File Sharing and the Higher Education Opportunity Act

What is the Higher Education Opportunity Act and how is it related to P2P file sharing?

The Higher Education Opportunity Act of 2008 (HEOA) is a reauthorization of the Higher Education Act of 1965. It includes provisions that are designed to reduce the illegal uploading and downloading of copyrighted works through peer-to-peer (P2P) file sharing. These provisions include requirements that:

- Institutions make an annual disclosure that informs students that illegal distribution of copyrighted materials may subject them to criminal and civil penalties and describes steps the institution takes to detect and punish illegal distribution activities.
- Institutions certify to the Secretary of Education that they have developed plans to "effectively combat" the unauthorized distribution of copyrighted material.
- Institutions, "to the extent practicable," offer alternatives to illegal file sharing.
- Institutions identify procedures for periodically reviewing the effectiveness of the plans to combat the unauthorized distribution of copyrighted materials.

Clark University's Compliance with the Higher Education Opportunity Act

The following outlines Clark University's plans to comply with these requirements.

- Part 1: The plan to effectively combat copyright infringement
  - **1-1. Link to relevant Web page(s)**
    - Clark University Appropriate Use Policy
    - Clark University Copyright Policy
    - Clark University File Sharing and Copyright Awareness

    1-2. What technology-based deterrent(s) have you decided to use?

    Clark University uses a bandwidth management device to shape and manage bandwidth utilization on campus. One of the bandwidth management policies in place greatly limits peer-to-peer network traffic to and from the Clark campus.

    1-3. What mechanism(s) are you using to educate your community?

    All students are given the opportunity to attend a session at orientation on current technology issues. This session addresses copyright infringement and other common policy violations that result through technology.

    At the start of school year an email is sent to all currently enrolled students from the Vice President of Information Technology, the Vice President of Student Affairs and the Dean of Graduate Studies. This email reminds students about Clark's Appropriate Use Policy, and informs them of the penalties associated with copyright infringement. In addition, during national cyber security awareness month (October), Clark highlights the issues around file sharing and copyright infringement.

    1-4. What procedures are you using for handling unauthorized distribution of

copyrighted material (e.g., monitoring, sanctions, etc.)?

Upon receiving notification of copyright infringement through a takedown notice, Information Technology Services has a set procedure of enforcement. The alleged infringer is identified, and a copy of the takedown notice is forwarded to him/her along with information about the University's procedure pertaining to the notifications of a copyright violation. The alleged infringer has 3 business days to respond to the Clark notification, otherwise their IP address will be blocked for all Internet traffic. In the response, the alleged infringer must validate that 1) they have deleted the file(s) from their computer's hard drive, and 2) they will cease and desist from any further file sharing activity involving content for which they do not have permission or license from the copyright holder. Because this notice may be evidence of a potential violation of the University's Policy on Appropriate Use of Clark's Computing Resources, a copy of the notification is also sent to Clark's VP for Information Technology and Clark's VP for Student Affairs. The alleged infringer is also afforded the opportunity to dispute the claim and to visit the ITS Help Desk to ensure that their computer has not been compromised. Further infringement violations are referred to Clark's judicial systems. Clark University's Appropriate Use explicitly disallows the sharing of copyrighted material. This is clearly stated in the policy and the following are cited as specific examples of likely copyright violations:

- Offering/sharing sound recordings you have not recorded yourself. Even if you have recorded them, you must have permission from the copyright holder.
- Placing any materials owned by others, (i.e. copyrighted works) on your Web page, course web site (even if it is password-protected), or in any other publicly accessible location, without the expressed permission of the copyright owner (i.e., cartoons, photographs, songs, movies, software, graphics scanned in from published works or other web pages).
- Reselling, copying or giving away licensed programs or data.

1-5. How are you periodically reviewing the plan? What criteria are you using to determine if it is effectively combating copyright infringement?

Annually, the registered DMCA Officer and Information Security Officer meet to review the effectiveness of the copyright plan. Clark's Information Security Task Force, a cross departmental working group brought together by the President to oversee all of Clark's data security efforts, also reviews all of Clark's information policies. The Information Security Officer chairs the Information Security Task Force. Overall campus awareness, technology changes and frequency of takedown notices are all taken into account. If the metrics suggest that modification to the plan is needed, a recommendation by the DMCA Agent is made for review by ITS and other affected parties.

- Part 2: Offering alternatives
  - **2-1. Link to relevant Web page(s)**

    The file sharing and copyright awareness page includes a link to the list of legal online content maintained by EDUCAUSE.

    2-2. Are you carrying out your own survey of alternatives or linking to one or more lists maintained by others? If the latter, which list(s)?

    We have been maintaining our own list. We also link to the list of legal content maintained by EDUCAUSE. The Motion Picture Association of America also offers this list

2-3. Have you made any special arrangements with one or more content providers to obtain content through legal methods?

Clark University has not made any special arrangements of this type.

- Part 3: Informing the community
  - **3-1. Link to relevant Web page(s)**
    - Clark University Appropriate Use Policy
    - Clark University Copyright Policy
    - Clark University File Sharing and Copyright Awareness

3-2. Have you developed your own statement regarding copyright and copyright law in general or are you linking to such statement(s) maintained by others? If the latter, which statement(s)?

Clark University Copyright Policy

> "Clark University expects all members of its community to respect the rights of intellectual property ownership by adhering to the United States copyright laws, including amendments made to the laws by the Digital Millennium Copyright Act (DMCA) and the Technology, Education, and Copyright Harmonization (TEACH) Act. Clark University also expects all members of the community to be mindful of the limited rights conferred on them by the 'fair use' exemption and other exclusions to the copyright laws."