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Chairman Keller, Ranking Member Kildee, and members of the Subcommittee, thank you for inviting me to speak today. As you know, the phenomenon of illegal peer-to-peer (“P2P”) file-sharing on college and university campuses has received mainstream attention. We have worked hard the past few years to address this issue with schools and find solutions. This being the Education Committee, I thought I would give you a report card on how we're doing.

The breadth of the problem of illegal file-sharing is clear. The ability of millions of computer users around the world to find and trade copyrighted works with each other has cost the entertainment industry billions of dollars and threatened our ability to succeed in the evolving legitimate digital marketplace. Many thousands of people across the country have lost their jobs. While we have achieved real progress in converting pirate networks into legal services and in deterring a sizable number of would-be illegal downloaders, the problem of illegal file-sharing remains a serious one.

And college and university students remain a VERY significant part of that problem. Each year, millions of students arrive on campus with time, high-speed computing networks, and a new favorite word: “free.” Recent surveys indicate that MORE THAN HALF of the nation’s college students frequently download music and movies illegally. Imagine the effect on our industry when our primary market decides it would rather steal than pay for the product it gets. Now imagine what happens when those students graduate and carry this behavior into the real world.

We have engaged schools across the country to recognize this problem and address it effectively. To be sure, we have seen a number of positive developments, and we are grateful to the many schools that have worked with us to address this issue proactively and constructively.

But, unfortunately, there are a far greater number of schools who have done little or nothing at all. We have found that many of them resist taking action, or do as little as possible in order to brush off further responsibility. This reality is evident in the fact that more than half of the students in a recent survey said they weren’t even sure whether illegal downloads were against their college or university’s policies.

We have heard one reason after another to avoid action. “It infringes on academic freedom,” “Technological measures to prevent piracy would violate privacy,” “We aren’t the music industry’s police,” “You need to change your business model.” Maybe these are real concerns. But to me at least, they’ve begun to sound like excuses.

We believe in academic freedom. But academic freedom is not the freedom to steal. Allowing illegal file-sharing is antithetical to any educational institution’s objective to instill in its students moral and legal clarity. Colleges and universities are in the education business, preparing young adults to succeed in the world. No administration would teach its students that stealing is okay. But when a school fails to act, it is teaching. Looking the other way when students engage in illegal activity on its system sends a message – and it’s the wrong one.

Moreover, the same methods we are asking schools to use to detect and control illegal file-sharing are already being used by many of them. Administrators regularly check their networks for the existence of viruses and other threats. The products and services available for detecting illegal file-sharing are no more intrusive. Audible Magic, for example, offers a CopySense appliance that eliminates infringing transmissions only, without interfering in any way with non-infringing P2P transmissions. This product has been available for use for some time. Just last week, the Chronicle of Higher Education included a pull-out advertisement from Audible Magic explaining the benefits of its technology. We are not asking schools to spy on the contents of students’ communications. We are simply asking them to use available technology to recognize and stop the transmission of infringing works. The products are out there; why are they being used so rarely?

We do not expect schools to be the music industry’s police. But when schools claim no obligation to help us, while simultaneously refusing anyone else the ability to enforce their rights themselves, where does that leave us? This is particularly true for activity occurring within a school’s internal network. Illegal file-sharing on Local Area Networks, or LANs, is nothing more than piracy rings on a school’s home turf, and it is unclear why any administration would want that kind of activity clogging up its network. An April 2006 letter from RIAA and MPAA informed dozens of schools of our awareness of such illegal LAN-based activity. We are also aware of “hacks” to otherwise licensed and legal applications, such as “myTunes” and “ourTunes,” which allow users to acquire songs from others’ iTunes collections without paying for them. If schools insist that others deal with it, we’ll assume responsibility for looking for infringers. But schools can’t have it both ways, washing their hands of the problem, yet refusing to help us address it ourselves.

The entertainment industry has worked hard to change its business model to embrace the Internet. Over a few short years, despite numerous obstacles, we have managed to establish a vibrant online marketplace where students can legitimately acquire the music they desire. But this marketplace is continuously challenged by the toleration of illegal file-sharing. The fundamental assumption that the availability – and, indeed, prevalence – of illegal file-sharing makes it acceptable, and that content owners

must adapt to accommodate it, is bogus. Claiming that “everyone is doing it” doesn’t fly for plagiarism. Why should it for illegal file-sharing?

The implicit message we get from university administrators is, “It’s not our problem.” Some have even said this explicitly. I believe this view is shortsighted and misguided. It IS their problem. Universities are among the most significant creators of intellectual capital in this country. Intellectual property is vital to them – to their revenues, to their curriculum, to their culture of thought and discovery. If intellectual property is disrespected, what does that say about the value of the ideas so fundamental to higher education?

It’s their problem because it’s their bandwidth that’s being abused. It’s their system that is being used to serve up content to illegal downloaders all over the world. It’s their network that is being compromised through the introduction of viruses, spyware, and other online threats. It’s their workforce and infrastructure that is being used to respond to infringement notices and engage in disciplinary proceedings. Tens of thousands of these notices were sent during the past two school years and this year we intend to ramp up the program considerably.

It’s their problem because it’s THEIR students who are exposed to viruses, compromised data, and, yes, the threat of being sued. Students at 132 schools have been sued since March 2004, and we recently informed hundreds of schools that we would soon be announcing a new university enforcement program that will focus on students who ignore warnings and continue to engage in illegal file-sharing.

And what about when students graduate and enter the work force? A recent study found that 86% of managers and supervisors consider illegal file-sharing attitudes and behaviors when making hiring decisions, and nearly a third would “probably or definitely” reject a candidate who had “lax attitudes toward illegal file-sharing in the workplace.” Aren’t schools doing their students a disservice when they fail to prepare them for this reality? Even students themselves recognize this missed opportunity. Just last week, an Ithaca College editorial complained that the college was merely addressing illegal downloading by giving warnings, and thus, “ignoring the root of the problem: that students must understand the legal and ethical problems intrinsic in downloading and be prepared for the consequences of file sharing beyond the world of judicial referrals.”

It is time for schools to step up to acknowledge the problem and join us in addressing it properly. Of course, there are numerous ways in which to do so, which we outline below.

## Education

Education on the value of intellectual property and the problems with illegal file-sharing is fundamental for any institution wanting to deal with piracy on its campus. Such educational content may appear in the form of brochures, flyers, websites, emails and letters from top school administrators, lectures, panels, and classes, among others. The material should be presented for students and parents at orientation, and throughout the student's enrollment. The following are some examples of steps schools can take toward educating students about illegal file-sharing and copyright infringement generally:

- Institute Acceptable Use Policies that clearly outline the appropriate use of school resources. Such policies should illustrate unacceptable behavior, including illegal file-sharing, and provide details on penalties imposed for failure to abide by such regulations. A comprehensive policy, however, is only as useful as it is accessible; administrations should conduct surveys or otherwise ensure that students (and others) are able to find them, including on the school website.
- Include information on copyright, piracy, and illegal file-sharing in orientation and other materials.
- Inform parents, through letters and at orientation, of the seriousness of copyright infringement and the penalties imposed, both legally and academically, for violations. Encourage them to discuss the risks with their children.
- Require students to pass a quiz about P2P and piracy before allowing access to the school's computing network. This educates the student and provides documentation negating any claim of lack of awareness.
- Engage students by incorporating discussion of illegal file-sharing on school websites and radio stations, and in papers and classrooms.
- Launch pervasive and visible anti-piracy campaigns using posters, brochures, banners, videos, fliers, etc.
- Send students periodic emails directly from the President/Provost/Dean to remind students that the school takes copyright infringement very seriously and to indicate the seriousness of any offense.

University administrators can also preview and order an informative video, designed to help teach students how to stay safe and legal when downloading music, by going to [www.campusdownloading.com](http://www.campusdownloading.com). Four focus groups were conducted to test concepts and tone with high school seniors prior to developing the materials, and the feedback so far from university administrators has been positive.

While it is indeed beneficial to offer an in-depth look at copyright, P2P, and illegal file-sharing, the first step in any educational campaign is to express concisely and

unequivocally that copyright infringement, through physical or online piracy, is illegal and simply wrong. Of course, any message conveyed should be short, direct, easy to understand, and emphasized repeatedly.

It should be noted that we are aware that many students arrive at college with a firm grasp of how to engage in illegal file-sharing and a less-developed understanding of why they shouldn't do it. With this in mind, the entertainment community has embarked on several initiatives to engage primary and secondary school students and prepare them for participation as a responsible adult. For example:

- *Music Rules!* is a free educational program, developed by Learning Works, that informs students in grades 3 through 8 about the laws of copyright and the risks of on-line file-sharing, while promoting musical and artistic creativity.
- i-SAFE has created a nationwide assembly program on intellectual property that includes four cutting-edge videos and on-line lesson plans. The assemblies and lesson plans are designed to foster a greater appreciation for the creative process behind the music, teach students how to stay safe and legal when downloading music, and highlight the consequences of illegal downloading.
- The Close Up Foundation has developed a supplemental textbook to help teachers create a classroom dialogue on issues related to the growth of on-line activity, copyright laws, fair use, and the impact of piracy and legal alternatives.

## Enforcement

As with any education campaign, it is necessary to ensure adherence to rules and regulations through consistent and meaningful enforcement measures. The administration should remind students that entertainment and other content industries have sought to enforce their copyrights through lawsuits against students and other individuals. Students clearly are not immune to legal action, yet, there undoubtedly remains a feeling by some of "safety in numbers" inherent in a nationwide campaign. The threat of disciplinary action by schools, however, resonates locally and quickly diminishes any sense of security (and anonymity) mistakenly felt by students.

School administrations should understand that school-wide Acceptable Use policies regarding online piracy and the appropriate use of school resources are not merely for the benefit of copyright owners. Such rules and regulations, just as with those regarding hacking and other violations, safeguard the security and integrity of the school's computing system. The unauthorized use of file-sharing applications and P2P networks threaten such systems with increased bandwidth costs, as well as with malicious viruses, worms, Trojan horses, and spyware.

While setting out and implementing a strict enforcement program is important, effective technical measures can stop the vast majority of piracy before it takes place.

This reduces the burden of processing potentially dozens of DMCA notices and directly targets the problem of student piracy on university networks.

### Technological Measures

In the much-publicized *Grokster* case last year, the U.S. Supreme Court itself stated that “there is evidence of infringement on a gigantic scale” on P2P systems, and it has been estimated that over 90% of the use on these systems is infringing. With such a disproportionate amount of P2P use going toward illegal purposes (and given the threat to network security and individual PCs from viruses and other malware), it seems entirely appropriate to restrict the illicit use of P2P systems, and to allow use of such applications only in justified circumstances.

Certain universities have chosen to prohibit the use on their networks of P2P applications known to be used overwhelmingly for illicit purposes. For example, the University of Florida developed cGrid (originally called Icarus), a network-based system that is flexible enough to provide the whole continuum of remediation options, whether through education, selective or complete blocking, track by track restriction, etc. The application, which is being commercially marketed under the company name Red Lambda, may be fully customized to manage adherence to a university’s own policies. The cGrid architecture supports other capabilities to address the full range of security management issues including: viral and worm attacks, spam relays, spyware, botnets, and other outbound malicious behavior. All of these can have huge effects on the operation and cost efficiencies of the university network.

While exceptions can be made for appropriate use of such applications, it is not surprising that the University of Florida has received very few requests for permission to use these P2P systems. Indeed, it is questionable whether such P2P applications are at all necessary (or beneficial) in an academic environment. Faculty and students remain able to share and distribute academic material through such secure and reliable means as websites, FTP, and email. In addition, there are legitimate and licensed P2P networks emerging—such as Penn State’s LionShare—which are dedicated to, and specially configured for, academic environments.

Some statistics tell the whole story. The University of Florida reports that before implementation of cGrid, nearly 90% of the school’s outbound bandwidth was being used for P2P. After deployment, the school experienced an immediate 90% drop in illicit P2P users and has since estimated a network and workforce savings of hundreds of thousands of dollars.

Blocking unauthorized P2P applications on campus is the easiest and surest way to reduce online piracy on school systems. For those schools that do not find the implementation of programs such as cGrid appropriate, however, another option is to install a network filtering system. Rather than prohibiting all P2P or other applications based on a particular protocol, these systems, such as Audible Magic’s CopySense, filter

out just the infringing transmissions, by matching them against a master database of copyrighted works. CopySense has been implemented at over 60 schools, including such schools as Texas A&M – Kingsville, Tulane, and Bentley. The technology uses an audio fingerprinting technique, providing the university network with the ability to identify, filter, and/or block any registered copyrighted file, and can find a match over 99% of the time with no false positives. While CopySense and similar applications are content-based filters, this technology is in fact no more intrusive than technologies most schools are already employing to scan for viruses and other malware. As a Coppin State IT administrator notes, “The CopySense Appliance acts in a surgical manner, taking copyright infringement out of the picture and doing it without interfering with privacy or academic freedom.”

Many schools use a bandwidth shaping tool such as Packeteer. The schools that have implemented this approach ratchet down bandwidth allowance during the peak hours of the day, then provide increased bandwidth at night. While this process may indeed reduce infringement to some extent, it unfortunately also can send the message that illegal file-sharing is acceptable as long as it’s done at night. By sanctioning such “windows of infringement,” schools do little to discourage students from engaging in piracy (and, of course, fail to impart a sense of ethical behavior and appropriately prepare their students for life after college as moral and law-abiding citizens). In addition, given the relative small size of music files, most limitations on bandwidth use may still enable the trading of hundreds and thousands of copyrighted songs, affording but a limited deterrent against illegal file-sharing.

Of course, the costs associated with implementing any one of these technological measures depends on a school’s network architecture. However, as mentioned above, administrations should keep in mind that the cost savings from implementing a technological measure may very likely outweigh the expense incurred in implementing them. These expenses include reductions in bandwidth utilization, IT infrastructure, and responding to DMCA notices.

I also note here that implementation of a network technology may likewise assist in the reduction of infringement on a school’s *intranet*, including through illegal file-sharing over LANs and through hacks such as myTunes or ourTunes.

By employing technologies that prohibit unauthorized P2P use on campus or, at least, make it harder for students to infringe on such systems, schools are laying the groundwork for one more component of a proven anti-piracy campaign: the successful implementation of a legitimate online service on campus.

## Legitimate Online Services

In a few short years, the number of schools partnering with a legitimate service has grown to more than 140. Services such as Cdigix, Napster, RealNetworks's Rhapsody, Ruckus, and Yahoo! offer students a wide array of entertainment content in a fun, safe, and legal way, and help to build a sense of community on campus. Again, any cost savings resulting from the partnership may very well outweigh the costs associated with failing to provide students an alternative to abusing school resources in search of illicit content. While we applaud any action that provides students an alternative to illegal file-sharing, we note that adoption and sign up rates of legitimate online music and movie services by students is often highest when the school has first reduced the availability of illegal file-sharing, thus developing the thirst for legal content. Services and schools alike have reported particularly positive results from this staggered approach. (Experience has also shown that it may be unwise to implement both network filtering technology and a legitimate online service simultaneously, as students tend to blame the online service for the cutoff in illegal file-sharing.) Without first addressing the illicit use of P2P systems on campus, it is extremely difficult for legitimate services to take root. If students have unfettered access to enormous amounts of pirated content, no service—regardless of pricing or content offerings—will be successful in that environment.

These and other measures have been highlighted by organizations such as the Joint Committee of the Higher Education and Entertainment Communities. The Joint Committee was formed in December 2002 to discuss and address matters of mutual concern between higher education institutions and the content community, including the growth of P2P network use on college campuses. Over the past four years, the Joint Committee has succeeded in raising awareness about illegal file-sharing and has assisted colleges and universities in finding solutions that work for them. It issued a report on "University Policies & Practices," as well as a white paper on student liability for illegal file-sharing on campus.

The issue of illegal file-sharing has also been taken up by both state and federal legislatures. Governor Schwarzenegger in California issued an Executive Order in 2004 requiring the State Chief Information Officer to develop a statewide policy prohibiting illegal P2P use on government computers. The Order requested the University of California and the California State University System to comply with the policy. Similar Executive Orders have been signed by Texas Governor Rick Perry and Illinois Governor Rod Blagojevich, requiring a statewide policy for use by each state agency, department, board, and commission which prohibits unauthorized or illegal use of P2P software programs. The Orders require the appropriate Department to assess the availability and cost effectiveness of technologies that can prevent the deleterious effects of such P2P applications.

Reflecting this trend on the national front, the U.S. Senate passed a resolution in May 2006, recognizing that "institutions of higher education should adopt policies and

educational programs on their campuses to help deter and eliminate illicit copyright infringement occurring on, and encourage educational uses of, their computer systems and networks.”

We still consider schools to be partners on this issue, and thank the number of administrations that have sincerely addressed the problem. We now ask the many others to step up to the plate, to recognize that they have an important role to play here, and to exercise moral leadership. To quote Penn State University President Graham Spanier from a Philadelphia Inquirer op-ed piece on file-sharing, “Stealing is not among our values.” Schools may not subscribe to that paper, but they certainly subscribe to that view. Now is the time to show it.

Thank you.