



American Council on Education  
Office of the President

March 27, 2006

The Honorable Howard P. "Buck" McKeon  
U.S. House of Representatives  
2351 Rayburn House Office Building  
Washington, DC 20515

Dear Congressman McKeon:

I write on behalf of the higher education associations listed below to express our grave concern about an amendment that may be offered by Mr. Berman and Mr. Hoyer when H.R. 609, the College Access and Opportunity Act reaches the floor this week. The amendment would impose federal regulatory requirements on colleges and universities related to illegal peer-to-peer (P2P) file sharing. We ask you to oppose this amendment, which would require new and unwarranted regulations on all institutions of higher education.

You have repeatedly expressed your desire to minimize excessive and unnecessary federal regulation of colleges and universities. Many of your FED UP initiatives have been included in H.R. 609. In light of this goal, it would be a step in the wrong direction to include new regulatory mandates that have never been raised as problems in the Education and the Workforce Committee's extensive hearings on higher education reauthorization; have never been subjected to analysis; would not benefit students and parents; and would provide unprecedented authority for other federal agencies to regulate institutional participation in the Higher Education Act. More specifically:

- This issue has never come before the Education and the Workforce Committee and has never before been suggested as an area that needs regulation through the Higher Education Act.
- The amendment would involve the Attorney General and the U.S. Justice Department in the Program Participation Agreements (Section 487) filed by institutions of higher education to participate in the federal student aid programs. At present, none of the 23 requirements of this section involve regulations imposed by federal agencies other than the U.S. Department of Education.
- There is no indication that this regulation would provide information that would help students and their parents, which is the fundamental objective of the Higher Education Act.
- Federal regulation of this issue through the Higher Education Act is unnecessary and undesirable. The Judiciary Committee has jurisdiction over these issues and has held hearings on this topic. Nonetheless, the extent of the problem is not well known. Indeed, the House Judiciary Committee has recently met with the Government Accountability Office to discuss conducting a study of this issue.

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We underscore that illegal P2P file sharing is a serious matter. The higher education community has already demonstrated its commitment to address this issue. There are extensive copyright and related intellectual property laws governing the misuse of copyrighted works. The recording and motion picture industries have appropriately employed these laws to request information from colleges and universities concerning suspected illegal file sharing. As the entertainment industry will confirm, institutional compliance with such requests is widespread. Numerous lawsuits have been filed when illegal file sharing has been identified. The Joint Committee of the Higher Education and Entertainment Communities has been working cooperatively for more than two years to develop ways to reduced illegal file sharing and develop legal alternatives. Indeed, I believe colleges and universities have voluntarily undertaken more efforts in this area than any other industry.

Imposing new federal regulations that have not been discussed or subjected to any analysis is never a good first step, and this case is no exception. Therefore, we ask you to oppose costly new federal regulations under the Higher Education Act.

Sincerely,



David Ward  
President

DW/cms

On behalf of:

American Association of Community Colleges  
American Association of State Colleges and Universities  
American Council on Education  
Association of American Universities  
EDUCAUSE  
National Association of Independent Colleges and Universities  
National Association of State Universities and Land-Grant Colleges