
DEGREES OF DECEPTION: ARE CONSUMERS AND EMPLOYERS BEING DUPED BY ONLINE UNIVERSITIES AND DIPLOMA MILLS?

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INTRODUCTION

Two high school teachers recently lost an arbitration dispute in which they sought from a Michigan school district pay increases of more than \$13,000 for doctorate degrees obtained from an online school.¹ The teachers, who had obtained the superintendent's approval prior to enrolling in Cambridge State University, claimed that they deserved raises based on their completion of 30 credit hours of coursework and a dissertation for doctorate degrees from Cambridge.² Unfortunately, Cambridge is an online unaccredited school not recognized by the State of Michigan because according to state regulators, it is, at best, of sub-standard quality.³ With words of rebuke, an arbiter determined that the superintendent only "approved" the degrees sought, not the institution itself, and that the school district correctly denied the teachers pay increases:

The grievants are bright women who have achieved well in several colleges. The non-rigorous program at the "distant" school, the lack of feedback, the absence of professorial oversight and communications all should have been "red flags" to the grievants that to get a Ph.D. this way was "too good to be true." The grievants may have been "Victims," but on the other had, they should have known what a "real"

1. See Jackie Harrison-Martin, *Arbitration Will Settle Teachers' Degree Dispute*, NEWS-HERALD (Southgate, MI), June 15, 2005, available at http://www.thenewsherald.com/stories/061505/loc_20050615002.shtml (stating that the teachers sought an increase in pay from \$69,369 to \$83,243 and that school district and the union tried unsuccessfully for months to resolve the dispute and stating that the teachers, prior to enrollment, obtained permission from the district to take the courses in order to later receive increased compensation based on the degree earned); *Huron Educ. Ass'n v. Huron Sch. Dist.*, Case No. 54-390-00578-05, 21 (2006) (Brown, Arb.) [hereinafter *Huron Arbitration Award*] (unpublished arbitration opinion and award on file with Huron School District).

2. See Dorothy Bourdet, *2 Teacher's Degrees Under Fire; Huron Schools Disputes Awarding of Doctorates from Online, Unaccredited College*, DETROIT NEWS, July 31, 2005, at 1B (reporting that the credit hours completed by the teachers are only half the credit hours expected to be completed for such degrees by the National Council for Accreditation of Teacher Education); *Huron Arbitration Award*, *supra* note 1, at 18 (The superintendent for the school district "acknowledged that the grievants were good teachers and 'educational leaders'" despite having obtained invalid degrees.).

3. See Bourdet, *supra* note 2.; see also STATE OF MICHIGAN, NON-ACCREDITED COLLEGES/UNIVERSITIES, (2005), available at http://www.michigan.gov/documents/Non-accreditedSchools_78090_7.pdf [hereinafter MICHIGAN'S LIST OF NON-ACCREDITED COLLEGES/UNIVERSITIES] (identifying Cambridge State University along with hundreds of unaccredited schools that "will not be accepted by the [Michigan] Department of Civil Service as satisfying any educational requirements indicated on job specifications").

doctoral program required.⁴

The teachers' dispute highlights the dark side of the Internet's role in the rapid growth of higher education institutions offering degrees entirely online as a less-expensive way to obtain a career-advancing education.⁵ The dispute raises important questions, such as when is the work required by an online unaccredited school like Cambridge considered substandard, when are employees "victims" of or "co-conspirators" with substandard unaccredited schools in perpetrating degree fraud on their employers and the public at large, and what role should employers play in verifying the legitimacy of online schools?

The increase in access, use, and popularity of the Internet has encouraged a record-breaking number of consumers to complete coursework and even earn degrees online.⁶ The Internet, combined with high-speed connections, video camcorders, email systems, and other technologies, has widened access to higher education—freeing non-traditional students from the typical hindrances to degree attainment.⁷ Students enrolled in asynchronous online courses can complete coursework when their schedules permit, maintain current employment and income, avoid long, hazardous, and costly commutes, and sustain vital family relationships.⁸ In addition to bringing higher education to students who lack access to brick-and-mortar universities, online classes can reproduce synchronous classroom discussions in ways that some students find more engaging and inclusive than face-to-face discussions.⁹ Some research shows that no significant differences exist in learning outcomes between students taught in online courses and those taught in traditional classrooms.¹⁰

4. See Huron Arbitration Award, *supra* note 1, at 20-21.

5. Unquestionably, education is the primary key to employment opportunities. See U.S. CENSUS BUREAU, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2003, (2004), available at <http://www.census.gov/prod/2004pubs/p20-550.pdf>; David B. Bills, *Education Credentials and Promotions: Does Schooling do More than Get You in the Door?*, 61 SOC. OF EDUC. 52, 52-53 (1988); and Arlene Dohm & Ian Wyatt, *College at Work: Outlook and Earnings for College Graduates, 2000-10*, 46 OCCUPATIONAL OUTLOOK Q. 2,4 (Fall 2002) ("When it comes to work, having a college degree is one of the best ways to gain and maintain a competitive edge. On average, college graduates enjoy advantages—ranging from more job opportunities to better salaries—over their non-college-educated counterparts."). Notably, the University of Phoenix Online is the largest for-profit university. See University of Phoenix Online, Benefits of University of Phoenix Online, <http://www.uopxonline.com/aboutus.asp> (last visited May 16, 2006) (describing the numerous benefits of obtaining an online degree from Phoenix).

6. See TIFFANY WAITS & LAURIE LEWIS, NATIONAL CENTER FOR EDUCATION STATISTICS, DISTANCE EDUCATION AT DEGREE-GRANTING POSTSECONDARY INSTITUTIONS: 2000-2001, (2003) [hereinafter NCES DISTANCE-EDUCATION REPORT], available at <http://nces.ed.gov/pubs2003/2003017.pdf> (During the 2000-2001 school year, over three million students nationwide were enrolled in distance education offered by two- and four-year, degree-granting institutions, with 2.876 million of these taking college-level courses for credit).

7. See *infra* Part I.

8. See *id.*

9. See *id.*

10. See *id.* (discussing studies assessing the quality of learning and instruction in online schools). While some educators continue to debate over the academic quality of online courses and degree programs, brick-and-mortar universities such as New York University have embraced

While online higher education has promising potential, web courses and web-only institutions face strong skepticism as some employers and academics at traditional institutions question whether online instruction imparts the same quality of education as a traditional college or university.¹¹ Most web-only degree-granting institutions are for-profit and lack accreditation from any accrediting agency recognized by the United States Department of Education (the “ED” or “Education Department”).¹² Some of these online schools are nothing more than “diploma mills,” companies that sell degrees to consumers without requiring any substantial coursework.¹³ Some for-profit schools do require completion of substantial coursework, but some have curricula and degree completion requirements that are inferior when compared to traditional on-campus degree programs.¹⁴ A few unaccredited schools do require the completion of academic work that is comparable to traditional accredited schools,¹⁵ and lack of accreditation does not automatically mean the education a student receives is inferior.¹⁶ However, a degree from a school possessing accreditation from an ED-recognized accrediting agency is generally the only degree that counts in the public and private sectors for obtaining jobs, promotions, raises, and tuition reimbursements.¹⁷

virtual instruction and offer several degrees online. Press Release, New York University, NYU Launches Its First Online Bachelor’s Degree Programs for Adult Students in Fall 2005 (Feb. 8, 2005), <http://www.nyu.edu/public.affairs/releases/detail/183>. See also NCES DISTANCE EDUCATION REPORT, *supra* note 6 (During the 2000-2001 school year, nineteen percent of all two and four-year Title IV-eligible degree-granting institutions offered degree or certificate programs designed to be completed totally through distance education, forty-eight percent of all such institutions offered undergraduate-level distance education courses, twenty-two percent of all such institutions offered graduate-level distance education course, and a significant number of such institutions planned to start offering distance education within the following three years.).

11. See *infra* Part I (describing criticisms of, and objections to, online higher education).

12. The Education Department does not accredit universities, but instead recognizes several accrediting agencies which are charged with the responsibility of accrediting universities that meet certain minimum standards. See U.S. DEP’T OF EDUC., COLLEGE ACCREDITATION IN THE UNITED STATES [hereinafter OVERVIEW OF ACCREDITATION], available at <http://www.ed.gov/admins/finaid/accred/accreditation.html>. See also JOHN BEAR & MARIAH BEAR, BEARS’ GUIDE TO EARNING DEGREES BY DISTANCE LEARNING, at 40–44, 64–65 (15th ed. Ten Speed Press, 2003) [hereinafter BEARS’ GUIDE] (stating that most unaccredited schools have very little chance of obtaining accreditation).

13. See *infra* note 29 (discussing hearings that refer to schools that require little or no work as diploma mills); ALLEN EZELL & JOHN BEAR, DEGREE MILLS 20–21, 60 (2005) (expressing a preference for the term “degree mill” over “diploma mill” and stating that while no universal definition exists, the term includes schools that require completion of a small amount of academic work in comparison to traditionally-accredited schools).

14. See *id.* at 20–22 (explaining how to tell the difference between a diploma mill and an unaccredited school requiring enough academic work to be considered legitimate).

15. See BEARS’ GUIDE, *supra* note 12, at 63. See also *infra* Part II.B.1 (describing Concord Law School as an example of an e-institution that presumably offers quality education).

16. See *infra* Part II.A (providing legitimate reasons why an unaccredited school may lack accreditation).

17. See BEARS’ GUIDE, *supra* note 12, at 63 (treating “schools with accreditation claimed from an unrecognized accreditor as equivalent to unaccredited, for that is how such schools are almost certain to be treated by evaluators and decision makers”).

Besides the potential to defraud employers, online diploma mills and substandard unaccredited schools put the public at risk of danger from their “graduates” who perform professional services, such as when a mother watched her eight-year old daughter die after a doctor with fake degrees advised taking her off insulin.¹⁸ These online fake and substandard schools have become a billion-dollar industry that has issued more than a million degrees and is expected to continue to grow rapidly, thereby spreading the risk of harm to the public.¹⁹

In addition to posing a risk of harm to the public, numerous online degree providers actively deceive *unsophisticated* consumers about their accreditation status and their degree-granting practices. Many of these degree providers confer degrees to consumers by heavily crediting their prior life experiences—such as employment history and previous education—and requiring them to complete substantially less academic work than is required at traditional accredited universities.²⁰ Playing on working adults’ desperation for increases in wages and employment opportunities,²¹ substandard degree providers assure prospective students that their practices are perfectly legal.²² These degree providers are technically correct because no state or federal law mandates that any degree-granting institution obtain ED-recognized accreditation.²³ Moreover, in most states, it is not a crime to obtain or use a fake or unaccredited degree for employment purposes.²⁴ While decried by most well-educated professionals and traditionally-accredited institutions, the practice of substantially crediting life experiences is not illegal.²⁵ Furthermore, when an unaccredited school is shut down by one state’s enforcement agency for breaking state law (*e.g.*, operating

18. See Stephanie Armour, *Diploma Mills Insert Degree of Fraud into Job Market*, USA TODAY, Sept. 28, 2003, at B1 (Laurence Perry, who displayed in his office medical degrees from Internet universities that required little or no study, caused a diabetic girl’s death and was subsequently convicted of manslaughter and practicing medicine without a license.).

19. See *infra* notes 332-38 and accompanying text (discussing the estimated number of holders of fake and unaccredited degrees).

20. See BEARS’ GUIDE, *supra* note 12, at 80. See *infra* Part II.B (providing examples of the education practices of unaccredited schools).

21. See *infra* Part I.B (describing labor market conditions that may make some consumers susceptible to advertising from substandard degree providers).

22. See, *e.g.*, Email from Flora Reese, to Katherine Delaney, Law Student, (June 25, 2005, 02:09 EST) [hereinafter Fast Track University Degree Program] (spam email, with subject line of: information) (“These are real, genuine degrees that include Bachelors, Masters, and Doctorate degrees. They are verifiable and student records and transcripts are also available. This little known secret has been kept quiet for years. The opportunity exists due to a legal loophole allowing some established colleges to award degrees at their discretion. With all of the attention that this news has been generating, I wouldn’t be surprised to see this loophole closed very soon.”).

23. See *infra* Part II.A (describing the accreditation process in America).

24. See *infra* Part IV.A (discussing state laws that criminalize users of fraudulent degrees).

25. See *infra* Part II.B.4 (describing the practice of giving academic credit for prior life/learning experiences). See also EZELL & BEAR, *supra* note 13, at 23–24 (stating that only three accredited schools will heavily credit prior learning experiences “if there is a great deal of it”).

without a license),²⁶ its officers usually resume operations in another state with either weak education statutes or weak enforcement activities.²⁷

Rapid changes in online higher education are raising complex issues for education policymakers to address.²⁸ Rather than examine those issues, this article probes a neglected aspect of the proliferation of online substandard schools: these schools have created a consumer protection problem that affects the public and many honest, but unsophisticated, consumers.²⁹ Because online degree providers market to attract those lacking bachelor's and graduate degrees, some of their prospective students will be new to higher education and, by definition, lack the sophistication to understand the importance of accreditation, discern whether a school has ED-recognized accreditation, and distinguish between quality and substandard education requirements. As a result of deceptive practices, many unaccredited online schools mislead not only consumers, but also employers and the public, thereby inflicting significant economic and personal harm.³⁰

Part I of this article describes the proliferation in online education as a result of the Internet and supporting technologies,³¹ outlines the demographics and motivation of people seeking online degrees, and addresses the obstacles these students face in obtaining traditional higher education.³² Part II describes the

26. The states, not the federal government, have the authority to issue licenses that enable a school to be a legitimate degree-granting institution; however, a school's receipt of accreditation by an ED-recognized agency is considered by most to be the assurance of quality education. *See infra* Part II.A. For numerous jobs, Michigan will allow them to be filled only by persons with accredited degrees. *See, e.g.*, MICHIGAN'S LIST OF NON-ACCREDITED COLLEGES/UNIVERSITIES, *supra* note 3 (identifying hundreds of unaccredited schools that are unacceptable by Michigan's Department of Civil Service for employment purposes).

27. *See infra* notes 242-52 and accompanying text (discussing American World University, an online unaccredited school, being enjoined from operating in Hawaii and now operating from Mississippi).

28. Those issues, including accreditation, access, financial aid, legislation, retention, and outcomes, are beyond the scope this article.

29. *See, e.g.*, *Bogus Degrees and Unmet Expectations: Are Taxpayer Dollars Subsidizing Diploma Mills: Hearings before the Committee on Governmental Affairs*, 108th Cong. 63 (2004) [hereinafter *Bogus Degree Hearings*] (Testimony of Robert J. Crahier, Managing Director, Office of Special Investigations), available at <http://a257.g.akamaitech.net/7/257/2422/07sep20041200/www.access.gpo.gov/congress/senate/pdf/108hr/94487.pdf> (In hearings about diploma mills, Senator Susan Collins reported: "We found from our investigation that many of those individuals who are the true victims of diploma mills feel that they don't have an easy way to check on whether an institution like Columbia State University or Kennedy-Western is a legitimate academic institution.").

30. *See, e.g.*, Press Release, Office of the Attorney General, Nevada Dep't of Just. Fake Doctor Sentenced to Four Months Imprisonment, (Aug. 18, 2005), http://ag.state.nv.us/menu/top/newsroom/press_release/archived/2005/August2005.pdf (Andrew Michael was sentenced to prison for four months after pleading guilty to practicing medicine without a license. "Michael had received a bachelor's degree from the now-defunct Hamilton University, an on-line school based in Wyoming, and was enrolled in St. Luke's School of Medicine, a correspondence medical school based in Liberia, Africa, that has since been shut down by African authorities.").

31. *See infra* Part I.A.

32. *See infra* Part I.B.

traditional accreditation process, the types of degree-granting institutions,³³ and the tricks that many online substandard unaccredited schools use to persuade consumers and employers that their degree programs are accredited³⁴ and their academic work is substantive.³⁵

Parts III and IV analyze what federal and state laws exist to curb the supply³⁶ and demand³⁷ for fake and substandard unaccredited degrees and propose legal and non-legal solutions.³⁸ For example, to deter the supply of fake and substandard unaccredited degrees, the article proposes enactment of the Authentic Credentials in Higher Education Act as a federal statute which would impose criminal liability on anyone selling fake degrees and on all principals of inferior-quality unaccredited schools that fail to make certain disclosures.³⁹ To deter demand for fake and unaccredited degrees, federal legislation is recommended to establish a standard for disciplining current employees holding such degrees⁴⁰ and to implement a mass media awareness campaign to warn people about them.⁴¹

I. EXPLOSION IN ONLINE EDUCATION

Use of the Internet has led to an explosion in the number of online courses offered by traditional colleges and universities and by for-profit web-only institutions.⁴² While some educators remain critical of all online education, a growing number of academics agree that online instruction, when provided by qualified educators, offers greater access to postsecondary education to people who have been unable to enroll in traditional on-campus courses because of time, distance, family, work, or physical constraints.⁴³ Employers, like academics, are divided over the value of online education; some employers have started to accept online degrees, but a majority still view even accredited online education programs as inferior to traditional in-classroom degree programs.⁴⁴

Some prospective students are less equivocal about the value of online degrees. Online education appeals strongly to older, working, and non-traditional

33. See *infra* Part II.A (describing the accreditation process and degree-granting institutions).

34. See *infra* Part II.B.

35. See *infra* Part II.B.3.

36. See generally *infra* Part III.

37. See generally *infra* Part IV.

38. See generally *infra* Parts III and IV.

39. See *infra* Part III.C.

40. See *infra* Part IV.C.

41. See *infra* Part IV.B.

42. Higher education gave birth to the Internet, and now the Internet is transforming higher education. See Ronald Roach, *Technology: Riding the Waves of Change*, BLACK ISSUES HIGHER EDUC., June 17, 2004, at 92; James V. Corbelli & Stephen L. Korbel, *Jurisdiction, Domain Names, Privacy and Security: How the Digital Age Has Changed Business*, 22 ENERGY & MINERAL L. FOUND. 117, 140-157 (2002).

43. See *infra* Part I.B.

44. See *infra* notes 72-78 and accompanying text.

students.⁴⁵ The growing need for a college degree to obtain a well-paying job,⁴⁶ combined with the escalating costs of traditional higher education,⁴⁷ has enhanced the attraction of online degree programs. The challenge for policymakers is to respond to the needs of nontraditional students by supporting the growth of quality online programs, while protecting consumers from substandard programs that will drain their resources and leave them further behind in the workplace.

A. Supply of Online Degrees: Revolution in Higher Education

Online education has enriched traditional classroom instruction in numerous ways. Electronic bulletin boards, chat rooms, and email permit synchronous and asynchronous communication between teacher and students and among students.⁴⁸ Such communications, along with courses designed to include interactive learning activities, enable students to participate at a level substantially greater than in the lecture-formatted traditional classroom.⁴⁹ Online education can also create more diverse discussions than many traditional classrooms support.⁵⁰ Online students may come from different countries, represent different ages, and have varying life experiences and political views.⁵¹ An online discussion may also include an expert who would not otherwise have had the time or geographic mobility to join a traditional classroom discussion. Even asynchronous online instruction holds numerous benefits.⁵² Sophisticated courses and program instruction can be tailored to the needs of the students more effectively than large lecture-style courses.⁵³ Moreover, online tutors may be more accessible to students than are professors and teaching assistants.⁵⁴ Some tutors may be better trained in both

45. See *infra* Part I.B.

46. See *infra* Part I.B.

47. See *infra* Part I.B.

48. See Julia Shovein, et al., *Challenging Traditional Teaching and Learning Paradigms: Online Learning and Emancipatory Teaching*, 26 NURSING EDUC. PERSPECTIVES 340, 341 (2005).

49. *Id.*

50. See, e.g., *Mississippi Professor Goes Online, Makes Music Heard Worldwide*, EDUC. TECH. NEWS, June 1, 2004, at 57 available at 2004 WLNR 6620090 (stating that in an online music class at Mississippi State University, students experience more musical diversity and mentioning that one Korean student wrote a review of a piano concert he saw in Seoul).

51. See, e.g., Justin Pope, *Education: Head of the Class: Online Courses Are Becoming Popular Among Traditional College Students*, MIAMI HERALD, Feb. 7, 2006, at C8 (stating that Miami-Dade College's "virtual college" has between 4,000 and 5,000 students enrolled each semester and that students come from different states and countries, including a military person fighting in Iraq).

52. See Lucilla Crosta, *Beyond the Use of New Technologies in Adult Distance Courses: An Ethical Approach*, 3 INT'L. J. ON E-LEARNING 48, 48-60 (2004) (discussing benefits of asynchronous communication).

53. See *id.* (discussing research using asynchronous communication: "as a group conference, where a 'many-to-many communication' will prevail: messages posted by someone, and stored in a virtual locus, can be read by all the participants of the conversation. It allows people to share works, information, messages, and experiences in a collaborative and cooperative learning situation, where the leader is not the tutor itself but the group of individuals.").

54. Tranette Ledford, *Online Tutoring: Help for College is Just a Click Away*, DECISION

their subject and pedagogy than the classic, first-time teaching assistant at a large university.⁵⁵

Greater enrichment of classroom experiences and wider access to higher education has driven huge increases in the number of online courses and degrees offered. According to the National Center for Education Statistics (NCES) in the Education Department, distance education⁵⁶ courses for credit are offered by 55 percent of all two- and four-year colleges and universities in the United States.⁵⁷ The NCES concludes that the prevalence of online courses and programs “indicates that institutions are seeking to build upon the convenience, flexibility, and improved access” of online courses and programs to increase enrollment.⁵⁸ Record-breaking enrollments may be further explained by preliminary research that shows online education may be on par with education in the traditional classroom setting.⁵⁹ Proponents of online education report experiencing an increase in the quality of student interaction online in comparison to in-class instruction.⁶⁰

The growth in online education is not without criticism. Although the majority of online course enrollments are at public higher education institutions,⁶¹ enrollments at private for-profit institutions are quickly growing.⁶² Even at

TIMES (ARMY), Nov. 14, 2005, at 4.

55. *Id.* (stating that students can pay for online tutorial services from private companies such as Realtimetutor.com, which “offers college tutoring services for undergraduates and graduates in a number of fields, particularly in math subjects like algebra, statistics, probability, calculus, pre-calculus and engineering math”).

56. Distance education is defined as “education or training courses delivered to remote (off-campus) sites via audio, video (live or prerecorded), or computer technologies, including both synchronous (i.e., simultaneous) and asynchronous (i.e., not simultaneous) instruction.” See NCES DISTANCE-EDUCATION REPORT, *supra* note 6, at 1.

57. *See id.* at iii.

58. *See* Vincent Tinerella, *Encyclopedia of Distributed Learning*, 44 REFERENCE & USER SERVICES Q. 84, 84 (Fall, 2004) (book review).

59. *See, e.g.,* Michaela Driver, *Investigating the Benefits of Web-Centric Instruction for Student Learning—An Exploratory Study of an MBA Course*, 77 J. EDUC. FOR BUS. 236, 244 (2002) (“[R]esults of [an] exploratory study [of an MBA course] indicate, at least tentatively, that Webcentric learning environments have a positive effect on student social interaction, involvement with course content, technical skills, and overall learning experience.”). *But see generally* DAVID F. NOBLE, *DIGITAL DIPLOMA MILLS: THE AUTOMATION OF HIGHER EDUCATION* (2002).

60. *See* Gary Wyatt, *Satisfaction, Academic Rigor and Interaction: Perceptions of Online Instruction*, 125 EDUC. 460, 470 (2005) (stating that online interaction is better because “students have the ability to think about responses before posting them and are often freed from the constraints of ‘stage fright’” so that they contribute to class discussion).

61. *See* Patrick Garmoe, *New Acceptance of Online Learning*, CHI. DAILY HERALD, Mar. 20, 2004, at 1 (“Illinois Virtual Campus, a part of the University of Illinois that tracks online statistics at 68 public and private Illinois colleges and universities, recorded 125,074 online course enrollments in the 2002-03 school year.”); Illinois Virtual Campus, Illinois Distance Education Enrollment Reports (Fall 2005), <http://www.ivc.illinois.edu/pubs/enrollment.html>.

62. *See, e.g.,* Cynthia Schreiber, *For-Profit Education Faces Tough Course*, AP ONLINE, Sept. 1, 2003, (“Apollo Group, parent of the University of Phoenix Online . . . has seen its enrollments rise 163 percent to 187,495 online and onsite students in 2003, from about 71,400 in 1998.”); *see also* I. ELAINE ALLEN & JEFF SEAMAN, *THE SLOAN CONSORTIUM, ENTERING THE*

traditional institutions, critics charge that administrators are replacing high-quality, but expensive, classroom instruction with lower-cost, poorly-executed, computerized online instruction.⁶³ Budget woes, as much as innovative pedagogy, may be driving the growth of online instruction. Critics also point to specific pedagogic flaws in online courses. Ninety percent of the schools providing online instruction use asynchronous methods that deprive students of the immediate contact with instructors.⁶⁴ Lack of “immediate” face-to-face communication means an instructor may not be able to determine whether students are understanding the subject matter.⁶⁵ Research shows that effective learning and student satisfaction are greatest in a synchronous or semi-synchronous learning environment, a context missing from the majority of online courses.⁶⁶

Educators also point to technology constraints, high attrition rates, and honesty issues as drawbacks of online education. Although institutions have invested heavily in software platforms for instruction, high-speed internet access, and advanced video capabilities, their online students are not always on par technologically and often lack the most up-to-date equipment.⁶⁷ Very high attrition rates mark online programs, raising questions about quality and student

MAINSTREAM: THE QUALITY AND EXTENT OF ONLINE EDUCATION IN THE UNITED STATES, 2003 AND 2004, 5-6 (2004), available at http://www.sloan-c.org/resources/entering_mainstream.pdf (“The percentage of Private, for-profit schools offering at least one online course increased from 44.9% in last year’s study to 88.6% this year.”).

63. See Gary Wyatt, *supra* note 60 (College administrators are driven to embrace online instruction as a way to increase enrollment and are influenced “by software corporations motivated to colonize higher education for financial gain.”).

64. The majority (ninety percent) of schools that provide distance education offer Internet courses using asynchronous (non-simultaneous) computer-based instruction. NCES DISTANCE-EDUCATION REPORT, *supra* note 6, at v.

65. Students are somewhat isolated in the virtual learning environment. See Chee Meng Tham, & Jon Werner, *Designing and Evaluating E-learning in Higher Education: a Review and Recommendations; Online Learning*, 11 J. LEADERSHIP & ORG. STUDIES 15, 17 (2005) (Evidence documenting that the quality of online learning is comparable if not better than the quality of learning in traditional classrooms.). Cf. INST. FOR HIGHER EDUC. POL’Y, QUALITY ON THE LINE: BENCHMARKS FOR SUCCESS IN INTERNET-BASED DISTANCE EDUCATION 2, 13-14 (2000) [hereinafter QUALITY ON THE LINE] (identifying and tracking the success of institutional benchmarks, such as electronic security measures and institutional records for effective teaching of distance learning courses, in distance learning programs for six institutions).

66. See Ben Arbaugh, *Virtual Classroom Versus Physical Classroom: An Exploratory Study of Class Discussion Patterns and Student Learning in an Asynchronous Internet-Based MBA Course*, 24 J. MGMT. EDUC. 213, 215 (2000); Robert Schramm, et al., *Student Perceptions of the Effectiveness of Web-Based Courses*, 27 NABTE REVIEW 54, 60 (2001) (concluding that student satisfaction with online courses was substantially higher when students felt they had received sufficient training to use the necessary technology); Anna C. McFadden, et al., *Why Do Educators Embrace High-Cost Technologies?*, 2 ONLINE J. DISTANCE LEARNING ADMIN. (Winter, 1999), available at <http://www.westga.edu/~distance/mcfadden24.html> (stating that the “synchronous model of distance education is closely related to a professor’s regular habits, experiences, and expectations”).

67. See QUALITY ON THE LINE, *supra* note 65, at 15 (stating that many students have computers with limited memory and video capabilities and have slow Internet connections not designed to handle large audio and video files).

commitment.⁶⁸ And many educators worry that online education poses unique honesty issues.⁶⁹ The relative anonymity and physical separation of student and instructor lead most to believe that it is easier to cheat in an online course than in a traditional classroom.⁷⁰ Universities can combat the temptation to cheat by using video-conferencing technology or hiring proctors and providing physical examination sites proximately available to their distance students.⁷¹ These safeguards, however, raise the cost of online education.

Whatever the pedagogic value of online education, it is clear that employers remain skeptical of online degrees. In a survey about the attitudes of those working in library systems towards students obtaining an online master's degree in library science ("MLS"), a researcher found the majority of respondents preferred hiring graduates with traditional MLS degrees.⁷² Most respondents questioned the rigor of online academic work⁷³ and were concerned with the lack of face-to-face

68. See *id.* at 21 (Online students generally fall at one of two extremes – they excel or they fail). See, e.g., Thomas Valasek, *Student Persistence in Web-based Courses: Identifying a Profile for Success* (2001), available at <http://www.raritanval.edu/departments/CommLanguage/full-time/valasek/MCF%20research.final.htm> (observing that, in a report formally published, the attrition rate for online course students at Raritan Valley Community College is as high as two to three times that for its traditional face-to-face courses).

69. See *Academic Integrity in Online Education*, 2 SLOAN-C VIEW 3, 3 (Oct. 2003), available at <http://www.sloan-c.org/publications/view/v2n7/pdf/v2n7.pdf> (Sloan Consortium article noting that the potential for cheating online is an enormous obstacle to faculty acceptance of online education).

70. See Virgil E. Varvel, Jr., *Honesty in Online Education*, 6 POINTERS & CLICKERS, 1, 1–4 (2005), available at http://illinois.online.uillinois.edu/resourus/pointersclickers/2005_01/VarvelChentPoint2005.pdf (stating that cheating in higher education is so pervasive across forums—as high as eighty-five percent according to some surveys—that any differences between traditional and online courses would be difficult to detect). Students who submit their work or take exams completely online may utilize books, notes, friends, paid helpers and even the Internet itself to assist them. *Id.* at 4. Also, an increasing number of commercial sites actually sell research papers over the Internet. See James E. Kasprzak and Mary Anne Nixon, *Cheating in Cyberspace: Maintaining Quality in Online Education*, 12 ASS'N FOR ADVANCEMENT OF COMPUTING IN EDUC. 85, 86 (2004) (arguing that susceptibility to fraud may be the most damning argument against the quality of online education, and discussing empirical study that revealed approximately nine percent of students in a University of Virginia Physics program had committed some form of plagiarism). See also J.D. Heyman et al., [P]ssst... *What's the Answer?*, PEOPLE Mag., Jan. 24, 2005, at 108 (alleging that the Wal-Mart heiress may have utilized technological resources in cheating her way through a bachelor's degree at the University of Southern California).

71. See *Academic Integrity in Online Education*, *supra* note 69, at 3 (stating that schools such as Florida State University and Pace University have developed such distance proctoring programs for administering exams to their students).

72. See Maureen Wynkoop, Camden County Library System, *Hiring Preferences in Libraries: Perceptions of MLS Graduates with Online Degrees* (2003), <http://www.camden.lib.nj.us/survey/default.htm> (last visited July 18, 2006) (unpublished survey of library employees performed in furtherance of MLS degree at Southern Connecticut State University) (“Of the 58 [MLS] programs currently accredited . . . 21 offer at least some web-based courses. And of these 21, eleven offer a degree that can be earned either completely online or predominantly online with brief campus visits.”).

73. See *id.* at 1-2.

interactions and interpersonal relationships involved in obtaining a degree online.⁷⁴ Likewise, another study revealed a bias against online degrees among human resource professionals.⁷⁵ In response to the question “Does it matter if the employee’s degree was obtained through a program offered totally over the Internet?”, 14 percent of the respondents replied that an online degree was “OK,” 57 percent gave a neutral response, and 29 percent rejected online degrees as “Not OK.”⁷⁶ The study “further confirmed that HR professionals have a strong preference for [schools with] institutional accreditation from a regional accrediting body as well as accreditation of the individual [degree] programs.”⁷⁷ Consequently, some students who obtain online degrees, especially degrees from unaccredited schools, will be disappointed with the response of employers when they begin their job searches.⁷⁸

In summary, while the demand for online education continues to grow, many educators and employers still view even *accredited* online education programs as inferior to the traditional classroom alternative. This skepticism is likely to increase as the public becomes more aware of today’s proliferation of fake and substandard online degree schools.

B. Demand for Online Education: The Intersection of Labor and Education Markets

In an earlier time, hard work and on-the-job training were the tickets to well-paying jobs and career advancements. But today, American workers increasingly need college degrees to secure good positions.⁷⁹ Faced with regular media reports of lackluster job growth, layoffs, and plant closings, workers realize that investment in human capital—attainment of a college degree—is the solution to job insecurity.⁸⁰

74. See *id.* at 2-4 (One survey respondent said that because the social interaction element of traditional education is largely lacking in online education that “[i]f a person plans on working solo, i.e. freelancing, . . . perhaps distance learning will suffice, but if a person plans to work directly with the public, they are by nature social and distance learning can be a disservice to them.”).

75. See Alan Tuchtenhagen, *New Providers in Higher Education: Higher Education for the Workforce in the New Economy*, (May 2002), (unpublished Ph.D. dissertation, Hamline University), available at http://proquest.umi.com.proxy.lib.ohio-state.edu/dissertations/preview_all/3067756 (stating that fifty-seven percent “didn’t care” if the degree was obtained online). Additionally, when asked to rank traditional degree programs and “nontraditional formats, such as online,” on a scale of one to five, traditional degrees scored 4.35, while online degrees received a 3.3. *Id.*

76. See *id.*

77. *Id.*

78. See, e.g., *Bogus Degree Hearings*, *supra* note 29, at 51 (stating that some graduates of unaccredited Kennedy-Western University were questioned about the school’s legitimacy when they applied for jobs and had to ultimately remove the school from their resumes).

79. See U.S. DEP’T OF LABOR STATISTICS, *OCCUPATIONAL OUTLOOK HANDBOOK 6* (2004–05) (discussing labor data showing that “all but 1 of the 50 highest paying occupations” require a applicants with at least a college degree).

80. See *infra* Section I.B.

Students who pursue college degrees through online degree programs differ from those who attend traditional campuses. In a 1999-2000 survey, the NCES found that students who worked full-time and had family responsibilities were more likely to participate in both undergraduate and graduate distance education programs.⁸¹ These students also value the time and space flexibility of online classes.⁸² Flexibility is so important that the vast majority of online students report a satisfactory experience with online education⁸³ even though some complain that online courses actually require *more* time and effort than traditional instruction and that interpersonal contact with instructors and fellow students is lacking.⁸⁴

Unfortunately, the very students most attracted to online education are those most vulnerable to its shortcomings. Handling full-time jobs and family responsibilities, these students are most likely to suffer *high rates of attrition*⁸⁵ and suffer disappointment when employers display little enthusiasm for their online degrees.⁸⁶

Already handicapped by their educational backgrounds and having to fight in an increasingly competitive workplace, these non-traditional students need the highest quality online education and the most supportive educational environment their limited dollars can buy.

Given the drawbacks of online education, working adults may be incorrect about pursuing a degree over the internet as opposed to in the traditional classroom, but they are correct in perceiving higher education attainment as the key to increasing their wages and employment opportunities.⁸⁷ In comparison to

81. See NAT'L CTR. FOR EDUC. STATISTICS, A PROFILE OF PARTICIPATION IN DISTANCE EDUCATION: 1999-2000 iv, v (2003) (This group includes students who are financially independent, older, married, and/or have dependents.).

82. See QUALITY ON THE LINE, *supra* note 65, at 6.

83. See Valasek, *supra* note 68 (discussing an online student survey indicating satisfaction with the flexibility of taking courses online).

84. See ALLEN & SEAMAN, *supra* note 62, at 10 (stating that the large majority of educational institutions agree that students are as satisfied with online courses as they are with traditional face-to-face instruction). See also Valasek, *supra* note 68 (reporting, on a scale of one to five (five being the most positive response), an average response of 4.4 regarding responsiveness of online instructors to students' questions and concerns; an average response of 4.2 regarding the overall level of online instruction; and an average response of 3.9 regarding recommending online courses to other students).

85. See *Academic Integrity in Online Education*, *supra* note 69 and accompanying text.

86. See *supra* notes 72-78 and accompanying text (reviewing surveys where employer rejection of and skepticism about online higher education was substantially high).

87. See Creola Johnson, *Credentialism and the Proliferation of Fake Degrees: The Employer Pretends to Need a Degree; The Employee Pretends to Have One*, 23 HOSFTRA LAB. & EMP. L.J. 269, 292-98 (forthcoming 2006) (discussing labor economic theories that explain the correlation between degree attainment and subsequent increased earnings). See generally JOHN IMMERWAHR & TONY FOLENO, NAT'L CTR. FOR PUB. POL'Y AND HIGHER EDUC, GREAT EXPECTATIONS: HOW THE PUBLIC AND PARENTS—WHITE, AFRICAN AMERICAN AND HISPANIC—VIEW HIGHER EDUCATION 3 (2000), available at <http://www.highereducation.org/reports/expectations/expectations5.shtml> (stating that 85 percent of the general public believe "a college education has become as important as a high school diploma used to be" and 77 percent of the general public believe that getting a college education today is more important than it was ten years ago).

the college-educated, employees lacking a college education are more likely to earn the minimum hourly wage,⁸⁸ suffer from unemployment,⁸⁹ and earn salaries near or below the poverty level.⁹⁰ A college graduate will earn \$1 million more over his career than will a worker lacking higher education.⁹¹

Workers lacking college degrees are also losing many well-paying jobs with benefits because of corporate restructuring and outsourcing to other countries.⁹² Intense global competition has led America's executives to close factories, cut workforces to the barest minimum, and/or move operations overseas.⁹³ Of the jobs remaining in America for those lacking a college education, a growing number are lower-paying full- or part-time jobs that offer no benefits.⁹⁴ Recent data reveal a

88. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, CHARACTERISTICS OF MINIMUM WAGE WORKERS: 2002, 8 (2005), available at <http://www.bls.gov/cps/minwage2002pdf.pdf> (reporting that 655,000 workers possessing only a high school diploma earned minimum wage of \$5.15 per hour or less); see *id.*, at 5 tbl.3 note (providing reasons why payment of wages below the minimum are not necessarily illegal). Even with a bachelors degree 149,000 workers earned minimum wage or less. See *id.* at 8 tbl.6 (reporting that 14,000 workers with only a bachelor's degree earned minimum wage and 135,000 earned less than minimum wage).

89. According to census data, 78.5 percent of men ages twenty-five to thirty-four who failed to complete high school were employed in 1998, while 85 percent of men with a high school diploma and 94 percent of men with a bachelor's degree were employed. NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., THE CONDITION OF EDUCATION 1999 22 (1999) available at <http://nces.ed.gov/pubs99/condition99/pdf/1999022.pdf>. The disparity in employment rates among women is even greater. See *id.* 22.

90. As an example, "a minimum-wage employee who works 40 hours a week, 52 weeks a year, earns only \$10,712 a year--\$5,000 below the 2004 poverty line for a family of three." See Amy Chasanov & Jeff Chapman, *A Long Overdue Increase in the Minimum Wage is Needed to Restore Lost Ground*, ECON. POL'Y INST., (April 28, 2004), available at http://www.epinet.org/content.cfm/webfeatures_snapshots_04282004.

91. According to 2002 census data, the average earnings by highest level of education were: for those with advanced degrees, \$72,824; for bachelor's degree-holders, \$51,194; for high school graduates, \$27,280; and for nongraduates, \$18,826. See U.S. CENSUS, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2003, 7 (June 2004) [hereinafter EDUCATIONAL ATTAINMENT IN THE UNITED STATES], available at <http://www.census.gov/prod/2004pubs/p20-550.pdf>.

92. Long-term restructuring in the manufacturing and service sectors has made permanent job cuts of over three million since 2001. See AFL-CIO, JOB LOSS AND JOBLESSNESS DURING THE BUSH ADMINISTRATION: A DISMAL RECORD UNPARALLELED IN THE PAST HALF-CENTURY, 2 (Aug. 5, 2003). According to the Labor Department, holders of bachelor's degrees saw a growth of 1.8 million jobs during the past ten years while holders of high school diplomas saw a loss of nearly 700,000 jobs. See DEP'T OF LABOR, FAMILIES AND EMPLOYERS IN A CHANGING ECONOMY (2001).

93. See Kate Bronfenbrenner & Stephanie Luce, The Changing Nature of Corporate Global Restructuring: The Impact of Production Shifts on Jobs In the US, China, and Around the Globe, (Oct. 14, 2004), (unpublished submission to the US-China Economic and Security Review Commission), available at http://www.uscc.gov/researchpapers/2004/cornell_u_mass_report.pdf.

94. See Richard Johnson & Stephen Crystal, *Health Insurance Coverage at Midlife: Characteristics, Costs, and Dynamics*, 18 HEALTH CARE FIN. REV. 123, 129 (1997) (One 1997 study found that fifty-six percent of employees who never attended college have employer-provided health benefits while seventy-six percent of college graduates have such benefits.) More good-paying, full-time jobs are being filled by workers hired by employment agencies to do

disturbing trend of the lowest-paying jobs providing the least health care coverage.⁹⁵ In 2003, private-sector employers provided health care benefits only 45 percent of the time, down from 52 percent in 2000, and 66 percent in 1990.⁹⁶ Thus, an increasing number of workers, especially those lacking college education, do not have employer-sponsored health care benefits.⁹⁷

The outlook for the future is even more grim: Americans without college degrees face a labor market that is creating few new jobs that pay well. Employers are adding jobs primarily in administrative services and accommodations/food services, two lower-wage sectors.⁹⁸ The United States Department of Labor projects that employment in service occupations will increase by 5.3 million, or 19

temporary, seasonal, and part-time jobs, most of which do not normally have health and retirement benefits. *See, e.g.,* Shirleen Holt, *Job Seekers "Just in Time" to be Temps*, SEATTLE TIMES, Nov. 16, 2004, at A1; Laurie Winslow, *Tulsa, Okla., Is Key in IBM's Outsourcing Strategy, Officials Say*, TULSA WORLD (Okla.), June 3, 2004, at A1 (stating that Tulsa-based Williams Cos. Inc., was being bought out by IBM Corp., resulting in the loss of jobs, some completely lost to outsourcing while others would be filled by ex-Williams' workers hired under temporary employment).

95. *See* BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYEE BENEFITS IN PRIVATE INDUSTRY 2003 6, tbl.3 (2004) [hereinafter BUREAU OF LABOR STATISTICS], available at http://www.bls.gov/ncs/ebs/sp/ebnr_0003.pdf (reporting forty-nine percent of blue-collar workers in private industry had no health insurance). *See* KAISER COMMISSION ON MEDICAID AND THE UNINSURED, KAISER FOUNDATION, CHALLENGES AND TRADEOFFS IN LOW-INCOME FAMILY BUDGETS: IMPLICATIONS FOR HEALTH COVERAGE 7 (2004), available at <http://www.kff.org/medicaid/upload/Challenges-and-Tradeoffs-in-Low-Income-Family-Budgets-Implications-for-Health-Coverage.pdf> (According to a Medicaid study, "[a]lmost none of the working families profiled here have employer-sponsored coverage," and those with such coverage "report trouble paying their part of the premium and tend to cycle off and on coverage.").

96. WILLIAM J. WIATROWSKI, BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, DOCUMENTING BENEFITS COVERAGE FOR ALL WORKERS tbl.2 (2006), <http://www.bls.gov/pub/cwc/cm20040518ar01p1.htm> (last visited July 21, 2006). From 2000 to 2004, the employee-paid premiums for employer-sponsored coverage grew by 35.9 percent, while average earnings for the same period grew by only 12.4 percent. FAMILIES USA, HEALTH CARE: ARE YOU BETTER OFF TODAY THAN YOU WERE FOUR YEARS AGO? 3 (2004) [hereinafter FAMILIES USA], available at: http://www.familiesusa.org/assets/pdfs/Are_you_better_off_final5354.pdf.

97. For workers with benefits, those workers paid substantially more for health care plans in 2004 than in 2000. *See* FAMILIES USA, *supra* note 96, at 2.

98. *Id.* In the retail industry, sales and related occupations are expected to add 1.9 million new jobs by 2010, a growth of 11.9 percent. The majority of new jobs are projected to be among retail sales persons and cashiers. *See* BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, OCCUPATIONAL OUTLOOK 2002-2003, BULLETIN 2540, 353 (2002) [hereinafter OCCUPATIONAL OUTLOOK]. While these occupations are expected to add jobs, they tend to pay lower wages. *Id.* at 354, 364-65. The starting wage for many cashiers/salespersons is the federal minimum wage. *Id.* at 364-365. The median hourly wage of cashiers in 2000 was \$6.95 and the middle fifty percent earned between \$6.14 and \$8.27 an hour. *Id.* at 364-365. From November 2001 to November 2003, jobs were lost in information service, technical services, and manufacturing, all sectors that pay above-average wages. *See* Jared Bernstein, *Job Growth Up, Job Quality Down*, ECON. POL'Y INST. (Dec. 17, 2003), available at http://www.epi.org/printer.cfm?id=1563&content_type=1&nice_name=webfeatures_snapshots_archive_12172003 (reporting 1.3 million jobs in the manufacturing sector were lost, 272,000 jobs in information services, and 93,000 jobs in professional technical services).

percent, between the years 2004 and 2014,⁹⁹ and that this growth in primarily service occupations will require workers with “lower-than-average education levels.”¹⁰⁰ At the other end of the spectrum, labor statistics show that “all but 1 of the 50 highest paying occupations” will require a “college degree or higher.”¹⁰¹

Recognizing that the foregoing labor market realities paint a grim picture for those lacking college degrees, providers of online degrees effectively advertise attainment of an online degree as the quickest way for employees to qualify for well-paying jobs, promotions, and raises.¹⁰² They pay search engine companies (e.g., Google) a fee to guarantee their schools will have a high ranking in search results, usually in response to specific search terms like “PhD in psychology,” and these engines make no distinctions among advertisers so that the consumer cannot tell whether the school is real or fake.¹⁰³ Fake and unaccredited schools also pay search engines as well as reputable websites for keyword-linked advertisements so that when a user is electronically identified, the user will see graphical banner ads or pop-up ads from fake and unaccredited schools.¹⁰⁴

Some of their marketing techniques, such as this recent email promising a genuine college degree in 2 weeks, are outlandish:

Have you ever thought that the only thing stopping you from a great job
and better pay was a few letters behind your name?

Well now you can get them!

BA BSc MA MSc MBA PhD

Within 2 weeks! No Study Required! 100% Verifiable!

These are real, genuine non accredited [sic] degrees that include

99. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, TOMORROW'S JOBS (2004), available at <http://www.bls.gov/oco/oco2003.htm> [hereinafter TOMORROW'S JOBS]. See Michael Ettlinger & Jeff Chapman, ECON. POL'Y INST., JOBS SHIFT FROM HIGHER-PAYING TO LOWER-PAYING INDUSTRIES, Jan. 21, 2004, available at http://www.epinet.org/content.cfm/webfeatures_snapshots_archive_01212004 (“In 48 of the 50 states, jobs in higher-paying industries have given way to jobs in lower-paying industries since the recession ended in November 2001.”).

100. See OCCUPATIONAL OUTLOOK, *supra* note 98, at 7 (“[T]wo broad groups of occupations are projected to grow most rapidly in the future . . . occupations that disproportionately require higher-than-average education levels, such as managerial, administrative, and professional jobs; and occupations that disproportionately require lower-than-average education levels, primarily service jobs.”).

101. See TOMORROW'S JOBS, *supra* note 99. See also BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, PROJECTED EMPLOYMENT IN HIGH-PAYING OCCUPATIONS REQUIRING A BACHELOR'S OR GRADUATE DEGREE 4 (2004), available at <http://www.bls.gov/opub/td/2004/mar/wk3/art03.htm>; BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, BLS RELEASES 2004-14 EMPLOYMENT PROJECTIONS (2005), available at <http://www.bls.gov/news.release/pdf/ecopro.pdf> (“An associate or bachelor's degree is the most significant source of postsecondary education or training for six of the ten fastest growing occupations.”).

102. See EZELL & BEAR, *supra* note 13, at 92–93 (discussing email offers stating that the consumer will “become the envy of your friends' by acquiring a degree”).

103. See *id.*

104. *Id.*

Bachelors, Masters and Doctorate degrees.

They are verifiable and student records and transcripts are also available.

This little known secret has been kept quiet for years. The opportunity exists due to a legal loophole allowing some established colleges to award degrees at their discretion.¹⁰⁵

These type of messages appeal to deep-rooted fears and frustrations among workers aspiring to improve their lot.¹⁰⁶ While most well-educated individuals would dismiss these email messages as absurd, some employees will be desperate enough to bypass a traditional education and opt for a degree from a fake or substandard unaccredited school in order to obtain more income and job security

In addition to the labor market conditions, trends in traditional higher education further buttress the appeal of online degree programs. Just as college degrees are becoming more essential to job success, classroom education at four-year institutions is becoming more inaccessible and unaffordable.¹⁰⁷ In 2002, the Lumina Foundation for Education published a nationwide study of two components of postsecondary institutions: affordability¹⁰⁸ and accessibility.¹⁰⁹

105. *Id.*; Fast Track University Degree Program, *supra* note 22.

106. *See* Fast Track University Degree Program, *supra* note 22; *see also* Email Randy Odonnell to johnson.1805@osu.edu (Aug. 19, 2005 16:29 EST) (containing similar spam mail message except that nothing in the message indicates that the degrees are unaccredited); Email from Lorenzo Morgan, to Larry Garvin, Professor of Law, Michael E. Moritz College of Law (Apr. 15, 2006 17:44 EST) (mass spam email) (“According to the U.S. Census Bureau, with the following degrees, here's how much you can expect to make in your lifetime: High School Diploma: \$1,100,000[,] Bachelor's Degree: \$2,100,000[,] Master's Degree: \$2,500,000[,] Doctorate: \$4,400,000[,] You Need a Better Degree, and we can Help! Obtain degrees from Prestigious non-accredited Universities based on you[r] life experience. NO ONE is turned down.”).

107. *See* ADVISORY COMM. ON STUDENT FINANCIAL ASSISTANCE, ACCESS DENIED: RESTORING THE NATION'S COMMITMENT TO EQUAL EDUCATIONAL OPPORTUNITY 1-2 (2001), *available at* http://www.ed.gov/about/bdscomm/list/acsfa/access_denied.pdf. In 1998–99, the average yearly in-state undergraduate tuition at a public four-year college or university was approximately \$3,200. *See* LAURA J. HORN, ET AL., NAT'L CTR. FOR EDUC. STATISTICS, GETTING READY FOR COLLEGE: WHAT STUDENTS AND THEIR PARENTS KNOW ABOUT THE COST OF COLLEGE TUITION AND WHAT THEY ARE DOING TO FIND OUT 5 (2003), *available at* <http://nces.ed.gov/pubs2003/2003030.pdf>. While tuition rates may seem reasonable, rates at a more prestigious public school may run over \$12,000, and a private education may run \$25,000 or more. *Id.*

108. *See* Samuel M. Kipp III, et al., *Unequal Opportunity: Disparities in College Access Among the Fifty States*, 4 LUMINA FOUND. FOR EDUC. NEW AGENDA SERIES 5 (Jan. 2002), *available at* <http://www.luminafoundation.org/publications/monographs/pdfs/monograph.pdf> [hereinafter *Unequal Opportunity*]. This study excluded the following: “non-degree-granting institutions; for-profit, proprietary vocational/technical schools and colleges; narrowly sectarian, religious colleges; freestanding graduate or professional schools or specialty schools that provide only limited undergraduate curricular offering.” *Id.* at 43 n.1. In determining “affordability,” the Foundation looked to three factors: “(1) the expenses that students . . . faced at a particular college; (2) the estimated amounts that the student and family could reasonably contribute toward those expenses (generally called the “Expected Family Contribution” or “EFC”), and (3) the amounts and kinds of financial aid available to the students. *Id.* at 2. If the sum of a student’s

With respect to affordability, the study showed that most states have two-year institutions that are affordable to low- and median-income traditional age (dependent) students.¹¹⁰ But there are fewer states with four-year institutions that are “affordable” for low- and median-income traditional students without the students being forced to borrow money.¹¹¹ Except for some public two-year institutions, most universities are no longer “affordable” for low-income independent (non-traditional adult) students.¹¹²

Even if a low-income student qualifies for income-based funding, private and public four-year institutions are making it increasingly difficult to gain admission.¹¹³ As enrollment in higher education booms, many four-year colleges and universities are increasing grade point averages and exam scores needed for admission.¹¹⁴ Thus, students lacking sufficient academic achievement will have to

EFC and the average financial aid available to that student was equal to or greater than their estimated annual expenses at a particular college, the college was deemed “affordable.” *Id.* at 2.

109. *See id.* at 1. To be classified as “admissible,” the institution must enroll students with admission test scores consistent with the middle range (twenty-fifth to seventy-fifth percentile) of scores for all test takers in the particular state. *Id.* at 1, 5. If an institution is classified as “inadmissible,” it is selective (i.e. it generally enrolls only more highly qualified applicants) and it is unlikely to be accessible to typical college-bound high school students. *Id.* at 2.

110. *See id.* at 28; *See also* Scott Powers, *Florida Legislature May Cut Back on Scholarship Program*, ORLANDO SENTINEL, Mar. 30, 2003, at B1. (“Besides raising alarms about long-term costs [of higher education in Florida], critics charge that most of the scholarships wind up going to students whose families already can afford college, while Florida provides little support for financially needy students.”) *But see* David L. Warren, *The Lumina Foundation Misses Its Opportunity*, 5 U. BUS. 56 (Mar. 2002), available at <http://www.universitybusiness.com/page.cfm?p=73> (criticizing the methodology of the authors of *Unequal Opportunity* and its conclusions regarding affordability).

111. *See Unequal Opportunity*, *supra* note 108, at 39.

112. *See id.* at 42. The average twenty-five to thirty-four year-old male high school graduate earns \$34,611 annually, working full time. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2004-2005 (2005), available at <http://www.census.gov/prod/2004pubs/04statab/educ.pdf>. The average yearly tuition, room, and board charges for a public 4-year college came to \$10,660 in 2003, and the rates for a private college reached \$31,051. *Id.* Presumably, these rates will increase each year. Moreover, the decision to attend one of these schools most likely means that the employee will not be able to work full time during the four years of education.

113. *See, e.g.*, Patti Ghezzi & David A. Milleron, *Holding On To Hope: HOPE Award Hinges on a Fickle Standard; Students' Struggle to Stay Eligible Suggests Some High Schools Too Generous with Grades*, ATLANTA J. CONST., Nov. 10, 2003, at A1 (stating that to qualify for state scholarship, high school graduates in West Virginia must have at least a 3.0 GPA and obtain at least 1000 on the SAT or the ACT equivalent). Most states that offer grants are awarding grants to the middle class, not to the students who can least afford a college education. *See also Unequal Opportunity*, *supra* note 108, at 42 (finding that most colleges and universities are not accessible to low-income independent students even if those students borrow money).

114. *See, e.g.*, Eric Eyre, *Making the Cut: New ACT Standard Could Block 1,500 from 4-year State Colleges*, CHARLESTON GAZETTE & DAILY MAIL (W. Va.), Oct. 30, 2005, at 1B, (quoting West Virginia's acting higher education chancellor as stating that 1,500 students will be unable to get into a state college based on new admissions standards, set to take effect in 2008, that will require a student to “score at least 18 on the ACT and graduate with a 2.0 grade point average or higher”); Jenna Russell, *Students Say UMass Being Too Selective: Goals at Amherst Spur Strong Debate*, BOSTON GLOBE, May 5, 2005, at A1 (stating that minority enrollment

begin their higher education in community colleges and, after proving themselves academically, may be able to transfer to four-year colleges or universities.¹¹⁵ Thus, a full-time worker wanting to improve his salary and job position through traditional higher education is likely to have significant financial and academic obstacles to overcome.

Unlike traditional four-year institutions, many online unaccredited schools charge relatively low-to-moderate tuition fees and do not condition admission upon the applicant's taking of standardized tests such as the SAT or the GRE.¹¹⁶ Online schools, unlike traditional four-year colleges and universities, are able to highlight accessibility and affordability as advantages of their degree programs. Traditional community colleges can match online schools' claims of accessibility and affordability,¹¹⁷ but these colleges, which still largely follow the classroom model of instruction, cannot match the flexibility of online degree programs. The triple pull of flexibility, accessibility, and affordability make online degree programs very tempting. Unscrupulous schools can manipulate these legitimate advantages of online education to draw unsophisticated consumers into worthless degree programs—especially if these schools cleverly misrepresent their accreditation status and mislead consumers to believe that heavily crediting prior life experiences is legitimate.¹¹⁸ This discussion now turns to the deceptive practices employed by substandard degree providers to convince consumers and employers that they provide legitimate postsecondary education.

II. FRAMING THE DEBATE AS DECEPTION

Online education has provoked intense academic debate over effective pedagogy and the most effective ways of harnessing the Internet's capabilities to benefit the greatest number of students.¹¹⁹ Yet, the debate over online education has largely ignored the pervasive deception and the consumer protection issues

decreased at the University of Massachusetts, after the state's board of higher education "phased in new admissions standards requiring that accepted students have a 3.0 high school grade-point average or SAT scores high enough to compensate for lower grades").

115. For an adult with a GED who is interested in technical fields, community college may enhance his or her ability to gain entrance into a traditional four-year university. See Lisa Tabachnick Hotta, *The GED: How do Colleges and Employers Regard It?*, http://adulted.about.com/cs/ged/a/ged_value.htm (last visited Aug. 2, 2005).

116. See, e.g., *infra* Part II.B.3 (discussing Kennedy-Western's operation, which charges roughly \$6,000 to obtain a master's degree and does not require the taking of any standardized test for admission).

117. See *Unequal Opportunity supra* note 108, at 1-3 (reporting that two-year schools are considered affordable and have open admission policies).

118. See *infra* notes 206-09 and accompanying text (discussing how Trinity College & University falsely claims that its practice of crediting prior learning experiences is in accordance with federal standards).

119. See *supra* Part I.A (discussing advantages and disadvantages of online instruction and learning); Katie Hafner, *Lessons Learned At Dot-Com U.*, N.Y. TIMES, May 2, 2002, at G1 (discussing numerous closings of online course/degree programs and suggesting such closures stemmed from administrators mistaken "belief that students need not be physically present to receive a high-quality education").

raised by online education. Generally, consumer law seeks to assure that consumers receive sufficient, accurate information to make informed purchasing decisions.¹²⁰ Creating a marketplace with accurate information is especially important for complex and expensive products like online higher education because consumers are likely to lack sufficient insight to make intelligent self-maximizing choices. Restricting false advertising is also essential when the product has the potential to harm the purchaser and third parties.¹²¹ Degrees based on inferior or bogus education have just that potential in various fields such as medicine, law, accounting, and engineering.¹²²

By framing the debate as a matter of deception, one can combine consumer law theory with the quality standards developed by education experts through their accrediting agencies. Those standards embody both the criteria that educators believe are essential for a quality education and the indicia that prospective employers value. The focus on deception also allows schools to function outside those accreditation guidelines,¹²³ a flexibility sometimes necessary for innovation, as long as appropriate disclosures are made to students.¹²⁴

The remainder of this section outlines the accreditation process in the United States, catalogues the four types of online programs that have raised consumer protection issues, and provides examples of some of their abusive practices.

A. America's Accreditation Process and the Importance of Accreditation

Unlike many countries, the United States government does not accredit higher education institutions but instead relies on a lengthy process by which experts from private agencies¹²⁵ evaluate a school to determine if it meets minimum standards

120. The United Nations General Assembly has adopted Guidelines for Consumer Protection, which obligate governments to prohibit manufacturers, distributors, and others from engaging in practices that are “damaging to the economic interests of consumers” and requiring the “provision of the information necessary to enable consumers to make informed and independent decisions.” See U.N. ECON. & SOC. COUNCIL [ECOSOC], COMM’N OF SUSTAINABLE DEV., UNITED NATIONS GUIDELINES FOR CONSUMER PROTECTION, ¶¶ 16, 22 (1999) (“Promotional marketing and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take [sic] informed and independent decisions, as well as measures to ensure that the information provided is accurate.”).

121. See *id.* at ¶ 16.

122. See, e.g., Matthew Chapman, “Fake Doctor Factory” Awards Degrees, BBC NEWS ONLINE, Nov. 26, 2000, http://news.bbc.co.uk/2/low/uk_news/education/1039562.stm (describing the practices of a fake doctor and describing a British diploma mill, the Metropolitan Collegiate Institute, which operates with the fictional “Sussex General Hospital” to sell fraudulent medical degrees and provide references to Americans and citizens of third world countries); *Patient Dies, Fake Doctor Held*, THE HINDU, June 7, 2004, available at <http://www.hindu.com/2004/06/07/stories/2004060712020300.htm> (reporting that a fake doctor killed a 16-year-old girl while attempting an operation on her tongue to correct stuttering).

123. See *infra* Part II.A (describing the accreditation process).

124. See *infra* Part III.C.3 (proposing that unaccredited degree providers be required to make certain disclosures to all prospective students and providing a table summarizing prohibited acts).

125. See COUNCIL FOR HIGHER EDUCATION ACCREDITATION, THE FUNDAMENTALS OF ACCREDITATION: WHAT DO YOU NEED TO KNOW? 1 (2002) [hereinafter FUNDAMENTALS OF

of quality education.¹²⁶ Accrediting agencies themselves are approved (i.e. recognized) by¹²⁷ the Secretary of the United States Education Department after showing they have met certain rigorous requirements.¹²⁸ These ED-recognized accrediting agencies fall in two general categories: institutional accrediting agencies which accredit entire institutions, such as traditional all-degree-granting colleges and universities, and programmatic accrediting agencies that accredit particular degree programs, which are generally part of broader institutions.¹²⁹

Accreditation does not have the same meaning as authorized, registered, chartered, recognized, licensed, approved, or “pursuing accreditation,” all of which are common terms used by diploma mills and some unaccredited schools to misrepresent their legitimacy.¹³⁰ Under various state laws, before an entity can begin operations and call itself a college, university, or higher education

ACCREDITATION], available at http://www.chea.org/pdf/fund_accred_20ques_02.pdf (“In the U.S., accreditation is carried out by private, nonprofit organizations designed for this purpose.”).

126. *Id.* at 6. Accrediting agencies serve two primary purposes: “to ensure the quality of an institution or program, and to improve the institution or program.” See Michael W. Prairie & Lori A. Chamberlain, *Due Process in the Accreditation Context*, 21 J.C. & U.L. 61, 65 (1994) (arguing that because of the increasingly intertwined relationship between governmental bodies and accrediting agencies, due process is needed in certain situations, especially when decisions of accreditation have an impact on government funding for schools).

127. See OVERVIEW OF ACCREDITATION, *supra* note 12.

128. See The Secretary’s Recognition of Accrediting Agencies, 34 C.F.R. § 602 (2003); U.S. DEP’T OF EDUC., NATIONAL RECOGNITION OF ACCREDITING AGENCIES BY THE U.S. SECRETARY OF EDUCATION, http://www.ed.gov/admins/finaid/accred/accreditation_pg3.html (last visited May 1, 2006); Hazel Glenn Beh, *Student Versus University: The University’s Implied Obligations of Good Faith and Fair Dealing*, 59 MD. L. REV. 183, 194 (2000) (“The government has turned over much of the oversight function to private accrediting agencies by requiring institutions receiving federal funds to be accredited by federally approved and recognized accrediting agencies.”).

129. See Jeffrey C. Martin, *Recent Developments Concerning Accrediting Agencies in Postsecondary Education*, 57 LAW & CONTEMP. PROBS. 121, 122 (1994) (describing issues arising from the relationships among the federal government, accrediting agencies, and post-secondary education institutions and stating that an example of a programmatic accrediting agency is the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association which accredits law schools). The Secretary of Education periodically publishes a list of recognized accrediting agencies in the Federal Register, together with each agency’s scope of recognition. See 34 C.F.R. § 602.2(a) (2003). A copy of the list may be obtained from the ED at any time and is also available on the ED’s website. In addition to the ED, the Council for Higher Education Accreditation (CHEA) recognizes accrediting agencies. See Council for Higher Educ. Ass’n, About CHEA: CHEA at a Glance, (2000) <http://www.chea.org> (last visited July 21, 2006). In general, a higher education institution’s eligibility for federal funding is based on institutional accreditation by ED-recognized, not CHEA-recognized, accrediting agencies, *id.*; COUNCIL FOR HIGHER EDUC. ASS’N, CHEA RECOGNITION POLICY, (1998) http://www.chea.org/recognition/CHEA_Recognition_Policy_and_Procedures.pdf. Consequently, providers of legitimate higher education seek accreditation for a number of reasons, including eligibility to participate in the student loan program. See COUNCIL FOR HIGHER EDUCATION ACCREDITATION, CHEA FACT SHEETS #1-5, available at <http://www.chea.org/Research/#CHEAfactsheets> (last visited May 1, 2006), and COUNCIL FOR HIGHER EDUCATION ACCREDITATION, CHEA RECOGNITION POLICY, 3-4 (1998), available at <http://www.chea.org/About/Recognition.asp>.

130. See BEARS’ GUIDE, *supra* note 12, at 61.

institution, it must file an application with the appropriate governmental agency and meet certain qualifications,¹³¹ which are often inferior to traditional accreditation standards.¹³² Upon meeting the state's qualifications, the entity can call itself authorized,¹³³ or whatever term is established by statute, but it cannot call itself accredited unless it is accredited by an ED-recognized accrediting agency.¹³⁴

With the exception of Western Governors University, schools that exist only on the Internet have only one realistic hope of receiving accreditation by an ED-recognized accrediting agency and that is through the Distance Education and Training Council ("DETC").¹³⁵ The Accrediting Commission of DETC is the ED-recognized accrediting agency¹³⁶ that accredits postsecondary institutions that educate primarily through distance learning.¹³⁷ However, degree-granting institutions that are accredited by DETC are not eligible to participate in federal financial aid programs administered by the Education Department except for a small number of institutions allowed participation through a pilot program.¹³⁸ This

131. See, e.g., N.J. STAT. ANN. § 18A:68-5 (2003) (requiring private institutions to file a certificate of incorporation with the state and obtain a license from the state commission on higher education before offering courses that lead to a degree).

132. Experts state that the number of legitimate but unrecognized accrediting agencies is "a very, very small number." See BEARS' GUIDE, *supra* note 12, at 40. Most unaccredited schools have very little chance of obtaining accreditation. *Id.* at 40-44, 64-65.

133. See OR. ADMIN. R. § 583-030-0016 (2003) ("Any entity that calls itself 'university' without authorization but with serious intent will be referred to the Department of Justice for enforcement of the statute that defines such deceptive representations as unlawful trade practices."); OR. REV. STAT. §§ 348.594, 348.606 (Supp. 2003).

134. See *supra* note 26.

135. Western Governors University ("WGU") is a private, non-profit online university founded and supported by 19 governors from western states, and because of its support, WGU is in the unique position of having received accreditation not only from the DETC but from four ED-recognized accrediting agencies. See Douglas Johnstone, *A Competency Alternative: Western Governors University*, 37 CHANGE 24, 24 (Jul/Aug 2005), available at 2005 WLNR 21080083 ("No other institution in the history of American higher education has received multi-regional accreditation, and, given the complexities of the undertaking, WGU achieved that milestone in a remarkably short time."). In order for a school to be considered as "predominantly at a distance" more than half the school's instruction must be taught by distance education. See THE DISTANCE EDUC. AND TRAINING COUNCIL, DETC ACCREDITATION HANDBOOK 16 (2006) [hereinafter DETC ACCREDITATION HANDBOOK], available at <http://www.detc.org/accreditHandbk.html>.

136. See U.S. DEP'T OF EDUC., NATIONAL INSTITUTIONAL AND SPECIALIZED ACCREDITING BODIES [hereinafter SPECIALIZED ACCREDITING BODIES], available at http://www.ed.gov/admins/finaid/accred/accreditation_pg6.html (listing all regional and national accrediting agencies recognized by the U.S. Secretary of Education as reliable authorities concerning quality of education and training).

137. DETC accredits institutions that predominantly offer distance education programs up to the first professional degree level. See SPECIALIZED ACCREDITING BODIES, *supra* note 136; DETC ACCREDITATION HANDBOOK, *supra* note 135, at 16 (Institutions that are eligible to apply for accreditation from DETC are those that are "bona fide distance education institution" meeting certain requirements.).

138. See U.S. DEP'T OF EDUC., ACCREDITING AGENCIES RECOGNIZED FOR TITLE IV PURPOSES, http://www.ed.gov/admins/finaid/accred/accreditation_pg10.html (last visited July, 28, 2005).

is because the DETC only accredits institutions that predominately instruct by distance education, and such institutions do not fall within the definition of higher education institutions for purposes of participation in student financial aid programs under Title IV of the Higher Education Act of 1965.¹³⁹

Eligibility for online schools to participate in Title IV-funding and the quality of online education is being hotly debated; however, this article takes no position as to whether Title-IV funding should be extended to DETC-accredited institutions.¹⁴⁰ This article accepts the following. First, distance education is an excellent way to open wider the door of educational opportunities if done correctly and by people possessing authentic academic credentials.¹⁴¹ Second, because of the history of dubious correspondence schools in this country, and the existence of an enormous number of diploma mills and unaccredited schools of questionable quality,¹⁴² education officials have reason to proceed very cautiously in deciding whether to extend funding to predominantly-online education providers.¹⁴³ Third, because of the thoroughness of the accreditation process, accreditation, even with adjustments to better evaluate quality online degree programs, remains the proven way to ensure that traditional and online institutions provide consumers with a basic level of quality online education.¹⁴⁴

The lack of accreditation does not necessarily mean that an online school's

139. *Id.* Financial aid programs under Title IV include the Federal Family Loan programs, Federal Subsidized and Unsubsidized Stafford Loans, Federal Subsidized and Unsubsidized Direct Loans, Federal Parent Loans for Undergraduate Students ("PLUS"), and Federal Direct PLUS Loans, Federal Perkins Loans, Federal Pell Grants, Federal Supplemental Educational Opportunity Grants, and Federal Work-Study. See Higher Education Act of 1965, 20 U.S.C. §§ 1070–1099 (2001).

140. Some consider the exclusion of DETC from Title-IV funding to reflect a continued reluctance by the ED to conclude that the quality of education at DETC-accredited institutions is equal to the quality at traditionally-accredited institutions. While current Title-IV financial aid rules penalize students pursuing degrees at online universities, the ED Secretary created in 1999 the Distance Education Demonstration Project, which exempts school participants from the Title IV rules and allows them to participate in Title IV financial aid programs. See U.S. DEP'T OF EDUC., THIRD REPORT TO CONGRESS ON THE DISTANCE EDUCATION DEMONSTRATION PROGRAMS 24 (April 2005) [hereinafter DEP'T OF EDUC. DEMONSTRATION REPORT] available at <http://www.ed.gov/offices/OPE/PPI/DistEd/index.html>.

141. See generally NCES DISTANCE-EDUCATION REPORT, *supra* note 6, at 1.

142. See BEARS' GUIDE, *supra* note 12, at 29–57.

143. See U.S. GEN. ACCOUNTING OFFICE, GAO-04-279, DISTANCE EDUCATION: IMPROVED DATA AND PROGRAM COSTS AND GUIDELINES ON QUALITY ASSESSMENTS NEEDED TO INFORM FEDERAL POLICY 20 (2004), available at www.gao.gov/new.items/d04279.pdf (reporting a lack of consistency in standards used by accrediting agencies to assess the quality of distance education providers and recommending measures be taken to prevent fraud and abuse by degree-providers who will benefit from the elimination of the 50-percent rules, which exclude distance education providers from being an "institution of higher education"). Some academics argue that abolishing "[t]he 50 percent rules would eliminate any constraints on the developing distance education field—a direction in which more proprietary schools are headed—and potentially put federal funds at a high level of risk of fraud and abuse through the Internet." NAT'L ASS'N OF INDEPENDENT COLLEGES AND UNIVERSITIES, ISSUE SUMMARY AND STATUS: INTEGRITY PROVISIONS 2 (2005), available at <http://www.naicu.edu/hea/2005Issues-Integrity.pdf>.

144. See OVERVIEW OF ACCREDITATION, *supra* note 12.

education is inferior. An online school may be an innovator, pushing the frontiers of a stagnant field. It may be a new institution undertaking the process of accreditation. It may eschew accreditation for other reasons, such as a reluctance to submit religious training to secular review.¹⁴⁵ The lack of accreditation itself, however, often diminishes the value of these degrees—or at least raises questions that consumers should consider. Employers view degrees from unaccredited institutions with suspicion.¹⁴⁶ Promotions, pay raises, and tuition reimbursements are usually reserved for employees who obtain accredited degrees.¹⁴⁷ Moreover, numerous occupations deny licenses to graduates obtaining degrees from unaccredited institutions.¹⁴⁸ Unsophisticated students lack knowledge about the importance of accreditation. Expecting these students to understand not only the process of accrediting, but the importance of accreditation, would require too much from individuals who—by definition—are new to higher education and especially from those drawn by the flexibility, accessibility, and affordability of online education. Using deceptive practices, many unaccredited institutions exploit this lack of sophistication to hoodwink prospective students.¹⁴⁹ Therefore, advertising and disclosures made by online schools about accreditation must be scrutinized.

B. Categories of Online Schools that Raise Consumer Protection Issues

When offered by accredited institutions, online education programs have the potential to advance learning. However, four types of schools and programs have shown significant potential to mislead the public about their accreditation status and educational quality. These are:

- (1) traditional or online institutions possessing accreditation by an ED-recognized accrediting agency, but lacking accreditation by the relevant/appropriate ED-recognized accrediting agency for the degree programs offered (“accredited schools with unaccredited degree programs”);
- (2) unaccredited colleges or universities requiring some level of coursework but lacking accreditation by an ED-recognized accrediting agency (“unaccredited schools”);
- (3) colleges or universities lacking accreditation by an ED-recognized accrediting agency and requiring course work that pales in comparison to coursework required at traditional schools (“substandard

145. See *infra* notes 231-41 and accompanying text (discussing Tyndale Theological Seminary and Biblical Institute, which refused, due to religious “doctrinal” reasons, to seek either accreditation or a state certificate of authority to operate as a degree-granting institution).

146. See *supra* notes 74-78 and accompanying text.

147. For example, under federal law, the federal government can reimburse federal employees for cost incurred in obtaining degrees only from colleges or universities accredited by “a nationally recognized body.” See 5 U.S.C. § 4107(a) (2000).

148. See *infra* notes 153-69 and accompanying text.

149. See *infra* Part II.B (discussing various practices, including the practice of unaccredited schools falsely claiming accreditation, obtaining accreditation from organizations not recognized by the Department of Education, or obfuscating the importance of accreditation).

unaccredited schools”); and

- (4) companies selling degrees for a fee and that require very little or no coursework or that confer degrees based almost exclusively on the buyer’s prior life experiences (“diploma mills”).

Examples of these types of institutions and their practices are discussed briefly below.

1. Accredited Schools Offering Unaccredited Degrees

Concord Law School is an example of an accredited institution of higher education with an unaccredited degree program. Although several unaccredited law schools exist, the fact that Concord exists *only* over the Internet allows one to explore the extent to which a school’s website representations have the potential to deceive prospective students. Concord is accredited by the DETC,¹⁵⁰ but it is not accredited by the American Bar Association (“ABA”), the only ED-recognized accrediting agency for law degree programs and schools.¹⁵¹ The quality of Concord’s legal education is not called into question. It clearly seeks to broaden access to legal education. Furthermore, given that its current dean and faculty come from traditional accredited law schools,¹⁵² one can reasonably assume that Concord requires significant academic work comparable to that required by ABA-accredited law schools. However, Concord’s representations about its approval and accreditation could be misleading to *some* prospective students hoping to use a Concord law degree to chart a path to the traditional practice of law.

While Concord’s website discloses its lack of ABA-accreditation, it fails to state that the lack of ABA-accreditation makes its graduates, relying solely on the law degree, ineligible to take the bar exam in most states.¹⁵³ This means that

150. See *supra* note 135 and accompanying text (discussing DETC, the only ED-recognized accreditor for schools that educate primarily through distance learning).

151. See Concord Law School, School Information: Institutional Approval, [hereinafter School Information] at <http://www.concordlaw.com/info/custom/concord/schoolinfo/approval.asp>? (last visited May 12, 2006); U.S. Dep’t of Educ., College Accreditation in the United States, http://www.ed.gov/admins/finaid/accred/accreditation_pg6.html#law (last visited July 21, 2006).

152. See Concord Law School, Faculty and Lecturers, <http://www.concordlawschool.com/info/custom/concord/faculty/visitinglecturers.asp?GUID=6F5F97532BEA4C09A9D760F41ADADAE0239327749634620320> (last visited July 14, 2006).

153. See School Information, *supra* note 151. The discussion of accreditation and the bar exam reads as follows:

Concord’s unique method of delivering instruction- via the Internet without a fixed classroom facility -places it in the correspondence school category under California law. While the California Committee of Bar Examiners and the American Bar Association do not accredit correspondence schools, the California Committee of Bar Examiners registers correspondence schools. Concord Law School is registered with the California Committee of Bar Examiners permitting its graduates to apply for admission to the California Bar.

Id. See ABA SEC. LEGAL EDUC. & ADMISSIONS TO BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 2004 10–13 (2004), available at <http://www.ncbex.org/pubs/pdf/2004CompGuide.pdf> (stating that bar exam eligibility in the following states is limited to graduates of ABA-approved schools: Arkansas, Delaware, Florida, Georgia, Idaho, Indiana, Iowa,

Concord's graduates cannot obtain a license to practice law in most states and, therefore, are severely limited in their ability to use the degree for the conventional purpose of practicing law.¹⁵⁴ Concord's disclosure of its lack of ABA-accreditation together with positive representations about its DETC-accreditation and the ability of its graduates to take the bar exam in California may mislead some students lacking experience about the legal profession.

Presumably schools like Concord do not actually intend to deceive anyone; nevertheless, an unintended material misrepresentation or omission is deceptive if it is likely to mislead a consumer acting reasonably under the circumstances.¹⁵⁵ Because Concord is a virtual law school, it is attracting students from around the United States and some of these students will want to practice law in numerous states. When any accredited school offering unaccredited degrees fails to accurately state the known limitations of its degree (e.g. inability of a graduate to take the bar exam in most states), it deprives consumers of information relevant to their decision regarding whether they should spend thousands of dollars pursuing an unaccredited degree.¹⁵⁶ To combat this problem, legislation requiring accredited schools with unaccredited degree programs to make relevant disclosures is recommended later in this article.¹⁵⁷

2. Unaccredited Schools Lacking Any Recognized Accreditation

In addition to failing to explicitly state the known limitations of their unaccredited degree programs, some online schools provide misleading and false statements about their accreditation status and often claim accreditation from

Kansas, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, and Virgin Islands). Moreover, in the District of Columbia and all other states except California, a Concord graduate wanting to take the bar exam and/or to become a licensed attorney must *first* satisfy additional requirements, such as completing additional legal education, completing a pre-approved apprenticeship, and/or passing an educational equivalency evaluation. *Id.* at 10–16.

154. See School Information, *supra* note 151; Robert J. Salzer, *Juris Doctor.com: Are Full-time Internet Law Schools the Beginning of the End for Traditional Legal Education?*, 12 *COMMLAW CONSPICUOUS* 101, 109 (2004) (“While states vary with regard to their qualifications for legal practice, most require passing a state bar exam, which is predicated on having graduated from an accredited law school.”).

155. Section 5(a) of the Federal Trade Commission Act provides in pertinent part that “deceptive acts or practices in or affecting commerce” are unlawful. 15 U.S.C. §45(a)(1)–(2) (2004). To establish that an act or practice is deceptive, the FTC must show that (1) there was a representation or omission, (2) the representation or omission was likely to mislead consumers acting reasonably under the circumstances, and (3) the representation or omission was material. See *FTC v. Tashman*, 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988). See *infra* Part III.B (discussing various ways an unaccredited online school can violate the FTC Act).

156. The public is relying more and more on accreditors and education providers to supply them with accurate information about “what a college education is worth in return for what it costs.” AM. COUNCIL ON EDUC. CTR. FOR POL’Y ANALYSIS, *DISTRIBUTED EDUCATION: SUMMARY OF A SIX PART SERIES 6* (2003), available at <http://www.acenet.edu/bookstore/pdf/distributed-learning/summary/dist-learn-exec-summary.pdf>.

157. See *infra* Part III.C.

agencies not recognized by the Education Department.¹⁵⁸ For example, American World University (AWU), which has no physical location,¹⁵⁹ boasts a purported enrollment of thousands of students from more than twenty-five countries¹⁶⁰ and requires its students to complete some academic work, the quality of which is considered unacceptable by some state agencies and education experts.¹⁶¹ AWU's founder, Maxine Asher, is a leading figure in the world of online schools lacking ED-recognized accreditation.¹⁶² In 1993, Asher established the World Association of Universities and Colleges ("WAUC"), an accrediting agency that gives its imprimatur to dozens of schools but is expressly disapproved of by some state educational authorities¹⁶³ and is not an ED-recognized accrediting agency.¹⁶⁴

AWU's accreditation statement downplays the importance of having accreditation from an ED-recognized agency, suggests that America's lack of a ministry of education is out of step with the rest of the world, and leaves the impression that the American accreditation process has been hijacked by private organizations that oppose online schools because they pose a threat to traditional

158. Such agencies are known as "accrediting mills." See COUNCIL FOR HIGHER EDUC. ACCREDITATION, FACT SHEET #6: IMPORTANT QUESTIONS ABOUT "DIPLOMA MILLS" AND "ACCREDITATION MILLS" 1 (2003) available at http://www.chea.org/pdf/fact_sheet_6_diploma_mills.pdf.

159. AWU lists as its address, "1126 Jackson Avenue, Suite 307, Pascagoula, Mississippi 39567 USA." American World University, About AWU: Accreditation, <http://www.awu.edu/about/accreditation.htm> (last visited May 12, 2006). AWU is operating lawfully in the state of Mississippi due to Mississippi's lack of laws to deal with substandard unaccredited schools. See Karen Nelson, *Mississippi is One of Four States Still Lacking Accreditation Laws*, SUN HERALD (Biloxi, Miss.), Jan. 25, 2004, at 1 (stating that Asher's AWU is "an answering service in Pascagoula"); see Thomas Bartlett & Scott Smallwood, *Maxine Asher Has a Degree for You*, 50 CHRON. HIGHER EDUC., June 25, 2004, at A12.

160. Bartlett & Smallwood, *supra* note 159. (stating that AWU has an enrollment of 7000, includes 2,000 from China, and 1,000 in the West Bank and Gaza Strip); American World University, AWU: History of the University, http://www.awu.edu/about/history_of_the_university.htm (last visited May 12, 2006) ("DR. ASHER'S EXPERIENCE HAS HELPED FORM THE NUCLEUS OF AMERICAN WORLD UNIVERSITY, ENSURING SUCCESS FOR ALL OF ITS 12,000 STUDENTS. American World University offers the Bachelor's, Master's and Doctor's degree to students in the U.S.A. and in more than 25 countries, including extensive programs in Palestine, Japan, Indonesia, China, Brazil, Spain, the Philippines and Western Europe.") (emphasis in original).

161. See MICHIGAN'S LIST OF NON-ACCREDITED COLLEGES/UNIVERSITIES, *supra* note 3 (identifying AWU along with hundreds of unaccredited schools that "will not be accepted by [Michigan's] Department of Civil Service as satisfying any educational requirements indicated on job specifications"); OREGON OFFICE OF DEGREE AUTHORIZATION (ODA), STUDENT ASSISTANCE COMMISSION: OFFICE OF DEGREE AUTHORIZATION, (2005) [hereinafter OREGON OFFICE OF DEGREE AUTHORIZATION], available at <http://www.osac.state.or.us/oda/unaccredited.html> (listing AMU as an unaccredited institution from which a degree is invalid for use in state or licensed employment in Oregon).

162. See Bartlett & Smallwood, *supra* note 159.

163. *Id.* (stating that some schools accredited by WAUC have been identified as "diploma mills"); See MICHIGAN'S LIST OF NON-ACCREDITED COLLEGES/UNIVERSITIES, *supra* note 3 (Michigan lists WAUC among a number of unapproved accrediting agencies.).

164. See Bartlett & Smallwood, *supra* note 159; MICHIGAN'S LIST OF NON-ACCREDITED COLLEGES/UNIVERSITIES, *supra* note 3.

schools:

Accreditation is the validation off [sic] a university's instructional program by an agency authorized to render an academic evaluation of the institution's degree granting process. Accreditation is not generally practiced in countries outside of the United States, since Ministries of education in the various countries regulate their own colleges and universities. In the United States, there are regional accreditation associations, in addition to selected private organizations, which accredit specific subject areas (e.g. business, nursing). There is also a distance learning accreditation association which primarily accredits trade schools and a few regular degree granting correspondence universities. What is not known to most students is that the United States government does not control or regulate colleges, universities, or accreditation associations except in connection with the reimbursement of tuition fees to students who qualify for these funds. *In a general legal sense, therefore, there are no federal enabling laws which allow colleges or accreditation associations to function. There are only for-profit and nonprofit organizations who make their own rules and regulations and who frequently "screen out" institutions of higher learning which are competitive with the larger residence schools in terms of student enrollment.*¹⁶⁵

Despite this extensive accreditation discussion, AWU's discussion fails to inform prospective students in two significant ways. First, contrary to federal law and several state statutes,¹⁶⁶ AWU's lengthy disclosure fails to state that it lacks ED-recognized accreditation. Recently, Hawaii's Office of Consumer Protection obtained injunctions permanently enjoining AWU from operating in Hawaii because AWU violated several provisions of Hawaii law,¹⁶⁷ including failure to disclose AWU's lack of any ED-recognized accreditation.¹⁶⁸ Second, although not

165. American World University, *supra* note 159 (emphasis supplied). The AWU's explanation of accreditation also states:

Additionally, prior to the advent of WAUC (a global accreditation association) in 1993, few valid associations exist [sic] to authenticate degree programs of colleges and universities worldwide. In 1992, several forward thinking educators decided to solicit colleges and universities around the world to ascertain their interest in forming a global accreditation association. So voluminous was the response, that the first meeting of the WAUC in . . . Switzerland hosted eleven universities. Thus, the World Association of Universities and Colleges was born and today has a membership of forty universities, with dozens of other worthy institutions in the process of application.

Id.

166. *See infra* Parts III.A-B.

167. Statutes like these prohibit unfair or deceptive acts or practices and are commonly referred to as UDAPs (Unfair and Deceptive Acts or Practices). Because state UDAP statutes are patterned after the Federal Trade Commission Act, a discussion of what practices constitute unlawful deception is delayed until Part III.B.

168. *See Hawaii v. Am. World U.*, No. 03-1-1648-08 (1st Cir. Aug. 12, 2004), available at http://www.hawaii.gov/dcca/areas/ocp/udgi/lawsuits/AWU/american_world_u_c.pdf (suing defendants American World University of Iowa and American World University of Louisiana,

currently prohibited by any law, AWU's accreditation disclosure fails to state that accreditation from an ED-recognized agency is essential for many of the reasons that students seek a degree.¹⁶⁹ As experts have found, "[a]cceptance [of unaccredited degrees] is very low in the academic world and the government world, [and] somewhat higher in the business world."¹⁷⁰

3. Unaccredited Schools Deceiving Consumers About the Amount and Quality of Work

In addition to misrepresenting their accreditation and claiming accreditation from unrecognized agencies, some unaccredited online schools are accused of going to great lengths to convince a potential student that substantial work is involved when it is not. Some unaccredited schools would have great difficulty obtaining accreditation because their educational practices fall far below the level that educators at accredited institutions find reasonable.¹⁷¹ One of these practices is the liberal granting of academic credit for prior "life experiences," frequently basing that credit on the most cursory review.¹⁷² Credit for "coursework" often rests on limited reading, writing, or other academic work.¹⁷³ Furthermore, exams may test general knowledge rather than the specialized training represented by the degree.¹⁷⁴

Take, for example, Kennedy-Western University, an online unaccredited school

both doing business as American World University, and stating that other education statutory violations included issuing degrees even though the schools lacked an office location in Hawaii, lacking the minimum requirement of an enrollment of twenty-five students, and accepting tuition payments from students even though they had not complied with statutory provisions).

169. People who obtain unaccredited degrees may suffer a number of negative consequences including ineligibility to apply for certain jobs or to obtain a license to practice certain professions. *See, e.g.*, CAL. BUS. & PROF. CODE § 2650 (WEST 2003) (mandating that "each applicant for a license as a physical therapist shall be a graduate of a professional degree program of an accredited postsecondary institution or institutions approved" by the governing regulatory board).

170. *See* BEARS' GUIDE, *supra* note 12, at 63 (stating that while some have made good use of their unaccredited degrees, "we hear from many more who have had significant problems with such degrees, in terms of acceptance by employers, admission to other schools, or simply bad publicity"). *See also supra* notes 72-78 and accompanying text (reviewing surveys where employer rejection of and skepticism about online higher education was substantially high).

171. *See* BEARS' GUIDE, *supra* note 12, at 40-44 (stating that most unaccredited schools have very little chance of obtaining accreditation).

172. *Id.*; EZELL & BEAR, *supra* note 13, at 24 ("It is a common approach for degree mills to look at an applicant's C.V. or resume and say, 'Ah, yes, you've been selling life insurance for three years. That is the equivalent of an MBA.'").

173. *See infra* notes 174-78 and accompanying text; EZELL & BEAR, *supra* note 13, at 24 (describing an arbitration dispute in which a teacher with a dubious doctorate degree from an unaccredited school sued for increased wages, the arbitration committee looked at the teacher's seventeen-page dissertation, found it to be "nothing more than a book report," and denied his claim for increased wages).

174. *See infra* notes 187-88 and accompanying text; EZELL & BEAR, *supra* note 13, at 24 (questioning whether a "three-page paper and one short open-book quiz is sufficient for a master's degree").

licensed by the state of Wyoming.¹⁷⁵ Kennedy-Western came under scrutiny after an investigation by the United States General Accounting Office (“GAO”)¹⁷⁶ revealed 463 federal employees had obtained degrees from diploma mills and unaccredited schools, and that federal agencies had reimbursed employees over \$169,000 for tuition fees paid to obtain these degrees.¹⁷⁷ Even though federal law allows tuition reimbursement *only* for accredited degree programs,¹⁷⁸ Kennedy-Western along with another unaccredited school provided records to the GAO that confirm these schools had received over \$150,000 from federal agencies, and that the figures reported by Kennedy-Western were actually understated.¹⁷⁹ Before considering the specific criticisms against Kennedy-Western, the reader should be aware that no court has specifically held that Kennedy-Western is a substandard unaccredited school or diploma mill, but Kennedy-Western lacks any ED-recognized accreditation and its degrees are expressly rejected as unacceptable in a few states.¹⁸⁰

175. See Kennedy-Western University, About KWU, <http://www.kw.edu/default.asp> (last visited July 21, 2006).

176. Despite a name change to the Government Accountability Office, some reports cited in this paper refer to it as the General Accounting Office because at the time the reports were created that was the office’s title. See Gov’t Accountability Office, GAO’s Name Change and Other Provisions of the GAO Human Capital Reform Act of 2004, <http://www.gao.gov/about/namechange.html> (last visited July 21, 2006).

177. See ROBERT J. CRAMER, U.S. GOV’T ACCOUNTABILITY OFFICE, REPORT NO. GAO-04-1096T, DIPLOMA MILLS: DIPLOMA MILLS ARE EASILY CREATED AND SOME HAVE ISSUED BOGUS DEGREES TO FEDERAL EMPLOYEES AT GOVERNMENT EXPENSE, 4 (2004) (separate publication of testimony at: *Are Current Safeguards Protecting Taxpayers Against Diploma Mills?: Hearing Before the Subcommittee on 21st Century Competitiveness, H. Committee on Education and Workforce 108th Cong. (2004)* [hereinafter GAO REPORT NO. 2] available at <http://www.gao.gov/new.items/d041096t.pdf>); ROBERT J. CRAMER, U.S. GEN. ACCOUNTING OFFICE, GAO REPORT NO. GAO-04-771T, DIPLOMA MILLS: FEDERAL EMPLOYEES HAVE OBTAINED DEGREES FROM DIPLOMA MILLS AND OTHER UNACCREDITED SCHOOLS, SOME AT GOVERNMENT EXPENSE 2 (2004) [hereinafter GAO REPORT NO. 1] (separate publication of testimony at *Bogus Degree Hearings supra* note 29), available at <http://www.gao.gov/new.items/d04771t.pdf>.

178. Federal law permits the federal government to pay for the cost of federal employees to obtain degrees from only a college or university accredited by a nationally recognized body. See 5 U.S.C. § 4107(a) (2000).

179. See GAO REPORT NO. 1, *supra* note 177, at 4 (“California Coast University and Kennedy-Western University provided records indicating that they had received \$150,387.80 from federal agencies for 14 California Coast University students and 50 Kennedy-Western University students.”); *Bogus Degree Hearings, supra* note 29 (“[T]he records provided by the schools understate the extent of Federal payments. It is very difficult to get an accurate snapshot of the true extent of Federal payments to the schools.”). The GAO believes records provided by Kennedy-Western understate the amount of federal dollars actually received. GAO REPORT NO. 1, *supra* note 177, at 6. For example, “Kennedy-Western reported total payments of \$13,500 from the Energy Department” but the GAO calculated that “Energy [had] made payments of at least \$28,000 to Kennedy-Western.” *Id.*

180. See, e.g., OREGON OFFICE OF DEGREE AUTHORIZATION, *supra* note 1601 (stating that Kennedy-Western is unaccredited and its degree is invalid for use in state or licensed employment in Oregon); MICHIGAN’S LIST OF NON-ACCREDITED COLLEGES/UNIVERSITIES, *supra* note 3 (identifying Kennedy-Western along with hundreds of unacceptable unaccredited schools); *Bogus Degree Hearings, supra* note 29, at 28 (testimony of Alan Contreras).

United States Senator Susan Collins, chair of the Senate Committee on Governmental Affairs, ordered additional investigations, conducted hearings, and accepted testimony that raises concerns about level of work required at Kennedy-Western.¹⁸¹ As part of an undercover investigation of Kennedy-Western, Coast Guard Lieutenant Commander Claudia Gelzer enrolled in Kennedy-Western to obtain a master's degree in environmental engineering.¹⁸² She did not have to take any standardized test, such as the GRE, to enroll in the master's degree program.¹⁸³ Although Gelzer had never taken any environmental courses, Kennedy-Western waived six master's-level courses by giving her prior-learning-experience credit for unrelated professional training courses taken during her career.¹⁸⁴ That meant Gelzer only had to take five courses to obtain a master's degree.¹⁸⁵ The liberal granting of academic credit for prior life or learning experiences is not a practice followed by reputable traditionally-accredited schools and is a practice closely related to the issue of determining whether unaccredited schools require completion of rigorous academic work.¹⁸⁶

In addition to receiving from Kennedy-Western substantial credit for prior experiences, Gelzer enrolled in two required courses, purchased and reviewed the assigned textbook for each course, and took a test for each.¹⁸⁷ *Without* having read

181. *Bogus Degree Hearings*, *supra* note 29, at 31-32, 38 (Senator Collins' committee decided to investigate Kennedy-Western after discovering that its catalog boasted that over twenty federal agencies had paid for their employees' education at Kennedy-Western.). Sadly, this representation was confirmed by GAO Report No. 1. See GAO REPORT NO. 1, *supra* note 177, at 5. The U.S. Senate Committee on Governmental Affairs has been renamed the U.S. Senate Committee on Homeland Security and Governmental Affairs. Press Release, S. Comm. of Homeland Sec. and Gov't Aff., Senator Collins Re-elected as Chairman of S. Comm. of Homeland Sec. and Gov't Aff. (Jan. 5, 2005), http://www.senate.gov/~gov_affairs/index.cfm?FuseAction=PressReleases.Detail&Affiliation=C&PressRelease_id=878&Month=1&Year=2005.

182. See *Bogus Degree Hearings*, *supra* note 29, at 38.

183. *Id.* at 46.

184. See *id.* at 39.

185. See *id.* (stating that Kennedy-Western "waive[d] six Master's level classes in engineering based solely on my claims of professional experience").

186. See *id.* at 2 (statement of Senator Susan Collins) ("All of the [diploma mill or unaccredited] schools we investigated gave credit for prior work or life experience, even for advanced degrees, which is very rare among accredited institutions."). Kennedy-Western's credit-granting practices are woefully substandard. For example, some credits given to Gelzer were for her attendance at unrelated previous seminars. *Id.* at 39. In contrast, in a survey of "20 accredited schools that offer a Master's degree in environmental engineering[,] [n]one of them offer credit for life experience." *Id.* A survey of 1,100 accredited institutions revealed "only 6 percent of these schools offer credit for life experience at the [m]aster's level." *Id.* Also, as part of the investigation of Kennedy-Western, the Council for Adult and Experiential Learning ("CAEL") determined that Kennedy-Western's practice of giving academic credit falls very short of the recognized standards for granting credit. *Id.* at 48. CAEL is an organization which establishes widely-consulted and accepted criteria for giving academic credit for non-collegiate experiences. For more information on guidelines for colleges granting credit for non-coursework such as life experience, see AM. COUNCIL ON EDUC., 2003-2004 GUIDE TO EDUCATIONAL CREDIT BY EXAMINATION (Jo Ann Robinson, et al. eds., 2003); AM. COUNCIL ON EDUC., 2002 NATIONAL GUIDE TO EDUCATIONAL CREDIT FOR TRAINING PROGRAMS (Jo Ann Robinson & Jacqueline E. Taylor eds., 2002).

187. See *Bogus Degree Hearings*, *supra* note 29, at 40 ("No papers, homework assignments,

the book, Gelzer testified that she learned from other students that exam answers could be found in the glossaries of the textbooks and that she passed two courses with a total of 16 hours of study for both courses:

As for my first-hand experience with Kennedy-Western courses and passing the tests, I found that basic familiarity with the textbook was all I needed. I was able to find exam answers without having read a single chapter of the text. As for what I learned, the answer is very little. The coursework provided only a cursory insight into management of hazardous waste or environmental regulations and laws, certainly not at the level one would expect from an environmental engineer.

Aside from a multiple-choice exam and someone to grade it, based on my experience, a student at Kennedy-Western receives little value for their roughly \$6,000 in tuition. I think that is why I found so many who expressed disillusionment on the school's chat room. Having stood in their shoes for a few months, I can understand why they feel betrayed.¹⁸⁸

Schools like Kennedy-Western do not merely offer different academic experiences, but they work aggressively to sell students on the school. Andrew Columbe, a former admissions counselor for Kennedy-Western, told members of the Senate Committee on Governmental Affairs that, shortly after beginning his job, he realized that he "had been hired to be a telemarketer, using a script to sell Kennedy-Western just like any other product."¹⁸⁹ Columbe testified that Kennedy-Western relies on high-pressure, shady telemarketing tactics to attract students and to get the tuition payment from them before the students realize how little work will be required of them:

As an admissions counselor, I was required to call between 120 and 125 prospective students per day, trying to convince them that they should apply to Kennedy-Western. If I convinced a student to apply, he was then handed over to a "senior admissions specialist" who tried to get the student to enroll and to pay for his degree. These senior admissions specialists were generally regarded as the experienced, hard-core "closers" who would close the sale and bring in the money. *Once the student paid*, he was turned over to the student services department to select his classes.¹⁹⁰

online discussions, or interaction with the professor was required.").

188. *Id.* at 42–43. Gelzer testified that "[w]ith just 16 hours of study, I had completed 40 percent of the course requirements for my Master's degree." *Id.* at 42. As indicated in Gelzer's testimony, some consider students enrolled in schools like Kennedy-Western to be victims, *id.* at 58. Others feel such students are dishonest. *Id.* (Sally Stroup, Assistant Secretary for Postsecondary Education, discusses at length the ramifications of whether a student is a victim or a participant.). See *infra* Part IV.C (discussing disciplinary standards for determining when an employee with a fake or unaccredited degree should be disciplined).

189. See *Bogus Degree Hearings*, *supra* note 29, at 43 (statement of Andrew Columbe before the U.S. Senate Committee on Governmental Affairs).

190. See *Bogus Degree Hearings*, *supra* note 29, at 44 (stating that "counselors work[ed] in a boiler room atmosphere, where we were under significant pressure to meet lofty sales goals" and

The testimony of Columbe, Gelzer, and others¹⁹¹ caused Senator Collins and others on the Senate Committee on Governmental Affairs to question the legitimacy of Kennedy-Western and to call for action to shut down schools like it or to run them out of business.¹⁹² Unfortunately, the testimony presented to this committee and other relevant information about unaccredited schools is relatively unknown except to those knowledgeable about the problems posed by the rapid growth in online unaccredited schools.¹⁹³ To make sure students can make a fully-informed decision about whether to obtain a degree from an unaccredited school, Part III of this article proposes legislative action requiring unaccredited schools to disclose in writing, before receiving any tuition payment, the precise academic work required to earn the degree sought.¹⁹⁴

In summary, as part of high-pressure recruiting tactics, many unaccredited schools often falsely claim accreditation, downplay the importance of ED-recognized accreditation, mislead consumers about the academic work required, and represent that the degrees sought can legitimately be merited based on a person's prior life and learning experiences.¹⁹⁵ The combination of these

were paid a low base salary and a commission of \$15 per each student application completed).

191. *Id.* Columbe also stated that much of the sales pitch was completely false, and his testimony corroborated Gelzer's testimony about the inferior quality of a Kennedy-Western's education. *Id.* Gelzer's statement: "I can tell you that there is no value to a Kennedy-Western education. Anything you learn there can be learned by buying a book and reading it on your own." *Id.* at 45 (summarizing the testimony of three former employees of Kennedy-Western as further evidence that students obtain very little education). Gelzer emphasized that numerous schools like Kennedy-Western exist so no one should conclude that the Kennedy-Western's operation is an aberration. *Id.* at 38.

192. *See id.* at 50–56. Senator Collins stated that "Kennedy-Western provided the Committee with a listing of its current employees and the list indicated that they have 119 employees. Sixty-nine of them, almost 60 percent, work in admissions. I can't imagine a legitimate college having 60 percent of its employees working in admissions." *Id.* at 55. After hearing the testimonies of Gelzer and Columbe, Senator Joseph Lieberman stated that these type of schools "ought to be closed down, or life ought to be made difficult enough for them . . . that they can no longer afford to go forward," and that if he and Senator Mark Pryor were attorney general, "that is exactly what we would be doing." *Id.* at 53.

193. *See, e.g., id.* at 63 (Senator Susan Collins reported: "We found from our investigation that many of those individuals who are the true victims of diploma mills feel that they don't have an easy way to check on whether an institution like Columbia State University or Kennedy-Western is a legitimate academic institution. . . . [T]he Department of Education receives many questions from the public, including potential employers who are trying to figure out whether various institutions are legitimate.").

194. *See infra* Part III.C.3 (discussing legislative proposal requiring unaccredited schools to make several relevant disclosures to all prospective students and providing a table summarizing the same). As for employees who knowingly obtain degrees from schools that are unaccredited and know the work required is substandard, Part IV recommends standards for disciplining those who have used such degrees to obtain jobs, raises, or promotions.

195. Although Kennedy-Western never claimed to be accredited, it went to great length to downplay the importance of accreditation. *See Bogus Degree Hearings, supra* note 29, at 51, 53–54 (Lieutenant Commander Gelzer testified that "if you didn't know any better, you would be convinced that accreditation was more of an administrative designation."). Many unaccredited schools seek to appeal to a person's sense of entitlement when trying to persuade them to enroll in their degree programs. *See, e.g., id.* at 19 ("Many individuals with superior talent, ability and

techniques can dupe unsophisticated consumers into pursuing and paying for degrees that are substantially inferior to traditional degrees.

4. Diploma Mills Selling Degrees and Providing Phony Transcripts

While some experts on degree fraud would include unaccredited schools like Kennedy-Western in the definition of diploma mills, other educators and policymakers restrict the definition of diploma mills to sham schools that award degrees based almost exclusively on an individual's life experiences, or sell degrees to individuals who complete very little or no academic work to earn them.¹⁹⁶ Trinity Southern University, which offers a bachelor's degree for \$299,¹⁹⁷ is a good example of an online diploma mill. Trinity Southern University received much media coverage after Pennsylvania's attorney general purchased a degree for Colby Nolan—a pet cat.¹⁹⁸ Because Trinity Southern University was suspected of awarding degrees based on the applicant's prior experiences, the information provided in Colby's online application claimed that Colby completed three courses at a community college and worked as a manager at two different retailers.¹⁹⁹ Colby's other previous work experience included food preparer at a fast food restaurant, babysitter, and paperboy.²⁰⁰ Trinity Southern University emailed Colby to inform him that his work experience qualified him to receive an Executive MBA, not the bachelor's degree that was requested.²⁰¹ Within several weeks after payment of the required fee, an official looking diploma arrived on professional stock paper and included an embossed gold seal from Trinity Southern University with the signatures of the dean and university president.²⁰² For an additional \$99 fee, the attorney general obtained a transcript that included

training are being denied raises, promotions, new jobs or the prestige they deserved just because they have not obtained the appropriate degree. Your intelligent decision, however, will not permit this travesty to happen to you.”)

196. See EZELL & BEAR, *supra* note 13, at 20–22 (stating that David Stewart and Henry Spille assert that “a diploma mill is a person or an organization selling degrees or awarding degrees without an appropriate academic base and without requiring a sufficient degree of post-secondary-level academic achievement.”).

197. Stephen Barrett, Trinity Southern University Sued by Pennsylvania Attorney General, www.quackwatch.org/02ConsumerProtection/AG/PA/tsu.html (last visited May 12, 2006).

198. See Daniel Engber, *One Smart Cat*, CHRON. HIGHER EDUC., Jan. 7, 2005, at A6; Press Release, Pa. Attorney Gen., AG Pappert Names Defendants in Elaborate E-mail Scheme to Sell Bogus Academic Degrees; PA Private Industry IP Addresses Hijacked to Promote Scam (Dec. 6, 2004) [hereinafter Pennsylvania Press Release], available at http://www.attorneygeneral.gov/prtxt/06Dec2004-ag_pappert_names_defendants_in_elaborate_e-mail_scheme_to_se.html (citing the Unsolicited Telecommunication Advertisement Act as the anti-spam law violated); Complaint and Petition for a Permanent Injunction, *Commonwealth v. Poe*, No. 796 MD 2004 (Pa. Commw. Ct. filed Dec. 2004) [hereinafter Pennsylvania Complaint].

199. See Silla Brush, *9 Lives - and 1 MBA[:] Cat Gets Degree From Diploma Mill, and Frisco Man Gets Sued*, DALLAS MORNING NEWS, Dec. 9, 2004, at A1.

200. *Id.*

201. *Id.*

202. *Id.*

Colby's courses taken and a GPA of 3.5.²⁰³ Despite its website representations, Trinity Southern University was obviously selling degrees as it did not bother to confirm whether Colby the cat was an actual person or had any of the work and educational experiences he claimed.²⁰⁴ As of this date, Trinity Southern University and its principals are permanently enjoined from operating in Texas and Pennsylvania and have been ordered to pay hefty fines for bilking consumers.²⁰⁵

Despite the implausibility of earning a legitimate bachelor's degree based on life experiences or minimal academic work, diploma mills take great pains to assure applicants that their practices are acceptable. For example, another "Trinity" school, Trinity College & University,²⁰⁶ offers undergraduate degrees for \$675 in as little as two days and informs prospective students that "College credit is NOT and is NEVER awarded for life experience," attempting to draw a meaningful distinction between "life experience" and prior "learning experiences."²⁰⁷ Trinity College & University also claims to "practice the standards of PLA [prior learning assessment] in compliance with the recommendations of the U.S. Department of Education."²⁰⁸ No such recommendations exist. These misleading statements give false assurances that it is somehow possible to legitimately earn a college degree in two days if the applicant's prior life experiences are so exceptional that he or she already has obtained an enormous amount of "learning experiences."²⁰⁹ The principals of Trinity College & University are now permanently enjoined from using the name "Trinity" because it is too similar to Trinity University, a reputable accredited school in San Antonio, Texas.²¹⁰

203. *Id.*

204. *Id.*

205. See *Commonwealth v. Poe*, Order Granting Application Relief, No. 796 MD 2004 (Pa. Commw. Ct. Sept. 8, 2005) ("Defendants are permanently enjoined from conducting business in the Cmwth. of Pa. & must pay a civil penalty; costs for investigation, prosecution & fees, restitution for consumers and attorneys fee to the Cmwth. within 60 days of the date of this Order."); *Texas v. Trinity S. U.*, No. 04-12386 (160th Dis. Ct. Mar. 14, 2005).

206. This Trinity is unrelated to Trinity Southern University, mentioned previously in the text. Trinity College & University is considered by the US Army and the State of Oregon to be a diploma mill and recently settled a copyright infringement lawsuit with Trinity University, a reputable traditional school in San Antonio, Texas. See Guillermo Contreras, *Trinity Sues To Protect Name*, SAN ANTONIO EXPRESS-NEWS, Apr. 16, 2004, at B1 [hereinafter *Trinity Sues*]; Guillermo Contreras, *Trinity Trademark Lawsuit is Settled*; SAN ANTONIO EXPRESS-NEWS, Oct. 27, 2004, at B3 [hereinafter *Trinity Settlement*].

207. Trinity College & University, Credit For Prior Learning, http://www.trinity-college.edu/credit_exp.html (last visited May 12, 2006). Trinity offers these degrees in "as little as two days...depending on the quality of the application and cooperation of the applicant in gathering documentation requested." Trinity College & University, Frequently Asked Questions, <http://www.trinity-college.edu/faq.html> (last visited May 12, 2006).

208. See Trinity College & University, Trinity Fees, [hereinafter *Assessment of Fees*] <http://www.trinity-college.edu/fees.html> (last visited May 12, 2006).

209. EZELL & BEAR, *supra* note 13, at 23-24 ("While there are three regionally accredited U.S. schools that will consider awarding their bachelor's degree totally based on prior learning (if there is a great deal of it), the vast majority of schools require at least one year of new work, no matter what the student has done before.")

210. See *Trinity U. v. Trinity Coll.*, No. 04-CV-313, (W.D. Tx Nov. 12, 2004) (Final

Diploma mills also engage in fraudulent academic verification services. Southeastern University, a diploma mill located in the living room and two bedrooms of Dr. Alfred Jarrett's home, was the subject of an investigation that led to it being shut down.²¹¹ During the investigation, the FBI uncovered 620 "graduates" and the phony transcripts and verification services provided to them by Jarrett.²¹² No doubt, Jarrett's verification practices played a role in the hiring of some of the 171 graduates that the FBI discovered were employed in positions at the local, state, and federal government levels.²¹³ Since the shutting down of Southeastern University, diploma mills have gotten more sophisticated in their provision of verification services.²¹⁴ To test the verification services of Degrees-R-Us for degrees purchased for Senator Susan Collins, a GAO investigator, as part of a sting operation, contacted Degrees-R-Us and pretended to be a potential employer.²¹⁵ The GAO had previously purchased three fake degrees from Degrees-R-Us for Senator Collins.²¹⁶ According to the instruction sheet included in her degree packet from Degrees-R-Us, Senator Collins could give a prospective employer her password information to view her transcript online at www.lexingtonuniversity.org.²¹⁷ Moreover, when the GAO investigator called the

Judgment and Order of Permanent Injunction); *Trinity Settlement*, *supra* note 206, at B3. ("[T]he confusion 'diminished' the value of a degree from Trinity University" and that "President Thomas P. Williams agreed to a permanent injunction requiring his business to destroy all materials - mugs, pens, pencils, sweatshirts, book bags, bumper stickers, and other items - bearing 'Trinity' in the logo."); Joseph Gidjunis, *One Trinity Too Many*, CHRON. HIGHER EDUC., Nov. 26, 2004, at A6 ("No fewer than 14 American institutions of higher education use 'Trinity' in their names, but only the one located in San Antonio shall be known as Trinity University.").

211. See Louis Ariano, Registrar, McMaster U., *Not for Novelty Purposes Only: Fake Degrees, Phony Transcripts and Verification Services, Presentation at the Conference of the Association of Registrars of the Universities and Colleges of Canada* (June 28, 2004) at 2, available at <http://arucc2004.centennialcollege.ca/documents/A3.pdf>.

212. *Id.* at 2-3.

213. *Id.* at 3.

214. Entities that provide fraudulent academic verification services are considered a threat to legitimate registrars at accredited institutions. For example, the American Association of Collegiate Registrars and Admissions Officers ("AACRAO"), the leading trade association for registrar and admissions professionals at higher education institutions, recently filed a trademark infringement lawsuit against the American Universities Admission Program ("AUAP"), allegedly the largest provider of dubious academic verification services. See Complaint and Application for a Temporary Restraining Order at 11-13, *American Ass'n of Collegiate Registrars and Admissions Officers v. American Universities Admission Program*, No. 1:06CV00137 (D.D.C. Jan. 25, 2006), available at <http://www.aacrao.org/reporting/complaint.pdf> (seeking to enjoin AUAP from misappropriating AACRAO's name and engaging in any other practices that deceive the public and students into believing AUAP is associated with AACRAO).

215. See *Bogus Degree Hearings*, *supra* note 29, at 1-2; GAO REPORT NO. 2, *supra* note 177, at 1; ROBERT J. CRAMER, GEN. ACCOUNTING OFF., PURCHASE OF DEGREES FROM DIPLOMA MILLS, (2004) (GAO Report No. GAO-03-269R) (publication of: Letter from Robert J. Cramer, Managing Dir., Off. Of Spec. Investigations, GAO, to Susan M. Collins, Ranking Min. Member, Perm. Subcomm. on Investigations, Comm. On Gov't Affairs, US S. (Nov. 21, 2002)) [hereinafter GAO'S PURCHASE OF DEGREES FROM DIPLOMA MILLS], available at <http://www.gao.gov/new.items/d03269r.pdf>.

216. See GAO'S PURCHASE OF DEGREES FROM DIPLOMA MILLS, *supra* note 215, at 2

217. *Id.* at 4

registrar's toll free number, a person associated with Degrees-R-U's confirmed Ms. Collins' award of a bachelor's and a master's degree from Lexington University.²¹⁸ In a realistic-looking transcript showing courses taken by Senator Collins, the diploma mill listed grades such as an "A" in Introduction to Sociology and a "B" in Spanish II, and reported an overall grade-point average of 3.80.²¹⁹

The foregoing discussion demonstrates that online diploma mills, along with many unaccredited schools and accredited schools offering unaccredited degrees, follow practices that can deceive unsophisticated consumers and seriously harm them. Because many consumers pursuing online degrees only have a high school education, they lack the higher education experience that might make them more sophisticated about legitimate educational practices, accrediting agencies, and degrees.²²⁰ Some, no doubt, lack family members or friends with such sophistication. Moreover, many see themselves as desperate—pushed by a tight job market, family constraints and declining access to traditional education—to pursue online degrees as their only hope of getting ahead. Under these circumstances, a significant number of these consumers cannot protect themselves against deceptive practices. As discussed in the next section, current state and federal laws provide some measure of protection.

III. GOVERNMENTAL ROLE IN CURBING THE SUPPLY OF SUBSTANDARD DEGREES

Unsophisticated consumers and employers suffer from the deceptive practices of fake and substandard online degree providers.²²¹ Members of the public have suffered when lawyers, doctors, and others sporting fake or substandard degrees have offered them inferior advice—sometimes with tragic outcomes.²²² Under these circumstances, both enforcement agencies and lawmakers have recognized the need for governmental action to halt the supply of harmful practices and deceptive advertising.²²³ This section details the steps that state and federal governments have already taken to reduce harm from inferior online degrees.

218. *Id.* at 2

219. *Id.* at 7; *Nightly News: Government Employees Using Fake Degrees Paid For With Tax Dollars To Get Better Jobs And Pay Raises* (NBC television broadcast May 10, 2004).

220. In response to Senator Joseph Lieberman's question: "Do you think most of the students [enrolled in Kennedy-Western] were . . . willing participants in what was essentially a fraud, or were they deceived?" Lieutenant Commander Gelzer stated: "I would say I saw more evidence of students who were surprised and seemed a little deceived that all of a sudden, they realized their company [employer] wouldn't reimburse them, or they put [the Kennedy-Western] degree on a resume and they went to apply for a job and they were questioned about it and they had to ultimately take it off their resume." *See Bogus Degree Hearings, supra* note 269, at 51.

221. Employers have spent millions of dollars reimbursing employers for participating in dubious degree programs. Some have also promoted employees into positions that the employee could not handle effectively. *See infra* notes 345-52 and accompanying text.

222. *See supra* notes 18 and 122 (discussing victims who died after following the instructions of fake doctors).

223. *See, e.g., Bogus Degree Hearings, supra* note 29, at 1-2 (Senator Frank Lautenberg stated: "Some people want to cut corners to meet the criteria needed to get a job or be promoted. Others are well-meaning in their pursuit of a degree, but they get duped. Either way, we need to crack down on diploma mills to protect consumers and taxpayers.").

Unfortunately, as the discussion below demonstrates,²²⁴ most states have tolerated fake and unaccredited schools.²²⁵ Federal laws have been used somewhat more effectively to criminally penalize the operators of diploma mills but have left most other unaccredited schools and programs untouched.²²⁶ To more effectively curb the practices of fake and unaccredited degree providers, this Article proposes enactment of a statute, the Authentic Credentials in Higher Education Act.²²⁷ The final section of this part discusses this proposed act in detail.

A. Existing State Laws

Some states currently regulate degree providers by setting minimum standards for authority to issue degrees and by fining and imposing injunctions against companies operating without a license or in violation of other statutes.²²⁸ Only a few states have been actively involved in shutting down diploma mills and forcing unaccredited schools to comply with state law.²²⁹ These states rely on statutes regulating post-secondary education as well as general statutes prohibiting deceptive acts and practices.²³⁰

HEB Ministries v. Texas Higher Education Coordinating Board offers one of the few examples of a state attempting to restrict practices of an educational institution operating in violation of state law.²³¹ In that case, the Texas Higher Education Coordinating Board (“Board”) sought an injunction against, and imposed fines on, Tyndale Theological Seminary and Biblical Institute (“Tyndale”) for using the word “seminary” and issuing theological degrees without government approval or accreditation.²³² In response, Tyndale challenged the Texas law that requires all religious postsecondary institutions in the state to obtain authority from the Board to issue degrees or to obtain accreditation from the state’s educational agency.²³³ Tyndale claimed it did not seek accreditation or a state

224. States have specific laws aimed at or regulating the creation and operation of providers of higher education, and such laws vary greatly from state to state. See The Education Commission of the States, What is the State’s Licensing Approval Authority Over Higher Ed Institutions?, http://www.ecs.org/dbsearches/Search_Info/StateNarrativeReports.asp?tbl=table6 (listing every state’s agency having the authority to license or approve higher education institutions) (last visited June 15, 2005).

225. See *infra* notes 249-52 and accompanying text; EZELL & BEAR, *supra* note 13, at 168 (identifying which states provide a haven for substandard schools and which states have weak or non-existent enforcement).

226. See *infra* Part III.B.

227. See *infra* Part III.C.

228. See JODY FEDER, AMERICAN LAW DIVISION, CONGRESSIONAL RESEARCH SERVICES, DIPLOMA MILLS: A LEGAL OVERVIEW 7 (Nov. 10, 2003) (a CRS Report for Congress); (discussing several states with weak enforcement and stating that “Idaho properly regulates most schools but intentionally ignores some dreadful Idaho-based schools as long as they do not enroll students living in that state”).

229. See *infra* notes 231-49 and 361-63 and accompanying text.

230. See *id.*

231. 114 S.W.3d 617 (Tex. App. 2003).

232. *Id.* at 624-25.

233. *Id.* at 627.

certificate of authority because of religious “doctrinal” reasons.²³⁴

The Texas Court of Appeals noted that the Texas law was a “response to the emergence and proliferation of ‘degree mills’ . . . that undermined the value and integrity of degrees granted by legitimate institutions.”²³⁵ Rejecting Tyndale’s arguments that the law violated the First Amendment, the court found no establishment clause violation because the regulation of degree granting institutions was only a minor and unobtrusive form of supervision that had a secular purpose—preventing public deception and confusion.²³⁶ The court likewise rejected Tyndale’s argument that the government’s prohibition on using the words “associate, bachelor’s, master’s, doctor’s and their equivalents” constituted a restriction of free speech in violation of the U.S. Constitution.²³⁷ This prohibition the court found was “not a complete ban on speech but rather a restriction on speech in an effort to prevent the conferral of fraudulent or substandard degrees.”²³⁸ Quoting a U.S. Supreme Court decision, the court observed that “[c]ommercial speech that is not false, deceptive or misleading can be restricted, but only if the State shows that the restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest.”²³⁹ The court held that Texas had a substantial interest in preventing harm from private postsecondary institutions conferring fraudulent or substandard degrees and that the regulation of academic terminology was narrowly tailored.²⁴⁰ The court upheld the Board’s administrative penalties of \$173,000 assessed against Tyndale.²⁴¹

By bringing enforcement actions against dozens of online schools, Hawaii has also attempted to rein in unscrupulous practices by educational institutions.²⁴² Its Office of Consumer Protection sued American World University of Iowa and American World University of Louisiana, two schools operated by the previously-mentioned Maxine Asher.²⁴³ The complaint alleges that Asher’s schools violated Hawaii’s consumer protection statute²⁴⁴ and specific laws regulating unaccredited

234. *Id.* at 624.

235. *Id.* at 622.

236. *Id.* at 628.

237. *Id.* at 631.

238. *Id.*

239. *Id.* (citing *Ibanez v. Fla. Dep’t of Bus. and Prof’l Regulation, Bd. of Accountancy*, 512 U.S. 136, 142 (1994)).

240. *Id.* at 636 (“By restricting the degree-granting powers of all private postsecondary institutions and restricting the use of certain academic terms in the names of such institutions, the Texas Legislature has assured the Texas public that all such institutions, *regardless of the content of their message*, have met basic postsecondary educational standards.”) (emphasis supplied).

241. *Id.* at 636–37.

242. See Hawaii Dep’t of Commerce & Consumer Affairs, Civil Enforcement Lawsuits, <http://www.hawaii.gov/dcca/areas/ocp/udgi/lawsuits/> (last visited May 12, 2006).

243. See *State v. Am. World U. of Iowa Inc.*, No. 03-1-1648-08 VSM, (Haw. Cir. Ct. Feb. 12, 2004) [hereinafter *Judgment Against AWU*] (granting summary judgment against defendants American World University of Iowa, Inc., and American World University), available at http://www.hawaii.gov/dcca/areas/ocp/udgi/lawsuits/AWU/american_world_u_sj-defense.pdf.

244. See *supra* note 168.

schools, including failing to disclose their lack of any ED-recognized accreditation.²⁴⁵ AWU's answer conceded that it had never had any ED-recognized accreditation.²⁴⁶ A court permanently enjoined these schools from operating in Hawaii, ordered them to refund all tuition payments to any student requesting a refund, and assessed \$125,000 as civil penalties against each school.²⁴⁷ The right-to-refund letter that Asher was ordered to send to all students must inform each student of his or her right to bring a private action and, if a favorable judgment is obtained, the right to collect \$1,000 or treble damages, whichever is greater.²⁴⁸

A few other states have attempted to curb the supply of fake and unaccredited degrees through similar actions.²⁴⁹ However, most states, either lacking the resources or the interest to prosecute, simply tolerate these schools.²⁵⁰ Once ordered to shutdown in a state with aggressive enforcement activities, Asher and degree providers like her simply resume business in other states that tolerate their business activities.²⁵¹ Asher, in fact, has never paid the \$250,000 in judgments rendered against her unaccredited schools, and Hawaii has deemed them uncollectible.²⁵²

States could adopt more laws to deter the growth of fake and substandard unaccredited schools. Because the laws in all fifty states and the District of Columbia vary greatly,²⁵³ it would be helpful for an organization like the Education Commission of the States²⁵⁴ to take the leadership role on this issue.²⁵⁵

245. See Complaint, *State v. Am. World U.*, No. 03-1-1648-08 (Haw. Cir. Ct. Aug. 12, 2004), available at http://www.hawaii.gov/dcca/areas/ocp/udgi/lawsuits/AWU/american_world_u_c.pdf (stating that the other education statutory violations included issuing degrees even though the schools lacked an office location in Hawaii and lacked the minimum requirement of an enrollment of twenty-five students and accepting tuition payments from students even though they had not complied with statutory provisions).

246. Compare Judgment Against AMU, *supra* note 243 with Response to Complaint, *Am. World U. of Iowa, Inc.*, No. 03-1-1648-08VSM (Haw. Cir. Ct. Sept. 22, 2003).

247. See Judgment Against AWU, *supra* note 243, at 2-3.

248. *Id.* at Ex. No.1.

249. Attorneys general in Pennsylvania and Texas are also aggressively trying to shut down unaccredited online providers. See EZELL & BEAR, *supra* note 13, at 17.

250. *Id.* at 168 (identifying several states, including Montana for having a "decent school-licensing law but intentionally [choosing] not to enforce it" and Louisiana for "exempt[ing] religious schools from the need for state licensing but then agree[ing] that religious schools could offer degrees in nonreligious subjects").

251. See James Varney, *MAILBOX U.: After Louisiana Cracked Down On Diploma Mills, Several Distance-Learning Institutions Moved to Mississippi, Where They Continue to Churn Out Degrees*, TIMES-PICAYUNE (New Orleans), Aug. 1, 2004, at 1 (discussing several diploma mills operating out of Mississippi that used to operate from Louisiana).

252. See Hawaii Dep't of Commerce & Consumer Affairs, *American World University*, <http://www.hawaii.gov/dcca/areas/ocp/udgi/lawsuits/AWU> (last visited May 12, 2006) ("The judgment remains completely unsatisfied and has been deemed uncollectible within the state of Hawaii. AWU's two Hawaii foreign corporation registrations were dissolved by court order on February 12, 2004.").

253. See Feder, *supra* note 228, at 9. Because the laws vary greatly, it is beyond the scope of this article to recommend details about what each state higher education agency should do.

254. The Education Commission of the States is a nonprofit, nonpartisan organization that

Also, states, for example, could follow Hawaii's lead by enacting statutes that specifically regulate the practices of unaccredited schools and make violations of these statutes *per se* violations of a state's consumer protection statutes.²⁵⁶ If providers of bogus and unaccredited degrees had to face civil fines for these violations,²⁵⁷ make restitution to their students, and risk treble damage liability in private actions, they might legitimize or cease their operations.²⁵⁸ Each state, moreover, could enact statutes that make it a felony for anyone to sell fake degrees. If such statutes were enforced, some fraudulent degree providers would get out of the business rather than risk imprisonment.

States, however, are unlikely to deal effectively with online fake and substandard schools. Limited state enforcement actions suggest that most states fail to police these schools.²⁵⁹ Furthermore, once an online unaccredited school (like Kennedy-Western or American World University) is licensed to operate in a single state, other states have great difficulty making such a licensed school cease operations in their states for failing to meet their standards of quality education.²⁶⁰ For these reasons, effective regulation of online schools almost certainly will depend on federal law.

B. Federal Laws and Aggressive Enforcement Actions

Several federal agencies have jurisdictional authority to curtail the deceptive practices of online degree providers. Because the heart of substandard online education is fraud, the Federal Trade Commission (FTC) is the most logical starting point for enforcement actions against online schools.²⁶¹ Indeed, recognizing the potential of unaccredited schools to deceive consumers seeking post-secondary education, the FTC adopted in 1998 special rules prohibiting

facilitates the "exchange of information, ideas and experiences among state policymakers and education leaders" and involves "key leaders from all levels of the education system." See Education Commission of the States, About ECS, http://www.ecs.org/ecsmain.asp?page=/html/aboutECS/home_aboutECS.htm (last visited May 12, 2006).

255. See *supra* note 224 and accompanying text.

256. See, e.g., HAW. REV. STAT. ANN. § 446E-5 (LexisNexis 2005) (listing several prohibited practices, including unaccredited institutions cannot indicate or suggest that the State of Hawaii licenses, approves, or regulates their operations). Violations of the provisions of Chapter 446E are deemed to be *per se* "unfair or deceptive" acts or practices. HAW. REV. STAT. ANN. 446E-3 (LexisNexis 2005).

257. See, e.g., HAW. REV. STAT. ANN. § 480-3.1 (LexisNexis 2005) (stating that anyone found "violating any of the provisions of section 480-2 [related to unfair or deceptive acts or practices] shall be fined a sum of not less than \$500 nor more than \$10,000 for each violation").

258. See *supra* notes 242-48 and accompanying text (discussing penalties imposed on unaccredited schools for violating Hawaii law).

259. See *supra* note 250.

260. See, e.g., *infra* notes 350-53 and accompanying text (discussing Oregon's attempt to prevent substandard degrees from being used in its jurisdiction and Oregon's ultimate settlement of a lawsuit with Kennedy-Western on terms unfavorable to Oregon).

261. The FTC may itself initiate an investigation (16 C.F.R. § 2.1 (2003)), or initiate one at the request of "[a]ny individual, partnership, corporation, association, or organization" (16 C.F.R. § 2.2(a), (2006)).

various practices, including misrepresentations of accreditation if the education provider is a for-profit vocational or distance learning school.²⁶² While online schools are not specifically mentioned in these rules,²⁶³ the regulatory language encompasses most online unaccredited schools because they are for-profit distance education providers.²⁶⁴

The FTC defines “accredited” to mean “[a] school or course has been evaluated and found to meet established criteria by an accrediting agency or association recognized for such purposes by the U.S. Department of Education.”²⁶⁵ Even if an online unaccredited school has met a state’s qualifications to be a degree-granting institution, the school cannot call itself accredited²⁶⁶ but can only refer to itself as authorized.²⁶⁷

To combat deception, the FTC rules impose upon unaccredited distance education schools an affirmative duty to disclose their lack of accreditation.²⁶⁸ Moreover, schools that do not have state approval to be a degree-granting institution commit a deceptive practice if they claim such approval; additionally, they have an affirmative duty to “clearly and conspicuously disclose[], in all

262. See FEDERAL TRADE COMMISSION, FTC VOTES TO UPDATE VOCATIONAL SCHOOLS GUIDES (1998), available at <http://www.ftc.gov/opa/1998/08/vocguide.htm>.

263. These false advertising prohibitions apply to “persons, firms, corporations, or organizations engaged in the operation of privately owned schools that offer resident or distance courses.” See 16 C.F.R. § 254.c(a) (2006). These schools can be degree-granting institutions. *Id.* (These rules “do not apply to resident primary or secondary schools or institutions of higher education offering at least a 2-year program of accredited college level studies generally acceptable for credit toward a bachelor’s degree.”).

264. See *id.*

265. *Id.* § 254.1(a).

266. The FTC makes the following representation regarding accrediting an unlawful misrepresentation:

(a) It is deceptive for an industry member to misrepresent, directly or indirectly, the extent or nature of any approval by a State agency or accreditation by an accrediting agency or association. For example, an industry member should not:

(1) Represent, without qualification, that its school is accredited unless all programs of instruction have been accredited by an accrediting agency recognized by the U.S. Department of Education. If an accredited school offers courses or programs of instruction that are not accredited, all advertisements or promotional materials pertaining to those courses or programs, and making reference to the accreditation of the school, should clearly and conspicuously disclose that those particular courses or programs are not accredited.

16 C.F.R. § 254.3 (2005).

267. “Authorized” or whatever term is mandated under state law simply means the entity can operate as degree-granting institution. See *supra* notes 130-34 and accompanying. For example, Oregon regulates the use of the term “university”:

The term “university” refers exclusively to a school that is authorized to offer bachelor’s degrees together with graduate or first professional degrees, or to an organization that constitutes a formal consortium of schools so authorized. Any entity that calls itself “university” without authorization but with serious intent will be referred to the Department of Justice for enforcement of the statute that defines such deceptive representations as unlawful trade practices. No religious exemption applies.

OR. ADMIN. R. § 583-030-0016 (2003).

268. 16 C.F.R. §254.3 (2006).

advertising and promotional materials that contain a reference to such degree, that its [degree] award has not been authorized or approved by such an agency.”²⁶⁹ Therefore, online for-profit unaccredited schools commit deceptive practices under the FTC Act and are subject to civil liability if they claim accreditation from an accrediting body not recognized by the Education Department or that falsely claim state authorization to operate.

Online unaccredited schools misrepresenting their status, however, have no reason to fear enforcement action from the FTC. The FTC expects distance education providers to comply voluntarily with these rules.²⁷⁰ According to experts, the FTC enforcement against unaccredited schools has a very low priority.²⁷¹ Research has not revealed any FTC enforcement actions involving violations of the accreditation and approval provisions of the FTC rules.²⁷² Yet, one can easily find numerous violators of these rules within a few minutes of surfing the web or reading classified ads.²⁷³

The FTC has brought enforcement actions against a few schools that outright sell degrees without requiring any academic work. Using its power to bring enforcement actions against anyone committing “unfair or deceptive” acts or practices²⁷⁴ or falsely advertising,²⁷⁵ the FTC recently sued “One or More Unknown Parties” marketing and selling international driver’s licenses and college degrees from “fictitious universities via unsolicited commercial email and the Internet.”²⁷⁶ This case demonstrates how difficult obtaining the exact identities of

269. *Id.* § 254.6(b); *see also* 16 C.F.R. § 254.1(b) (2006) (“Approved” means a “school or course has been recognized by a State or Federal agency as meeting educational standards or other related qualifications as prescribed by that agency for the school or course to which the term is applied. The term is not and should not be used interchangeably with ‘accredited.’ The term ‘approved’ is not justified by the mere grant of a corporate charter to operate or license to do business as a school and should not be used unless the represented ‘approval’ has been affirmatively required or authorized by State or Federal law.”).

270. *See* 16 C.F.R. § 254.0(b) (2006).

271. *See* EZELL & BEAR, *supra* note 13, at 148–49 (“[I]n the last decades, the FTC has done little, even though some senior administrators there have knowledge of, and concern for, degree mills.”).

272. The author did not find any cases involving FTC enforcement action based solely on an entity’s violations of FTC accreditation rules. Perhaps this is because the FTC leaves it up to schools to voluntarily comply with these rules. *See* EZELL & BEAR, *supra* note 13, at 151 (“[T]he FTC has a bit of Pollyanna philosophy: the FTC hopes and expects that everyone will do the right thing. And so it depends heavily on ‘voluntary compliance’ with its [r]ules.”).

273. *See, e.g., id.* at 151 (“Every one of the thirty unaccredited schools that have advertised in the past year in *USA Today*, *The Economist*, and other major publications is in violation of this [accreditation] Rule. If they couldn’t make their useless accreditation claims, these unaccredited schools would get far fewer customers.”).

274. *See* 15 U.S.C. § 45(a) (2003); 15 U.S.C. § 57b-1 (2002).

275. *See* Guides for Private Vocational and Distance Education Schools, 16 C.F.R. § 254 (2006).

276. *See* FTC v. One or More Unknown Parties, No. 1:03-CV-00021-RMC, (D.D.C. filed Jan. 16, 2003), *available at* <http://www.ftc.gov/os/2003/01/aladdincomp.pdf>; FTC v. Mountain View Sys., Ltd., No. 03-CV-00021-RMC, (D.D.C. Nov. 25, 2003), *available at* <http://www.ftc.gov/os/caselist/mountainview/031125mountainviewstip.pdf>; *see also* Second Amended Complaint for Injunctive and Other Equitable Relief, at 6, FTC v. Mountain View Sys.,

the offending parties can be because of the technological capabilities of operating a business primarily over the Internet.²⁷⁷ The FTC eventually discovered the identities of the principals and their companies and amended its complaint naming Mountain View Systems as the first of seven defendants,²⁷⁸ located in Jerusalem, Israel; Nassau, Bahamas; Bucharest, Romania; and North Carolina (Raleigh), United States.²⁷⁹

One might argue that these defendants' practices are not deceptive because their buyers know they are buying phony sheepskins, not earning degrees. Clearly stating in their spam mail²⁸⁰ that their schools were not accredited, the Mountain View defendants awarded degrees based solely on a buyer's prior knowledge and life experiences²⁸¹ and advertised that a buyer could use the degrees for purposes of obtaining employment and business.²⁸² However, courts have long held that when a defendant provides the "means and instrumentalities for the commission of

Ltd., No. 03-CV-00021-RMC (D.D.C. filed Nov. 1, 2003), [hereinafter Second Amended Complaint] available at http://www.ftc.gov/os/caselist/mountainview/031125_amendedcomp_mountainview.pdf.

277. GAO REPORT NO. 2, *supra* note 177 (showing how easily one can create a fake school over the Internet when it create a website for Y'Hica Institute for the Visual Arts, a fake school purportedly located in London, England). See Johnson, *supra* note 87, at 280-82 (explaining how fake degree providers can use the Internet, spam mail, printers, and other electronic technology to easily create profitable businesses while maintaining anonymity).

278. See Amended Complaint for Injunctive and Other Equitable Relief, FTC v. Mountain View Sys., Ltd., No. 1:03-CV-00021-RMC, at 1-2 (D.D.C. Feb. 21, 2003), available at <http://www.ftc.gov/os/2003/02/mvslamdcmp.htm> (naming the following defendants: Jason Abraham, Caroline Shallon, Charles Fogel, Mountain View Systems, Ltd., Aladdin Travel, Inc., Wheelie International, Ltd., and S.C. Hyacinth S.R.L.).

279. Second Amended Complaint, *supra* note 276 at 2-3. The Mountain View principals follow the trend of many individuals seeking to avoid the jurisdictional reach of U.S. law enforcement agencies by relocating their businesses to other countries which have few, if any, laws applicable to diploma mills. See EZELL & BEAR, *supra* note 13, at 56.

280. Defendants spam mail usually provided the following:

UNIVERSITY DIPLOMAS

Obtain a prosperous future, money earning power, and the admiration of all.

Diplomas from prestigious non-accredited universities based on your present knowledge and life experience.

No required tests, classes, books or interviews.

Bachelors, masters, MBA, and doctorate (PhD) diplomas available in the field of your choice.

No one is turned down.

Confidentiality is assured.

CALL NOW to receive your diploma in days!!!

[Telephone Number]

Call 24 hours a day, 7 days a week including Sundays and holidays.

Second Amended Complaint, *supra* note 276, at 11-12.

281. See *id.* at 14-15 (Defendants selling degree packages ranging from \$500 to \$8,000 that included extensive verification services, such as providing transcripts and letters of recommendation from purported professors at non-existent universities.).

282. *Id.*

deceptive acts and practices,” a deceptive act in violation of the FTC Act occurs.²⁸³ Therefore, the public has been harmed and a defendant has been unjustly enriched.²⁸⁴ As a result, the FTC did not have to prove the Mountain View defendants intended to deceive with their claims but only that the defendants, by selling fake degrees, gave their buyers the means of deceiving employers and the public.²⁸⁵ Without admitting violation of the FTC Act, the Mountain View defendants entered into a settlement where they agreed to shut down their websites, pay the FTC \$57,000, stop marketing and selling degrees, and stop providing verification materials and services.²⁸⁶

Unfortunately, the FTC’s victory in *Mountain View* was short-lived. Because the FTC generally pursues only civil enforcement actions,²⁸⁷ unscrupulous providers may treat the fines assessed as simply a cost of doing business. Reportedly, some individuals formerly associated with the defendants in the *Mountain View* case did just that, resuming operations under different names.²⁸⁸ Thus, the finding of an FTC violation is not likely to have any significant impact on the supply of phony or inferior-quality degrees.²⁸⁹ However, other federal agencies with prosecutorial authority have an effective means to shut down some diploma mills—individuals who fear imprisonment have an incentive to comply with the law.

The United States Federal Bureau of Investigations (FBI), the United States Postal Inspection Service (USPIS), and the United States Internal Revenue Service (IRS) all have broad powers to seek criminal prosecutions.²⁹⁰ These agencies can shut down diploma mills and other deceptive online schools more effectively than the FTC can. What follows is an analysis of what laws these agencies can and have used to criminally prosecute operators of diploma mills.

In addition to its power to seek criminal prosecutions, the FBI has the authority

283. Second Amended Complaint, *supra* note 276, at 14; see *Waltham Watch Co. v. FTC*, 318 F.2d 28, 32 (7th Cir. 1993), *cert. denied*, 375 U.S. 944 (1963) (“Those who put into the hands of others the means by which they may mislead the public, are themselves guilty of a violation of Section 5 of the Federal Trade Commission Act.”) (citation omitted).

284. See Second Amended Complaint, *supra* note 276, at 14–15.

285. See *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988).

286. See Stipulated Final Order for Permanent Injunction and Settlement of Claims at 3, *FTC v. Mountain View Sys., Ltd.*, No. 03-CV-00021-RMC, (D.D.C. Nov. 25, 2003) [hereinafter *Mountain View Stipulated Final Order*], available at <http://www.ftc.gov/os/caselist/mountainview/031125mountainviewstip.pdf>; Press Release, Federal Trade Commission, Court Order Puts Brakes on International License Marketers (Nov. 25, 2003), <http://www.ftc.gov/opa/2003/11/mountainview.htm> (last visited July 22, 2006). See *supra* notes 211-19 and accompanying text (describing verification services and materials).

287. See Judith L. Oldham & Ann M. Plaza, *Informed Consent: How to Negotiate a Consumer Protection Order You Can Live With*, 12 ANTITRUST 45, 48 (Summer 2002) (“Although criminal penalties are rare, the [FTC’S] Enforcement Division may seek other remedies in lieu of, or in addition to, civil penalties.”).

288. See *EZELL & BEAR*, *supra* note 13, at 202–03.

289. See *ABC: 20/20, Scam Schools Colleges that Issue Meaningless Degrees*, (ABC television broadcast Dec. 9, 1998) [hereinafter *Scam Schools*], available at 1998 WL 5433829.

290. See *infra* notes 291-98 and accompanying text.

to conduct investigations,²⁹¹ carry firearms,²⁹² serve warrants and subpoenas,²⁹³ make arrests,²⁹⁴ and seize assets.²⁹⁵ The USPIS has similar powers except that USPIS's powers may be exercised only in matters involving mail or the United States Postal Service (USPS).²⁹⁶ The USPIS also has the power to conduct mail covers and to detain mail.²⁹⁷ Likewise, the IRS has the same authority as the FBI except that it is limited to exercising its powers in matters involving violations of tax law.²⁹⁸ The IRS also has the authority to compel testimony and examination of books and records, to use summonses for criminal investigations, and to conduct undercover operations in certain circumstances.²⁹⁹

Two prosecutions demonstrate the power of these agencies to work together against fraudulent educational providers. The first involves Ronald Dante (a.k.a. "Ronald Pellar"), a former stage hypnotist,³⁰⁰ operating Columbia State University (CSU), a purported university in Louisiana where students could obtain degrees in twenty-seven days.³⁰¹ Pursuant to its authority to investigate violations of U.S.

291. See 28 U.S.C. § 531 (2001); 28 U.S.C. §§ 532-533 (2002); 28 C.F.R. § 0.85 (2003) (authorizing the FBI to investigate for possible violations of the law). See generally, John T. Elliff, *The Attorney General's Guidelines for FBI Investigations*, 69 CORNELL L. REV. 785 (1984) (discussing guidelines that establish procedures and standards for FBI investigations).

292. See 18 U.S.C. § 3052 (2002).

293. *Id.*

294. *Id.*

295. See 18 U.S.C. § 3107 (2002); 28 C.F.R. § 0.85(a) (2003).

296. 18 U.S.C. § 3061(a) (2004) "Postal Inspectors and other agents of the United States Postal Service" have the power to investigate criminal matters related to the mails and the Postal Service and may also serve warrants and subpoenas, make arrests in certain circumstances, carry firearms, and seize property as provided by law. *Id.*; see also 39 C.F.R. § 233.1(a) (2002). See generally, *United States v. Unverzagt*, 424 F.2d 396, 398 n. 1 (8th Cir. 1970) ("Postal inspectors under 18 U.S.C.A. § 3061 are given power to make arrests for postal offenses upon probable cause but are given no power to make arrests for state offenses by either state or federal statute.").

297. See 39 C.F.R. § 233.3(c)(1) (2002) (defining "mail cover" as "the process by which a nonconsensual record is made of any data appearing on the outside cover of any sealed or unsealed class of mail"); 39 C.F.R. § 233.3(e)(1) (2002) (explaining that a mail cover may be initiated when a law enforcement agent has reasonable grounds to believe a mail cover is necessary to obtain information regarding the commission of a crime); 39 C.F.R. § 233.1(d) (2002) ("In conducting any investigation, Postal Inspectors are authorized to accept, maintain custody of, and deliver mail.").

298. See 26 U.S.C. § 7608 (2001).

299. A criminal investigator charged with investigating the criminal provisions of tax law may "execute and serve search warrants and arrest warrants, and serve subpoenas and summonses," make arrests in certain circumstances, seize "property subject to forfeiture under the internal revenue laws." See 26 U.S.C. § 7608(b) (2001); 26 U.S.C. § 7602(a) (2001) (granting power to "examine any books, papers, records, or other data which may be relevant or material to such inquiry" and to "summon the person liable for tax or required to perform the act"); 26 U.S.C. § 7608(c) (2002) (describing "rules relating to undercover operations"). See, also, Michael I. Saltzman, *Tax Controversies: What to Do When the IRS Calls[:]* Strategies for Dealing with the IRS, 501 PLI/TAX 145, 168 (2001) (describing investigative techniques employed by criminal investigators that include "wire taps, mail covers, and use of informants").

300. See *Scam Schools*, *supra* note 22189 (stating that "authorities consider [Pellar] the godfather of the diploma mill scam").

301. See Judi Russell, *AG Looking into Columbia State's 27-day Degrees*, NEW ORLEANS

law,³⁰² the FBI began investigating CSU. Aided by evidence obtained by the FTC³⁰³ and Louisiana's attorney general,³⁰⁴ the FBI and USPIS obtained an order shutting down CSU and seizing its assets.³⁰⁵

Using the USPIS's jurisdiction to fight fraud when the mail system is involved,³⁰⁶ prosecutors charged Dante with mail fraud.³⁰⁷ Under the criminal mail fraud statute,³⁰⁸ the government must prove the following: "(1) a scheme to defraud; (2) use of the mails using 'private or commercial interstate carrier[s]'³⁰⁹ to execute that scheme; and (3) the specific intent to defraud."³¹⁰ To prove wire fraud,

CITY BUS., Nov. 17, 1997, at 20.

302. See *supra* notes 291-95 and accompanying text.

303. In order to obtain a warrant to arrest Dante, the FBI could have simply relied on the FTC to share the evidence it collected in another open case against him. See 28 C.F.R. § 0.85(a) (2003) (stating that the FBI has the authority to investigate violations of U.S. laws and is charged with collecting evidence in cases in which the U.S. is or could become a party); 18 U.S.C. § 3052 (2002) (The FBI can arrest anyone who has committed a felony cognizable under U.S. law.). The FTC's policy is "to cooperate with other governmental agencies to avoid unnecessary overlapping or duplication of regulatory functions." See 16 C.F.R. § 4.6 (2004). Dante came under the FTC's radar screen when the FTC received complaints about Dante doing business as Perma-Derm Academy and the American Dermatology Association. See Robert L. Goldemberg, *Odor Impact, DRUG & COSM. INDUST.*, Dec. 1, 1990, at 28 (stating that FTC brought suit against Pellar after the legitimate American Academy of Dermatology complained). He offered workshops (for \$1,750) that purportedly trained students how to tattoo eyeliner and lipliner and represented falsely to the graduates that they would become licensed "dermatologists," board certified by the American Dermatologists Association. *Id.* Dante was enjoined permanently from making these false representations and engaging in other practices, but later held in contempt for violating the injunction. See "*College*" Founder Pleads Guilty to \$2M Diploma Fraud, 18 White-Collar Crime Rep. (Andrews Publ'n) No. 5, 17 (2003) [hereinafter "*College*" Founder Pleads Guilty].

304. See Russell, *supra* note 301, at 20. The attorney general for Louisiana and the state's board of regents began investigating CSU after receiving complaints from non-Louisiana residents. *Id.* In August 1998, after the attorney general for Louisiana filed a petition listing several reasons why CSU was nothing more than a diploma mill, a court declared CSU a fraud and issued a permanent injunction barring it from operating in Louisiana. See Stephanie Grace, *Degrees of Deception*, TIMES-PICAYUNE (New Orleans), Aug. 9, 1998, at A1. CSU's brochure pictured a historic mansion that did not exist at CSU's address. See Stephanie Grace, *Judge Orders Phony College out of State Litany of Abuses Persuades Judge*, TIMES-PICAYUNE (New Orleans), Aug. 14, 1998, at B2 (listing a number of indicia justifying the shutdown of CSU including providing "transcripts for students listing courses they never took, complete with grades").

305. See Russell, *supra* note 301, at 20.

306. "[T]he Postal Inspection Service [is] the investigative arm of the U.S. Postal Service." *Use of Mass Mail to Defraud Customers: Hearing Before the Subcommittee on International Security, Proliferation, and Federal Services of the Senate Committee on Governmental Affairs*, 105th Cong. 10 (1998) (statement of Kenneth Hunter, Chief Postal Inspector), available at http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPAddress=162.140.64.88&filename=51102.pdf&directory=/diskc/wais/data/105_senate_hearings.

307. See *infra* note 315 and accompanying text.

308. See 18 U.S.C. § 1341 (2000); *Kann v. United States*, 323 U.S. 88, 95 (1944) ("The federal mail fraud statute does not purport to reach all frauds, but only those limited instances in which the use of the mails is a part of the execution of the fraud.").

309. See, e.g., Senior Citizens Against Marketing Scams Act, Pub. L. No. 103-322, § 250006, 108 Stat. 1796, 2087 (1994) (codified at 18 U.S.C. § 1341 (2003)).

310. See *United States v. Bieganowski*, 313 F.3d 264, 275 (5th Cir. 2002) (citing 18 U.S.C.

the elements are the same except that the scheme must be done using wire communications (e.g., the Internet) instead of mail.³¹¹ Reliance by the victims on the fraud does not need to be established.³¹²

Dante clearly perpetrated fraud by falsely representing that CSU was an accredited university fully competent to confer bachelor's, master's, and doctoral degrees via correspondence.³¹³ Even though CSU had no faculty members, no academic curricula, no educational facilities, and no ED-recognized accreditation, it mailed a degree to any student who paid a fee (starting at \$1,500) and submitted a book summary based on the student's reading of one single book supplied by CSU.³¹⁴ Dante-Pellar used the mail system to further his scheme to deceive students into thinking CSU was a real institution.³¹⁵ In his two-year operation of CSU, he generated roughly \$20 million, with \$4 million paid directly to him.³¹⁶ In 2004, Dante-Pellar, then seventy-five years old and already serving a sixty-seven-month sentence for criminal contempt, pled guilty to nine counts of mail fraud.³¹⁷

Even these aggressive actions, however, were only partly successful. Dante-Pellar received only a nine-month prison sentence.³¹⁸ And although Dante-Pellar forfeited his \$1.5 million yacht and was ordered under the Mandatory Restitution Act³¹⁹ to pay \$45,835.50 in compensation to twenty-seven identified victims,³²⁰

§1341 (2000)). For a case interpreting the elements, *see*, for example, *United States v. Autuori*, 212 F.3d 105, 115 (2d Cir. 2000) (wire and mail fraud).

311. *See* 18 USC § 1343 (2002). Although the wire fraud statute explicitly applies to the use of television, radio, and wire communications, the statute has been applied to other popular modes of communication, such as facsimile machines, computer modems, and telephones. *See, e.g., United States v. Gabriel*, 125 F.3d 89, 92 (2d Cir. 1997) (affirming conviction for wire fraud scheme involving fax transmission); *United States v. Otto*, 103 F.3d 134, 134 (7th Cir. 1996) (affirming conviction for wire fraud scheme involving computer modem transmission).

312. *See, e.g., United States v. Stewart*, 872 F.2d 957, 960 (10th Cir. 1989) (stating that "the government does not have to prove actual reliance upon the defendant's misrepresentations").

313. *See Russell, supra* note 301, at 20.

314. *See Bogus Degree Hearings, supra* note 29, at 18–19 (statement of Laurie Gerald Former Employee of Columbia State University). Included in the CSU catalog packet was a reference book, created and paid for by Dante-Pellar, entitled "University Degrees by Mail." *See Grace, supra* note 304, at A1 (listing "Dr. Jonas Salk, who discovered the polio vaccine, and two Nobel laureates as holders of Columbia State honorary doctorates"). This book ranked CSU as number one among 700 universities around the world offering correspondence study programs, including distance education programs offered at Harvard and UCLA. *Id.*

315. Using the alias "Phil Harris," Pellar rented office space from a service company in Metairie, Louisiana. *United States v. Ronald Pellar*, No. 03-CR-089, 3, (C.D. Cal. Apr. 17, 2003) [hereinafter *Pellar Indictment*] (Indictment) (stating that service company simply forwarded the mail for CSU to a post office box, located in San Clemente, California).

316. *See Judgment and Probation/Commitment Order*, SA CR 03-89-AHS, USDC (C.D. Cal. Apr. 16, 2004) [hereinafter *Probation/Commitment Order*].

317. *See Probation/Commitment Order, supra* note 316. The charges against him carried a potential maximum sentence of 45 years imprisonment and fines up to \$2.25 million. *See Press Release*, U.S. Dep't of Justice, Operator of Orange County 'Diploma Mill' Indicted on Federal Mail Fraud Charges (Apr. 18, 2003), <http://losangeles.fbi.gov/pressrel/2003/la041803.htm> (last visited July 22, 2006).

318. *See Probation/Commitment Order, supra* note 316.

319. *See* 18 U.S.C. § 3663(a)(1)(A) (2003); 18 U.S.C. § 3663A (2003) (stating that mail

these amounts pale in comparison to the \$20 million he generated from operating CSU and the \$4 million paid directly to him.

In another case, the USPIS, the FBI, and the IRS coordinated their efforts to shut down LaSalle University and obtain convictions against several individuals for mail fraud and tax evasion.³²¹ To prove tax evasion, the government had to establish the existence of a tax deficiency, willfulness to evade the taxes due, and an affirmative act constituting evasion.³²² Thomas Kirk, the founder of LaSalle University, established LaSalle as part of the World Christian Church, a bogus non-profit organization that he created in order to avoid regulatory oversight and taxes.³²³ In the end, Kirk pleaded guilty to tax evasion, was fined \$125,000, and received a five-year prison sentence.³²⁴ As part of the plea bargain, Kirk forfeited a \$1.5 million mansion, and the university forfeited more than \$10.7 million in cash as well as three luxury automobiles.³²⁵ The cash and proceeds from the sale of assets were used to refund fees paid by LaSalle students seeking compensation.³²⁶ Several of Kirk's associates were convicted of other crimes.³²⁷ Although LaSalle University came under new leadership and changed its

fraud offenses involving property are subject to the Mandatory Restitution Act).

320. See Probation/Commitment Order, *supra* note 316. See also News Release, Broadcast News, A California Man Who Sold Phony Diplomas to a Fictitious University Has Been Sentenced (Apr. 6, 2004), available at 2004 WLNR 13315622.

321. See Sara Shipley, *Former LaSalle Leader Gets 5 Years, Kirk Ordered to Pay \$125,000 Fine*, TIMES-PICAYUNE (New Orleans), Jan. 30, 1997, at B3.

322. See 26 U.S.C. § 7201 (2002); United States v. Hook, 781 F.2d 1166, 1171 n.4 (6th Cir. 1986).

323. See Shipley, *supra* note 321, at B3.

324. *Id.* (stating that he also pled guilty to wire fraud and credit card fraud).

325. *Id.* See also Jason Bullock & Bill Voelker, *Former LaSalle Official To Do Time; LaSalle: Third Person Is Imprisoned In Scandal*, TIMES-PICAYUNE (New Orleans), June 26, 1997, at A1 ("Though both Turow [Kirk's ex-wife] and Kirk had taken vows of poverty as part of the church ministry, they used church money to purchase extravagant items, including Kirk's \$1.75 million Madisonville mansion, luxury cars and furnishings."). See also *Former College President Weds In Louisiana Jail*, DALLAS MORNING NEWS, Aug. 15, 1997, at A17 (stating that Kirk forfeited the mansion and three automobiles)

326. See Shipley, *supra* note 321.

327. Two former directors pleaded guilty to tax evasion and were given prison sentences and ordered to make restitution. *Id.* A former board member was fined and put on probation after pleading guilty to concealing a felony because he lied to investigators about his knowledge of Kirk's diversion of money from LaSalle for personal use. Terri Turow, ex-wife of Kirk and former director of LaSalle University, pleaded guilty to tax evasion for failing to report more than \$185,000 in income she earned during 1990 and 1991; she was ordered to pay \$50,000 in taxes, and was sentenced to four months in prison and four months on house arrest. See Bullock & Voelker, *supra* note 325 at A1; Correction, *Sentence Incorrect*, TIMES-PICAYUNE (New Orleans), June 27, 1997, at A2. Polly Zar, a former executive director of the World Christian Church, pled guilty to tax evasion and was ordered to pay the IRS \$8,744 in restitution, and sentenced to house arrest for six months in addition to three years of probation. Jarvis DeBerry, *Former Church Exec Gets Sentence[,] She Avoids Prison in LaSalle Matter*, TIMES-PICAYUNE (New Orleans), May 28, 1998, at B1. Stanley Foster pleaded guilty to "misprison of a felony" for failing to disclose Kirk's diversion of \$384,000 from LaSalle for his personal use and Kirk's failure to pay income taxes on it. See Bullock & Voelker, *supra* note 325, at A1, (stating that Foster was sentenced to two years' probation and was fined \$500).

operations,³²⁸ it applied for, but never received, ED-recognized accreditation.³²⁹

Neither the payment of fines nor imprisonment deterred Kirk from further fraudulent behavior. After getting out of prison, he helped his wife start Novus University, a reputed diploma mill located in Mississippi and accredited by Maxine Asher's unrecognized accrediting agency.³³⁰ Diploma mills and the individuals who operate them are difficult to stymie, requiring enactment of a new federal law—imposing stiffer penalties and longer prison sentences—would empower federal and state law enforcement agencies to curb the supply of bogus degrees.

C. The Proposed Authentic Credentials in Higher Education Act

Under existing law, state and federal agencies have had difficulty restraining the deceptive practices of online diploma mills and other substandard unaccredited programs. Moreover, the federal agencies active in this field have ceased to cooperate in efforts to shut down diploma mills, and no agency makes the prosecution of diploma mill operators a priority.³³¹ A new regulatory approach, based on a targeted federal statute, is necessary to revitalize oversight in this field. The first subsection below recaps the arguments in favor of stronger regulation. The second defines the covered degree providers and prohibited acts. Section three sets forth the required disclosures in detail, and section four considers a variety of concerns that might be raised about the statute.

1. The Case for Federal Regulation of Online Schools

Online diploma mills and unaccredited schools have been growing rapidly. Evidence suggests that millions of Americans have bogus and unaccredited degrees.³³² The number of fake degree holders was estimated to be two million in the 1980s.³³³ The number in 2006 has to be much larger due to the advent of the

328. Stacey MacGlashan, *LaSalle University Works to Remake Troubled Image*, TIMES-PICAYUNE (New Orleans), Oct. 26, 1998, at A1. See also Sara Shipley, *LaSalle Recruits Man for Top Job[.] Ohio University Exec Takes Post*, TIMES-PICAYUNE (New Orleans), Apr. 12, 1997, at A1 (explaining that LaSalle's board members chose as president John Scarpitti, former university administrator at the University of Findlay, a small, private college in Findlay, Ohio).

329. Stephanie A. Stanley, *LaSalle Official Lied, Woman Says in Suit She Thought School's Accreditation Was Near*, TIMES-PICAYUNE (New Orleans), Mar. 9, 2000, at B1 ("After more than three years of trying to distance itself from federal charges that it falsely claimed accreditation and defrauded thousands of students, LaSalle University is again facing accusations that it misled a student by telling her she would receive a doctorate degree from an accredited school.").

330. See Thomas Bartlett & Scott Smallwood, *A Small World*, CHRON. OF HIGHER EDUC., June 25, 2004, at A10, A11 (stating that Novus University is located in Mississippi, is accredited by the World Association of Universities and Colleges, and is granting "degrees on the basis of life experience, multiple-choice exams, and a thesis").

331. See EZELL & BEAR, *supra* note 13, at 145–47. The author discussed this shift with several law enforcement individuals who would not go on record. The essence of these discussions was to identify terrorism and identity theft as the current priorities of the federal law enforcement agencies discussed in this paper.

332. *Id.* at 78.

333. *Id.* at 32.

Internet and given the revenue such operations can generate.³³⁴ A GAO investigation uncovered five unaccredited schools that had revenue exceeding \$110 million.³³⁵ Another online school shut down by the FTC earned over \$400 million in sales of over 200,000 bogus degrees primarily to consumers living in the United States and Canada.³³⁶ While estimates exist about the number of phony degrees, no one knows how many people have obtained unaccredited degrees from schools that require the completion of some academic work.³³⁷ The number could be quite large because of the numerous online unaccredited schools and their aggressive email marketing.³³⁸

Given the likely existence of millions of fake and unaccredited degrees, operators of fake or unaccredited online programs can inflict serious harm on the students they attract.³³⁹ The attrition rate among students enrolled in online degree programs is high, which means many students are wasting their money and time pursuing unaccredited degrees.³⁴⁰ This is especially true given that online degrees—even ones from accredited schools—are viewed with suspicion by many employers.³⁴¹ While operators of online degree programs attract consumers of all types, unsophisticated consumers with limited education experience and who feel trapped in their employment situation are particularly easy prey for unscrupulous operators.³⁴² These consumers not only waste their money, but can lose their jobs and suffer other economic loss and embarrassment once their employers learn about their dubious degrees.³⁴³ The degrees have inferior value at best and are

334. One way to estimate the number of fake and unaccredited degrees is to look at the gross revenues of the degree providers.

335. See *Bogus degree hearings*, *supra* note 29 (testimony of Senator Susan M. Collins, chairwoman, Committee on Senate Governmental Affairs) (reporting that a GAO audit of 450,000 resumes revealed that more than 1,200 of them included degrees from fourteen different diploma mills, that a school investigated by the FBI grossed a “pure profit” of \$12 million in a 18-month period, and that “Kennedy-Western University, an unaccredited school that requires completion of academic work, earned short of \$25 million in 2003 and currently has almost 10,000 students enrolled”).

336. See Press Release, Federal Trade Commission, Court Order Puts Brakes on International License Marketers (Nov. 25, 2003), <http://www.ftc.gov/opa/2003/11/mountainview.htm> (last visited July 21, 2006).

337. No one knows exactly how many fake degrees have been sold because buyers and sellers are not going to freely share their involvement in the proliferation of fake degrees. See EZELL & BEAR, *supra* note 13, at 32–33 (contending that at least one million fake degrees exist based on the operations of various diploma mills that have been shut down over the years and providing estimates of up to two million fake degrees).

338. See BEARS’ GUIDE, *supra* note 12, at 40–44, 64–65 (stating that college degree solicitations are among the top ten spam mail topics). Of those responding to spam mail, one in three may buy a fake degree. See EZELL & BEAR, *supra* note 13, at 14.

339. See *supra* Part III.B.

340. See *supra* notes 68–71 and accompanying text.

341. See *supra* notes 72–78 and accompanying text.

342. See *supra* notes 79–106 and accompanying text.

343. See *infra* note 345; Johnson, *supra* note 87, at 284 n.85; EZELL & BEAR, *supra* note 13, at 116 (stating that a popular television consultant who called herself “The Love Doctor” was fired after her doctorate degree from a diploma mill came to light and that a Colorado state official was not only fired for having a fake degree, but his “green card” was revoked and he was

bogus at worst.³⁴⁴

In addition to consumers, the workforce at large also suffers from the proliferation of bogus and substandard degrees. In a global, dynamic marketplace, employment skills are no longer a matter of concern for the individual worker alone; they are vital to America's ability to compete globally. Employers have unwittingly promoted and hired employees with dubious degrees and reimbursed them for dollars spent to obtain degrees from substandard or unaccredited degree providers.³⁴⁵ By wasting time and economic resources on inferior online education, operators of online schools harm individual workers and the workforce as a whole.

While no research has indicated how much money from private employers has been used to subsidize the purchase of bogus and substandard degrees, it is clear that public dollars are being used to pay for them.³⁴⁶ A 2004 GAO report found that nearly \$170,000 in federal funds have been used to reimburse government employees for the cost of obtaining such degrees.³⁴⁷ This figure is only the tip of the iceberg, as the 2004 GAO report indicates the figure is likely to be substantially lower than the actual cost of reimbursement programs.³⁴⁸ Other research estimates have suggested that more than \$7.5 million have been used to pay tuition reimbursements for questionable degrees.³⁴⁹ The costs of these degrees

deported back to his native country).

344. See *supra* Part II.B (discussing various types of degree providers and the work required to obtain their degrees).

345. See, e.g., Matthew Pinzur, *School Board: Six Teachers Are Fired, 26 Quit in Credit Scandal Six Miami-Dade Teachers Were Fired, the First Punishments Handed down since Allegations of Continuing-Education Credit-Buying Began*, MIAMI HERALD, Mar. 16, 2006, at B3, available at 2006 WLNR 4355737 (discussing the firing of one teacher who had been paid by a local school board to take continuing-education classes from diploma mill Moving On Toward Education and describing disciplinary action taken by the school board against 31 other teachers who took classes from the diploma mill). Charles Abell was appointed by President George Bush as the Principal Deputy Under Secretary of Defense for Personnel and Readiness after obtaining a master's degree in human resource management from Columbus University, an unaccredited school shut down by Louisiana's attorney general. See Margie Boule, *These Folks Should Feel Sheepish About Getting Fraudulent Sheepskins*, PORTLAND OREGONIAN, June 20, 2004, at L1, available at 2004 WLNR 17955076; U.S. Dep't of Def., Biography – Charles S. Abell, http://www.defenselink.mil/bios/abell_bio.html (last visited July 27, 2005). See also EZELL & BEAR, *supra* note 13, at 258-266 (mentioning other people who benefited from their bogus degrees).

346. See, e.g., Stephanie Armour, *28 Top Officials Have Fake Degrees; Senator Sees It as "Tip of the Iceberg,"* USA TODAY, May 12, 2004, at B5 [hereinafter *28 Top Officials*].

347. See GAO REPORT NO. 1, *supra* note 177, at 9.

348. *Id.* Reasons given for concluding the \$170,000 figure is understated include: (1) "the way in which some agencies maintain records of payments for employee education makes such information inaccessible," and (2) "diploma mills and other unaccredited schools modify their billing practices so students can obtain payments for degrees by the federal government" without the government knowing the schools are unaccredited. *Id.* at 3. Federal dollars have also been used to buy diploma mill degrees for workers employed in federal Head Start programs. See *Bogus degree hearings*, *supra* note 29 (stating that "three checks from federal Head Start program grantees in three different states [were] made out to Kennedy-Western University").

349. See Helena Andrews, *Diploma Mills Provide Phony Credentials; Web Sites Push Fake Degrees*, WIS. ST. J. (Madison, Wis.), Feb. 14, 2005, at A7 (calling the federal government "the

mount even higher when one considers the public resources spent on salaries and raises for holders of unaccredited degrees. From teachers to elected officials, millions of tax dollars are paying the salaries and raises of federal, state, and local government employees who have obtained fake or unaccredited degrees.³⁵⁰

Besides harm to the public purse, fake and unaccredited schools pose risks of harm when inadequately trained workers attempt to practice medicine, give tax advice, pilot planes, or work in numerous professions that usually require employees with specialized higher education or training.³⁵¹ Individuals in a host of positions have been caught practicing without the proper education and license credentials and, therefore, pose a real and present danger to the public.³⁵²

The post-9/11 era offers another reason to pass federal legislation to clamp down on fake degrees and unaccredited schools. These schools could enable the work of terrorists. To show how easily a terrorist could get a degree, a news correspondent recently purchased a Master of Science degree in chemistry for \$500 over the Internet from Rochville University³⁵³ under the name of Abu Salsabil Hasan Omar, who is an alleged terrorist with a \$5 million bounty on his head.³⁵⁴ One way for terrorists to enter and remain in the country is to obtain

largest supplier of diploma mills in our country”); *Are Current Safeguards Protecting Taxpayers Against Diploma Mills?: Hearing Before the Subcomm. On 21st Century Competitiveness of the H. Comm. On Education and the Workforce*, 108th Cong. 9 (2004) (statement of retired FBI Agent Allen Ezell: “Most probably, over one million Americans have purchased (and probably use) fictitious credentials.”). The GAO report discovered that federal agencies, in violation of a federal statute, paid over \$169,000 for the cost of employees obtaining bogus and unaccredited degrees. See GAO REPORT NO. 1, *supra* note 177, at 3–4 (stating that actual costs are probably higher due to a number of limitations, including the practice of diploma mills changing their billing practice to make it look like the employee was enrolled in a course rather than paying a flat fee for the degree). Workers facing layoffs at an Indiana auto plant spent at least \$42,000 in federal educational retraining money on purchases of advanced degrees from St. Regis University, a diploma mill currently being sued by the legitimate Regis University. See Bill Morlin, *School Sues ‘Diploma Mill’ Participants; Jesuit University in Denver Claims its Reputation Being Damaged*, SPOKESMAN-REV. (Spokane, Wash.), Dec. 10, 2004, at B1.

350. See, e.g., EZELL & BEAR, *supra* note 13, at 185 (stating that co-author John Bear testified at the trial of a former state psychologist who had purchased a doctorate degree and “had been earning doctoral pay for six years”); *Bogus degree hearings*, *supra* note 29, at 37 (Statement by Alan Contreras, Administrator for the Office of Degree Authorization, Oregon Student Assistance Commission) (stating that fake degrees were commonly held by numerous professionals, including professionals serving as K-12 teachers and administrators, police and corrections officers, fire and emergency employees, and public administrators).

351. See, e.g., Second Amended Complaint, *supra* note 276, at 11–12 (“Defendants sell bachelors degrees, masters degrees, MBA’s, and Ph.D.’s in a variety of fields including many medical related fields such as anesthesia, cardiology, cardiovascular surgery, dentistry, . . . emergency medicine, endocrinology . . .”).

352. See Varney, *supra* note 251 (naming several professionals disciplined or terminated for holding fake degrees).

353. Rochville is considered by state education agencies and experts to be a diploma mill. See, e.g., OREGON OFFICE OF DEGREE AUTHORIZATION, *supra* note 161; MICHIGAN’S LIST OF NON-ACCREDITED COLLEGES/UNIVERSITIES, *supra* note 3 (identifying Rochville as one of many unacceptable unaccredited schools).

354. Paula Zahn *NOW: Diploma Mills Represent Security Threat to United States?* (CNN television broadcast Dec. 15, 2005).

student visas to enroll in unaccredited schools.³⁵⁵ Experts point out that some unaccredited schools have permission to use I-20 student visas, which allow foreigners to enter the country to further their education, and that operators of one of the largest diploma mills have possible links to terrorism.³⁵⁶

All of the foregoing concerns require a federal, rather than a state, solution. Online unaccredited schools easily evade state laws designed to regulate them by moving from states where their businesses are enjoined and relocating to other states that tolerate them.³⁵⁷ No federal or state law requires an unaccredited school to obtain or even seek accreditation.³⁵⁸ Consider again Kennedy-Western University, which has authorization from Wyoming to be a degree-granting institution.³⁵⁹ It does not claim to be accredited, and it is not technically a diploma mill because it does not sell degrees but instead requires the completion of some academic work.³⁶⁰ Therefore, it cannot be shutdown as a diploma mill by the FTC or any of the other federal agencies previously discussed. While overwhelming congressional testimony may lead one to reasonably conclude that Kennedy-Western is a substandard unaccredited school,³⁶¹ Oregon, though it tried, could not stop Kennedy-Western from issuing degrees to its residents and had to settle litigation initiated by Kennedy-Western on terms most favorable to this unaccredited school.³⁶² States lack the resources to police multi-state ventures, and interstate differences in licensing standards make enforcement against an unaccredited school practically impossible.³⁶³ Just as most educational fields have formulated national accrediting standards, and federal agencies have been most effective in regulating interstate fraud of bogus degree providers,³⁶⁴ federal regulation is essential in higher education to deal with both bogus and substandard unaccredited degree providers. The following section outlines the proposed federal regulation.

355. See EZELL & BEAR, *supra* note 13, at 148.

356. *Id.* Another concern is that foreign terrorists can obtain visas to attend legitimate doctoral programs by relying on undergraduate degrees from diploma mills operating outside the United States. See 28 *Top Officials*, *supra* note 346.

357. See *supra* Part II.B.2 (explaining how Maxine Asher simply relocated operations of her unaccredited schools).

358. See *supra* Part I (describing the accreditation process in America).

359. See *supra* note 175 and accompanying text.

360. See *supra* note 180 and accompanying text.

361. See *supra* notes 181-94 and accompanying text (discussing testimony from various persons about Kennedy-Western's operations).

362. Settlement Agreement, Kennedy-Western U. v. Contreras, No. 04-CV-1023-HU (D. Or. 2004); Settlement Agreement Addendum, Kennedy Western U. v. Contreras, No. 04-CV-1023-HU (D. Or. 2004); See also *Oregon Settles Federal Lawsuit Filed by Kennedy-Western University; State Officials Will Seek Changes to State Law Regulating the Use of Degrees from Unaccredited Universities*, BUSINESS WIRE, Dec. 21, 2004, available at <http://www.forbes.com/businesswire/feeds/businesswire/2004/12/22/businesswire20041221005728r1.html>.

363. See *supra* Part III.A (discussing the possibilities of and impediments to state policing of substandard and unaccredited schools).

364. See *supra* Part III.B (discussing how the FBI, FTC, IRS, and USPIS have shut down diploma mills).

2. Defining Covered Degree Providers and Prohibited Acts

This article proposes a federal statute to hold fake degree providers and unaccredited schools civilly liable and to establish criminal penalties for fake degree providers and unaccredited schools who fail to make relevant disclosures about lack of accreditation. Under current FTC rules that prohibit misleading information about accreditation,³⁶⁵ victims of such misrepresentations have no private right of action to sue online unaccredited degree providers and, therefore, must rely on state law to force compliance.³⁶⁶ Since that strategy has proven to be ineffective,³⁶⁷ the proposed act gives any student the right to seek treble damages and attorneys' fees in a civil suit against any unaccredited school that gives misleading information about its accreditation or fails to disclose its lack of ED-recognized accreditation. The proposed law also imposes affirmative disclosure requirements and authorizes criminal prosecution under specified circumstances.

The proposed Authentic Credentials in Higher Education Act ("proposed act") is aimed at the following degree providers: diploma mills, unaccredited schools, and accredited schools with unrecognized degree programs. The following discussion defines each type of degree provider and explains the prohibited practices and potential liability. A summary of the same is provided in the table below.

365. See *supra* notes 261-73 and accompanying text.

366. Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255, 1303-04 (2002).

367. See *supra* notes 261-73 and accompanying text.

Degree Providers Covered under the Authentic Credentials in Higher Education Act			
	Type of Degree Provider		
	Diploma Mill	Unaccredited School	Accredited School with Unaccredited Degree Program
Prohibited Conduct:	(1) Selling degrees;	(1) Providing false or misleading statements about accreditation status;	(1) Providing false or misleading statements about accreditation status of unaccredited degree program;
	(2) Issuing degrees based exclusively (or an amount greater than 70%) on life experiences;	(2) Failing to disclose in detail the academic work that is required to obtain a particular degree sought;	(2) Failing to disclose in detail the academic work that is required to obtain a particular degree sought;
	(3) Providing academic verification materials or services; and	(3) Failing to make required disclosures about the consequences of obtaining an unaccredited degree; and	(3) Failing to make required disclosures about the consequences of obtaining an unaccredited degree; and
	(4) Assisting in the operation of a diploma mill	(4) Failing to acquire and maintain on file a student's signed disclosure statement	(4) Failing to acquire and maintain on file a student's signed disclosure statement
Liability Imposed:	Criminal: Imposed upon operators of diploma mills or persons assisting in their operation	Criminal: Imposed if held in contempt under the Act for failure to make mandated disclosures	Criminal: Imposed if held in contempt under the Act for failure to make mandated disclosures
	Civil: Including a private right of action for consumers deceived by diploma mill	Civil: Including a private right of action for consumers affected by violations	Civil: Including a private right of action for consumers affected by violations
Penalties/Damages for Violations under the Act:			
Criminal Penalties:	Violations classified as a felony; penalties include imprisonment of at least 5 years, a fine of \$500,000, or both	Violations classified as a felony; penalties include imprisonment of at least 1 year, a fine of \$100,000, or both	Violations classified as a felony; penalties include imprisonment of at least 1 year, a fine of \$100,000, or both
Civil Damages Recoverable:	Treble damages and reasonable attorney's fees can be recovered in a successful cause of action by the affected consumer	Treble damages and reasonable attorney's fees can be recovered in a successful cause of action by the affected consumer	Treble damages and reasonable attorney's fees can be recovered in a successful cause of action by the affected consumer

Under the proposed law, a “diploma mill” is defined as:

Any corporation, institution, association, company, person, or entity operating without accreditation from any entity recognized as an accrediting agency by the United States Department of Education or without any licensing, approval, or authorization recognized by the state in which operations are headquartered, located, or conducted *and* that knowingly does any *one* of the following:

- A. Issues degrees, whether denoted as a real or novelty items, without requiring any student academic work;
- B. Issues degrees, whether denoted as a real or novelty items, based solely on the student’s life experience or portfolio without requiring any college-level work be submitted to and evaluated by faculty with appropriate academic degrees from accredited institutions; or
- C. Issues degrees, whether denoted as a real or novelty items, by basing more than seventy percent of required course credits on the student’s life and/or learning experiences.

This definition draws upon previous legislative and enforcement efforts,³⁶⁸ and adopts the seventy percent line because of the short amount of time in which one can complete academic work at a diploma mill.³⁶⁹ Recall Trinity College & University, which offered a bachelor’s degree for only \$675,³⁷⁰ and provided that if a person’s prior *learning* experiences were sufficient, earning a degree “can take as little as two days or as long as a year or more, depending upon the quality of the application and cooperation of the applicant in gathering documentation requested.”³⁷¹ Because obtaining an undergraduate degree usually takes four or more years, Trinity’s suggested time frame—two days or as long as a year—means a student is getting academic credit for seventy percent or more of the courses required to obtain a degree at a reputable accredited school.³⁷² Under the proposed act, any school following this practice of heavily granting academic credit is *prima*

368. This definition of “diploma mill” expands on definitions of “diploma mill” and “degree mill” given by the Maine House of Representatives. ME. REV. STAT. ANN. 20-A § 10801 (2005) (Table 1) [hereinafter ME. STATUTE]. Diploma mills issue degrees based almost exclusively on life experience and the payment of a fee, but, to the extent that they do require some academic work, the amount is not likely to make up more than seventy percent of the credits “earned.” See EZELL & BEAR, *supra* note 13.

369. See EZELL & BEAR, *supra* note 13, at 23–24 (stating that diploma mills award degrees by granting academic credit based almost entirely on experiences represented in a person’s resume).

370. Trinity College & University, Degree Fees, <http://www.trinity-college.edu/fees.html> (last visited June 10, 2005). Trinity is considered by the U.S. Army and the State of Oregon to be a diploma mill and has been sued for copyright infringement for using a name too similar to Trinity University, a reputable traditional school in Texas. See *Trinity Sues*, *supra* note 206 at B1.

371. Trinity College & University, <http://www.trinity-college.edu/faq.html> (last visited June 10, 2005) (“College credit is NOT and shall NEVER be offered for life experience.”).

372. See *supra* note 209.

facie evidence that the school is a diploma mill.

The proposed act makes it a crime for a diploma mill to issue *any* degrees,³⁷³ novelty or otherwise. The greatest harms to the public come from these empty degrees; holders of fake degrees have deceived employers and thereby gained undeserved jobs, promotions, and raises,³⁷⁴ and have deceived the public and harmed it with their negligent services. For example, diploma mill operators have issued numerous fake degrees in various medical fields.³⁷⁵ Purported psychologists, physicians, and other medical professionals with fake degrees have been caught practicing without the proper education and license credentials.³⁷⁶ This has resulted in tragic consequences.³⁷⁷ Thus, the extent of fraud inherent in diploma mill degrees, combined with the public harm, justifies criminal liability being imposed on operators of diploma mills.

In addition to making the issuance of bogus degrees a crime, the proposed act subjects diploma mills to criminal prosecution for issuing academic verification materials or providing academic verification services. In the proposed law, the phrase “academic verification materials” means any transcript, letter of recommendation or other document issued or purported to be issued by any college, university, community college, or any other educational institution or any professor, teacher, instructor, dean, or other individual associated therewith, for the purpose of evidencing or confirming any academic degree, or that any person has completed, wholly or partially, a particular course of instruction.³⁷⁸ A prohibition on academic verification materials and services is necessary because these practices are used by diploma mill operators to deceive employers.³⁷⁹

373. Mountain View Stipulated Final Order, *supra* note 286 at 3 (describing in detail the proscribed conduct).

374. See *supra* note 177 and accompanying text (discussing a GAO investigation that uncovered 463 federal employees with degrees from schools alleged to be diploma mills). As part of its investigation of diploma mills, the GAO compared a government-sponsored Internet résumé service to a list of unaccredited universities provided by the Oregon State Office of Degree Authorization (“ODA”) and discovered that, from a database of more than 1,200 résumés, fourteen different diploma mills and unaccredited schools were listed and approximately 200 employees who listed one of these degree providers applied for or held “a position of trust and responsibility.” GAO’S PURCHASE OF DEGREES FROM DIPLOMA MILLS, *supra* note 215 at 2-3. When GAO investigators interviewed four applicants who purchased fake degrees, they found the individuals “intended to use the bogus degrees to benefit financially or defraud employers” because “they purchased the degrees either to enhance their résumé or to be considered for certain positions.” *Id.* at 3.

375. See *supra* note 351.

376. See EZELL & BEAR, *supra* note 13, at 121 (stating that “patients at Lincoln hospital in New York . . . were treated by an accountant who bought a medical degree and was employed as an emergency room physician” and couples got divorces “following ‘treatment’ at a New York ‘sex therapy’ clinic run by a high school dropout whose only degree was a PhD purchased from a California degree mill”).

377. See, e.g., Armour, *supra* note 18; see also Patient Dies, Fake Doctor Held, *supra* note 122.

378. This is a modification of the FTC’s definition of the term “academic verification material.” See Mountain View Stipulated Final Order, *supra* note 286, at 3.

379. See *supra* note 281. See EZELL & BEAR, *supra* note 13, at 201–02.

Southeastern University, described previously, offers one example of the extent of this deception because 171 of its “graduates” with phony transcripts obtained jobs in all levels of government.³⁸⁰

Finally, along with criminalizing the providing of academic verification materials and services, the proposed bill makes it a crime for any individual to knowingly assist in the operation of a diploma mill. “Assisting” means providing:

Any of the following goods or services to a diploma mill: (a) performing customer service functions, including but not limited to receiving or responding to employer inquiries or consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, any telephone sales script or any other written marketing material, including the text of any Internet website, email or other electronic communication; (c) providing names of, or assisting in the generation of, potential customers; (d) performing marketing services of any kind; (e) acting as an officer or director of a diploma mill; (f) creating websites purporting to be the address of a diploma mill, or (g) supplying degrees, academic verification material, or related material, information or services.³⁸¹

Those who assist in the operation of diploma mills should be subject to criminal prosecution because they aid in the fraud being perpetrated on the public.³⁸² Furthermore, the criminalization of those performing support activities has the potential to create investigative and prosecutorial leverage. The proverbial “little fish” in diploma mill operations can be encouraged to cooperate in criminal investigations when they themselves face criminal prosecution. If criminal convictions of such individuals receive sufficient media attention, they may have a deterrent impact on the supply of diploma mills.

In addition to regulating diploma mills, the Authentic Credentials Act imposes obligations on unaccredited schools. According to the proposed act, an “unaccredited school” is defined as “an institution that has received the licensing, approval, or authorization required by the appropriate state agency to be a degree-granting institution in the state in which it is located or headquartered *but* lacks accreditation from an agency recognized by the U.S. Department of Education.”³⁸³ While a wide range of substandard unaccredited institutions are covered by this definition, the proposed act operates on the assumption that many unaccredited institutions may actually offer appropriately-designed and rigorous academic work but nevertheless have legitimate reasons for not seeking ED-recognized accreditation,³⁸⁴ or may have sought it but not yet received it.³⁸⁵ Although lack of

380. See Ariano, *supra* note 211, at 2–3.

381. The definition is an expansion of the FTC’s definition of the term “assisting others.” See Mountain View Stipulated Final Order, *supra* note 286, at 4.

382. See *supra* note 190 and accompanying text.

383. This definition is a modified version of “[d]uly authorized institution of higher learning” as contemplated by the State of Maine’s House General Assembly. See ME. STATUTE, *supra* note 368.

384. See BEARS’ GUIDE, *supra* note 12, at 20.

accreditation does not mean the education provided is automatically substandard, the existence of accreditation is an important mark of educational quality and affects the degree's value regardless of the underlying educational quality.

Substandard unaccredited schools tend to require completion of some academic work, but they follow educational practices that make their work fall substantially below the standards of quality education as measured by ED-recognized accrediting agencies.³⁸⁶ Because being able to distinguish a substandard unaccredited school from other unaccredited schools is a fact-intensive inquiry and, therefore, likely to be a very expensive aspect of litigation against an unaccredited school, the proposed act seeks to regulate the content of disclosures made by unaccredited schools to consumers. The goal of the proposed act is not to dictate educational standards but to prevent deception. Thus, requiring honest disclosures about the significance of a lack of accreditation is appropriate for all unaccredited institutions. As a result, those charged with enforcing the proposed act will not have to invest resources into proving that an unaccredited school provides substandard education. If an unaccredited school's disclosures fail to meet the standards established by the proposed act, the school is liable even if the education it provides is on par with accredited schools. The proposed act thus regulates an easily defined category of unaccredited schools which must provide detailed disclosures to their prospective students about the limitations of graduating from an unaccredited school.

Finally, the proposed act seeks to regulate accredited schools offering unaccredited degrees. An "accredited school with an unaccredited degree program" is defined as:

an institution that (1) has received the licensing, approval, or authorization required by the appropriate state agency to be a degree-granting institution in the state in which it is located or headquartered, (2) has received accreditation from an agency recognized by the United States Department of Education, and (3) has not received accreditation from an agency recognized by the Department [of Education] for a particular degree program offered by the institution.

This category, like the unaccredited schools category, is easy to describe. Adequate disclosure is the primary concern for these accredited schools because, presumably, they have a reputation to preserve and will likely do everything possible to eventually obtain accreditation for their unaccredited degree programs.³⁸⁷

385. Tyndale Theological Seminary and Biblical Institute may be an example of such an unaccredited institution. *See supra* notes 231-41 and accompanying text. Nothing in the facts of the case suggested that Tyndale provided a substandard education; however, due to religious "doctrinal" reasons, Tyndale refused to seek either accreditation or a state certificate of authority to operate a degree granting institution. *HEB Minorities, Inc. v. Texas Higher Educ. Coordinating Bd.*, 114 S.W.3d 617, 624, 627 (Tex. App. 2003).

386. *See supra* notes 180-88 and accompanying text.

387. *See supra* Part II.B.1 (discussing Concord Law School, which is accredited by a ED-recognized accrediting agency but lacks accreditation by the American Bar Association, the only ED-recognized accrediting agency for law schools).

3. Required Disclosures Under the Authentic Credentials Act

While the proposed act does not prohibit unaccredited schools or accredited schools with unaccredited degree programs from operating altogether, as it does for diploma mills, it does require that such schools make certain disclosures designed to inform their potential students of the nature of the education and likely consequences of obtaining an unaccredited degree. Failure to make these disclosures and maintain the records described below will subject the schools to civil liability. Criminal liability would arise only if these schools fail to comply with contempt orders arising from civil judgments.

A principal purpose of the proposed act is to deter the supply (and ultimately the demand) for inferior education by prohibiting unaccredited schools from providing any false or misleading statements about accreditation status,³⁸⁸ and requiring schools to make affirmative disclosures about the potential consequences of obtaining an unaccredited degree. These aspects of the proposed act are intended to supplement the FTC regulations discussed previously.³⁸⁹ The required disclosures will enable prospective students to make informed decisions about the value of an unaccredited degree.

The proposed act also requires unaccredited schools to disclose to potential students the type and amount of coursework truly required for a student to earn a degree. To illustrate why such a disclosure is important, consider again the congressional testimony against Kennedy-Western University.³⁹⁰ One former admissions counselors testified that he had to follow high-pressure telemarketing tactics to get prospective students to pay the tuition fee *before* the students could discover what academic work would be required of them.³⁹¹ As part of an undercover GAO investigation against Kennedy-Western, Lieutenant Commander Claudia Gelzer testified that in her interactions with other students in a Kennedy-Western-sponsored chat room several students expressed their dismay about the amount of required academic work³⁹² and about their exams.³⁹³ If these

388. See, e.g., *supra* note 161 and accompanying text (providing an example of misleading statements by American World University that were designed to downplay the importance of accreditation recognized by the U.S. Department of Education).

389. See *supra* notes 261-73 and accompanying text.

390. See *Bogus degree hearings*, *supra* note 29, at 50 (statement of Andrew Coulombe, Former Employee, Kennedy-Western University).

391. *Id.* at 43-44.

392. *Id.* at 42. Specifically, Lieutenant Commander Gelzer noted:

In reviewing student dialogue in the school's online chat room, I found numerous postings about the quality of Kennedy-Western's program and its lack of accreditation. I sensed genuine disappointment and even desperation from some students, questioning whether they had made a mistake. Many admitted they hadn't understood the importance of accreditation when they enrolled. Some students spoke of feeling duped by the school. Several questioned why it seemed like so many students at Kennedy-Western had to take only four or five classes.

On the other hand, there were students who seemed completely at ease with the lack of program exams. The chat room included regular exchanges about how to prepare for Kennedy-Western exams. It was openly acknowledged that test answers could often be found in the textbook glossaries.

allegations are true, a disappointed student could assert under tort law a claim of educational malpractice against Kennedy-Western. However, case law is currently on the side of schools accused of providing substandard post-secondary education: courts have thrown out complaints by former students and “graduates” asserting educational malpractice claims against the schools based on substandard instruction.³⁹⁴

In view of this, the proposed act will have the impact of putting the burden on online unaccredited schools to disclose exactly what academic work is required to obtain a degree. The Internet and email are being used to perpetrate all types of deception to entice consumers to part with their money, making it difficult for consumers to know whether they are getting legitimate, quality higher education, prior to paying tuition.³⁹⁵ In transactions involving the sale of goods, consumers can avoid becoming victims of online fraud by using an escrow system designed to protect sellers and buyers.³⁹⁶ No such mechanism exists for students enrolling in online schools. Thus, the proposed act recognizes that some unaccredited schools may be offering substandard education and imposes civil liability on any unaccredited school that fails to disclose, before receiving payment, to prospective students a written description of the academic work required for completion of the particular degree sought.

In most cases, violations of disclosure requirements invoke civil liability only, but if unaccredited degree providers are found to be in contempt of civil injunction orders, their principals would be subject to criminal sanctions, including imprisonment. Criminal liability would also arise if an unaccredited school fails to comply with the law of the state of its residency by failing to obtain authorization to be a degree-granting institution. Nothing in the proposed federal statute would

Id. Gelzer also testified that many of her fellow Kennedy-Western students felt “betrayed” since their education turned out not to be worth what they were paying for it. *Id.* at 43.

393. *Id.* at 41-43. She also noted that:

In this chart you can see one student who said, “I do not know about yours, but some of my exams were terrible. One referred to a diagram that was not on the test, and others you can barely read because of very poor English.” Another student said, “My advice to those who are studying hard is to recheck their exam results and challenge the score if you believe you have the right answers. I was surprised to find out that all my exams contained some errors, which I had to challenge and correct. I guess a lot of us are experiencing similar issues across different majors.”

Id. at 41 (footnotes omitted).

394. See, e.g., *Miller v. Loyola U. of New Orleans*, 829 So.2d 1057, 1060 (La. Ct. App. 2002) (dismissing the claim of a law student alleging educational malpractice and noting a “great weight of authority” against such claims for alleged poor instruction and other forms of supposed educational malpractice).

395. See *Fast Track University Degree Program*, *supra* note 22. See also BEARS’ GUIDE *supra* note 12, at 40-44, 64-65 (identifying degree solicitations as among the top ten spam mail messages).

396. See David E. Sorokin, *Payment Methods for Consumer-to-Consumer Online Transactions*, 35 AKRON L. REV. 1, 14 (2001) (“[T]here are several online escrow services, the best known of which is Tradenable (formerly i-Escrow). Escrow services generally operate like PayPal and Billpoint, except that an escrow service holds the buyer’s payment until after the goods have been shipped and the buyer has had an opportunity to inspect them.”).

excuse a degree provider from complying with state law requirements for legitimately operating in the state where the degree provider is located. Accredited schools with unaccredited degree programs would be subject to civil penalties only if they failed to make the accreditation disclosures explained below.

All unaccredited schools must make the following disclosures:

- A. A statement explicitly stating that the particular degree granting institution is not accredited by an agency recognized by the United States Department of Education;
- B. A statement explaining the potential impact of lack of accreditation on a graduate's ability to obtain employment using an unaccredited degree;
- C. A statement explaining the potential impact of lack of accreditation on a student's current employment, including, but not limited to, the student potentially facing discipline, demotion, or termination;
- D. A statement explaining the impact and/or potential impact of lack of accreditation on a student's ability to qualify for an employer's tuition reimbursement program;
- E. A statement explaining the potential impact of lack of accreditation on a graduate's ability to obtain a license to practice in his or her field of educational expertise;
- F. A statement explaining the impact and/or potential impact of lack of accreditation on a student's eligibility for federal, state, and private financial aid;
- G. A statement explaining the impact and/or potential impact on a student's ability to transfer credits earned from an unaccredited institution to an accredited institution;
- H. A statement explaining that a student or graduate may be subject to civil and criminal prosecution if the student or graduate attempts to use the degree to seek employment or licensing in states that make such use unlawful; and
- I. A statement directing potential students to the U.S. Department of Education's website and toll free number for questions concerning accreditation.

The above accreditation disclosure statement must be in language plain enough for a high school student to understand and in large-size font so that it is clear and conspicuous and prominently featured on the front page of any websites and all written and electronic materials.³⁹⁷ Moreover, unaccredited schools would be obligated to get a signed disclosure statement from each student applying, whether electronically, verbally, or in writing, for enrollment. As with any meaningful

397. The disclosure shall be made in at least fourteen-point, bold-faced font, and shall be presented in a manner reasonably calculated to draw the attention of the reader and be understood by a reader with a typical high-school education.

disclosure statute, the disclosure statement must be given when the student initially contacts the school and long before any tuition is paid so that the consumer has enough information to make a meaningful decision about the merit in pursuing an unaccredited degree. Moreover, unaccredited schools must maintain records of all signed disclosure statements from each applicant. These records would provide a paper trail for an enforcement agency to audit compliance with the proposed act.

There are three goals in requiring schools to disclose the consequences of obtaining an unaccredited degree and in subjecting them to criminal sanctions if they fail to make the disclosures. The first is to cause unaccredited schools operating in contempt of civil orders to fear criminal prosecution and thereby deter the supply of such substandard degrees. For some unscrupulous degree providers, the risk of incurring a civil penalty has not had a deterrent effect,³⁹⁸ but fear of imprisonment may cause some to get out of the business. The second is to discourage consumers and the public from wasting precious resources on substandard degrees. If the proposed disclosure influences more people to attend accredited schools, society will benefit from a more-appropriately educated population.³⁹⁹ Because all accredited schools were once unaccredited, the disclosure statement should arm consumers pursuing legitimate credentials with accurate information to help them determine when an unaccredited degree is nevertheless worth pursuing.⁴⁰⁰ Finally, because the proposed disclosure statement may be viewed as sufficiently burdensome and may drive away some prospective students, the disclosure statement may also motivate some unaccredited schools to expeditiously pursue accreditation to keep their revenue from being negatively impacted.

In order to meet the foregoing goals, many factors need to be taken into account when creating an effective affirmative disclosure. The first important factor is that the disclosure statement must gain the consumer's attention.⁴⁰¹ That can be accomplished by using certain spacing, size, color, and symbols to attract the consumer's attention.⁴⁰² Here, the author proposes an accreditation seal that is prominently featured at the school's website and forces the visitor of the website to acknowledge a disclosure statement by mandating entry through a splash or gateway page.⁴⁰³ Once a disclosure statement grabs a consumer's attention, it

398. See, e.g., *supra* note 242-252 and accompanying text (showing Maxine Asher's relocation of American World University to Mississippi after being shut down in Hawaii).

399. See David W. Stewart & Ingrid M. Martin, *Advertising Disclosures: Clear and Conspicuous or Understood and Used?*, 23 J. PUB. POL'Y & MKTG. 183, 184 (2004) (identifying the policy objectives of disclosures and the outcomes sought from disclosures, noting that changing consumer behavior is "difficult to achieve with disclosure alone").

400. Information about an unaccredited degree is particularly relevant in light of research showing employers continue to value degrees from traditional schools over degrees obtained from online degree programs. See *supra* Part I.B.

401. See Jennifer J. Argo & Kelley J. Main, *Meta-Analyses of the Effectiveness of Warning Labels*, 23 J. PUB. POL'Y & MKTG. 193, 194 (2004).

402. See *id.* at 194-195 ("The use of vividness-enhancing characteristics . . . increases the likelihood that consumers will see a warning.").

403. A splash page is "the gateway page that a user must access (cannot skip) to get to the content beyond." Letter from Jill Lesser, Vice President for Domestic Policy, America Online, to

must be relevant to the consumer's goals and be understandable because, otherwise, the consumer is likely to dismiss the information.⁴⁰⁴

Thus, in the context of unaccredited schools, the disclosure should state the ramifications of receiving an unaccredited degree in a way that clearly has bearing on a potential student's goals. For example, the disclosure statement would have to inform prospective students about the existence of state laws that make it a crime to use an unaccredited degree to seek employment or transact business. Apart from being relevant, research shows that the disclosure statement's language must be clear and simple and not written in highly technical language if it is to have the desired effect of informing the reader.⁴⁰⁵ This is especially important as research also demonstrates that those most at risk of being confused or misled are those who are the least educated.⁴⁰⁶ The drafter must also limit the message to important facts, and not include superfluous information which can clutter or distract from the key points of concern.⁴⁰⁷

The timing of the disclosure is another factor in the effectiveness of such warnings.⁴⁰⁸ In the case of online colleges, the advertisement typically consists of a pop-up window or an email message that directs the potential student to the school's website. Here, the proposed disclosure statement could be required in this initial contact with the consumer. Disclosure at various points prior to starting the enrollment process may be more effective than one single disclosure.⁴⁰⁹

The following sample disclosure statement conforms to the requirements of the proposed act described above:

(Name of Degree Granting Institution) IS NOT ACCREDITED BY AN ACCREDITING AGENCY RECOGNIZED BY THE UNITED STATES SECRETARY OF EDUCATION.

Courses, programs, and degrees offered by this institution may not be recognized by employers, licensing authorities, government agencies, and accredited colleges and universities. This means that:

1. Potential employers may consider a degree from this institution to be illegitimate or substandard.

Donald S. Clark, Secretary of the Commission, Federal Trade Commission, (June 11, 1999), available at <http://www.ftc.gov/privacy/comments/americasonlineinc.htm> (entitled Re: Proposed Rulemaking to Implement the Children's Online Privacy Protection Act of 1998—Comment PP994504) (discussing privacy policies that the FTC would like to establish)

404. See Stewart & Martin, *supra* note 399.

405. See G. Ray Funkhouser, *An Empirical Study of Consumers' Sensitivity to the Wording of Affirmative Disclosure Messages*, 3 J. PUB. POL'Y & MKTG. 26, 31–32 (1984).

406. *Id.* at 33 (finding that those with a college degree scored better on a comprehension test than those who had no more than an eighth grade education).

407. See Stewart & Martin, *supra* note 399, at 186 (discussing how individuals have differing goals and perspectives and use information differently).

408. *Id.* at 186 (explaining that the timing of disclosure to achieve maximum effect can be a subtle and nuanced art; while mandated guidelines assume that disclosure should take place at the time of advertisement, here, the authors note that it is important that "relevant disclosure occurs in a meaningful and salient way before the consumer acts").

409. *Id.* (discussing the benefits and trade offs of message timing and frequency).

2. Listing a degree from this institution as a qualification for employment or promotion may result in potential disciplinary action, demotion, or termination from employment, depending on your state of employment.
3. Earning a degree from this institution and using it to seek employment may expose you to civil or criminal liability (e.g., fines or imprisonment) in some states, where use of unaccredited degrees is unlawful.
4. Enrollment in this institution may not qualify for an employer's tuition reimbursement program.
5. Earning a degree from this institution may not be sufficient to obtain a license to practice in your field of education.
6. Enrollment in this institution may not allow you to qualify for federal or state financial aid.
7. Credits earned at this institution may not be transferable to accredited institutions, causing credits to be lost when transferring to another college or university.

To learn more about accreditation and the consequences of acquiring an unaccredited degree, please contact the U.S. Department of Education at www.ed.gov/ or 1-800-USA-LEARN (1-800-872-5327). Go to <http://ope.ed.gov/accreditation/Search.aspx> to determine if any higher education school, college, or university is accredited.

I have read and understood the above disclosure:

[Student's name, signature, and date of signing]

This disclosure statement provides the information necessary to protect consumers looking to obtain degrees from unaccredited institutions. At the very least, full disclosure will provide consumers with basic information and direct them to resources that can help them make an informed decision about where to obtain a college degree.

Finally, the proposed act applies similar disclosure requirements to accredited institutions offering unaccredited degrees. These requirements are designed to protect prospective students who, when assessing a degree program, might otherwise fail to make the distinction between an accredited school and an unaccredited degree program and incorrectly assume a particular degree has ED-recognized accreditation. Under the proposed act, an accredited school or institution of higher education with an unaccredited degree program would be required to make a disclosure that includes the following:

- A. A statement that the particular educational program is not accredited by any agency recognized by the U.S. Department of Education for such a program.
- B. A statement explaining that lack of accreditation for the degree sought:

1. May prevent a graduate of the unaccredited degree program from obtaining a license to practice in that particular field or profession;
2. May negatively affect a graduate's search for employment;
3. May have a negative impact on the student's current employment, including but not limited to the student being disciplined, demoted, or terminated;
4. May prevent a student from qualifying for an employer's tuition reimbursement program;
5. May prevent a student from qualifying for federal, state, or private financial aid;
6. May negatively impact a student's ability to transfer credits to an accredited program; and
7. May subject a student or graduate to civil or criminal prosecution (e.g., fines or imprisonment) if the student or graduate attempts to use the unaccredited degree to seek employment or licensing in states that make such use unlawful.

C. A statement directing potential students to the nationally recognized accrediting agency for the unaccredited program for more information.

D. A statement directing potential students to the U.S. Department of Education's website and toll free number for questions concerning accreditation.

The disclosure statement must be signed by the student and must be made in accordance with the format described with respect to unaccredited institutions.⁴¹⁰

Such disclosures will help protect consumers like Mary Muller. In 1993, Muller applied to the Illinois Department of Professional Regulation for a license as a registered nurse after earning an associate's degree in applied nursing from Regents College External Degree Program in New York.⁴¹¹ The department rejected her license application because she had graduated from an unaccredited professional nursing education program, stating:

Illinois does not accept the New York Regents External Degree as meeting the requirements for licensure The New York Regents External Degree Program does not meet the nursing education program standards, and is, therefore, not approved. Basically, the program is a correspondence program which the Illinois Nursing Act identifies as not satisfying the education requirements.⁴¹²

410. See *supra* notes 397-409 and accompanying text.

411. Muller v. Zollar, 642 N.E.2d 860, 862 (Ill. App. Ct. 3d 1994).

412. *Id.* at 869. When Muller challenged the department's ruling, the court concluded that the department's decision to deny licensure to Muller was legal and held that Muller had no standing to challenge the accreditation status of the Regents College External Degree Program.

Had Muller been required to read and sign a statement disclosing the significance of Regents' lack of accreditation of its nursing program before she completed the application, she would have known that the program might not equip her to meet Illinois' requirements for a nursing license. Muller could then have elected to enroll in an accredited nursing program, saving herself considerable heartache, time, and expense in obtaining a relatively worthless nursing degree.

In sum, the proposed act protects students, employers, and third parties by giving law enforcement authorities the tools to convict operators of diploma mills and by giving authorities and consumers the authority to impose civil liability on operators of unaccredited schools and unaccredited degree programs if they fail to make certain disclosures.

4. Consideration of Arguments Against the Proposed Act

The current proposal to enact a statute criminalizing fake and substandard degree providers may be troubling to many concerned about the move towards "over-criminalization" in this post-Enron, post-9/11 era.⁴¹³ Some scholars have noted a dramatic increase in the number of federal criminal legislation over the last few decades,⁴¹⁴ particularly emphasizing how many of these new offenses hinge upon a rather low standard of proving crimes—requiring proof of a low *mens rea* and some even applying strict liability.⁴¹⁵ Moreover, scholars are concerned about regulatory crimes that define criminal conduct (i.e., the *actus reas* element) as merely the failure to perform some required act:

[T]he common law has recognized that in certain limited circumstances one may be held criminally liable without having done an affirmative act, precisely because the failure may be said to be a cause of the resulting harm . . . [but] [g]eneral failure by the Courts [sic] to read regulatory crime statutes narrowly, proscribing conduct when "to interpret the statute otherwise would be to criminalize a broad range of apparently innocent conduct." (citation omitted).⁴¹⁶

Although the proposed act is arguably regulatory in nature and provides for criminal liability under certain circumstances, such criminal liability is justified in light of the harms perpetrated by fake and substandard degree providers. First, it is necessary to adopt the proposed act on a federal level because the providers of such degrees are transient.⁴¹⁷ "Virtual universities" not only make it difficult to

Id. at 863. "The plaintiff was not a party to the Department's decision to deny Regents' program accreditation and thus may not contest Regents' accreditation status." *Id.*

413. See, e.g., Paul Rosenzweig, *The Over-Criminalization of Social and Economic Conduct*, THE HERITAGE FOUNDATION LEGAL MEMORANDUM, No. 7, June 25, 2003, available at <http://www.heritage.org/Research/LegalIssues/lm7.cfm>; see generally Ellen S. Podger, *Jose Padilla and Martha Stewart: Who Should be Charged with Criminal Conduct?*, 109 PENN. ST. L. REV. 1059 (2005).

414. See Rosenzweig, *supra* note 413, at 2; Podger, *supra* note 413, at 1060.

415. See Rosenzweig, *supra* note 413, at 3, 6.

416. *Id.* at 5, 13.

417. See, e.g., *supra* notes 159-68 and accompanying text (discussing American World University, which relocated to Mississippi after being shut down in Hawaii).

determine their providers' specific location, but also make it easy for them to relocate to another state or even leave the country if one state challenges them.⁴¹⁸ Consequently, aggrieved graduates cannot find these operators to obtain refunds. Second, the proposed act requires a violation to be performed "knowingly" for it to constitute criminal conduct.⁴¹⁹ The proposed act's criminal sections are meant to supplement deceptive practices already proscribed by the FTC.⁴²⁰ Coupled with a mass media campaign that will educate the public regarding the scope of the statute and the consequences of obtaining a degree from a diploma mill or substandard school,⁴²¹ the criminal sections of the proposed act should result in the prosecution of only those who knowingly sell or assist in the selling of fake degrees.

Finally, the statute criminalizes certain failures to act for the same reason that omissions have traditionally been recognized as criminal—the omissions actually cause harm. As explained throughout this article, students and employers are misled by the failure of a substandard school to inform its potential students regarding the school's accreditation status, the nature and amount of work necessary for obtaining a degree, and the potential real-world consequences of obtaining such a degree.⁴²²

IV. GOVERNMENTAL ROLE IN CURBING DEMAND

This article not only recommends federal legislation to regulate the providers of bogus and unaccredited degrees, but federal action to deter consumers from obtaining these degrees. The prevailing view is that one can curb demand for bogus and unaccredited degrees by criminally prosecuting those who use them.⁴²³ The existing burden on the criminal justice system alone makes such an idea tenuous, except when prosecution is sought against uncredentialed individuals performing the type of work that is already covered by state criminal statutes.⁴²⁴ This article rejects any criminal prosecution of employees found to hold bogus or unaccredited degrees, except prosecution of uncredentialed individuals acting in

418. See *supra* notes 276-79 and accompanying text (discussing litigation involving defendants whose identity was unknown at the time the lawsuit was initially filed). Even though Ronal Pellar, a diploma mill operator, had been convicted of criminal contempt and sentenced to prison, he managed to flee to Mexico and began living on a yacht that he obtained with the profits from his schools. See "College" Founder Pleads Guilty, *supra* note 303; *Scam Schools*, *supra* note 289.

419. See *supra* Part III.C.2.

420. See *supra* notes 261-67 and accompanying text (reviewing FTC rules regulating the use of the word "accreditation").

421. See *infra* Part IV.B (proposing mass media campaign).

422. See *supra* Part II.B.3 (describing how Kennedy-Western deceives students regarding the amount and quality of work required to obtain a degree).

423. See EZELL & BEAR, *supra* note 13, at 186 (arguing that demand for fake degrees can be curbed "by prosecuting the users [of the degrees] and publicizing the prosecution").

424. For example, it is generally a crime to practice medicine without the proper credentials. A person with a bogus medical degree would already be subject to criminal prosecution. See, e.g., Armour, *supra* note 18.

violation of existing state criminal statutes.⁴²⁵ A broad criminal sanction is wrong in light of the level of deception perpetrated by providers of dubious degrees,⁴²⁶ the over-reliance by employers on educational credentials,⁴²⁷ the ability of employers to easily identify bogus and unaccredited degrees in job applicants' credentials,⁴²⁸ the education market realities that make it difficult to qualify for or afford traditional college degrees,⁴²⁹ and the labor market realities that make it very difficult for a high school graduate to obtain a well-paying job.⁴³⁰ A few states, as explained below, have laws that impose civil or criminal liability on persons with bogus and unaccredited degrees who represent them as legitimate education credentials. To deter demand for such degrees, this article proposes educating consumers on how to tell the difference between illegitimate and legitimate providers of higher education and empowering employers with an objective standard for determining what type of discipline is appropriate for employees who have bogus or unaccredited degrees.

A. Existing State Laws Criminalize Users of Bogus and Unaccredited Degrees

A few states, including Florida, Illinois, Indiana, Iowa, Michigan, New Jersey, North Dakota, Oregon, and Washington, have statutes that prohibit a person from representing that he or she has a legitimate academic degree if the degree is bogus or if the degree is from a school that lacks ED-recognized accreditation or approval from the state in which the representations are directed.⁴³¹ These statutes prohibit certain uses, such as using an "academic degree for the purpose of obtaining employment or admission to an institution of higher learning or admission to an advanced degree program . . . or for the purpose of obtaining a promotion or higher compensation in employment."⁴³² In addition to prohibiting fraudulent academic degree claims, some states prohibit the use of titles and other insignia that falsely signify that a person has a doctorate degree or other similar recognition of

425. See WEST'S ANN. CAL. BUS. & PROF. CODE, *supra* note 169 (requiring a physical therapist to have an accredited degree prior to licensing).

426. See *supra* Part II.

427. See Johnson, *supra* note 87, at 288-300.

428. In addition to a plethora of available Internet sources for researching the validity and quality of degrees from specific institutions, a hard copy directory of accredited institutions is published each year by Higher Education Publications, Inc. See, e.g., 2003 HIGHER EDUCATION DIRECTORY (2003) (Jeanne M. Burke, ed.) (listing all U.S. post-secondary, degree-granting institutions that are accredited by regional, national, professional and specialized agencies recognized as accrediting bodies by the U.S. Department of Education).

429. See *supra* Part I.B.

430. See *id.*

431. FLA. STAT. ANN. § 817.567 (West Supp. 2006); 720 ILL. COMP. STAT. ANN. 5/17-2.5 (West Supp. 2005); IND. CODE ANN. § 24-5-0.5-12 (West 2006); IOWA CODE ANN. § 715A.6A (West 2003); MICH. COMP. LAWS ANN. § 390.1604 (West Supp. 2006); N.J. STAT. ANN. §§ 18A:3-15.1-15.3, 15.5 (West 1999); N.D. CENT. CODE § 15-20.4-15 (2003); OR. REV. STAT. § 348.609 (2005); WASH. REV. CODE ANN. § 28A.415.024 (West Supp. 2006).

432. 720 ILL. COMP. STAT. ANN. 5/17-2.5 (West Supp. 2005).

professional credentials.⁴³³ Washington prohibits teachers from using fraudulent or unaccredited degrees to obtain promotions or raises.⁴³⁴ Some states classify these acts as misdemeanors,⁴³⁵ while others impose civil penalties⁴³⁶ on the people who have obtained such degrees.⁴³⁷

Oregon has been particularly aggressive in the fight against bogus and unaccredited schools. It maintains a website with a list of these schools and provides a wealth of information about diploma mills and other educational matters.⁴³⁸ In Oregon, a person who continues to represent that he has a degree, even when he or she has been warned that the degree does not satisfy any recognized accreditation standards,⁴³⁹ is subject to civil penalties.⁴⁴⁰ A civil suit may be brought against the person in the circuit court for legal or equitable remedies, including injunctive relief, to enforce compliance with state law.⁴⁴¹ In addition, attorneys' fees and court costs may be recovered by the state for these actions.⁴⁴² A person claiming an unrecognized degree also commits the crime of falsely claiming possession of a degree, a Class B misdemeanor.⁴⁴³

Oregon's enforcement was recently challenged in a lawsuit filed by Kennedy-

433. See, e.g., N.J. STAT. ANN. § 18A:3-15.3 (West 1999) ("A person shall not append to his name any letters . . . unless the person has received from a duly authorized institution of higher education the degree or certificate for which the letters are registered."); IND. CODE ANN. § 24-5-0.5-12(b) (West Supp. 2004) (declaring that it "is an incurable deceptive act for an individual, while soliciting or performing a consumer transaction, to claim to be a: (1) physician . . . (2) chiropractic physician . . . (3) podiatric physician" unless the person holds a license, as authorized, under a specific Indiana statute).

434. WASH. REV. CODE ANN. § 28A.415.024(1) (West Supp. 2006) ("All credits earned in furtherance of degrees earned by certified staff, that are used to increase earnings on the salary schedule . . . must be obtained from an educational institution accredited by an accrediting association recognized by rule of the state board of education.").

435. FLA. STAT. ANN. § 817.567(3) (West 2006) (stating that the penalty is a misdemeanor of the first degree); 720 ILL. COMP. STAT. ANN. 5/17-2.5 (West Supp. 2005) (stating that the penalty is a class A misdemeanor); IOWA CODE ANN. § 715A.6A (West 2003).

436. See, e.g., MICH. COMP. LAWS ANN. § 390.1605 (West Supp. 2006) (providing for a fine of \$100,000); OR. REV. STAT. § 348.609.5(b) (2005) (providing for a penalty of \$1,000); WASH. REV. CODE ANN. § 28A.415.024(4)(b) (West Supp. 2006); IND. CODE ANN. § 24-5-0.5-8 (West 2000) (providing for a penalty of \$500).

437. North Dakota is the only state that has different penalties for suppliers and users of fake degrees. See N.D. CENT. CODE § 15-20.4-15 (2003) (recognizing that there is a difference in culpability between those who use false degrees and those who issue them, North Dakota makes use of fraudulent degrees a class A misdemeanor, while issuing fraudulent degrees is a class C felony).

438. See OREGON OFFICE OF DEGREE AUTHORIZATION, *supra* note 161.

439. See, e.g., Letter from Office of Degree Authorization, State of Oregon, Oregon Student Assistance Commission, to Jeanette Louise Beckelhymer, (Feb. 18, 2004) (warning Ms. Beckelhymer from claiming a master's degree from William Carey International University in Pasadena, California). William Carey International University is now listed at Oregon's website as an unaccredited school approved by the Office of Degree Authorization.

440. OR. REV. STAT. § 348.609.5(b)(2005).

441. *Id.* § 348.609(5)(a).

442. *Id.*

443. See *id.* § 348.992 ("Violation of any of the provisions of ORS 348.594 to 348.615 by any person individually or on behalf of an organization or group is a Class B misdemeanor.").

Western University and three of its graduates, claiming violation of free speech rights.⁴⁴⁴ Seeking to avoid costly litigation, Oregon and Kennedy-Western entered into a settlement agreement, under which Oregon changed its law to allow a person to use a degree not recognized by Oregon if he or she discloses the degree as unaccredited.⁴⁴⁵ But nothing in the settlement or the amended statute requires unaccredited schools to inform their students that their degrees are unaccredited. Failure to insist that an unaccredited school disclose its lack of accreditation is problematic⁴⁴⁶ given that many unaccredited schools misrepresent their accreditation status.⁴⁴⁷ Consequently, “graduates” of Kennedy-Western and other unaccredited schools are likely to continue to break Oregon’s law (and laws from other states), thereby risking criminal liability if they mistakenly believe the schools are accredited.

Because criminal prosecution of consumers who obtain bogus degrees is warranted in the extreme situations already covered by state law, punishing holders of substandard degrees would be both harsh and an unwise use of prosecutorial resources given that *some* holders of such degrees are victims themselves.⁴⁴⁸ Separating “victims” from “participants” would likely entail difficult and time-consuming investigation because prosecutors would have to prove actual intent to commit degree fraud. This article proposes a more moderate program of public education and workplace discipline to deter individuals from obtaining substandard degrees or using them to deceive others. In this way, state and federal governments can help consumers obtain the knowledge they need to help protect themselves—without unduly penalizing holders of substandard degrees for their own victimization.

B. Proposal to Launch a Media Awareness Campaign

To decrease the demand for fake and substandard unaccredited degrees, state higher education agencies and the Education Department should implement a public service announcement campaign warning the public about such degrees.⁴⁴⁹

444. See Complaint, *Kennedy-Western U. v. Contreras*, (D.Or. 2004) (No. 04-1023-HU (suing Alan Contreras, Administrator of the Oregon Student Assistance Commission Office of Degree Authorization, and Hardy Myers, Attorney General for the State of Oregon). Kennedy-Western was highly motivated to challenge Oregon because of the potential loss in profits, which in 2003 amounted to almost \$25 million paid by its nearly 10,000 students currently enrolled. See *Bogus degree hearings*, *supra* note 29, at 39.

445. See *supra* note 362.

446. Some graduates of Kennedy-Western and other unaccredited schools feel cheated once they realize the type of education they have received because they cannot reap the full benefits of having obtained a college degree. See *supra* Part II.C.3 (discussing complaints by students who obtained degrees from Kennedy-Western). See also EZELL & BEAR, *supra* note 13, at 40 (referencing “Dr.” Laura Callahan, who was such a victim because, although she took steps to educate herself about avoiding diploma mills, she was still duped by one).

447. See *supra* Part II.B.2.

448. See *supra* Part II.B.

449. While the risk of discovering the true nature of a diploma mill degree was once slight, experts believe that the tide is already changing thanks to a number of well-publicized, individual cases. See EZELL & BEAR, *supra* note 13, at 116. A widely disseminated public service

The campaigns should focus first on warning potential students of the education and career hazards of these degrees, as well as about viable alternatives such as community colleges, and low-interest loans for accredited degree programs.⁴⁵⁰ The announcements should also inform consumers that they could be criminally prosecuted in states forbidding the use of such degrees.⁴⁵¹ Consumers should be directed to web links that contain lists of accredited schools and information about the ways in which they can identify fake schools.⁴⁵² A mechanism should be provided for the consumer to report fake schools to the proper authorities. In addition to warning potential students, the announcements could warn the public about the dangers of receiving services from professionals with fake and unaccredited degrees. It would also be prudent to include a special caution on international diploma mills and dubious accreditations conferred by unstable foreign governments.⁴⁵³

Several states and the U.S. Education Department have already begun campaigns of this nature, which could be broadened. Oregon, Michigan, and the Education Department all maintain information on their websites about which schools are accredited or unaccredited.⁴⁵⁴ Maine recently enacted a statute that requires the state to provide, “via publicly accessible sites on the Internet, information to protect students, businesses and others from persons, institutions or entities that issue, manufacture or use false academic degrees.”⁴⁵⁵ The statute also requires publication of all known “diploma mills, degree mills, accreditation mills and substandard schools or institutions of higher education.”⁴⁵⁶ By consulting all these websites, a person should be able to determine whether a degree provider is legitimate so as to avoid civil or criminal liability. These websites also make valuable information available to employers and the public, and they should be replicated in other states. The purpose of the mass media campaign, however, is to make prospective students and the public aware of the substandard degree problem and inform them of the useful information at these websites.

Some of the costs of public awareness campaigns could be drawn from the

campaign would expand this trend exponentially.

450. Johnson, *supra* note 87, at 309-310 (discussing the viability of community colleges as an alternative to enrolling in accredited four-year institutions because community colleges are generally accessible and affordable to all).

451. See *supra* Part IV.A (discussing states where a person’s use of fake or unaccredited degrees is a crime).

452. See U.S. Dep’t of Educ., Postsecondary Educational Institutions and Programs Accredited by Accrediting Agencies and State Approval Agencies Recognized by the U.S. Secretary of Education, <http://www.ope.ed.gov/accreditation/> (last visited July 28, 2005) (providing a web page where the public can search a school’s name and see if it is accredited by an ED-recognized accrediting agency); MICHIGAN’S LIST OF NON-ACCREDITED COLLEGES/UNIVERSITIES, *supra* note 3 (providing a lists of unaccredited schools).

453. See EZELL & BEAR, *supra* note 13, at 69–70 (discussing how international diploma mills take advantage of corrupt governments to represent themselves as legitimate).

454. See MICHIGAN’S LIST OF NON-ACCREDITED COLLEGES/UNIVERSITIES, *supra* note 3; OREGON OFFICE OF DEGREE AUTHORIZATION, *supra* note 161.

455. 20A ME. REV. STAT. ANN. § 10804 (West Supp. 2005).

456. *Id.*

assets of diploma mills closed through prosecution under tougher regulations.⁴⁵⁷ Current law already allows the law enforcement agencies to seize these assets under specified circumstances.⁴⁵⁸ Some of the proceeds of assets seized could also be used to supplement governmental financial aid assistance for low-income students attending accredited programs—an alternative that would, of course, be further promoted through the awareness campaigns.⁴⁵⁹

The Ad Council creates many nationally-televised public service announcements (PSAs), and, through cooperation with the Education Department, could inspire honest consumers to get legitimate education credentials and unmask employees who have obtained dubious degrees. The campaign could aspire to the heights of the most famous higher education campaign, the United Negro College Fund slogan, “A Mind is a Terrible Thing to Waste,” which has been credited with inspiring the enrollment of African-Americans in colleges.⁴⁶⁰ With the help of the Ad Council, a possible campaign slogan could be: “Don’t be Duped by Deceptive Degrees,” or “Make Your Education Worth the Paper it’s Printed on.” A proposed degree fraud awareness campaign would meet the Ad Council’s four criteria: (1) the issue of concern would be sponsored by a government agency (the Education Department), (2) making consumers aware of bogus and substandard unaccredited degrees would be an issue completely non-partisan in nature, (3) the campaign would be national in scope because it would be relevant to a nationwide audience, and (4) federal coordination with state departments of education would create a national network to disseminate information.⁴⁶¹ Using multiple mediums such as Internet, radio, television, magazines, newspapers, and flyers, the campaign would ensure that the widest possible socioeconomic audience will receive proper warnings.

In addition, the Education Department could run a more covert awareness campaign by releasing investigative results to relevant local media outlets. Most

457. See *supra* Part III.C.2 (discussing proposed law to expand the scope of prosecutable offenses committed by operators of diploma mills).

458. See *supra* notes 290-326 and accompanying text (discussing the prosecution of several diploma mill operators and assets seized from their closure).

459. For example, the Education Department could join efforts with Colorado’s media campaign to promote increased enrollment in higher education. “College in Colorado” is a public and private partnership through which \$15 million will be used to promote new and existing scholarships, promote grants for low-income students to go to college, and fund a media campaign to raise awareness that money is available to send every Coloradan to college. See Chris Frates, *Teens Nudged Toward College[:] Low Participation Targeted*, DENV. POST, Jan. 18, 2005, at B1. That same media campaign could be used to educate students about how to tell legitimately accredited universities from diploma mills and inferior-quality unaccredited schools.

460. Since 1972, The United Negro College Fund has helped to raise more than \$2 billion to graduate 350,000 minority students from college with the help of the “A Mind is a Terrible Thing to Waste” slogan. See, AD Council, The Advertising Council: Effective Positive Social Change, <http://www.adcouncil.org/about/> (last visited Mar. 6, 2005).

461. See Ad Council, Frequently Asked Questions: General Questions, http://www.adcouncil.org/np/How_To_Official/ (last visited Mar. 8, 2005) (listing four criteria necessary to receive PSA sponsorship). Alternatively, the Education Department could run an independent advertising campaign with an Ad Council endorsement (entailing similar requirements to developing campaigns within the Ad Council). *Id.*

local television stations have a consumer affairs department or investigative reporter who would pick up on this information. The demand-side deterrent effect of a graduate of a diploma mill appearing on television in a shameful light could strengthen the effectiveness of a national media campaign.

A massive media campaign would also raise the awareness of employers as well. Alerted to the problem of bogus and unaccredited degrees, employers could then audit employee records to determine who has such degrees, particularly if the employer is a governmental entity.⁴⁶² The possibility of local reporters uncovering employees with such degrees may encourage some employers to expedite a degree-legitimacy auditing process for their own protection and reputation. In addition, media reports may increase pressure on local politicians and state legislatures to take stronger action against diploma mills. Educational quality and consumer fraud are important issues to voters.⁴⁶³ And in a time of increasing media attention on income inequality and job losses, regulation of operators of diploma mills and unaccredited degree schools/programs offers a politically low-cost way of protecting low-to-moderate-income workers.

C. Proposed Law for Disciplinary Action Against Employees With Substandard Degrees

The last proposal for curbing consumer demand for online substandard degrees is to establish a standard to determine when employers should discipline employees with substandard degrees. By establishing best practices with respect to federal employees, and amending federal law to discipline employees violating those practices, the federal government can both reduce the harm of substantially inferior degrees within its own ranks and set a model for state and private employers to follow. This section thus makes specific recommendations for federal law and employment practices with the intention that state and private employers would find these models useful to emulate.

First, all federal agencies should conduct regular degree-legitimacy audits. These audits are especially important for governmental employers because tax dollars may be paying for tuition reimbursements for unaccredited degrees or paying the salaries of such degree holders.⁴⁶⁴ If estimates about the existence of at

462. See *infra* Part IV.C (discussing employee audit proposal).

463. See, e.g., Kevin Begos, *Governor Fails to Wow Voters: Few Improvements Are Noted in Poll*, TAMPA TRIB., Nov. 24, 2005, at 6, available at 2005 WLNR 19943060 (stating that although improving education is a stated goal of Jeb Bush, 34 percent of Florida voters responded in a survey that the quality of education has not changed much during his seven years as governor); Martha Stoddard, *Amendment Would Protect Privacy Rights Worries about Government Intrusion into Private Lives Are Behind the Proposal*, OMAHA WORLD-HERALD, Feb. 19, 2006 at 3B, available at 2006 WLNR 3238882 (As a consumer protection measure, Nebraska residents have the opportunity to vote on “Legislative Resolution 254CA [which] would prohibit the state from making or enforcing ‘any law which infringes upon or interferes with the privacy of the person, family, home, property, documents, correspondence or information of any person.’”).

464. See *supra* notes 177-79 and accompanying text (discussing GAO report’s finding that government money has been used to reimburse employees for the cost of obtaining fake and unaccredited degrees).

least one million fake degrees are accurate, widespread employee personnel audits will undoubtedly uncover many fake and unaccredited degrees.⁴⁶⁵ With this information in hand, employers face a wide range of possible disciplinary actions that may be taken against the identified employees.

As discussed above, criminal prosecution is inappropriate for these employees; however, some form of discipline is necessary to deter the demand for fake and inferior-quality unaccredited degrees. A federal statute already forbids tuition reimbursement for unaccredited degrees,⁴⁶⁶ and this statute should be enforced. Moreover, an existing regulation provides that “an applicant, appointee, or employee may be denied Federal employment or removed from a position only when the action will protect the integrity or promote the efficiency of the service.”⁴⁶⁷ The criteria, however, for an agency to take such action are too generic to be applied to the problem at hand.⁴⁶⁸ Therefore the statute and the regulation should be amended to authorize discipline of a federal employee with a fake or unaccredited degree, allowing human resource supervisors to fire or demote the employee, reduce the employee’s salary, or require the employee to reimburse the government for any raises or employer-sponsored tuition money received. This article proposes a five-factor disciplinary test for employers to determine the proper action that should be taken against employees with these degrees. These factors include: (1) scrutinizing each employee in light of the employee’s previous education, (2) examining the level of deception practiced by the provider of the dubious degree, (3) assessing the employee’s job performance before and after obtaining the dubious degree, (4) comparing the employee’s job performance to the employer’s requirements for the position, and (5) assessing the level of integrity the employer needs to maintain.

The first of these five factors requires the supervisor to identify the type of degree obtained by the employee and to scrutinize it in light of the employee’s level of educational attainment prior to acquiring the dubious degree. This factor acknowledges the educational naiveté of many workers before they obtain at least their first post-secondary degree.⁴⁶⁹ For instance, if an employee obtains a bogus or unaccredited degree but has never attended college, that factor weighs in favor of leniency. Indeed, it might establish a presumption of innocence unless one of

465. See EZELL & BEAR, *supra* note 13, at 29 (estimating over one million fake degrees sold). See also Christopher Byron, *Fee For Certificate - Executive Resumes Padded By Sheaves Of Faux Sheepskin*, N.Y. POST, July 27, 2004, at 41 (reporting that, in a search of filings by companies to the United States Securities & Exchange Commission, “15 different chairmen and CEOs, 29 corporate board members and 40 other top officials of public companies . . . have burnished their resumes with diplomas and degrees from Barrington U. and 17 similar [diploma mill] operations”).

466. See 5 U.S.C. § 4107(a) (2004).

467. See 5 C.F.R. § 731.201 (2004).

468. See *id.* § 731.202 (2004).

469. The rationale behind treating the high-school graduate differently from the college-educated is that the college-educated may be presumed to have greater sophistication in differentiating between authentic and illegitimate post-secondary education. Having completed course work in a traditional college setting, the educated worker knows a degree is not earned when one has to do a small amount of work to obtain it.

the other factors militates in favor of discipline. Conversely, if an employee already held a traditional bachelor's or associate's degree prior to getting the bogus or unaccredited degree, that factor suggests more sophistication on the employee's part and might establish a presumption of guilt.⁴⁷⁰ Other facts such as the culpability of the degree provider would be necessary to swing the pendulum back in favor of the employee.

The second factor in the disciplinary test requires scrutiny of the level of deception practiced by the online provider of the dubious degree. The areas of deception include misrepresentations about accreditation, amount of course work, and quality of education. The employer should objectively evaluate the representations made on the degree provider's web pages and in the written materials sent to the employee. The supervisor should search for answers to questions like the following: Did the degree provider convey the impression that little or no work was involved, credit heavily the employee's prior learning or life experiences, or grant the degree shortly after the employee paid for the degree or completed the course packet?⁴⁷¹ Did the provider try to create an aura of legitimacy by using a name very similar to a reputable and traditional accredited college or university, by claiming accreditation from fake or non-ED-recognized accrediting agencies, by misrepresenting its state-licensing status, or by claiming compliance with non-existent federal guidelines on crediting an employee's life or learning experience?⁴⁷² Did the provider claim to provide education on par with similar legitimate institutions by claiming affiliation with reputable schools and posting testimonials about the quality of the instruction?⁴⁷³ The employer should probably conclude that no discipline, other than a reprimand, is necessary when the employee's level of sophistication was minimal and the deception perpetrated by the online degree provider was great. On the other hand, if the employee was more educationally-sophisticated and the bogus nature of the degree was readily apparent, harsher discipline is probably appropriate.⁴⁷⁴

The third part of the disciplinary test requires the employer to assess the employee's performance. Based on previous evaluations, employers should be able to determine if the worker has been performing the job satisfactorily, regardless of whether or not he possesses the credentialed degree. If the online degree provider required the completion of real academic work, the employer should assess whether the employee's job performance actually improved after

470. See *supra* notes 1-4 and accompanying text (discussing arbiter's denial of pay increases to two teachers who obtained doctorate degrees from a substandard school because the teachers should have realize the doctoral program was substandard as a result of previous experience in obtaining degrees from reputable accredited schools)

471. See *EZELL & BEAR, supra* note 13, at 82-102 (providing lists of deceptive practices that diploma mills engage in to mislead people).

472. See *Bogus Degree Hearings, supra* note 29 at 3 (opening statement of Senator Collins).

473. See *EZELL & BEAR, supra* note 13, at 82-102.

474. See, e.g., *id.* at 185 (At his criminal trial, a state psychologist with a degree from a diploma mill stated that he was not bothered by the diploma mill's lack of a telephone or mailing address or the mill's willingness to grant him a doctorate degree based on his life experiences. In closing argument, the prosecutor stated: "There sits a man who clearly spent more time deciding which candy bar to buy from the vending machine than he did in choosing his university.").

obtaining the unaccredited degree. Strong work performance, both before and after obtaining the questionable degree, should weigh in the employee's favor.⁴⁷⁵

Under the fourth part of the disciplinary test, the employer should assess the employee's performance in view of employer's requirements for the job position. The nature of the employment itself must be considered before taking action. Employers may be acting unfairly if they terminate or demote employees for falsely claiming accredited degrees when the degrees are not necessary for job performance.⁴⁷⁶ While the job description may indicate that a degree is preferred or required, care should be taken to make sure a degree is reasonably necessary to perform the job.⁴⁷⁷

An employer's application of factors three and four could lead, for instance, to the conclusion that even though a graduate of Concord Law School hired as an entry-level attorney is performing well, her lack of a law degree from a school accredited by the American Bar Association limits her usefulness because she cannot obtain a license to litigate in any courts where the employer is located.⁴⁷⁸ Therefore, if the employee is in a state where an ABA-accredited degree is necessary to obtain a license to practice, the employer is free to fire the employee for not possessing such a degree. Conversely, if the United Parcel Service ("UPS"), which recruits students on college campuses to fill part-time package handling positions, discovers an employee working as a package handler obtained his associate's degree from an online unaccredited school, the employee should not be fired if he is performing competently.⁴⁷⁹ A college degree is not necessary to perform this position.⁴⁸⁰

The fifth and final factor for a supervisor to consider is the level of integrity the employer needs to preserve by focusing on integrity in the hiring process, integrity in educational claims, and integrity in services or goods provided by the employer's workforce. Because maintaining a high level of integrity may be necessary, a personnel supervisor could terminate or demote an employee even though the employee's culpability was minimal and the degree provider's deception was pervasive. In applying this factor, the forced resignation of "Dr." Laura Callahan from her post as a senior-level director in the Department of Homeland Security may have been justified by integrity concerns even if one believes she was competent and believes her claims that she investigated diploma

475. See, e.g., Johnson, *supra* note 87, at 303-05 (discussing Charles Abell, top official in the Department of Homeland Security, and how his superiors supported his retention despite his attainment of a master's degree from a reputed diploma mill).

476. See *id.* at 288-300 (explaining how employers act unfairly when they insist on job applicants having college degrees to fill low-to-moderate-skill positions).

477. See *id.* at 311-30 (explaining how employers risk liability under federal anti-discrimination law when they prefer employees with college education over those having only a high school diploma if the college education is not a business necessity and manifestly related to successful job performance).

478. See *supra* notes 153-54 and accompanying text.

479. See Johnson, *supra* note 87, at 299-300 (discussing UPS's hiring practices and how it may be violating federal anti-discrimination law when it prefers individuals with college education when filling package handling positions).

480. *Id.*

mill Hamilton University before obtaining three degrees from it.⁴⁸¹

The five-factor test seeks to prevent employers from losing otherwise competent workers due to lack of proper credentials as well as to protect employees who may have themselves been victims of deception. While firing is an ultimate punishment, the test allows lesser sanctions such as demotions and salary reductions. Applying the five factors will still send a strong message to employees and will, hopefully, deter the pursuit of fake and unaccredited degrees. Even if an employer decides that an employee does not deserve any serious disciplinary action, the employer should at least formally reprimand an employee who obtains a fake or unaccredited degree. In addition, the employee should be forced to return any tuition support received regardless of the employee's naivety. Such a sanction will serve a restitution purpose and preserve limited resources for employees seeking to legitimately educate themselves.

As a final step in regulating their workforces, federal employers should review their own degree requirements, hiring procedures, and promotion processes, and assure that required degrees correspond to genuine job needs. They should then communicate clearly to the workforce their standards for degrees, hiring, promotions, raises, and tuition reimbursement as well as the penalties employees may suffer if they do not meet those standards. Encouraging quality education advances the interest of both employers and employees. By adopting these measures, the federal government can both enhance its own extensive workforce and serve as a welcome model for state and private employers. When combined with the mass media campaign and legislative changes proposed elsewhere in this article, the federal government's lead in setting disciplinary standards may have a substantial impact on private employers.

CONCLUSION

The proliferation of fake and substandard unaccredited schools is an international epidemic. The Internet has greatly enhanced the ability of these schools to operate, both by reaching out to unsophisticated consumers and by facilitating their movement across jurisdictional lines. Other countries have already taken aggressive steps against fraudulent and substandard unaccredited institutions that purport to offer postsecondary education. For example, in September 2004, Iran's Ministry of Science, Research, and Technology froze the financial accounts of Ardeshir Qassemlu, chancellor of American University of Hawaii's Tehran campus, and issued an order banning him from leaving Iran.⁴⁸²

481. See EZELL & BEAR, *supra* note 13, at 291–95 (providing Callahan's prepared statement explaining how she investigated Hamilton University but erroneously concluded it was legitimate). Callahan's competency has also been questioned. See Paul Sperry, *Cut-Rate Diplomas*, REASON, Jan. 1, 2005, at 38, available at 2005 WLNR 2108888 (stating that Callahan drew a six-figure salary even though all three of her degrees were from diploma mill Hamilton University in Wyoming and that "Callahan's [heavy-handed] management practices had led to 'low morale' among her 60 federal employees and 65 contractors").

482. See, *Diploma Mills' Activities Reflect Iran's Bigger Problems* RADIO FREE EUROPE/RADIO LIBERTY (Sept. 27, 2004), <http://www.rferl.org/reports/iran-report/2004/09/33-270904.asp> (Qassemlu, whose only academic degree was issued by American University of Hawaii, formerly

These affirmative acts of enforcement followed a three-year mass media campaign designed to shine a spotlight on the institution's scheme that sold some eight thousand bogus degrees to Iranian citizens over a ten-year period.⁴⁸³ Iranian officials view substandard schools as a primary target in their plan for the overall improvement of Iran's education system.⁴⁸⁴

Unlike some countries, America's current enforcement mechanisms and activities are woefully inadequate to protect the public from peddlers of substandard degrees. America's patchwork of laws in a few jurisdictions, combined with low-enforcement priority on a state and federal level, have allowed operators of diploma mills and inferior-quality unaccredited schools to proliferate. Congress should step into the breach by enacting the Authentic Credentials in Higher Education Act and strengthening oversight of federal employers. At the same time, federal and state agencies should coordinate a massive media campaign to raise awareness about the public and personal harms perpetrated by individuals with substandard degrees. Finally, state and private employers can follow the proposed five-factor test for federal employers to deter the demand for these degrees by reprimanding current employees who have them and following good credential-checking procedures. These measures will help safeguard the integrity of legitimate higher education, protect vulnerable consumers, restore integrity to the hiring and promoting processes, and improve America's workforce.

spent one year in prison on a fraud conviction.) (last visited July 21, 2006).

483. *Id.*

484. *Id.*