Chairman Lamar Smith  
House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515

Ranking Member John Conyers  
House Committee on the Judiciary  
B-351 Rayburn House Office Building  
Washington, D.C. 20515

Re: Stop Online Piracy Act, H.R. 3261

Dear Chairman Smith and Ranking Member Conyers:

I write on behalf of EDUCAUSE, the Association of American Universities, the Association of Public and Land-Grant Universities, and the American Council on Education. Following our earlier communications with you and our interactions with your staff, we have reviewed the proposed Manager’s Amendment to H.R. 3261 that became available yesterday. We would like to share our reactions in the hope that they will assist you as markup proceeds.

The Amendment effectively addresses a number of the issues that we raised, and we thank you for your responsiveness to these concerns. However, the Managers Amendment carries forward problematic provisions that we believe will pose problems for legitimate uses of copyrighted material.

In particular, we are very concerned that the streaming provisions, which will impede the development of online intellectual property such as streamed video, have been carried forward unchanged in the Amendment.

We have attached a more detailed response to the Manager’s Amendment. We hope that we can continue to work with you and the Committee to address these remaining concerns as the legislation proceeds.

Sincerely,

[Signature]

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In our original submission, which is available online at

http://net.educause.edu/ir/library/pdf/EPO1115.pdf,

we pointed to four key problem areas in H.R. 3261:

1. Broad Definitions Create Uncertainty for Colleges, Universities, and Their ISP
2. New Monitoring Mandates Contravene the DMCA Safe Harbor Provision
3. Felony Streaming Provision Creates New Liability for Good Faith, Non-Profit User
4. Domain Name System (DNS) Filtering and Redirection Set a Bad Precedent, and Will Not Work

Based on our initial reading of the Manager's Amendment, there has been progress addressing these concerns. Nevertheless, we hope that the Committee will consider further changes in H.R. 3261 before reporting it out of Committee.

- We believe there has been considerable progress on #1, "Broad Definitions...", especially by eliminating the "enable or facilitate" language.

- We believe that the introductory provisions in the Amendment reduce the risk of #2, "...Contravene the DMCA Safe Harbor...".

- We recognize that the Amendment's introductory provisions and some language revisions attempt to address #4, "...DNS Filtering and Redirection...". They reduce the risk that complying with H.R. 3261 will threaten key Internet technologies, but the Amendment's language remains somewhat ambiguous on this point.

Especially now that the Amendment emphasizes that technical compliance choices are entirely up to Internet service providers, we believe that it is unnecessary for the bill to mention DNS as a specific technology that might be used for compliance. We would much prefer that all references to DNS be removed from the bill.

After all, the object of H.R. 3261 is to encourage and enable service providers, payment processors, and advertising entities to take the most effective actions at their disposal to deal with alleged infringement. Since optimal actions will vary across providers and with circumstances, we believe that prescribing particular approaches such as DNS blocking or filtering will impede rather than advance progress.

- Finally, we believe that the Amendment is not responsive to our concerns about video streaming. We again urge that this be fundamentally revised, or perhaps severed from the bill for separate future action (as is the case for S. 968).

As the Committee’s markup and future deliberations proceed, we hope that you and your colleagues will continue to consider the specific changes several higher-education and library associations suggested in the November 29 document "Proposed SOPA Fixes from the Higher Education & Library Communities", which is online at

http://www.educause.edu/Resources/ProposedSOPAFixesfromtheHigher/242321.

As before, we stand ready to assist you as work continues on this far-reaching legislation.