily misidentified as infringing uses.

I encourage the Department of Commerce to consider the priorities of colleges and universities in its investigation into intellectual property and innovation, as these institutions are an integral source of innovation in the digital economy.