A Report to the Subcommittee on Courts, the Internet, and Intellectual Property
House Judiciary Committee
By the Joint Committee of the Higher Education and Entertainment Communities
On Progress during the Past Academic Year
Addressing Illegal File Sharing on College Campuses
September 21, 2005

In October 2004, the Subcommittee on Courts, the Internet, and Intellectual Property held its second hearing on "Peer-to-Peer (P2P) Piracy on University Campuses." Much has happened since then and, in anticipation of the Subcommittee's next hearing this month, we offer this follow-up report highlighting the events over the past year.

Undoubtedly, we have reached a turning point on the issue of illegal P2P file-sharing. This June, the Supreme Court handed down its decision in the *MGM vs. Grokster* case, finding that P2P companies (and others) who encourage or induce infringement on file-sharing systems can be held liable themselves. The unanimous Court decision brought further attention to an already important topic for schools across the country. Last month, these schools received a letter from the Joint Committee, reminding administrators of their responsibility to appropriately address this issue and offering assistance in their aim to reach students. In addition, in light of the holding in *Grokster*, the Joint Committee will offer an update to its 2003 white paper on student P2P liability. Hundreds of news sources have reported on the Supreme Court's final word on illegal file-sharing. School papers as well have already begun talking about the implications of this decision, and the discussion (and response) will undoubtedly continue into the new school year.

In November 2004, Joint Committee Co-Chair Graham Spanier sent a letter to 90 university presidents, asking them to report on how they deal with illegal file-sharing on their campus. Information from those who submitted reports, coupled with news pieces and personal discussions with those in the academic community, have offered great insight into the different ways in which schools have addressed this problem. The main topics that have been discussed, including legitimate services on campus, education, enforcement, and adoption of technological measures, appear below.

Legitimate Online Services

Last year's report reflected the exciting emergence of legitimate services on college and university campuses. Services such as Napster, Cdigix, MusicRebellion, Ruckus, Real Networks' Rhapsody, and Apple's iTunes gave schools the opportunity to offer their students the music and movies they desired in a fun, convenient, economical, and legally responsible way. The success of these pilot programs is reflected in the remarkable rate of adoption by other schools. Since last year's report, the number of schools with legitimate services on campus has more than tripled to nearly 70. As a result, more than 670,000 students now have access to a legitimate music service through their university. And the number is growing rapidly. The University of California and California State systems have announced agreements to allow individual schools in the network to sign up

with a service, potentially adding hundreds of thousands of additional students to the legitimate downloading movement. *Please see attached map of colleges and universities offering legitimate services.*

Of course, the level at which students use these legitimate services on campus varies from school to school, often depending upon the accompanying means by which administrators address the piracy issue. We have discovered that the adoption rate of such services has been best at schools that first successfully reduce the availability of illegal file-sharing on the network. This reduction is best accomplished through the use of filtering products, bandwidth controls, and other network technologies.

Filtering and other Technology Measures

Many schools continue to use bandwidth shaping technologies, such as Packeteer, that limit the amount of bandwidth students can use per week (or the times at which they can use it). Those who exceed this limit are warned and their network access is subject to being significantly reduced in speed or ultimately discontinued. While a positive step, these applications are often used in such a way as to make them ineffectual. By reducing bandwidth availability only at certain times, schools may incidentally give students the impression that infringement is acceptable at prescribed interludes. Students adapt to time constraints and never receive the message that this activity is illegal and simply wrong. Further, the relative small size of music and other content files enables the illegal trading of hundreds or thousands of such works even under moderately aggressive bandwidth shaping efforts.

More and more schools are turning to products that target specific illegal activities on their system. The University of Florida's Icarus application, which prohibits certain protocols that facilitate infringement, is being marketed for use at other schools under the company name Red Lambda. Under the program, there has been a 50 percent decrease in offenders year over year, and UF has received no DMCA infringement notices. As the new year progresses, Icarus and similar products will allow more schools to consider the prevention of illegal file-sharing at its source: illicit P2P applications.

Audible Magic's CopySense weeds out infringing transmissions on P2P networks by using fingerprinting technology to match transmitted content against a master database of protected works. The product has been employed at more than 30 universities and has significantly reduced the number of infringement notices received by these administrations.

By first implementing these technologies, and by later complementing them with a legitimate online service, schools will continue to have the best success in reducing illegal file-sharing on their systems.

Education

Education, of course, remains a significantly important element in our efforts to curtail abuse on P2P networks. Conversations about file-sharing, ubiquitous on campus, have been brought into classrooms as schools update their curriculum to reflect the relevance of this subject. This is no longer an esoteric topic limited to intellectual property discussions in law school classes. Undergraduates, with their laptop computers, portable music devices, and growing opportunities to acquire music online, are increasingly interested in copyright and the implications of infringement. Administrations have become progressively more vigilant, communicating more with the academic community through letters and emails to inform students, faculty, and staff of the seriousness of copyright infringement. It has now become standard for orientation programs to include material on copyright and the proper use of school resources. Presentations and seminars throughout the year are reinforced by posters, flyers, videos, and other educational campaigns to keep students engaged.

However, many schools could do a better job to ensure that the message is being received. While acceptable use policies have been updated, they are too often hidden or not easily accessible to students and others. School websites should clearly link to these policies without requiring the user to drill down or make leaps of logic to find the relevant section. It may be beneficial for schools to periodically engage in surveys to ensure their efforts to educate students on these matters are effective.

This past June, the Association of Governing Boards of Universities and Colleges sent members its "Ten Public Policy Issues for Higher Education in 2005 and 2006." Included in this paper was a discussion of intellectual property on campus, encouraging colleges and universities to "comply with copyright law." As the Association wrote, "Promotion and compliance is a matter of self-interest—to preserve their credibility in protecting their own intellectual property. And it is a matter of principle—to promote respect for copyright law and intellectual property as part of the educational mission."

Certainly, a look at many school papers across the country shows the increased attention to this matter. Articles and op-eds appear, not only from members of the music community seeking to reach out and inform students, but also from current students and school administrators. Many national papers have also given voice to those in the industry. Op-eds by Joint Committee Co-Chairs Graham Spanier and Cary Sherman have appeared in the Philadelphia Inquirer and the Boston Globe, respectively. School administrations undoubtedly can become more involved in engaging students, providing additional and more frequently offered forums in which students can discuss and learn about these issues.

Enforcement

In March 2004, the RIAA began including university students in its rounds of lawsuits against online infringers. This past year saw the continuation of that program, with a total of 880 students at 134 schools sued to date. Online piracy has not been reserved for

music, however, and the Motion Picture Association of America (MPAA) in November of 2004 began suing individuals illegally distributing copyrighted movies. While lawsuits are still considered a last resort in the ongoing effort to curb infringement, the resulting publicity has nonetheless brought national attention and understanding to the issue, and enabled legitimate online services to take root.

This past April and May, the RIAA and MPAA turned their attention to Internet2, an advanced network created by participating institutions of higher education and partially supported by government funding. This exceptional resource, created for academic and research purposes, unfortunately fell victim to an onslaught of illegal file-sharing activity. P2P applications such as i2hub, which have been optimized for the incredibly fast Internet2, have enabled users to download songs in seconds and entire movies in minutes. The closed academic-based network led many students to believe falsely that they could engage in infringing conduct with impunity. Lawsuits against those on the i2hub system ended that myth. Letters were sent to school administrators, either as a courtesy "heads-up" communication to notify them of forthcoming subpoenas, or as simple warnings that such activity was taking place on their campus. Two rounds of i2hub litigation by the recording industry resulted in almost 500 lawsuits filed against users on 38 different campuses. The response was immediate. In addition to a flurry of news reports, op-eds, and internal school notices highlighting the issue, the number of users on i2hub decreased significantly (and some legitimate online services reported a corresponding increase in sign-ups). The RIAA and MPAA have now joined as members of Internet2 and look forward to collaborating with this diverse community.

Many schools have stepped up enforcement, realizing that violation of the school's own policies can have serious consequences. Ensuring adherence to these rules not only safeguards the security and integrity of the school's computing systems, but also enables students to stay within the law and acquire a lasting respect for copyright and the works it protects. As with acceptable use policies, however, schools should work toward providing students with easy access to, and a clear understanding of, the penalties and disciplinary proceedings following claims of infringement.

Emerging Challenges

Colleges and universities that received the April and May Internet2 letters were also informed that many students have set up file-sharing systems on the schools' Local Area Network ("LAN"), facilitating the illegal copying and distribution of copyrighted works without connecting to the larger public Internet. As with i2hub on Internet2, these students often believe that these closed networks grant them immunity. Nevertheless, these hubs of piracy are frequently brought to copyright owners' attention, and school administrators should become more vigilant in stemming this abuse of their network services.

Many schools are also facing the increased use of myTunes and ourTunes, unauthorized hacks of iTunes, Apple's legitimate online music download service. These applications enable students in college dorms to illegally trade thousands of copyrighted songs stored

on the user's iTunes application and further impede the successful adoption of a legitimate download service by a school community.

Finally, many schools unfortunately have yielded to complacency in their methods of addressing piracy on campus. Illegal file-sharing and other forms of online infringement are evolving rapidly; schools must remain vigilant and adapt their anti-piracy programs accordingly. For example, while a positive step, the mere implementation of a legitimate online service without regard to its successful adoption by students would clearly be ineffective. (Again, first implementing a filter or other network technology significantly raises the likelihood of successful adoption by students.) Alerting students to policies and requirements serves only limited purpose when administrators fail to remain vigilant and effectively – and consistently – punish violators. Education and enforcement programs may waste considerable efforts if they fail to convey strongly and repeatedly the seriousness with which the school takes copyright infringement. The goal, of course, is not to accumulate haphazardly-implemented solutions, but to successfully reduce piracy on campus through an effective combination of proven and appropriate measures.

Conclusion

The Joint Committee has been instrumental in the progress being made on this issue at colleges and universities across the country. On November 13th, the Joint Committee will hold its final conference, which will be attended by university presidents, provosts, general counsels, and other administrators. We look forward to the participation of so many parties interested in the future of legitimate content on campus and in ensuring students' continued respect for copyrighted works. The response by both the education and entertainment communities this past year to the issue of illegal file-sharing has been overwhelming and the coming years, while challenging, hold even more promise. The Joint Committee is proud to have helped initiate this process and we thank the Subcommittee for its ongoing support.