

# Congressional Legislation May Affect Campus Network Management

by **Garret Sern**

The 106th Congress is not predicted to pass a great deal of legislation this session. However, laws passed by the Congress over the past two years are now providing college and university chief information officers (CIOs) with new remedies—and in some cases with new dilemmas—in managing their campus networks.

## Reclaiming a Name

President Clinton last December signed into law a bill to prevent the bad faith registration and reselling of Internet domain names. The Anticybersquatting Consumer Protection Act (ACPA) allows trademark owners to seek statutory damages against defendants found to have registered a domain name with "bad faith intent to profit from that mark" or a domain name that is "identical or confusingly similar to a distinctive mark, or dilutive of a famous mark."

While primarily associated with big-name private corporations, cybersquatting has also been a problem for the higher education community. Some universities have had trouble with Internet sites that threaten to disparage the school's reputation or attract customers to their site using a similar domain name. As part of the law's guidelines for determining whether cybersquatting took place, courts may consider the intent to tarnish or create confusion over the source of a trademark or Internet site. Already several universities

have brought suit under the ACPA to stop the unfair and confusing use of their domain names.

Attorneys at the law firm of Dow, Lohnes, and Albertson drafted a memorandum on the recent anticybersquatting law for the American Council on Education. As the memo explains, cybersquatters have increasingly targeted the Internet domain names of colleges, universities, and higher education

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associations. It also contains information on what recourse is available to institutions affected by this practice.<sup>1</sup>

## The DMCA: Not So Straightforward

As reported in *CAUSE/EFFECT* last year,<sup>2</sup> Title II of the Digital Millennium Copyright Act (DMCA) establishes certain limitations of copyright infringement liability for online service providers (OSPs), including colleges and universities. Interim regulations provided by the Copyright Office under Title II require that certain steps be

taken by OSPs before they may take advantage of the protections, including registration of an agent with the Copyright Office and the development and posting of updated copyright policies.<sup>3</sup>

While the number of higher education institutions registering with the Copyright Office has increased, confusion still prevails concerning who on campus should be the designated agent and whether registering with the Copyright Office would make state colleges and universities lose protections granted under the Constitution. Our community will have another chance to voice its concerns when the Copyright Office requests public comments for final regulations. (To date, no announcement has been made on when this will occur.)

Another provision of the DMCA currently being fought in federal courts may create more headaches for campus CIOs. Section 1201 of the DMCA prohibits the circumnavigation of access control technologies employed by copyright owners to protect their works. However, Sec. 1201(f) of the act allows for "reverse engineering" of encryption technology for "good faith" encryption research. To date, two federal courts have barred the use of a certain type of encryption descrambling technology and the posting of the software program used on the Web.

The overly broad nature of the ruling

may hurt legitimate scholars and researchers from accessing copyrighted material under fair use rights. Access under fair use is permitted, provided an identical copy of that work is not available under another form. Among many other clauses and exceptions of various types in Section 1201 is one specifically addressing "nonprofit library, archive, and educational institutions." It "permits nonprofit libraries, archives, and educational institutions to circumvent solely for the purpose of making a good faith determination as to whether they wish to obtain authorized access to the work." The Copyright Office is currently seeking public comment about exempting certain copyrighted works from this prohibition because there will be persons who will be inhibited in their ability to make noninfringing uses of that particular class of works.<sup>4</sup>

Currently, colleges and universities

that register with the Copyright Office are not required to actively monitor their networks for copyright infringement. Whether this will change under

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the recent federal court rulings concerning the anti-circumvention issue is unclear. If that changes, however, CIOs will have the dilemmas of finding additional resources needed to perform such

a task and addressing the privacy issues that are bound to surface as CIOs become cybercops.

#### Endnotes:

1. See <http://www.educause.edu/policy/ace112999.pdf>.

2. Casey Lide, "What Colleges and Universities Need to Know about the Digital Millennium Copyright Act," *CAUSE/EFFECT*, Vol. 22, No. 1, 1999, 13-16. [<http://www.educause.edu/ir/library/html/cem9913.html>]

3. To register as an online service provider with the Copyright Office, see <http://www.loc.gov/copyright/onlinesp/>.

4. For information about how to participate in the Copyright Office Notice of Public Rulemaking, see <http://www.loc.gov/copyright/1201/anticirc.html>.

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