

**Prepared Statement of  
The Federal Trade Commission**

**Before the  
Subcommittee on Competition, Infrastructure, and Foreign Commerce  
of the Committee on Commerce, Science, and Transportation**

**United States Senate  
Hearing on P2P File-Sharing Technology**

**Washington, D.C.**

**June 23, 2004**

I. Introduction

Mr. Chairman and members of the Committee, I am Howard Beales, Director of the Bureau of Consumer Protection, Federal Trade Commission (“Commission” or “FTC”).<sup>1</sup> I appreciate this opportunity to provide the Commission’s views on peer-to-peer (“P2P”) file-sharing and protecting consumers online.<sup>2</sup>

The Federal Trade Commission is the federal government’s principal consumer protection agency. Congress has directed the Commission, under the FTC Act, to take law enforcement action against “unfair or deceptive acts or practices” in almost all sectors of the economy and to promote vigorous competition in the marketplace.<sup>3</sup> With the exception of certain industries and activities, the FTC Act provides the Commission with broad investigative and enforcement authority over entities engaged in, or whose business affects, commerce.<sup>4</sup> The FTC Act also authorizes the Commission to conduct studies and collect information, and, in the public interest, to publish reports on the information it obtains.<sup>5</sup>

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<sup>1</sup>The written statement presents the views of the Federal Trade Commission. Oral statements and responses to questions reflect my views and not necessarily those of the Commission or any individual Commissioner.

<sup>2</sup>The views contained in this testimony are expressed to assist you in your review of peer-to-peer file sharing technology. Official Commission determinations of the legality of practices under the Federal Trade Commission Act are ordinarily made based on a complete record, after notice and the opportunity to fully brief the issues being considered. Thus this letter testimony should not be viewed as a final Commission resolution of the legality of the acts and practices discussed herein.

<sup>3</sup>15 U.S.C. § 45.

<sup>4</sup>In addition to the FTC Act, the Commission also has responsibility under 46 additional statutes governing specific industries and practices.

<sup>5</sup>15 U.S.C. §§ 46(b) and (f). Section 46(f) of the FTC Act provides that “the Commission shall also have the power . . . to make public from time to time such portions of the information

## II. P2P File-Sharing Technology

P2P file-sharing services make available for downloading computer programs that enable users to share computer files with other users of that file-sharing program. These files may be music, video, or data files. The files do not reside in a central location, but rather are stored on the hard drives of the individual users of the file-sharing software. File-sharing applications work by making selected files on a user's computer available for upload, which in turn gives the user access to selected files on the computers of other users on the same P2P file-sharing network (hence the name, peer-to-peer).<sup>6</sup> Each user on a particular P2P file-sharing network places files in a shared folder on his or her own hard drive and can label or designate these files in any manner he or she chooses.

P2P file-sharing programs eliminate the need for a central storage point for files, and, e computerR canto.3

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obtained by it hereunder as are in the public interest; and to make annual and special reports to Congress . . . .”

<sup>6</sup>See “P2P Fear and Loathing: Operational Hazards of File Trading Networks,” John Hale, Nicholas Davis, James Arrowood, and Gavin Manes, Center for Information Security, University of Tulsa, September 2002, at 2. *See also* “File-Sharing Programs: Peer-to-Peer Networks Provide Ready Access to Child Pornography,” General Accounting Office Report to the Chairman and Ranking Minority Member, Committee on Government Reform, U.S. House of Representatives, Feb. 2003, at 21; Letter from Linda D. Koontz, Director, Information Management Issues, General Accounting Office, to The Honorable Orrin G. Hatch, dated Nov. 14, 2003.

<sup>7</sup>An example is the P2P file-sharing system used by Lindows, the developer and vendor of Linux-based operating systems, to distribute its Linux operating system software. Lindows uses a P2P file-sharing technology called BitTorrent, which breaks a typical 500MB Lindows Operating System file into about 1,000 pieces, which are then transported independently for reassembly at the customer's computer.

requires less bandwidth.

Downloading and using P2P file-sharing programs, however, sometimes also creates

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<sup>8</sup>See “P2P Fear and Loathing: Operational Hazards of File Trading Networks,” *supra* note 6, at 2.

<sup>9</sup>69 Fed. Reg. 8538 (Feb. 24, 2004), at [www.ftc.gov/os/2004/02/040217spywareworkshopfrn.pdf](http://www.ftc.gov/os/2004/02/040217spywareworkshopfrn.pdf).

<sup>10</sup>See, e.g., “Usability and Privacy: A Study of Kazaa P2P File-Sharing,” by Nathaniel S. Good (HP Laboratories) & Aaron Krekelberg (University of Minnesota), June 2002; *see also* “Kazaa Users Often Expose Personal Files,” by Steven Musil, Cnetnews.com, June 6, 2002. This risk of inadvertently sharing personal files appears to have decreased because the default settings of most of the popular P2P file-sharing programs currently only share files in a special “shared” folder created by the program or in other folders that the user specifically selects.

<sup>11</sup>See “P2P Fear and Loathing: Operational Hazards of File Trading Networks,” *supra* note 6, at 2.

that may subject them to civil or criminal liability under laws governing copyright infringement and pornography.<sup>12</sup> Because of the way the files are labeled, individuals, including children, may be exposed to unwanted and disturbing images.<sup>13</sup> The Commission is concerned with the exposure of individuals, especially children, to unwanted pornographic materials through deceptive practices.<sup>14</sup>

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<sup>12</sup>See 17 U.S.C. §§ 502-505, 506, and 509 (civil and criminal liability for copyright infringement); 18 U.S.C. § 2252 (criminal liability for possession or distribution of child pornography). Distributing pornography to children is a criminal violation under the laws of most, if not all, states. We are not aware, however, of any criminal prosecutions for the unintentional redistribution of pornography via P2P file-sharing.

<sup>13</sup>In connection with its oversight of the marketing of violent entertainment to children, the Commission staff recently examined four popular P2P file-sharing services (Kazaa, Morpheus, LimeWire, and Overnet) to assess what online disclosures, if any, were made regarding the content of individual files shared by users of these services. Each of the P2P file-sharing programs offered some type of filter to exclude unwanted content. All of these filters, however, operate by examining language found in the title or descriptor of the file, rather than the content of the file. Thus, these filters may not be effective when users label files inaccurately, which can result in the transfer of files with pornographic or other unwanted content. This is particularly a problem because P2P technology necessarily involves sharing information with other users rather than with a centralized source.

<sup>14</sup>For example, the Commission sued John Zuccarini who, in a ploy designed to capture teenaged and younger Internet users, registered 15 variations of the popular children's cartoon site, [www.cartoonnetwork.com](http://www.cartoonnetwork.com), (e.g., "cartoon netwok" instead of "cartoon network") and 41 variations on the name of teen pop star, Britney Spears. *FTC v. John Zuccarini*, No. 01-CV-4854 (E.D. Pa. 2002). The Commission alleged in its complaint that surfers who looked for a site, but misspelled its Web address, were taken to the defendant's sites. Once consumers arrived, Zuccarini's Web sites were programmed to take control of their Internet browsers and force the consumers to view explicit advertisements for pornographic Web sites. The Commission obtained a permanent injunction and a \$1.8 million judgment. The United States Attorney's Office for the Southern District of New York also indicted Mr. Zuccarini with violations of the Truth in Domain Names Act and possession of child pornography. He was sentenced to 30 months in prison.

More recently, pursuant to the CAN-SPAM Act (the Controlling the Assault of Non-Solicited Pornography and Marketing Act), the Commission adopted a final rule requiring that

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the phrase “SEXUALLY-EXPLICIT: “ be included in the subject line of spam that contains sexually oriented material in order to inform recipients that a spam message contains such material and to make it easier to filter out messages that recipients do not wish to receive.*See* 69 Fed. Reg. 21,024 (Apr. 19, 2004), at <http://www.ftc.gov/os/2004/04/040413adultemailfinalrule.pdf>. When opening such an email, the recipient must see the electronic equivalent of a “brown paper wrapper” in the body of the message. The first portion of the message must include the phrase “SEXUALLY-EXPLICIT” and certain other specified information but no other information or images.

<sup>15</sup> *See* Recording Industry Association of America Press Release, “RIAA Brings New Round of Cases Against Illegal File Sharers” (Mar. 23, 2004).

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<sup>17</sup>See “File-Sharing: A Fair Share? Maybe Not,” at [www.ftc.gov/bcp/online/pubs/alerts/sharealrt.htm](http://www.ftc.gov/bcp/online/pubs/alerts/sharealrt.htm).

<sup>18</sup>In April 2004, the Commission likewise alerted businesses to the potential security risks of P2P file-sharing programs. The Council of Better Business Bureaus, with the cooperation of the Commission and the National Cyber Security Alliance, produced and widely distributed a

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<sup>24</sup>Seven of the eight P2P file-sharing software programs that bundled software (usually adware) with their programs disclose this fact to consumers. Eight of the ten P2P file-sharing

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<sup>27</sup> Letter dated May 20, 2004, from Martin C. Lafferty, CEO, Distributed Computing