Congress of the United States

Washington, DC 20515

May 1, 2007

President Mary Sue Coleman
University of Michigan
Office of the President
503 Thompson Street
2074 Fleming Administration Building
Ann Arbor, MI 48109

Dear President Coleman:

The issue of copyright piracy on university campuses is one that Congress has long sought to address in a constructive and collaborative manner. Since 2003, the House of Representatives has conducted no fewer than five hearings into this subject, involved multiple Committees in the consideration of legislative alternatives, and engaged in direct outreach to both the educational and creative communities.

Most recently, on March 8, 2007, the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property conducted a hearing entitled, "An Update – Piracy on University Networks." Previously, on September 26, 2006, the Education and Labor Subcommittee on Higher Education, Lifelong Learning, and Competitiveness held a hearing entitled, "The Internet and the College Campus: How the Entertainment Industry and Higher Education are Working to Combat Illegal Piracy."

This extended Congressional inquiry into the campus piracy issue has given the education community, copyright creators, and technology providers numerous opportunities to update us on the state of efforts to combat the theft of copyrighted material by the use of university computer and data networks. While this inquiry demonstrates that modest progress has been achieved, it has also furnished substantial evidence to question the commitment of some institutions to adopt and, more importantly, implement policies that will actually contribute to a reduced incidence of campus digital piracy.

The fact that copyright piracy is not unique to college and university campuses is not an excuse for higher education officials to fail to take reasonable steps to eliminate such activity nor to appropriately sanction such conduct when discovered. Consider:

- a 2006 study by the L.E.K. group attributed **44% of the domestic piracy losses suffered by the U.S. motion picture industry – more than half a billion dollars annually** – to college students;

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- a Spring 2006 survey by Student Monitor found **more than half of all college students download music and movies illegally;**
- a survey of college students conducted by the NPD market research firm revealed that students reported that more **than 2/3 of all music they acquired was illegally obtained;** and

- NPD also concluded college students were **responsible for more than 1.3 billion illegal music downloads in 2006** and that **college students disproportionately used P2P networks to download unauthorized music files** (i.e. college students accounted for 21% of all P2P users but 26% of all P2P downloaded music files.)

Both copyright theft and plagiarism involve the misappropriation of another's work for one's own personal benefit. Just as institutions of higher education take seriously the moral and ethical ramifications that result from individual acts of plagiarism, it is critical they convey a similar sense of purpose and commitment in the fight against digital piracy.

The theft of copyrighted goods and losses attributable to digital piracy are substantial and consequential. Beyond the obvious ethical and moral dimensions, the economic loss borne by U.S. creative industries imposes serious individual and collective costs on the U.S. economy. As one example, **the $6.1 billion dollar loss endured in 2005 by the U.S. movie industry equals a loss of $20 billion in GDP, 141,000 jobs, and $835 million in tax revenue. The jobs lost tend to be positions that pay substantially more than average, and in fact, represent precisely the types of opportunities that those with an advanced education may wish to seek after graduating.**

Student digital piracy imposes extraordinary costs on creators who earn their living by working directly in the copyright industry and diverts scarce and expensive university computing and networking resources, which are intended to be devoted to educational purposes, to the furtherance of illegal activity.

Taxpayers at the federal, state and local level expend billions of dollars annually in support of efforts to keep college within the reach of qualified students. Many of these dollars may be used, directly or indirectly, to support university computing resources and programs that it appears are, all too often, abused to facilitate civil and criminal copyright infringement on a massive scale.

We are concerned that your institution has been identified by either the Recording Industry Association of America (RIAA) or the Motion Picture Association of America (MPAA) as one of the ten schools in receipt of the highest number of Digital Millennium Copyright Act (DMCA) notices of infringement during the most recent reporting period.

Specifically, the University of Michigan has been identified as having received 740 DMCA infringement notices, which are issued pursuant to the terms of 17 U.S.C. 512, from MPAA during the period from September 2006 to December 2006.

The presence of your institution on this "Top Ten" list is a troubling indication that authorized users of your university computer networks routinely utilize your facilities to engage in the theft of copyrighted works.

Inclusion on this list also indicates that an institution may need to act urgently to improve elements of its education, enforcement and technology programs. The offering and promotion of legal alternatives to illegal P2P downloading may also significantly enhance efforts to combat the corrosive effects of campus digital piracy.

To ensure that we and other Members of Congress are provided with a more comprehensive understanding of the precise anti-piracy practices enforced on your campus and the extent of the University of Michigan's commitment and resources devoted to tackling this serious problem, we ask you to personally ensure that the following "Survey of University Network and Data Integrity Practices" is completed and returned to the Subcommittee on Courts, the Internet and Intellectual Property no later than May 31, 2007.

Your full and complete responses to the enclosed survey will assist us in determining what "best practices" need to be instituted. It will also help us to assess whether Congress needs to advance legislation to ensure the unacceptable use of educational facilities to obtain or traffic in copyrighted goods is no longer commonly associated with student life on some U.S. campuses.

We look forward to receiving your completed responses and hope to have the opportunity to discuss with you what steps your institution is taking to ensure members of your university community comprehend and take seriously the need to respect copyrights.

Sincerely,

Lamar Smith
Ranking Member
Judiciary Committee

George Miller
Chairman
Education and Labor Cmte.

Howard "Buck" McKeon
Ranking Member
Education and Labor Cmte.

Howard Berman
Chairman
Judiciary Committee
Subcommittee on Courts, the
Internet and Intellectual Property

Howard Coble
Ranking Member
Judiciary Committee
Subcommittee on Courts, the
Internet and Intellectual Property

Survey of University Network and Data Integrity Practices

Please provide a full and complete written response to each of the following questions that relate to the network and data integrity policies of your institution, as such policies existed on April 26, 2007. If your institution modified any of these policies after this date, then please describe how the policies have been changed. Your written response is requested NLT May 31, 2007 and should be directed to:

House Committee on the Judiciary
Subcommittee on Courts, the Internet and Intellectual Property
Attn: Shanna Winters and David Whitney
B-352 Rayburn House Office Building
Washington, D.C. 20515

I. Education: Communicating the Importance of University "Acceptable Use" Policies

1. Does your institution have an "acceptable use" policy that includes an unambiguous prohibition against illegal peer-to-peer file trafficking[1] of copyrighted works through the use of campus computer and networking systems?
2. If you answered "yes" to (1) above:
    a. Please provide a copy of your institution's acceptable use policy and describe the means by which it is communicated and reinforced to members of the university community. Please also note when the present policy was adopted as well as describe the manner in which your institution ensures that the policy is kept current with technological developments (i.e. is there a defined procedure in place to conduct regular reviews or are changes made on an ad hoc basis?).
    b. Does your institution's acceptable use policy clearly state the consequences for violations, i.e. the range of penalties available for using university resources to download, upload, or traffic in illegal files?
    c. Which, if any, of the following practices does your institution employ to ensure authorized users of your computer and network resources are made aware of your institution's policies regarding illegal file-trafficking?:

[1] For purposes of this questionnaire, "illegal peer-to-peer file trafficking" means the illegal reproduction or distribution of copyrighted works through the use of peer-to-peer software applications, such as DirectConnect, BearShare, LimeWire, BitTorrent, Morpheus, and KaZaA.

i. Publish a website that describes the acceptable use of your institution's computer systems and networks. If "yes", please provide a screen shot;
ii. Require authorized users to acknowledge and agree to the policy before being permitted access to your institution's computer and network resources. If "yes", please provide a screen shot;
iii. Send general email reminders to authorized users reminding them of the priority your institution places on respecting copyrighted works and educating them on your acceptable use policy. If "yes", please provide a screen shot;
iv. Send individual notices to authorized users alerting them that they may be in danger of violating the acceptable use policy and describing the penalties that could apply if they proceed. If "yes", please provide a copy;
v. Communicate the acceptable use policy and possible consequences for violations to matriculating students during orientation. Please provide copies of any written materials distributed as well as a copy of any "slide" used in audio-video presentations;
vi. Reinforce the acceptable use policy through ongoing dialogue and meetings with groups that represent faculty, staff and students. Please describe the frequency of these meetings, identify the university official who typically leads such discussions, and provide copies of any documents or materials that are routinely distributed;
vii. Articulate the acceptable use policy through the use of advertising, announcements, and/or articles published in student newspapers or other widely-read student publications. Please provide a copy of any such materials published during the 2006-07 school year;
viii. Place posters and or distribute handouts or flyers in prominent places on or around campus. If "yes", please provide copies.

3. If you answered "no" to (1) above, please explain why your institution has not decided to adopt an acceptable use policy and widely communicate it to members of your university community? Also, please reconcile your decision not to promulgate an acceptable use policy with statements from national higher education association officials to Congress that finding a means to effectively combat the unacceptable use of computer and networking resources to commit copyright theft represents an urgent priority for university and college administrators.

II. Enforcement: Meaningful Implementation of University Anti-Piracy Policies

1. Please describe, in detail, your institution's formal policy or procedure for processing and responding to notices of infringement received from copyright

holders? If the policy is written, please provide a copy of the policy or procedure to the Subcommittee. If your institution lacks a formal written policy, then who at your university is charged with responsibility for receiving such notices and what steps are they expected and held accountable for taking upon receipt of such a notice?

2. Recently, one university "spokesman" was reported as stating that a notice of infringement received from a copyright owner "is asking us to pursue an investigation and as the service provider we don't see that as our role."[2] Do you and your institution agree with this statement? If "yes", why? Please fully explain your response.
3. Beginning with the 2002-2003 academic year and for each school year thereafter, please identify the number of student violations of your institution's acceptable use policies that involved illegal downloading, uploading, or file trafficking of copyrighted material? Please also note the number of works whose copyrights were infringed.
4. Of the number of illegal file-trafficking violations discovered, how many were brought to your institution's attention through a notice provided by a copyright holder?
5. Did your institution acquire knowledge of violations through any means other than by relying upon the receipt of notifications sent by copyright holders? If "yes", how many violations were attributable to these alternative methods of discovery? Please describe any independent measures your institution takes to discover violations and preserve the integrity of your computer and network resources as well as respect for your institution's acceptable use policy.
6. Does your institution monitor the use of its computer systems and networks for any of the following activities that may serve as possible indicators of infringing activity:
    a. Use of common file-trafficking software?
    b. Amount and percentage of overall system bandwidth consumed by file-trafficking activities? If "yes", what is the typical percentage of your system's bandwidth consumed by such activities?
    c. Ports accessed?
    d. Requests to access IP addresses known to be associated with illegal file-trafficking?
    e. Bandwidth consumption by individual users?
    f. Amount of time spent connected to university networks?
7. Describe your institution's procedures for ensuring that known violators of your acceptable use policies are deterred from committing future violations. What methods does your institution employ to keep track of violations and deter recidivism? Do you keep records? If "yes", for how long do you retain such records? If "no", then why do you not maintain such records?
8. What techniques does your institution employ after being informed of a suspected violation of your acceptable use policy? Does your institution:

[2] Quote attributed to Purdue "spokesman" Steve Tally in February 21, 2007 AP article entitled, "Music Companies Targeting Colleges", written by Ted Bridis.

a. Initiate an investigation? If "yes", please describe the steps taken in pursuing a typical investigation.
b. Identify the violator?
c. Issue a warning to the violator? If "yes", please provide a copy of such warning.
d. Reduce bandwidth available to the violator? If "yes", please describe how, for how long, and in how many instances your institution has instituted this practice.
e. Require removal of file trafficking software from the violator's computer? If "yes", how is this accomplished? In how many instances has this been required?
f. Require removal of any illegal copyrighted files? If "yes", how is this accomplished? In how many instances has this been required?
g. Ban, curtail or suspend computer or network access privileges? If "yes", in how many instances have violators had their computer or network access privileges banned, curtailed or suspended? For how long were these privileges banned, curtailed or suspended?
h. Assess fines or require restitution of funds? If "yes", in how many instances have violators been assessed fines or been required to pay restitution? What are the amounts of the individual fines and restitution that have been assessed? In total, how much has been collected?
i. Refer violating students to university judicial processes? If "yes", how many students have been so referred? How many students have been adjudged to have violated university "authorized use" policies and what have been the consequences prescribed?
j. Place violating students on probation? If "yes", how many violators have been placed on probation? What length of time did they serve on probation?
k. Suspend violating students? If "yes", how many violators have been suspended? Were violators suspended from the school or merely suspended from certain activities? What length of time did they serve on suspension?
l. Expel violating students? If "yes", how many violators were expelled?
m. Make note of honor code violations or copyright infringement violations on academic reports or transcripts that may be provided, upon student assent, to graduate schools or potential employers?

9. Does your institution retain records that enable the identification of specific users of computer and network resources who may be the subject of a notice of infringement from a copyright holder? For how long are these "user logs" maintained? What factors were considered in making the decision to retain such "user logs" and in determining how long to retain such records? Is the lack of such records or a limited retention time a practical impediment to the effective identification of violators of your institution's acceptable use policies?

III. Technology: Leveraging Piracy Countermeasures to Reduce Exposure and Prevent Misuse of University Computing and Network Resources

1. To mitigate the use of your institution's computer network for illegal file trafficking in copyrighted works, does your institution place individual bandwidth limitations on all users, or on selected groups of users? If your answer is "yes":
    a. Does your institution use bandwidth limitations at all times, i.e. 24/7, or only during certain periods during the day?
    b. Please describe the bandwidth-shaping technology used.
2. Does your institution limit inbound connections to student computers connected to the campus computer network?
3. Does your institution block, restrict, impede or otherwise seek to limit student access to websites known to distribute file-trafficking software? If not, why not?
4. Does your institution block, restrict, impede or otherwise seek to limit student use, through the campus computer networks, of any file-trafficking software? If "yes", please describe the methods used and identify the technology employed. If not, why not?
5. Does your institution use any filtering technology to prevent the illegal transmission of copyrighted material through campus computer networks? If "yes", please describe the methods used and identify the technology employed. If not, why not?
6. Does your institution limit the number or types of open ports available to student users of the campus computer network? If "yes", please describe the methods used and identify the technology employed.
7. Has your institution ever utilized any of the technologies described above? If "yes", and a decision has been made to no longer employ these technologies, why was such use discontinued? If your institution has never employed any of the above referenced technologies, then what factors account for that determination?

IV. Legal Alternatives: Promoting Legitimate Services as Alternative Sources for Copyrighted Materials

1. Does your institution encourage students to use legitimate online services, such as Ruckus, iTunes, CinemaNow, Unbox, Rhapsody, or MovieLink, to access copyrighted material? If "yes", please specify which services your institution promotes.
2. If you answered "yes" to (1) above, does your institution:
    a. Use websites to direct users to these services?
    b. Offer free advertising to one or more services?
    c. Offer certificates for free downloads from, or subscriptions to, one or more services?
    d. Offer discounts on monthly use of one or more services?
    e. Offer collective or site licensing of one or more services?

f. Offer free access to one or more services, or parts of those services?
g. Provide information on one or more services in student enrollment materials or during back-to-school events?

3. What are your institution's policies regarding access and availability of cable or satellite television programming in university residences? Specifically, does your institution provide free or subsidized cable or satellite television programming to resident students? If "yes", how much does this service cost on an annual basis? What is the source of funding for this service?