

April 2004

Dear Colleague:

We are pleased to share with you the enclosed paper, "University Policies and Practices Addressing Improper Peer-to-Peer File Sharing." As you are no doubt aware, the problem of unauthorized peer-to-peer (P2P) file sharing of copyrighted music, movies, software and other material continues to pose problems for colleges and universities. The widespread occurrence of unauthorized file sharing, which extends well beyond campuses, is of great concern to the entertainment industry and to other owners of digital copyrighted content. The enclosed paper provides a range of responses that different higher education institutions have employed to address unauthorized P2P file sharing. The paper is intended to be illustrative, not prescriptive; we hope that your institution may find the paper's discussion of issues and examples of institutional responses useful as you consider your own institution's policies and practices concerning the use of file sharing technologies.

The paper has been prepared by the Education Task Force of the Joint Committee of the Higher Education and Entertainment Communities (membership list enclosed), a committee that was formed in December, 2002, to work collaboratively to address the problem of unauthorized file sharing. This paper on campus policies and practices is the second paper prepared by the Joint Committee's Education Task Force; a paper on the legal aspects of P2P file sharing was distributed last August and is available on the American Council on Education web site (<http://www.acenet.edu/washington/legalupdate/2003/P2P.pdf>).

We hope that you will find the enclosed paper helpful.

Sincerely,

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Chair, Education Task Force

Graham Spanier
President, The Pennsylvania State University
Co-Chair, Joint Committee of the Higher Education
and Entertainment Communities

Enclosures:

"University Policies and Practices Addressing Improper Peer-to-Peer File Sharing"
Joint Committee Membership List



University Policies and Practices Addressing Improper Peer-to-Peer File Sharing¹

INTRODUCTION

The rapid growth of the use of peer-to-peer (P2P) file-sharing technologies for the unauthorized distribution or making available of copyrighted works over computer networks has generated a great deal of concern among copyright owners and widespread attention in the media. Until recently, unauthorized file sharing activities have proliferated in the absence of legitimate alternatives. The fundamental challenge confronting colleges and universities is how to reduce or eliminate illegitimate P2P use without sacrificing legitimate uses of P2P technologies and related activities or otherwise interfering with academic freedom or privacy rights. The emergence of legitimate online content delivery systems provides considerable promise for helping to meet this challenge.

P2P file sharing occurs throughout society, from high school students and younger people to adults at home and at work. Colleges and universities have not been immune; indeed, higher education institutions have drawn particular attention, in part because increasing proportions of incoming students arrive with expectations of continuing file-sharing practices previously acquired, and because these institutions often provide powerful computing and broadband distribution capacity to their students and faculties in support of their education and research missions.

Although P2P technologies are themselves not illegal, such technologies as KaZaA, Morpheus, Grokster, Gnutella, and eDonkey are used overwhelmingly for the unauthorized downloading and uploading of copyrighted works, primarily music but also movies, software, and other copyrighted material. There are cases where the unauthorized use of copyrighted material is legal, as in cases of “fair use.” Nonetheless, there is substantial evidence that the preponderance of P2P file sharing by the technologies such as those named above constitute copyright infringement, an unambiguous violation of federal law.

The entertainment industry is extremely concerned about the impact of unauthorized P2P file sharing on the market for its works; they believe there is considerable evidence of substantial lost revenue from lost sales due to unauthorized file sharing—CD sales have declined, CD outlets are closing, and movies may soon become broadly and illegitimately traded as broadband capacity expands, enabling more rapid downloading or uploading of first-run, full-length movies. Colleges and universities are concerned that computer and network facilities that they make available for legitimate education and research purposes are being used for illegitimate purposes. Such uses can clog networks, impeding their ability to support education and research activities; more importantly, such uses constitute violations of law and raise important questions about the responsibility of institutions to educate students, faculty and staff about the appropriate use of their networks and the relationships between P2P use and copyright law.

In December, 2002, higher education and the entertainment industry formed the Joint Committee of the Higher Education and Entertainment Communities to address the problem of P2P file sharing on college and university

¹ A paper prepared by the Education Task Force of the Joint Committee of the Higher Education and Entertainment Communities.

campuses. Among other activities, the committee has described technologies that can limit unauthorized P2P use, and is promoting pilot projects to adapt new legitimate online music delivery services to the campus environment. (Results of requests for information on both these topics are available at <http://www.educause.edu/issues/rfi/>.)

The consideration of institutional responses to P2P use has taken two forms. The first was the preparation of a paper entitled "Background Discussion of Copyright Law and Potential Liability for Students Engaged in P2P File Sharing on University Networks."² The second is this paper, which reports on a range of policies and practices adopted by higher education institutions to reduce the illegitimate use of P2P technologies.

As noted earlier, the challenge for higher education institutions is how to reduce illegitimate file sharing without sacrificing legitimate uses of P2P technologies and overriding important academic values. The difficulty of meeting this challenge should not be underestimated: procedures exist for dramatically reducing if not eliminating illegitimate P2P use, but these procedures may impose a cost in the elimination of legitimate uses as well; in contrast, one can adopt procedures that assure that no or minimal loss of legitimate use occurs, but the likely consequence may be no effective reduction in illegitimate use. Each institution must decide on the combination of educational, technological, and disciplinary approaches that best meet its pedagogical, legal, and ethical needs and objectives.

Therefore, this report is not, and cannot be, a "best practices" document describing preferred ways of addressing the problem of P2P use. Instead, what the report seeks to accomplish is to provide higher education institutions with a range of responses that different higher education institutions, operating within their own distinct institutional traditions and objectives, have employed to address the problem of unauthorized P2P file sharing.

CURRENT STATUS OF INSTITUTIONAL POLICIES AND PRACTICES GOVERNING P2P ACTIVITIES

Given the recency and rapidity with which P2P file sharing has become a significant activity on university networks, it may not be surprising that many institutions have yet to adopt formal policies governing use of P2P technologies. A fully implemented institutional policy would seem to require several steps, including (1) adoption of an institutional policy governing the use of copyrighted works, (2) defining the improper use of P2P technologies and making an explicit statement that the institutional policy prohibits such improper use, and (3) a dissemination of that policy to students, faculty, and staff. Although most (but not all) institutions have formal copyright policies, far fewer have updated such policies to include provisions specific to P2P file sharing.

In conjunction with preparation of this paper, staff members of the Recording Industry Association of America (RIAA) conducted a very informal survey of the top 55 doctoral institutions as ranked by the U.S. News and World Report. The survey categorized the institutional policies and related statements concerning P2P file sharing that were accessible online. Though admittedly drawn from a limited sample and methodology, the results as interpreted by RIAA are nonetheless instructive.

- Less than three-fourths of the institutions had online-accessible institutional policies that included more than a cursory treatment of copyrighted works; just over one-fourth had policies that treated copyright in some depth, including such issues as exclusive rights and limitations and exceptions to those rights such as fair use.
- Over 80% of the institutions had online-accessible statements on P2P file sharing, with slightly more than a half of these statements addressing file sharing in some detail in the context of the institution's stance on P2P. However, less than 20% of detailed online institutional statements on P2P were incorporated into an institutional computer use or copyright policy.

These data do suggest that institutions are beginning to address the issue of P2P file sharing, with statements concerning file sharing likely to evolve into formal institutional policy positions.

EXAMPLES OF INSTITUTIONAL RESPONSES TO P2P FILE SHARING

² The paper was distributed August 8, 2003 to colleges and universities and is available on the American Council on Education web site <http://www.acenet.edu/washington/legalupdate/2003/P2P.pdf>.

Those institutions that have actively addressed the problem of unauthorized P2P file sharing generally have adopted a combination of methods, including education of students; use of technological measures that limit or block P2P activity; and adoption of policy provisions specifying how P2P use fits into network acceptable use policies, as well as specific enforcement procedures for violation of those policies. University policies also vary in how directly they address file sharing itself and in how detailed they are; but, in general, universities appear to be moving towards addressing this issue more fully.

As part of the Joint Committee Education Task Force work on campus policies and practices, the Association of American Universities asked its member universities whether they had recently undertaken campus initiatives concerning P2P file sharing, such as efforts to educate students about the lawful and unlawful aspects of file sharing, updating their institutional policies to address the use of P2P technologies, or other related activities. The following is a sampling of the responses received, providing a range of activities in the areas of education, network management technologies, policy implementation and enforcement, and development of legal file sharing alternatives. The responses are broken down by category of response. However, most institutions examined used multiple techniques, and therefore will appear multiple times throughout this paper.

Education. Education of students is a fundamental component of efforts to counter unauthorized file-sharing and to provide a legal and ethical framework for the use of copyrighted works. Institutions generally employ education as a pre-emptive step as well as, in many cases, for users caught engaging in unauthorized file sharing for the first time. Education can take the form of a policy which students are required to sign (or, as at the University of Virginia, an online quiz students are required to take) before using computing resources, poster campaigns, paid advertisements in school newspapers, or messages (via email, informational brochures or other media) sent to all students. Institutions such as the University of Pennsylvania have adopted procedures for educating and training not only students, but also those responsible for oversight of students and their activities, such as deans, IT staff, faculty, resident and graduate assistants, and other administrators (see below).

Emory University has undertaken a major education effort – the institution has conducted a poster campaign for students and is planning another for faculty and staff, placed paid advertisements in the school newspaper, and sent email to all students with information about unauthorized file sharing and its consequences. One of its posters explains in direct language that using KaZaA may result in lawsuits and in loss of privacy (due to spyware programs often secretly attached to KaZaA and similar software).

The University of Virginia also has a creative approach to student education – its computing policy website links to a video clip on responsible computing (<http://www.itc.virginia.edu/pubs/docs/RespComp/videos/home.html>). The clip is a parody of a monster.com commercial, involving children talking about all the irresponsible computer-related things they want to do once they get to UVA (including downloading music illegally), and then a tagline: “How much trouble can you buy with your computer?”

The University of Wisconsin-Madison has created a “Rules of the Road” campaign, providing guidelines to help ensure that UW-Madison electronic resources are used in a manner consistent with the mission of the University. The campaign has made use of videos, radio spots, and posters to communicate to the school community on issues such as copyright infringement. (<http://www.doit.wisc.edu/security/policies/rules.asp>.)

Princeton University's Office of Information Technology has created a website, <http://helpdesk.princeton.edu/kb/display.plx?id=9407>, which provides a clear discussion of P2P file sharing and its relation to federal law and university policies. Entitled “Copyrighted music, film, video files: Are they illegal to have on my computer?”, the site also points students to additional resources, including RIAA and Motion Picture Association of America (MPAA) websites.

Open discussions or presentations on campus are also used to educate students and direct them away from unauthorized file sharing. Purdue University, for example, held a student government forum on the issue, which included representatives from legal services, the copyright office, university residences, information technology, the dean of students office, and a student representative. (Purdue also requires students to sign an Acceptable Use Policy, including information on copyright policies, before they are registered to use computing resources).

The University of Pennsylvania includes a speech on risks and problems involved in P2P file sharing in its orientation week, as well as a series of presentations to IT staff, academic deans, house deans, resident and graduate assistants, and faculty in residence—so that officials who manage the system and have mentoring and supervisory roles with students understand the legal and institutional policies governing P2P file sharing. The

institution also distributed about 350 posters and a brochure on information security which, in part, addresses copyright law and the potential consequences of violating it.

Princeton makes frequent use of presentations. A joint presentation before the Council of the Princeton University Community by the Office of Information Technology and the General Counsel's office (with the University's President presiding), a number of presentations educating students at every residential college about applicable law, as well as guest speaker presentations in academic courses and various other faculty and administrative meetings help to build understanding about legal and illegal use of copyrighted material.

Presentations such as these are intended to provide a greater awareness of, and a respect for, copyrighted works and the risks of using P2P file-sharing services for unauthorized file sharing. It may be beneficial for institutions that make use of such presentations to document the contents for future use; not everyone may be present for an orientation presentation or course discussion, but everyone could easily access such material at a later date.

Network Management Technologies. Colleges and universities have routinely employed technological procedures for management of their computer networks. With the emergence of P2P file-sharing a number of these procedures, such as bandwidth shaping, have been applied to the management of P2P file-sharing traffic. Recently, the Technology Task Force of the Joint Committee prepared a report on new network management technologies that can be used to control or block the use of P2P file-sharing. (This report is on the EDUCAUSE website at <http://www.educause.edu/issues/rfi/>).

Although most universities do not appear to be using measures to block file-sharing preemptively, some universities are taking technological blocking steps now. A number of universities do block access to university computing resources for individuals who have been found to be engaged in unauthorized file-sharing (usually discovering them through notification from copyright holders or through excessive use of bandwidth).

Emory, for example, has adjusted its firewall so that people working within Emory's network cannot create web pages or file transfer protocol connections on the Emory server, and people from outside Emory's network cannot download files from within it. An Emory representative reports that it is "very difficult" to engage in unauthorized file-sharing activity from inside the Emory network, and commented that "[t]his has cut down enormously on the calls we've received from RIAA, Universal Studios, etc."

The University of Florida's ICARUS program is a network management tool that also blocks P2P file sharing. It detects any P2P use (even legal use, although adjustments to permit certain authorized uses may be made) and immediately disconnects the user from the network. First-time offenders are shut out for 30 minutes, second offenders for five days, and third offenders are shut out indefinitely and subjected to the school's judicial process. Florida reports over a 90% drop in P2P use. Florida includes a notable education component in its ICARUS program: first-time offenders are required to engage in an online tutorial designed to educate the user about copyright law and the potential penalties that can result from unauthorized P2P file sharing. However, some observers have expressed serious concerns about restricting resource use too strictly - the program bars legal P2P use and such legal activities as LAN gaming (i.e. playing computer games over a Local Area Network, or LAN).³ Nonetheless, Florida has received many inquiries about the program from other universities and businesses, and the institution plans to make ICARUS available to the public this spring⁴.

Policies. Universities commonly have policies covering copyright issues, as well as appropriate use of university computer networks and related technological resources. Where the two coincide, as with unauthorized file sharing, university policies range from those that only mention the issue to those that cover it in comprehensive detail. Due to the recent, well-publicized problems surrounding unauthorized file sharing at colleges and universities, however, institutions may wish to examine their current copyright and computer use policies for the adequacy of their treatment of P2P file sharing.

Most policies surveyed are fairly straightforward and contain a few common themes – pointing out that infringing copyright is illegal, that illegal behavior will not be tolerated, and describing potential consequences. Many also

³ Dean, Katie. "Florida Dorms Lock Out P2P Users," in *Wired News*, Oct. 3, 2003

<http://www.wired.com/news/digiwood/0,1412,60613,00.html>.

⁴ Reichel, Hannah. "Public Will Have Access to UF File-Trading Program," in *The Independent Florida Alligator Online*, Oct. 30, 2003 <http://www.alligator.org/edit/news/issues/stories/031030icarus.html>.

describe how a student violating copyright law can be caught – generally through notices of claimed infringement or subpoenas issued by copyright holders, or by the institution’s detection of sharp spikes in use during routine maintenance or monitoring of bandwidth. Students and other members of the higher education community should understand that they are not anonymous when engaging in unauthorized behavior on the institute’s computer system.

An example of a simple and clear message is Harvard’s Computer Rules and Responsibilities policy (<http://www.fas.harvard.edu/computing/rules/>), which specifies that sharing copyrighted files without the copyright holder’s permission may be illegal. The statement names names: “KaZaA, Gnutella, eDonkey, Morpheus and other file-sharing programs can transmit files on your computer to others in violation of copyright laws, with or without your knowledge. If these programs are on your computer, you will be held responsible for any copyright violations that may result.”

Brown University has a noteworthy site that addresses copyright infringement issues ranging from the basic question of “What is copyright?” to the application of the Digital Millennium Copyright Act (DMCA). In this comprehensive context, the site provides a discussion of the legality of sharing and downloading MP3 files, as well as the procedures by which violators are identified. In addition, the site offers a step-by-step analysis of the measures taken against first-time and repeat offenders.

The University of Virginia offers a quick-reference chart giving lists of information resources about various copyright issues, their intended audiences, their subjects and a quick summary of their main points. This can be found at <<http://www.its.virginia.edu/policy>>. Among the links in this quick-reference chart is a “Responsible Computing Handbook” for students: <<http://www.its.virginia.edu/pubs/docs/RespComp/rchandbook03.html>>, that, among other things, goes into detail about the violations inherent in copying software or downloading unauthorized MP3s. It also mentions that students using file-sharing programs may be making more files available for sharing than they realize, and warns that even inadvertent sharing is a violation that can have consequences. Another site, <<http://www.its.virginia.edu/policy/uvadmca.html>> clearly explains the DMCA and delineates the process that the university is expected to follow on receiving a notice of a copyright violation. The site also describes the information that must be provided both by the copyright owner or its representative seeking removal of offending material and by a user who chooses to file a counter notice arguing that the copyright owner is mistaken about either the material posted or the legality of its posting.

Northwestern University recently changed its policy to clarify copyright and file sharing issues (the current policy prohibits the unauthorized sharing of software or copyrighted files) and to inform its students about potential penalties. The institution sent an email to all students to draw their attention to this change, and to point them to the website where they can read the new policy. (The policy can be found at <http://www.it.northwestern.edu/policies/responsibilities.html>). Northwestern also specifies consequences for failure to adhere to this new policy (see next section).

Institutional Enforcement. One of the key aspects of the application of law to punishment or deterrence is, of course, the penalty structure for those who violate the law. In most cases of unauthorized student P2P file sharing, colleges and universities are not directly implicated in potential copyright infringement; instead, liability in these cases is typically an issue between copyright owners and students (or faculty or staff) as third-party users of university networks. Despite this, many institutions voluntarily take on the task of educating their students about appropriate use of their networks and of copyrighted works, as well as investigating claims of infringement directed at users of their networks.

Many institutions have adopted institutional use policies that closely track federal law governing access to and use and distribution of digital copyrighted works. In such cases, institutions have a basis for directly enforcing their own policies, and a number of universities have now adopted specific procedures for enforcing institutional policies governing P2P file sharing. Penalties for unauthorized file sharing at universities vary, but many choose to shut the offender off from resources, perhaps for varied periods of time based on whether the user is a first-time or multiple offender. This is true, for example, at the University of Florida, where the ICARUS system automatically detects P2P use—which has been prohibited in the residence halls by the institution—and automatically disconnects the student for increasing periods of time depending on the number of offenses, with a third offense resulting in student judicial procedures, as described above. At the University of Pittsburgh, a second offense initiates student judicial procedures. At Harvard, a second offender is shut off from network resources for a full year.

Some institutions are quite specific in their delineations of prohibited activities and the specific consequences for violations. For example, Northwestern warns students, faculty, and staff that continued use of unauthorized file

sharing may “jeopardize the individual’s continued employment or continued enrollment” (from a memo sent to the university community by the VP and Chief Technology Officer, found at <http://www.it.northwestern.edu/news/archive/may03/filesshare.pdf>). Northwestern's policy lists potential penalties as “fines, restitution of funds, termination of computer or network access, probation, suspension, separation, or exclusion from the University.”

Other institutions are less specific about potential punishments, simply noting that incidents of alleged infringement will be referred to the appropriate officials for review and disciplinary action as warranted. Such statements of position do not necessarily imply that those institutions will be more lax in their punishments of inappropriate computer network use than institutions with more precise policies; instead, such statements may serve primarily to provide more flexibility in determining appropriate punishments. Nonetheless, if such disciplinary procedures are to be a deterrent to persons who may be predisposed to unauthorized file sharing, it is helpful that the consequences of engaging in such activity are widely known.

Legal File-Sharing. Perhaps the most promising approach to addressing the problems caused by unauthorized P2P file sharing is the development of legitimate alternatives. A number of legitimate commercial online music providers, which charge subscribers for the copyrighted music they download, have recently arisen. The Joint Committee is currently working to facilitate a number of pilot projects in which individual colleges and universities work with a selected legitimate online music delivery service to explore ways that those services can be modified to operate more effectively in a campus environment. Particularly in a context of broad education activities concerning copyright and the legitimate and illegitimate uses of P2P technologies, and institutional policies and enforcement procedures governing appropriate use of computer networks, the introduction of legitimate music delivery services adapted to campus use holds considerable promise for displacing unauthorized file-sharing activity.

Pennsylvania State University is one of the earliest institutions to undertake such a pilot project, having entered into a contract with the new, legally reconfigured Napster, in order to provide its students with online music. The service is being paid for through part of the existing student technology fee, and allows students access to free streaming content and tethered downloads (i.e. downloads that the students may retain on up to three computers).

Undoubtedly, some pilot projects will work better than others. The objective of the effort is to initiate a range of experiments, recognizing that in the long run, different institutions—as well as different online content delivery services—will develop different procedures that provide a best fit for their circumstances. The Joint Committee intends to track the various pilot projects and draw lessons from the experiences as the projects progress. Results of a request for information from companies offering these legitimate service programs can be found at <http://www.educause.edu/issues/rfi/>.

Dissemination of Information on Institutional Policies and Practices. Institutional policies and practices concerning P2P file sharing must be effectively conveyed to students, faculty, and staff in order to affect behavior. Colleges and universities may wish to implement multiple means of conveying information, including not only clear and easily accessible postings of policies and practices on the institution’s web site (see Tulane University: <http://tis.tulane.edu/Policies/index.cfm>), but notification of such policies and their location by email. In addition, communication through the student newspaper, flyers distributed via post office boxes and other outlets, campus forums where P2P issues and institutional policies are discussed, all can help bring these issues before the campus community.

CONCLUSION

The problem of unauthorized P2P file sharing is a significant problem on many college and university campuses. Much of the activity may be unlawful, and it can interfere with the use of campus computer networks for academic purposes. The collective impact of unauthorized file sharing is believed to be harming the entertainment market from which file sharers wish to draw enjoyment, a market that includes creators and artists as well as companies. A concerted and sustained effort by colleges and universities to substantially reduce or eliminate unauthorized file sharing through multifaceted efforts—by continuing education activities, use of network management technologies, and the development of legitimate online entertainment delivery

alternatives—holds considerable promise of success. The Joint Committee of the Higher Education and Entertainment Communities will continue to try to assist work in all of these areas.

March 19, 2004

Joint Committee of the Higher Education and Entertainment Communities

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