

The Campus Costs of P2P Compliance

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The reauthorization of the Higher Education Act (HEA) signed by President Bush on August 14th as the Higher Education Opportunity Act of 2008 imposes “hundreds new reporting requirements” that govern the activities of the nation’s 4400 public, private, and for-profit two- and four-year colleges and universities.¹ Buried deep in the 1,158 pages of the HEA legislation, in Section 488, are three new regulations intended to force colleges and universities to address the issue of illegal peer-to-peer (P2P) filesharing of digital content – primarily music and movies.

As outlined in a legislative summary prepared by senior officials of key higher education associations based in Washington DC, the P2P provisions were “designed to reduce [the] illegal uploading and downloading of copyrighted works through peer-to-peer (P2P) filesharing on campus networks.” The key provisions addressing P2P require campuses:

- “to make an annual disclosure that informs students that the illegal distribution of copyrighted materials may subject them to criminal and civic penalties;”
- “to certify to the Secretary of Education that [the institution] has developed plans to ‘effectively combat’ the unauthorized distribution of copyrighted material.
- “to offer alternatives to illegal file sharing. Both the practicality and selection of alternatives are to be determined by the institution “in consultation with the chief technology officer or other designated officer of the institution.”²

Although these legislative mandates seem sweeping and absolute, the briefing memo prepared by the Washington association officials notes that the law contains some caveats. For example, even as HEA requires colleges and universities to develop plans to combat digital piracy on campus networks, HEA “does not require the Secretary to collect these plans, nor is the Secretary given the authority to review or approve [the plans].”

However, as stated in the association memorandum, HEA mandates that “in developing these plans, institutions are required to consider the use of technology-based deterrents” and the report language accompanying the law “explicitly states that technology-based deterrents include ‘bandwidth shaping’ and ‘traffic monitoring to identify the largest bandwidth users,’ and indicates that certain education and enforcement programs will also qualify. The report language explicitly notes that institutions are **not** required to adopt any particular type of technology-based deterrent, recognizing that even institutions that ‘prohibit content monitoring’ retain the authority to determine their own plans” (original emphasis).

Finally, the briefing memo reports that the provision requiring campuses to “offer alternatives to illegal sharing” of music and movies “is not an absolute mandate...by no

means does [HEA] require institutions to offer students free music or videos through legal channels.”

These provisions represent a victory, of sorts, for the two associations that represent the entertainment industry in Washington – the Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA). These industry groups aggressively lobbied members of the House and Senate to add provisions to the HEA that would require postsecondary institutions to address P2P filesharing. That the HEA legislation on P2P does not contain more provisions or more explicit or restrictive mandates also represents a victory for the higher education community, led by their Washington associations (American Council on Education, Association of American Universities, EDUCAUSE, and the National Association of State Colleges and Universities, among others) and supported by the efforts of numerous campus officials across the country who contacted Congressional representatives and staff during the final weeks of the legislative activities to express concern about what some viewed to be the draconian (and expensive) mandates strongly supported by the MPAA and RIAA.

That said, the success of the MPAA and RIAA in pressing for and securing these legislative provisions raises two questions:

- why did the MPAA and RIAA seek legislative redress for the problem of P2P activity on college and university networks and by college and university students; and
- what are the campus costs – as reflected in dollars and personnel time – of compliance with the P2P provisions of HEA.

The Quest for Legislative Redress

The exploding consumer access to the Internet coupled with the emergence of Napster and other P2P filesharing software in the late 1990s created havoc for the music industry. For more than two decades the recording industry had been concerned about but seemingly resigned to a kind of informal, “friend-to-friend” sharing of music that was fostered, in large part, by the arrival of low-cost dual-deck cassette recorders in the mid-1970s. But the Internet and P2P software served “to liberate” music from physical media (CDs), allowing almost anyone with a computer and an Internet connection to upload and download large libraries of digital content. Although uploading and downloading commercial music and movies is a violation of copyright law, few consumers seemed aware of or concerned about copyright. For the generation of college students that had come of age with VCRs and a 1984 Supreme Court decision that affirmed the right of consumers to copy television programs to their VCRs, the nuance between recording TV programs and downloading music was largely lost.

Not surprisingly, college students were big fans of illegally “liberated” music. Moreover, well before cable companies and telecommunication firms began to offer high speed consumer broadband services, college students living in campus dorms and using campus networks were probably the largest “unrestricted” population of Internet users in the United States. Unlike the employees of large technology firms who have broadband access at work but whose employers can monitor their online activities, colleges and universities generally impose far fewer restrictions of the personal use of Internet resources than corporations and government agencies. Additionally, given that colleges provide broadband access to students living in dorms and working in other public locations on campus, college students are far more likely than other consumers to engage in “after hour” activities,

ranging from research and homework for classes to social activities and, alas, downloading music via P2P filesharing.

College students have been an understandably easy target for the music industry's anger about P2P filesharing and by extension, declining CD sales. College students represent a significant segment of the music buying population, and, at least during the last years of the 1990s, the one segment of the consumer population with generally unrestricted access to broadband. Moreover, at least in the early years of the current decade, many colleges, like most consumer Internet Service Providers (ISPs), provided little if any guidance to network users about copyright and appropriate use issues.

Beginning in 2004 and into 2005 the RIAA issued monthly press releases to announce "John Doe" lawsuits for P2P and copyright violations. Although the press releases and other public statements by RIAA officials often highlighted the role of college students in illegal P2P activity, they were actually a small proportion of the total population of the "John Doe" filings. For example, a RIAA press release dated 16 December 2004 announced a "new wave of copyright infringement lawsuits against 754 individual file-sharers," including 20 students at six colleges.³ An independent count of the RIAA's P2P filesharing lawsuits during this period by The Campus Computing Project revealed that college students accounted for just under four percent of the more than 8400 "John Doe" filings during 2004 and early 2005.⁴

The RIAA's focus on P2P piracy was part of a larger campaign by both the RIAA and the MPAA to publicize the costs and consequences of digital piracy – be it US students downloading music and movies in college dorms or factories in China making illegal copies of CDs and DVDs. Several Congressional hearings during 2004-2006 focused on the impact and consequences of digital piracy, emphasizing lost revenue and lost jobs for the US entertainment industry. Some hearings focused specifically on P2P activity on campus networks and by college students.

The push for Congressional mandates on P2P filesharing as part of HEA may have begun early in 2007. In February 2007, the American Council on Education forwarded a letter from RIAA president Cary Sherman to some 2000 college and university presidents. Mr. Sherman's letter offered a *pro forma* acknowledgement that there had been some progress regarding "illegal file trafficking of copyrighted content on peer-to-peer (P2P) systems," stating that the RIAA and others in the entertainment industry are "grateful for the proactive work of many institutions." But Sherman's letter also stated clearly that because "the piracy problem on campuses remains extensive and unacceptable," the RIAA felt "compelled to escalate [its] deterrence" efforts, as reflected in a new wave of lawsuits under the Digital Millennium Copyright Act, announced earlier in February.⁵

Mr. Sherman's February 2007 letter to campus presidents indicated that the RIAA wanted colleges and universities to (1) implement a technical network solution; (2) offer an online music service to students; (3) take disciplinary action against students; and (4) provide user education programs about copyright and downloading. Additionally, Sherman suggested that campus officials should "facilitate the [RIAA's] new deterrence program by forwarding pre-lawsuit letters" to students and others with access the campus network to settle legal claims ahead of RIAA lawsuits."⁶

In March and June 2007, two separate House Committees convened hearings on P2P issues on college campus. The March hearing titled “An Update: Piracy on University Networks” was convened by Cong. Howard Berman (D-CA), chair of the Subcommittee on the Courts, The Internet, and Intellectual Property who literally represents Hollywood – his congressional district in California.⁷ In June, Cong. Bart Gordon (D-TN), chair of House Science and Technology Committee, convened a second hearing. In his opening statement, Chairman Gordon expressed concern about the impact of P2P piracy on his constituents “who live and work in Nashville.” Additionally, in his opening comments Cong. Gordon stated that “technology will be the first line of defense” in efforts to stem digital/P2P piracy, an assessment disputed and discounted by the expert witnesses who appeared before his panel that day.⁸

In January 2008, as the P2P provisions were moving into the final drafts of the HEA legislation, the MPAA issued what had to be a hugely embarrassing news release acknowledging that an aggressively promoted and widely cited research report commissioned by the organization in 2005 significantly overstated the Internet-based P2P piracy of college students: “The 2005 study had incorrectly concluded that 44 percent of the motion picture industry’s domestic losses were attributable to piracy by college students. The 2007 study will report that number to be approximately 15 percent.” The MPAA release attributed the bad data to an “isolated error,” adding that it took the error seriously and planned to hire an independent reviewer “to validate” the numbers in a forthcoming edition of an updated report.⁹ (To date the MPAA has yet to issue the updated report promised in January.)

Even as additional evidence affirmed the role of consumers – not college students – as the primacy source of P2P piracy, the MPAA and RIAA pressed on in their efforts to add language to HEA that would require campus officials assume a broader role in enforcement efforts, and for campuses to incur costs for software and content licenses. These unfunded mandates for music services and “technology solutions” – as initially outlined in Cary Sherman’s 2007 letter to college presidents – appeared the various drafts of the HEA bill as it progressed through the House and the Senate during spring and summer, 2008. Campus officials lobbied vigorously during the spring and summer months to remove (or modify) what they deemed to be expensive, onerous, and ineffective mandates. The final legislation, signed into law by President Bush on August 14th, can be seen as a victory for both sides: the MPAA and RIAA secured P2P mandates as part of the HEA legislation; however, the campus community was successful in muting some of the requirements.

The Costs of P2P Compliance

In response to the well-publicized media industry outcry (and accompanying Congressional concern) about copyright violations and P2P filesharing by college students using campus networks, the Campus Computing Project began to monitor campus policies intended stem downloading of commercial music and video content from the Internet in 2003. From 2003-2007, data collected by the Campus Computing Project as part of its annual survey of IT planning and policy issues has confirmed that the vast majority of colleges and universities in the United States have institutional policies intended to address and stem the illegal P2P filesharing of digital content, primarily music and movies. For example, as of fall 2007 approximately 90 percent of the nation’s four-year colleges and universities, and almost two-thirds (63.7 percent) of the nation’s community colleges, report policies to address illegal or inappropriate P2P filesharing (Table 1).

Table 1
**Institutions Reporting a Written Campus Policy or Code of Conduct Regarding
the Downloading of Commercial Music and Video Content from the Web**
(percentages by campus type, fall 2007)

Public Institutions	
Universities	92.4
Master's Institutions	89.0
Baccalaureate Institutions	93.3
Associate Colleges	63.7
Private Institutions	
Universities	92.7
Master's Institutions	85.7
Baccalaureate Institutions	85.0

Source: Campus Computing 2007

New questions added to the 2007 Campus Computing Survey (conducted in summer, 2007) went beyond a prior survey item about existing campus policies to ask about specific institutional efforts to address P2P issues via user education, technology solutions, and campus sanctions. As shown in Table 2, a number of institutions across sectors have installed technology solutions intended to stem inappropriate P2P activity as of fall 2007 (range: 19.5 percent in private universities to 40.0 percent in private master's institutions.) Mandatory education about P2P issues was the institutional practice at a small number of colleges and universities (range: 1.8 percent at public associate colleges/community colleges to 24.0 percent at public universities). And across all sectors, many institutions report sanctions for students who engage in P2P piracy by terminating network access privileges and imposing fines (paid to the institution) to restore network access for students who lost network privileges.

Table 2
**How Does Your Institution Address the Problem of P2P Digital
Piracy on Campus Computer Networks**
(percentages by campus type, fall 2007)

	Installed a Technology Solution to Stem P2P Piracy	Mandatory User Education Program	Sanction Students for P2P Violations	Students Can Lose Network Access for Violations*	Financial Penalty for P2P Violations**
Public Institutions					
Universities	25.3	24.0	64.6	86.1	10.1
Master's Institutions	30.0	15.0	51.1	80.1	8.0
Baccalaureate Institutions	33.4	13.3	40.0	66.6	0.0
Associate Colleges	22.1	1.8	24.8	47.8	0.9
Private Institutions					
Universities	19.5	17.2	56.1	73.2	22.0
Master's Institutions	40.3	7.8	46.7	70.1	6.5
Baccalaureate Institutions	34.0	15.0	49.0	77.0	3.1

*campus sanctions for copyright, DMCA, or P2P violations
** fines imposed by and paid to the institution for P2P violations, which may include a fee to re-establish network access.

Source: Campus Computing 2007

Conscious of the P2P filesharing mandates imbedded in the HEA legislation moving through the Congress in spring and summer 2008, the Campus Computing Project launched a new survey on P2P issues in July, 2008. The focus of the new survey was the institutional cost of compliance with the P2P provisions in HEA, emphasizing both the financial costs (for content licenses and for software intended to stem P2P activity) and also costs reflected in the time campus personnel spent on P2P issues. CIOs and other senior campus IT officials representing 321 two- and four-year public and private colleges and universities across the United States participated in this special survey on P2P compliance issues.

Survey respondents were asked four questions about the financial costs of P2P compliance, reflecting the P2P mandates in the 2008 HEA legislation:

- does your institution have a campus license for a music service, and if so, what is the annual cost of the license?
- does your institution license one or more software or hardware products specifically to monitor or stem illegal/inappropriate P2P activity on campus networks, and if so, what is the annual cost of the license?
- has your institution incurred other costs for hardware – servers, network resources, etc. – related to institutional efforts to stem illegal/inappropriate P2P activity on campus networks? and
- has your institution incurred other direct costs as part of institutional efforts to illegal/inappropriate P2P activity on campus networks?

As shown in Table 3, only two-fifths (42.6 percent) of public universities and a third (32.3 percent) of private universities report a campus licensing agreement for a music service going into the 2008-09 academic year. The numbers are lower for other sectors: a third (33.3 percent) for public bachelor's colleges, a fifth (19.2 percent) for public master's institutions, and a tenth for private master's and bachelor's institutions. Only two percent of community colleges report a music service licensing agreement.

	<u>License for a Music Service</u>	<u>License for Software to Stem P2P</u>	<u>Special Hardware Expenditures for P2P</u>	<u>Other Direct Costs</u>
Public Institutions				
Universities	42.6	58.8	31.5	43.3
Master's Institutions	19.2	44.4	34.6	34.6
Bachelor's Colleges	33.3	83.3	33.3	16.7
Associate Colleges	1.9	34.6	13.5	15.4
Private Institutions				
Universities	32.3	45.2	25.8	32.3
Master's Institutions	10.8	67.6	29.7	13.5
Bachelor's Colleges	11.4	58.2	24.1	12.7

Source: 2008 Campus Computing Project P2P Survey

A far larger number of institutions report that they have licensed one or more software products intended to stem illegal or inappropriate P2P activity on campus networks. The numbers range from a high of four-fifths (83.3 percent of public bachelor's colleges) to a low of a third (34.6 percent) for community colleges.

A fourth to a third of four-year colleges and universities report additional expenditures for special hardware as part of their efforts to stem P2P activity (range: 34.6 percent in public master's institutions to 13.5 percent in community colleges). And a good number of colleges and universities report "other direct costs" as part of the campus effort to address P2P (range: 43.3 percent in public universities to 12.7 percent in private bachelor's colleges).

The P2P questionnaire also asked respondents to provide information about the cost of any special content licensing agreements (e.g., music services such as Napster). While 59 of the 321 institutions participating in the survey report content (music) licensing agreements, only three colleges reporting licensing agreements for A/Y 2008-09 that involved fee payments. These three institutions all reported licensing agreements with Napster.

As for the other 56 campuses reporting content (music) licensing agreements, follow-up phone conversations and email correspondence with senior IT officials at a number of these institutions revealed that these colleges had "no fee" licensing agreements for digital music and movies with Ruckus Networks (www.ruckusnetworks.com).

Table 4 presents data about the range of expenditures for software licenses, special hardware, and other direct costs. The survey reveals that many private universities spend significant sums to license software intended to stem illegal/inappropriate P2P activity on campus networks (over \$100,000 annually, on average, for campuses with software license agreements). While the software licensing fees paid by public universities are significantly less (over \$20,000 annually), these payments still reflect a major allocation from campus IT budgets. Master's institutions, bachelor's colleges, and community colleges all report spending far less to license software intended to stem P2P activity than do doctoral universities.

	License Fee for Software to Stem P2P		Special Hardware Costs for P2P	Other Direct Costs
	<u>A/Y 2007-08</u>	<u>A/Y 2008-08</u>	<u>A/Y 2007-08</u>	<u>A/Y 2007-08</u>
Public Institutions				
Universities	\$ 22,482	23,469	64,618	82,782
Master's Institutions	9,756	10,065	25,258	19,988
Bachelor's Colleges	5,760	6,360	7,900	25,000
Associate Colleges	7,352	6,832	43,160	7,970
Private Institutions				
Universities	105,126	110,882	158,714	143,944
Master's Institutions	10,036	10,812	22,600	15,938
Bachelor's Colleges	5,425	6,011	11,169	12,577

Source: 2008 Campus Computing Project P2P Survey

Private universities also report significant expenditures for both special hardware and for other direct costs as part of the institutional effort to stem P2P activity – approximately \$150k in each category. Across all sectors, these other expenditures – for special hardware and for other direct costs – far exceed the annual costs of P2P software licenses and represent a significant expenditure of institutional resources.

The survey also provides data on how much time college and university officials spent on P2P issues during the past academic year (A/Y 2007-08), focusing on four categories of institutional personnel or campus offices: the president and senior campus officials; legal counsel; technology officers; and student affairs personnel. The survey data reveal major differences across sectors, but significant investments of time within most sectors. Not surprisingly, the heaviest time burdens for P2P compliance are on IT personnel, particularly in doctoral universities.

As shown in Table 5, campus presidents, provosts, and senior (non-IT) personnel spend generally little time on P2P issues. Across sectors, senior campus officials in private universities spend far more time on P2P issues than their counterparts about two person days per year. And across sectors boards appear to spend almost no time on this issue. Within the “office of the president,” secretarial and administrative staff at four-year colleges and universities spend far more time on P2P issues than do their supervisors.

Table 5
How Much Time Do Senior Campus Officials Spend on P2P Issues?
(mean hours by campus type, A/Y 2007-08)

	President Provost & <u>Other VPs*</u>	Trustees & <u>Board Members</u>	Administrative & Secretarial <u>Support</u>
Public Institutions			
Universities	2.1	0.0	30.0
Master's Institutions	7.8	0.5	98.6
Bachelor's Colleges	1.7	0	30.0
Associate Colleges	2.2	0.5	5.2
Private Institutions			
Universities	17.4	2.4	323.6
Master's Institutions	6.8	1.3	25.0
Bachelor's Colleges	4.7	1.0	17.9

* does not include VP for information Technology

Source: 2008 Campus Computing Project P2P Survey

Table 6 reveals that legal counsel in public and private universities spent far more time on P2P issues this past academic year (about 44 hours annually) than did their counterparts in other sectors. Additionally, Table 6 suggests that campuses generally do not engage outside legal counsel for assistance with P2P issues. Finally, as was the case with the office of the president, support staff appear to spend far more time on P2P issues than do the attorneys.

As noted above, the burden of P2P compliance falls primarily on campus IT personnel. As shown in Table 7, this burden falls primarily on front line managers, “back room” technical staff, and campus help desk personnel. And the burden is significant. For example, 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. While the numbers are lower in other segments, the hours remain significant and serve as a reminder that P2P compliance “drains” campus IT resources – both cash and personnel – from other functions and services. Moreover, the sector means reported in Table 7 also mask large variations from campus to campus: upon completing the P2P survey one senior campus IT official was surprised to discover that P2P compliance efforts accounted for more than 2.0 FTE IT staff time.

The P2P survey also explored the time student affairs personnel spend on P2P issues. On many campuses, student affairs professionals are involved in user education efforts, and on occasion, in campus judicial procedures prompted by violations of campus policy on appropriate use. As shown in Table 8, P2P issues engage student affairs professionals on many campuses, particularly at public and private universities.

Table 6

How Much Time Does Legal Counsel Spend on P2P Issues?
(mean hours by campus type, A/Y 2007-08)

	<u>In-House Legal Counsel</u>	<u>Outside Legal Counsel</u>	<u>Administrative & Secretarial Support</u>
Public Institutions			
Universities	44.5	2.2	12.3
Master's Institutions	15.1	17.0	9.4
Bachelor's Colleges	5.8	0.0	15.7
Associate Colleges	0.5	0.4	1.7
Private Institutions			
Universities	46.5	3.4	26.9
Master's Institutions	6.5	1.4	7.0
Bachelor's Colleges	2.4	1.3	2.7

Source: 2008 Campus Computing Project P2P Survey

Table 7

How Much Time Do Campus IT Personnel Spend on P2P Issues?
(mean hours by campus type, A/Y 2007-08)

	<u>CIO and other sr. IT Officers</u>	<u>IT Mgrs, Directors & Advisors</u>	<u>Technical Personnel in IT Unit</u>	<u>IT Help Desk Staff</u>	<u>Admin. & Secretarial Support</u>
Public Institutions					
Universities	95.9	116.4	401.2	112.4	52.8
Master's Institutions	45.6	64.9	138.9	60.7	17.6
Bachelor's Colleges	22.2	24.6	75.5	36.7	15.0
Associate Colleges	10.5	15.2	37.6	20.0	1.5
Private Institutions					
Universities	53.9	102.5	316.4	114.7	19.1
Master's Institutions	15.7	24.7	57.5	35.7	6.7
Bachelor's Colleges	25.0	22.9	46.2	20.2	5.9

Source: 2008 Campus Computing Project P2P Survey

The patterns that emerge from the survey data reveal the highest P2P compliance costs – actual dollars and also time spent by campus officials on P2P issues – are in public and private universities. Moreover, IT units incur the largest burden of P2P compliance, whether measured by budget dollars or personnel time. In aggregate, some universities may spend more than \$500,000 in cash and personnel time annually on P2P compliance. While the aggregated compliance costs as reflected in cash and personnel resources are less

in master's and bachelor's institutions, P2P compliance still consumes significant budget dollars and personnel time.

Table 8
How Much Time Do Student Affairs Personnel Spend on P2P Issues?
(mean hours by campus type, A/Y 2007-08)

	Vice President & Other Sr. <u>Officials</u>	<u>Deans</u>	Campus Judicial System	Student Advisors & Counselors	Admin. & Secretarial Support
Public Institutions					
Universities	21.5	21.1	80.1	88.8	16.4
Master's Institutions	6.2	8.9	24.4	10.2	13.7
Bachelor's Colleges	9.2	0.0	1.7	0.0	8.3
Associate Colleges	0.4	0.4	0.0	0.5	0.0
Private Institutions					
Universities	9.3	38.4	29.4	27.6	20.3
Master's Institutions	6.7	11.8	16.8	17.6	8.6
Bachelor's Colleges	5.1	6.4	5.3	4.1	2.1

Source: 2008 Campus Computing Project P2P Survey

Not surprisingly, community colleges have been far less engaged in P2P compliance as these institutions generally have not been the targets of the MPAA and the RIAA, even though they serve almost half of the students, ages 16-67, enrolled in degree-granting institutions in the United States.

P2P Compliance After HEA

HEA is now the law of the land. The US Department of Education is currently convening regional hearings for comments on the law, ahead of issuing regulations that will define implementation, including the implementation of the new P2P mandates.

The data from the summer 2008 P2P survey confirm that compliance with the HEA P2P mandates involves significant costs for the nation's colleges and universities. For some large doctoral institutions, these costs – cash and personnel time – easily exceed half a million dollars annually. From one perspective, these campus expenditures seem to be a significant “enforcement subsidy” that supports the entertainment industry's efforts to stem digital piracy. In the wake of the new HEA legislation, these P2P compliance expenditures are now a mandated subsidy.

The survey data reveal, perhaps surprisingly, that very few campuses are paying to license digital content: almost one-fifth of 321 institutions participating in the survey have opted for “no-free” content licenses. While these no-fee licenses may not have been the intent of RIAA president Cary's Sherman's February 2007 recommendation to college presidents that their institutions license a music service, it would seem to comply with that recommendation, as well as the letter and the spirit of the HEA mandate that colleges and universities offer students “alternatives to illegal file sharing.”

Many, but not all campuses are spending money for a “technology” solution to stem illegal P2P activity on campus networks. Yet the number of colleges and universities that will begin to budget for P2P compliance efforts, as well as individual campus expenditures for

compliance - software licenses, hardware, and other “direct expenses” (e.g., developing user education programs) – will likely increase in the coming years as more institutions review the HEA mandates and forthcoming regulations.

Moreover, individual campuses as well broad sectors of American higher education that have had little or no illegal P2P activity in the past are also subject to the HEA P2P mandates. For example, P2P filesharing seems not to have been a major issue at community colleges. These institutions generally are not the primary Internet service provider for most of their students. Yet under HEA, community colleges are subject to the same P2P compliance mandates and regulations that seem intended to target large and small public and private residential institutions which do serve as the primary Internet provider their students. Consequently, even as campus budgets will experience constraints and cuts caused by the current financial downturn, campus officials in two-year institutions may feel compelled to spend more money and time on P2P compliance.

Beyond community colleges, HEA applies broadly to all the nation’s postsecondary institutions that participate in Title IV financial aid programs – some 4,400 public, private, and for-profit degree granting institutions and as well as another 1,700 (often for-profit) career colleges and other non-degree granting institutions. For-profit postsecondary providers such as Argosy University, Capella University, and the University of Phoenix are now, in theory, subject to the same P2P mandates that affect largely residential institutions such as Boston University, Ohio State, and UCLA, even if these institutions (Argosy, Kaplan, & Phoenix) have never received a notice about inappropriate or illegal P2P activity on their networks. Admittedly, thanks to the lobbying efforts of campus officials and the higher education associations in Washington, DC there is some latitude allowed to campus administrators as they review the P2P mandates in HEA. Still, the legislation stands and the accompanying regulations are forthcoming. In aggregate and over time, there’s little question that for most institutions, P2P compliance will consume more dollars from campus budgets and more hours from campus personnel.

Seen from afar, the P2P provisions of HEA can be seen as a part of the larger efforts – a broad campaign - by the MPAA and RIAA to secure legislative resolution and remedy for the problem that digital piracy poses to the entertainment industry. The PRO-IP Act, strongly supported by the MPAA and RIAA and signed by President Bush on October 13th, creates a very senior federal position for a new “protector” of the nation’s intellectual property – described by some as the nation’s new IP Czar. As the bill moved through Congress, Justice Department lawyers objected to major provisions of the PRO-IP legislation, complaining, in part, that “civil cases [involving copyright] should be left to the people who own the copyrights; [DOJ] did not want its staffers to become ‘pro bono lawyers’ for [entertainment] industry.”¹⁰

So too it is understandable that campus officials would chaff at the continuing efforts of the MPAA and RIAA (a) to swiftboat higher education on the issue of P2P, portraying college students as digital pirates and campus officials as turning a deaf ear to concerns about copyright and IP issues¹¹; and (b) to have colleges and universities engage in costly “pro bono enforcement” on P2P piracy on behalf of the entertainment industry. Echoing a theme heard during the recent public debates about the credit crisis, the entertainment industries seem determined to privatize content but pass on the costs of IP protection and enforcement to the public – either through the new IP czar or via legislative mandates on P2P and digital piracy targeting the nation’s colleges and universities.

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