

CAP ANALYSIS

Attachment to the Statement of James C. Miller III, Chairman The CapAnalysis Group, LLC

**Federal Trade Commission Workshop on
Peer-to-Peer File-Sharing Technology:
Consumer Protection & Competition Issues**

December 15, 2004

Overview

- P2P technology holds great promise for the future
- Major current P2P software providers, however, profit from consumers' ignorance of the substantial risks that arise from engaging in file-sharing
- The FTC and other law enforcement agencies have recognized that these software providers **do not** disclose as much risk information as they should
- While consumer education programs and promises of voluntary cooperation offer some help, history teaches that the major P2P providers will not change their current practices unless compelled to do so

P2P Market Characteristics Are Conducive to Deception

Demand Side

- Product characteristics/defects difficult to observe and evaluate
- Consumers are largely teenagers and children
- Parents are unsophisticated or unaware
- Consumers engaged in socially/legally disapproved activities unlikely to complain

Supply Side

- Strong incentives for “cheating”/advertising-based revenue model
- Low costs of entry/exit to P2P business – no sunk costs/reputational capital
- Suppliers are sophisticated avoiders of legal liability

The FTC's Long-Established Deception Standard

FTC POLICY STATEMENT ON DECEPTION

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

October 14, 1983

Certain elements undergird all deception cases. *First, there must be a representation, omission or practice that is likely to mislead the consumer. . . . Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances. . . . Third, the representation, omission, or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service.*

- The FTC's deception standard since at least 1983 has been a material representation or omission likely to mislead a reasonable consumer
- Qualifying information, when required, must be stated clearly and conspicuously

The FTC's Long-Established Deception Standard

- The current advertising practices of the major P2P software providers, as reflected in their Internet websites, do not comply with these standards
 - As many comments to this Workshop explain, the current business model of these providers thrives on consumer ignorance, with the goal of driving as much user traffic as possible (thereby keeping advertising rates high) while failing to disclose clearly and conspicuously the substantial risks of file-sharing
- **Examples of violations from several major current P2P software providers follow**



KaZaA

- KaZaA's express "No Spyware" commitment is materially misleading
 - KaZaA is the #1 spyware threat on the Internet
 - The disclosures KaZaA provides on bundled third-party software are woefully inadequate
- KaZaA also fails to adequately warn consumers about the risks of file-sharing
- Despite its claims to the contrary, KaZaA does not provide an effective content filter
- Consumers have been misled and harmed by these and other practices

The Alleged “No Spyware Commitment”

KAZAA

FEATURES THE GUIDE PRIVACY ABOUT US HOME

ADVERTISEMENT

THE GUIDE

- ▶ [How P2P and Kazaa Works](#)
- ▶ [Make It](#)
- ▶ [Magnet Links](#)
- ▶ [Parents Guide to Kazaa](#)
- ▶ [Kazaa is 100% Legal](#)
- ▶ [Security and Privacy](#)
- ▶ ['No Spyware' commitment](#)
- ▶ [How is Kazaa free?](#)

Sharman's No Spyware Commitment

- Kazaa does NOT install or delete software from your computer without your permission.
- Kazaa does NOT contain software that gathers personally identifiable information about you.
- Kazaa and its partners securely process any credit card or transaction information you may give.
- Kazaa does NOT contain software that monitors keyboard strokes.
- Kazaa does NOT deceptively install software that centrally records your personally identifiable internet usage.
- Kazaa does NOT prevent your efforts to remove Kazaa.

The official, certified versions of Kazaa software - Kazaa and Kazaa Plus - are accessible from Sharman Networks and its authorized publishers through www.kazaa.com.

Kazaa, which is supported by advertising, and Kazaa Plus, which is not advertising supported, do not deliver software -- which we refer to as "spyware" -- that is installed without your prior consent or that gathers any personally identifiable information without your consent.

Unofficial, fake or hacked versions of the software might include spyware. These are not products of Sharman Networks or its authorized publishers and always infringe the Kazaa copyright. Use caution before downloading and/or installing all software.

[Kazaa Home](#) | [News](#) | [End User Licence Agreement](#) | [Your Privacy](#) | [Languages](#) | [About Sharman Networks](#) | [Features](#) | [Contact Us](#)

Copyright: Sharman Networks Ltd does not condone activities and actions that breach the rights of copyright owners. As a Kazaa user you have agreed to abide by the End User License Agreement and it is your responsibility to obey all laws governing copyright in each country.

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“No Spyware” – But What About Cydoor and GAIN?

Kazaa Media Desktop Installer

Kazaa Media Desktop Installer

HOW TO INSTALL KAZAA

Important Information

[Kazaa Media Desktop End User License Agreement](#)

[Altnet Peer Points Manager and My Search Toolbar End User License Agreements](#)

Important Information: What You Agree to Install

Step 2 of 6

Kazaa Media Desktop file sharing application. With:

- Bullguard Virus Protection
- Altnet Topsearch
- PerfectNav

Altnet Peer Points Manager Package. Reward application with:

- Altnet Peer Points Components
- My Search Toolbar
- Joltid P2P Networking

Sharman Networks respects your privacy. [Read the privacy policy](#). You must read and agree to the licenses linked from the left or below before continuing.

I agree to the [Kazaa Media Desktop End User License Agreement](#) and [Altnet Peer Points Manager Package End User License Agreements](#).

Kazaa Media Desktop is a free download supported by advertising from:

- Cydoor
- The GAIN Network

Cancel

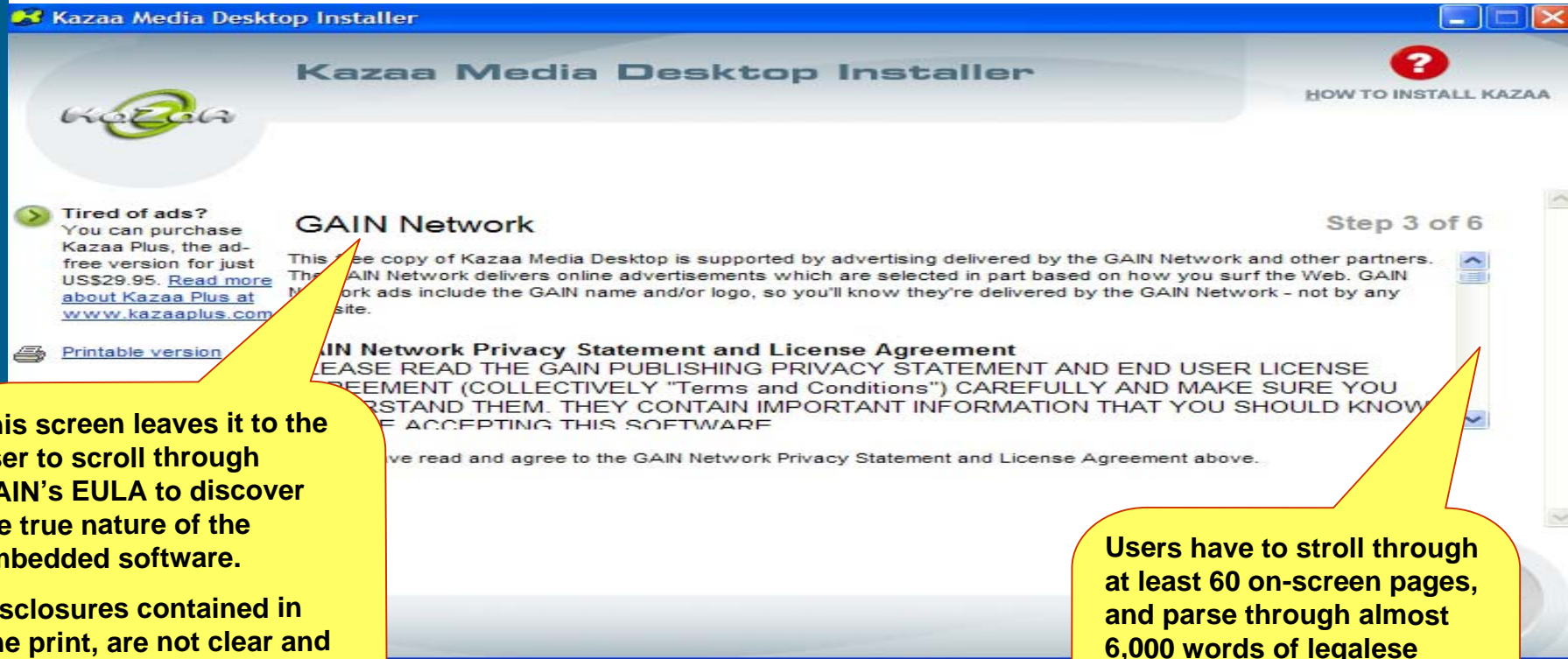
Cydoor and GAIN both distribute spyware

Their software collects personally identifiable information and tracks web browsing

Cydoor and GAIN

- *Computer Associates* recently ranked KaZaA as the **#1 Spyware Threat on the Internet**
- KaZaA fails to clearly and conspicuously disclose information about the spyware bundled with its software
- Moreover, the fact that KaZaA bundles Cydoor and GAIN contradicts its “No Spyware Commitment”

Disclosures that KaZaA Does Provide Are Not Clear and Conspicuous



This screen leaves it to the user to scroll through GAIN's EULA to discover the true nature of the embedded software.

Disclosures contained in fine print, are not clear and conspicuous (FTC 1983 Policy Statement on Deception)

Meanwhile, in Section 9 of its own EULA, KaZaA disclaims all liability for GAIN and other bundled third-party software

Users have to stroll through at least 60 on-screen pages, and parse through almost 6,000 words of legalese

According to the FTC's *Dot Com Disclosures*, such scroll bars do not provide clear and conspicuous disclosure

Disclosures that KaZaA Does Provide Are Not Clear and Conspicuous

- Restrictions contained in the fine-print of GAIN's EULA include:
 - A prohibition on removal via Ad-Aware, Spybot, and other “unauthorized” methods
 - A prohibition on the use of third-party software to observe what personal information GAIN's spyware is transmitting
- GAIN has removed bold face and line breaks distinguishing different sections in the EULA
- GAIN's EULA also is not word searchable

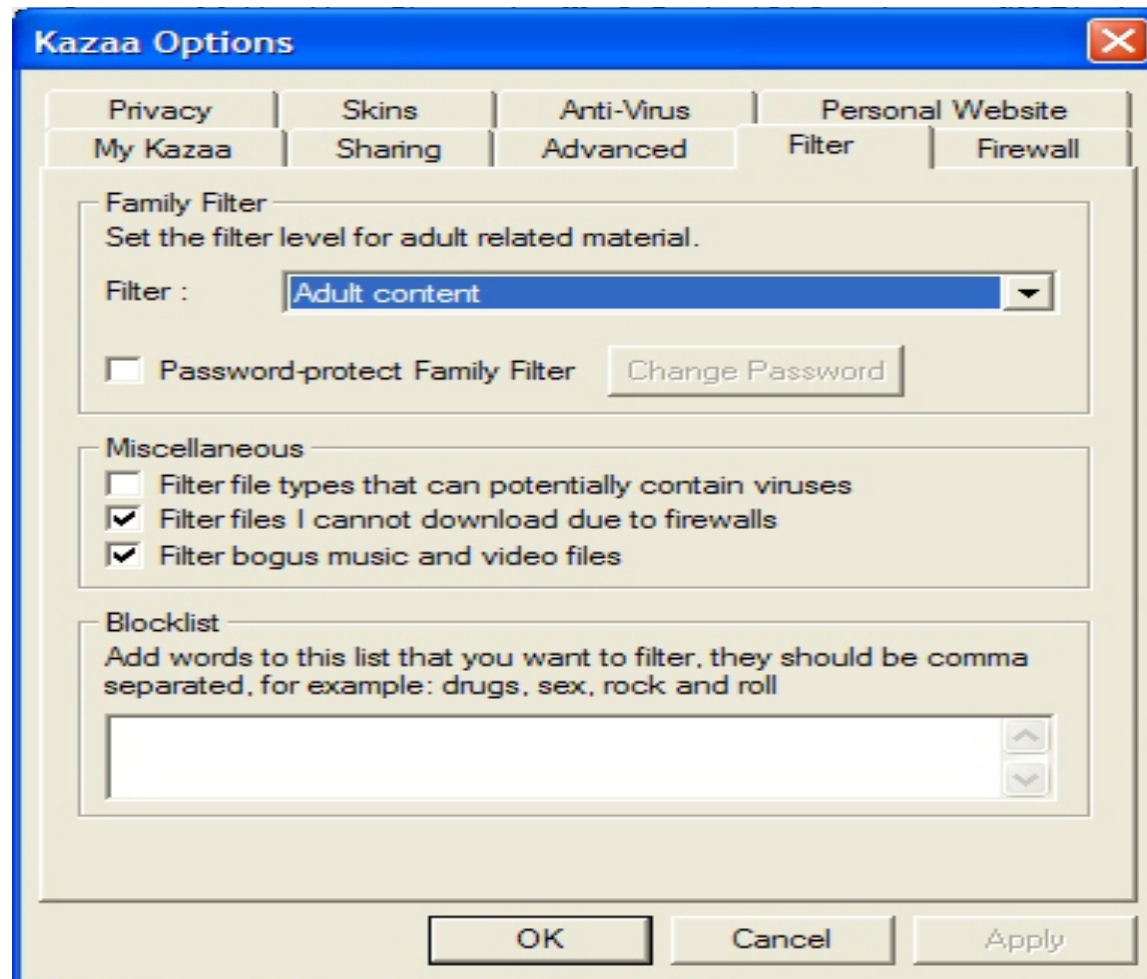
“Making the disclosure available somewhere in the ad so that consumers who are looking for the information *might* find it doesn't meet the clear and conspicuous standard.”

FTC Guidance in *Dot Com Disclosures*

Lack of Clear and Conspicuous Disclosure Makes KaZaA's "No Spyware Commitment" Materially Misleading

- KaZaA's pledge states that it does not install software "without your permission" and does not transmit personally identifiable information "without your consent"
- KaZaA, however, acquires a user's consent without clear and conspicuous disclosures of the spyware bundled with its P2P file-sharing software
- The so-called "consent" provided by users (many of whom are teenagers or children) therefore is not fully informed

During Installation, KaZaA Claims that It Provides an Effective Adult Content Filter



However, While Using the KaZaA Software, Searching for Blocked Terms Immediately Offers an Option to Remove the Filter



To No Surprise, KaZaA's Customers Are Deceived

“What a piece of !@#\$. When I installed it the first time, I couldn't get it running without keeping all of the spyware running.”

--(Complaint dated 02/18/04)

“I just got through spending 13 hours cleaning off my computer all of the garbage that Kazaa put on my computer with its 'bundled software.'”

--(Complaint dated 02/18/04)

“Horrible, they sell your identity!!!!!! Give you tons of spyware and screwed my whole computer up!”

--(Complaint dated 01/13/04)

“This is killing my computer! I have had nothing but trouble with my downloads from this program! Spyware, Virus and who knows what else.”

--(Complaint dated 12/03/03)

“Only install this if you don't care about privacy and want your computer screwed up. I own a computer service business, and have been called countless times because of popups, spam, and because 'my computer is doing something strange,' . . . It's a spyware-packed derailer made especially for anyone dumb enough to download it.”

--(Complaint dated 12/07/03)



LimeWire

- Like KaZaA, LimeWire bundles spyware – contrary to an express “no spyware” claim
- LimeWire’s disclosures concerning risks of file-sharing, including the legal risks of exchanging copyrighted material, are materially misleading
- As a result, consumers have been misled and harmed

LimeWire Claims “No Bundled Software”

Choose your Language < Welcome LimeWire current version: 4.2.4 857257 hosts online

Download | Features | Support | About

Faster than Kazaa and No Bundled Software
No Spyware, No Adware, No Trojan Horse, Just Pure File Sharing

Developers Wanted.
LimeWire is looking for a talented dev to join our team.

English 汉语
Français Deutsch
Ελληνικά Nederlands
Català Italiano

LimeWire 4.2
The Fastest P2P File Sharing Program on the Planet

speeches (116)

Quality	#	Name
★ ★ ★ ★ ★	2	Great Speeches - Malcom X - Bl
★ ★ ★ ★ ★		The end of the beginning
★ ★ ★ ★ ★		Spoken Word- Malcolm X, Hume
★ ★ ★ ★ ★		Speech - Malcom X - on police b
★ ★ ★ ★ ★		Speech - Great Speeches - Muh
★ ★ ★ ★ ★		speeches - WWII Old Time Radi
★ ★ ★ ★ ★		Speeches - WW2 - 1945-04-12
★ ★ ★ ★ ★		Speeches - Ruccal Crowe - Glad

- + Clean Install, No
- + Windows and
- + Firewall to Fire
- + Cleaner, Updated
- + Proxy support.

Get It Now

also get:

- Ease of use - just install, run, and search
- Ability to search by artist, title, genre, or other meta-information
- Elegant multiple search tabbed interface
- "Swarm" downloads from multiple hosts help you get files faster
- iTunes integration for Mac and Windows users
- Unique "ultrapeer" technology reduces bandwidth requirements for most users
- Integrated chat
- Directly connect to a computer
- Browse host feature--even works through firewalls
- Added Bitzi metadata lookup
- International versions: Now available in many new languages.
- Connects to the network using GWebCache, a distributed connection system
- Automatic local network searches for lightning-fast downloads. If you're on a corporate or university network, download files from other users on the same network almost instantaneously!
- Support for MAGNET links that allow you to click on web page links that access Gnutella.

[Click Here for Important Information About Filesharing](#)

PRESS | COMPANY | CONTACT | ADVERTISE | PRIVACY

Copyright 2004 Lime Wire LLC. All rights reserved.

Express Claim – Presumed material per the FTC’s 1983 Deception Policy Statement

Hyperlink promising more information on P2P. However, it appears at the bottom of page, separate from the remainder of the text – thereby not compliant with FTC guidance in *Dot Com Disclosures*

No Bundled Software?

- A recent University of Washington Study found that LimeWire bundled eZula, a form of spyware
- LimeWire's customers also complain about the presence of spyware:

"I've used most p2p programs and have never encountered so much spyware and adware as when I downloaded this. I've uninstalled LimeWire and installed SpyBot and Ad-aware and I'm still having a problem with pop-ups. Prior to installing this I hadn't had a pop-up in probably 6 months. Downloader beware!!!! DON'T put this on your computer!!!"
--(Complaint dated 08/29/04)

"Beware the hidden spyware"
"Not a very [trustworthy] program since the makers hide their spyware deep inside without telling you."
--(Complaint dated 08/07/04)

LIARS.....F**ing LIARS. BEWARE>>>ADWARE!!**
My anti-spyware software found more than 24 suspicious files. . . . I'm sure all the positive feedbacks are FAKE. Check the negative ones, you'll see what Limewire is about!"
--(Complaint dated 10/08/04)

LimeWire Also Makes Deceptive Claims About the Legality of File-Sharing

11. **Who is LimeWire's target audience?**

Users in all age groups enjoy LimeWire's software. About 70 percent of LimeWire users are located in the U.S., U.K., and Canada.

12. **What is dynamic querying?**

In early 2003, LimeWire introduced dynamic querying, which fine-tunes a file search by sending a query to progressively more computers until 150 responses are returned. This technique limits bandwidth waste by tweaking the number of computers searched for a file based on the number of sources already discovered. This means that rare content is searched for more extensively, while less effort is expended to find sources for easily available content. Dynamic querying has prevented the LimeWire section of the Gnutella network from being overloaded and has thus made LimeWire searches more effective.

13. **What is LimeWire's position on piracy?**

LimeWire is working to keep P2P technology legal in the courts and in Congress. The company defends Freedom of Speech and believes that existing laws are an over-reaching abuse of copyright laws. The company believes that there is no way to completely control piracy in a file sharing system. One solution may be compulsory licenses similar to radio. A second solution is low-cost high-quality downloads.

14. **Is it legal to use LimeWire's software?**

Yes, it is legal to use LimeWire's software. It is an Internet enabling technology.

15. **What is in store for the future of LimeWire?**

The LimeWire Development Team is at the forefront of file sharing development and is working to enhance the power and use of the network. Several developments are being finalized, such as the ability for companies to offload bandwidth costs by serving files on LimeWire, as well as adding new ways to interact with the network.

- LimeWire does not clearly and conspicuously warn its customers that a vast majority of music files “shared” on P2P networks contain copyrighted material, or the potentially serious legal consequences of engaging in this activity
- “A misleading omission occurs when qualifying information necessary to prevent a practice, claim, representation, or reasonable expectation or belief from being misleading is not disclosed.” (FTC 1983 Deception Policy Statement)



Morpheus

- As detailed on the following slides, Morpheus provides several material misrepresentations or omissions concerning spyware and the risks of file-sharing
- As a result, consumers have been misled and harmed

Deceptively Offering “Free Downloads”

Morpheus Ultra™

Get the official Morpheus Ultra™ file searching and sharing software!

Morpheus Ultra™

- More P2P results
- Multiple P2P networks
- **Free downloads***
- no spyware
- no third party software
- no banners or popups

Download Now!
only \$19.95

Express claim of Free downloads*

- Search Morpheus™, KaZaa, eDonkey, iMesh, and Limewire** users shared folders simultaneously
- No P2P software has access to more files and more users
- Search for and download any file type including audio files, games, mobile content, documents, video and more
- Free upgrades for 6 months
- Free voice chat rooms
- No spyware and no bundled third-party software
- No banner or pop-up advertising
- Integrated media player
- Unlimited simultaneous searches
- Advanced search narrowing option
- Integrated IRC chat

System Requirements

Windows:
95/98/NT/2000/XP
WMP 7 or higher
128MB RAM

Morpheus clarifies this claim in a small-print footnote:
**Morpheus users can receive FREE Downloads of non infringing material...WARNING: Downloading or uploading copyrighted material protected under copyright law without permission from the copyright holder(s) may be in violation of the law.*

Deceptively Claiming “No Spyware”

Morpheus Ultra™ Download F.A.Q

Get the official Morpheus Ultra™ from the makers of Morpheus™ file searching and sharing software!

Morpheus Ultra™

- More P2P results
- Multiple P2P networks
- Free downloads*
- no spyware
- no third party software
- no banners or popups

Download Now!
only \$19.95

Features:

- Search Morpheus™, KaZaa, eDonkey, iMesh, and Limewire** users shared folders simultaneously
- No P2P software has access to more files and more users
- Search for and download any file type including audio files, games, mobile content, documents, video and more
- Free upgrades for 6 months

Express claim of no spyware

System Requirements

Windows:
95/98/NT/2000/XP
WMP 7 or higher
128MB RAM

Morpheus Certified
Official program from

You spoke - we listened! Users demanded an ad-free version with no third-party software so here it is. . . Morpheus Ultra™.

>>> **Download Now for only \$19.95!**

What are others saying about Morpheus™ ?

- "Morpheus is the One..." - **Time magazine**
- "The multinetwork support, stellar performance, and nice community features of Morpheus one of the best P2P apps available right now..." - **CNET**

Fact: Spyware remains even if the user upgrades from the basic to the Ultra version

« **Download Morpheus Ultra™ for \$19.95 • Morpheus.com**

Consumer Confusion: Morpheus P2P Software

Morpheus™ powered with **NEO**™
home resources f.a.q notices contact

NEO™
REVOLUTIONARY
NEW ★ P2P
FILE SHARING
TECHNOLOGY
DOWNLOAD ALL FILE TYPES
MP3 AUDIO, VIDEOS, GAMES, SOFTWARE, PICTURES & DOCUMENTS™

click to download
Morpheus Ultra™
\$19.95
MORE powerful than ever
NO bundled adware
NO banners or pops
6 months FREE upgrades
ONLY \$19.95

click to download
Morpheus
FREE
MORE search results
BETTER download success
FRIENDLY community
Ad-Supported FREE version

"...as a must-have P2P application...an excellent choice for file-sharers"—CNET

"Morpheus is The One"—Time Magazine

- Searches all 5 major P2P Networks and millions of users of **Kazaa, Gnutella, iMesh, Grokster, eDonkey, G2, Limewire, and more**!**
- Download files faster and easier with better success
- Optional proxy network access protects your privacy
- Integrates your anti-virus software to scan out malicious files
- Includes free Bitzi anti-spoofing look-ups to download only the files you want
- Absolutely no spyware
- Morpheus is the only American P2P File Sharing software ruled legal by the US Federal Courts.

Morpheus claims:

- Absolutely no spyware.
- “Morpheus is the only American P2P File Sharing software ruled legal by the US Federal Courts.”

Morpheus facts:

- Morpheus installs “value-added” software that many consider spyware
- The court ruled that P2P software may be legal, but a consumer who uses the service to reproduce and distribute copyrighted materials is still subject to lawsuits from the copyright owners.

Customers Suffer from Morpheus' Deception

"I bought Morpheus Ultra and I am regretting it. The web site states that there is no spyware or adware however you'll quickly find 'Marketsource' adware if you run any antispyware application. This software completely slowed down my Windows Pro XP2."

--(Complaint dated 10/07/04)

"I only used this program for about an hour and when I was done I found programs that were trying to connect to the internet without my approval, including remote desktop with someone else's user name and IP address, through my computer."

--(Complaint dated 10/29/04)

"Morpheus . . . does contain spyware which it says it does not."

--(Complaint dated 10/22/04)

"Spyware plenty. Morpheus comes with spyware. Install at own risk."

--(Complaint dated 10/18/04)

"The whole part about it being spyware-free is untrue."

--(Complaint dated 10/11/04)

"Great program if you want to ruin your pc. Memory hog with spyware galore included. Spyware, Adware, browser hi-jackers. Not worth the risk!"

--(Complaint dated 10/25/04)



eDonkey

- eDonkey does not clearly and conspicuously disclose or describe the third-party spyware bundled with its file-sharing software
- eDonkey also provides its customers with an ineffective content filter
- Such practices have resulted in consumer deception and injury

Deceptively Claiming “No Bundled Software”

920,837 Users Online

Downloads Features Support Guide

Download eDonkey

**Express Claim:
No Bundled Software**

Purchase eDonkey now and you will receive:

- The best file sharing program available
- Ad-Free - No Banners- NO SPYWARE
- No Bundled Software
- Available in multiple languages
- Support via email
- Free upgrades to all future versions of the program
- [All these great features](#)

Please read our [Refund Policy](#)

Buy Pro! \$19.95 eDonkey download pay with PayPal

Buy Pro! \$19.95 eDonkey download pay with credit card

Check out

FACT:

Spyware selected as default
During installation

eDonkey2000 Setup

Please try out our partners software to support your friends and programmers at MetaMachine!

Webhancer

GloPhone
GloPhone lets you make calls anywhere in the world for free, right from your browser!

TopRebates

New.net

Click "I Agree" to accept the Terms and Conditions of Installing the webHancer Customer Companion (the "Software").

IMPORTANT NOTICE:
THIS SOFTWARE RELAYS YOUR WEB SURFING PERFORMANCE METRICS TO WEBHANCER CORP. TO GENERATE PERFORMANCE REPORTS FOR THIRD PARTIES. AS SUCH, YOUR INTERNET CONNECTION WILL BE USED PERIODICALLY TO SEND AND RECEIVE DATA.

WE RESPECT OUR

Cancel MetaM

According to consumer complaints, spyware is installed even if one “de-selects” the defaults

Misleading Description of the Spyware bundled with eDonkey

The screenshot shows the eDonkey2000 installation page. At the top, it says "Harness the power of 2000 electronic donkeys!" and "920,837 Users Online". Navigation tabs include "Downloads", "Features", "Support", and "Guide". A sidebar on the left lists "FAQ", "Forum", "Skins", "Content", and "About Us". The main heading is "Installing eDonkey". Below this, there is a paragraph of instructions and a "Note" section. A dashed line separates the main content from a list of promotional software options. A yellow callout box labeled "Promotional Software" points to this list. The list includes "U.S. Robotics (8054)", "Norton Internet Security", "Tiny Firewall", "Zone Alarm", and "WinXP Firewall". Another yellow callout box labeled "can add new functionality" points to the "U.S. Robotics (8054)" option. Below the list, there is a section titled "Promotional Software" with a detailed description, and a section titled "eDonkey Installs" with a brief note.

Harness the power of 2000 electronic donkeys!

920,837 Users Online

Downloads Features Support Guide

Installing eDonkey

After the software has been downloaded (if you haven't downloaded it yet you can do that on the [download page](#)), double click on the file you downloaded to begin the installation process.

Note
Throughout the installation process the installer will connect to our website, no personally identifiable information is sent

- Software Firewalls
 - [U.S. Robotics \(8054\)](#)
 - [Norton Internet Security](#)
 - [Tiny Firewall](#)
 - [Zone Alarm](#)
 - [WinXP Firewall](#)
- Proxies
- More Information
 - [File Types](#)
 - [Video Problems](#)

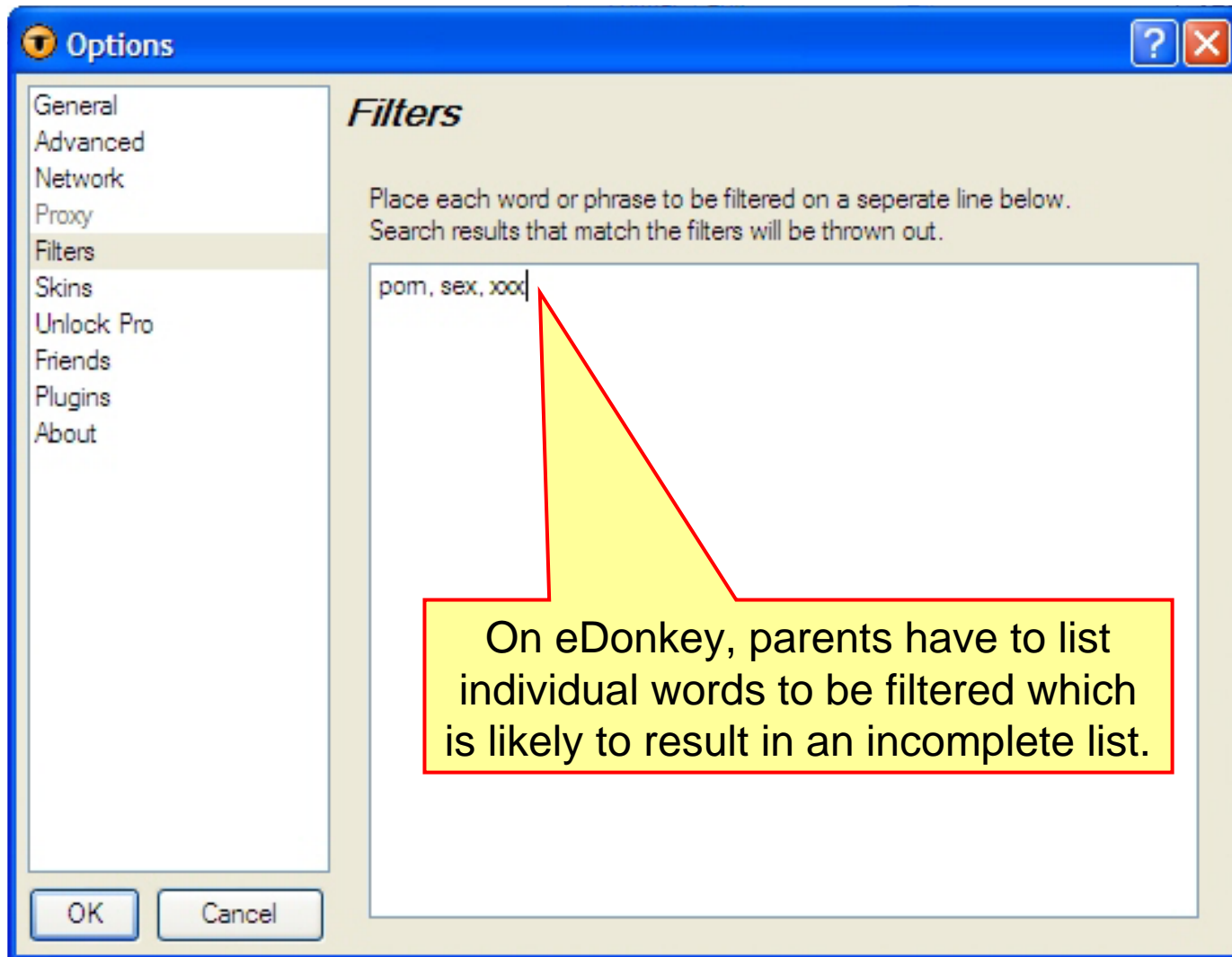
Promotional Software
Depending on your region you may see as many as four different promotional packages available to you as an eDonkey2000 user. These packages can add new functionality to Windows or Internet Explorer, please read the license agreements on the right hand side. You may choose not to install some or all of these packages by un checking the box beside its name. Click I Agree to indicate your acceptance of the license agreements and continue.

eDonkey Installs
At this point eDonkey2000 will be installed on your machine

Promotional Software

can add new functionality

Ineffective Content Filter



Filters Like eDonkey's Are Ineffective

- “Some file-sharing software promotes ‘keyword’ filters as a means to protect file-sharing children from pornography. But ‘keyword’ filters can only prevent children from searching for pornography – not from exposure to the pornography responsive even to innocuous [P2P] searches.” (Letter from Senators Leahy, Hatch, Boxer, Stevens and Smith to the FTC Commissioners, May 4, 2004)
- “While at least some [P2P] companies do provide ‘filters’ to help screen out unwanted files, including presumably those containing pornography, those filters appear to work by focusing on language in the file’s description or the file’s title rather than on the file’s content.” (Letter from 47 State and Territory Attorneys General to P2P United, Aug. 5, 2004)

Once Again, Customers Are Deceived

“Beware ---it does more than in offers. The programme works well but, look out because there is more to this than meets the eye. Trojans, and heaps of other programmes are installed at the same time. I use adware, avast and Norton internet security and yet I still ended up with [unwanted] spyware---which I may add were all very difficult to remove. It works but at what cost???”

--(Complaint dated 10/16/04)

“You’re the donkey if you download this. I installed it carefully, refusing the optional components. It’s slow and confusing. But that’s the least of it. This is a minefield of malware.”

--(Complaint dated 10/16/04)

“Nothing but spyware! I ran Ad-aware and spybot before installing Edonkey. Ad-aware found 35 new entries, all spyware and adware. Spybot found 8 new entries. And this was AFTER I unticked the extras boxes and declined any extra software. I have just taken over an hour to remove it all! DON’T DOWNLOAD. Bad program!”

--(Complaint dated 10/27/04)

“Full of Spyware and Virus. . . . [D]on’t install this unless you want deception, viruses and spyware.”

--(Complaint dated 10/03/04)

“It’s really a mess. DOWNLOAD it in case you have both the time and wish to clean up garbage from your computer and to deal with a bunch of spyware that is installed without your knowledge.”

--(Complaint dated 09/16/04)



BearShare

- Like other major P2P software providers, BearShare fails to provide clear and conspicuous disclosures concerning the risks of file-sharing
- As detailed on the following slides, P2P software such as BearShare facilitate the dissemination of confidential information over the Internet

“The Commission . . . considers . . . omissions material if they significantly involve . . . areas with which the reasonable consumer would be concerned. . . . Information has been found material where it concerns the purpose, safety, efficacy, or cost, of the product or service.”

FTC 1983 Deception Policy Statement (citations omitted)

Confidential, Personal Information is Easily Accessible Via BearShare

The screenshot shows the BearShare 4.5.1 application window. The search bar at the top contains the text "credit card". A yellow callout box points to this search bar with the text "Search for 'Credit Card'". Below the search bar, a table displays the search results. A second yellow callout box points to the table with the text "Results: numerous listings for credit card numbers, number generators, etc.".

Rank	File Name	Size	Type	Info	So...
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	22	Archive		13
	Fake ID 3 (Generates a new ID with Credit Card numbers!).zip	39,146	Archive		9
	credit cards 040.html	6,458	Document		5
	Jim Stafford - The Credit Card Song.mp3	3,266,463	Music	128 Kbps 44 kHz 3:24	4
	credit cards 010.html	4,707	Document		3
	credit cards 020.html	5,334	Document		3
	credit cards 030.html	4,557	Document		3
	credit cards 050.html	2,736	Document		3
	credit cards toc.html	2,545	Document		3
	65000 credit card numbers illegal.pdf	1,425,468	Document		3
	Credit Card Cust Copy Cred.gif	2,140	Image		3
	Credit Card Number Generator 4 0.zip				2
	Real Credit Card Numbers.txt				2
	Credit Card Verifier 1.2.zip				2
	CREDIT CARD NUMBER - TESTED AND WORKING.txt				2
	Credit Card Merch Copy SR.gif				2
	Hacking credit cards.txt				2
	no-credit-card-needed[1].htm				2
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	credit cards social security.txt	632,587	Document		
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	The Credit Card Song Dick Feller.mp3	3,266,847	Music	128 Kbps 44 kHz 3:24	
	Dr. Demento - ray stevens - The Credit Card Song.mp3	3,268,639	Music	128 Kbps 44 kHz 3:24	
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		
	Credit Card Numbers generator(ind Visa,MasterCard,...).zip	123,897	Archive		

Confidential, Personal Information is Easily Accessible Via BearShare

The screenshot shows the BearShare 4.5.1 interface with a search for "Tax Return". A yellow callout box points to the search input field with the text "Search for 'Tax Return'". Below the search bar, a table lists search results for individual tax returns.

Rank	File Name	Size	Type	Info	So...
	2003 Danford A Tax Return.tax	226,872			
	May 2004 Excise Tax Return.htm	2,596	Document		
	2002 tax returns.tif	316,520	Image		
	06-new_mexican_disaster_squad-tax_return-rns.mp3	4,877,083	Music	192 Kbps 44 kHz 3:23	
	Fixed Asset Changes for the Tax Return.QBR	10,240			
	2003 Tax Return File.ta3	121,397			
	2003 Tax Return File-Jodi.ta3	220,605			
	2002 BOND S Tax Return.tax	292,582			
	2002 GLENN D Tax Return.tax	289,180			
	2002 JACKSON C Tax Return.tax	246,443			
	2002 Tax Return.tax	181,207			

A yellow callout box at the bottom of the screenshot contains the text: "Results: numerous listings for individual tax returns".

Taskbar information: (C:) 15 GB Free, No Shared Files, 56 Kbps, 2, 160,615, 4:55 PM.

The Practices of P2P Providers Harm Consumers

Consumers Are Harmed

- As shown above, major P2P providers currently make material misrepresentations and omissions that harm consumers
- According to 41 state and territory attorneys general: “users of file-sharing services (many of whom are minors) . . . do not yet fully appreciate the unlawful nature of [P2P file-sharing], the legal risks they are undertaking, and the personal risks they are running and to which they are exposing their families.” (Brief *Amici Curiae* to the Supreme Court in *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*)

These Practices Have Produced a Myriad of Consumer Complaints

- To get a sense of the impact of the deceptive practices described above, we looked at the complaints against major P2P providers posted on a single website (download.com) for particular time periods

Provider	Date Range	Total Complaints	Spyware/ Adware	Viruses	Porn. Exposure	Loss of Per. Info.	Impaired Functionality	Other
KaZaA	11/03-04/04	687	284	54	4	2	96	247
LimeWire	08/04-11/04	81	17	7	0	0	12	45
Morpheus	02/03-11/04	77	25	0	0	1	21	30
Blubster	06/03-11/04	63	36	8	0	4	0	15
Grokster	02/04-11/04	62	41	6	0	0	8	7
eDonkey	08/04-11/04	41	24	4	1	0	1	11
Totals		1011	427	79	5	7	138	355

Consumers Are Harmed

- Collectively, around two-thirds of the total user comments about these P2P providers on download.com were negative
- According to these statistics, spyware/adware account for the largest number of consumer complaints, roughly 42%
- According to ICD.com, sales of spyware removal software totaled \$12 million in 2003, and are expected to increase almost 260% in 2004

Questions and Alternatives for Consumer Protection and Law Enforcement

Enforcement Issues Under Section 5

- Express claims such as “100% legal” and “no bundled spyware” are materially deceptive
- The lack of disclosures concerning the risks associated with P2P file-sharing are material omissions
- In addition, these practices also may be unfair under the FTC Act because they create unavoidable consumer risks that are substantial and not outweighed by countervailing benefits

What is the government's role in protecting consumers from risks related to file-sharing?

- Consumer Education
- Voluntary Cooperation
- Rulemaking
- Litigation
- Constant Surveillance

Consumer Education

- The efforts to date of the FTC and other law enforcement agencies to inform consumers of the risks of file-sharing are commendable, and such efforts should continue
- The FTC's consumer alerts entitled *Spyware* and *File-Sharing: A Fair Share? Maybe Not* inform consumers of the “trade-offs” of file-sharing that the major P2P software providers fail to disclose
- Consumer education, however, is no substitute for effective enforcement action
 - As the FTC showed with the recent release of the *Spyware* consumer alert and its enforcement action against Seismic Entertainment Productions, consumer education and enforcement action can be effective complements

Voluntary Cooperation with P2P Providers

- Along with consumer education, the Chairman's December 6 letter to Representative Terry indicates that seeking the voluntary cooperation of P2P software providers has been the FTC's preferred course of action to date
- Such efforts are positive and should continue
- However, like consumer education, requests for voluntary cooperation from P2P providers are not likely to be sufficient
- Recent history suggests that the major P2P providers will not change their currently profitable business models unless forced to do so
- In fact, . . .

P2P Providers Are Moving in the Wrong, not Right, Direction

- In their August 2004 letter to a major P2P trade association, 47 state and territory attorneys general expressed their concern that at least some P2P providers are adding encryption features to their software
 - Encryption features make it more difficult to monitor the exchange of illicit materials such as child pornography over P2P networks

P2P Providers Are Moving in the Wrong, not Right, Direction

blubster

HOME PAGE : FREE DOWNLOAD : TECHNOLOGY : SCREENSHOTS &

press releases

P2P DOWNLOADERS GO ANONYMOUS WITH BLUBSTER 2.5

WORLD'S LARGEST DIGITAL MUSIC NETWORK PROVIDES PRIVACY TO DOWNLOADERS AND POWERFUL MARKETING TOOLS TO ARTISTS

Madrid, SPAIN, June 30, 2003 - Optisoft S.L., provider of popular peer-to-peer program Blubster, today announced the launch of Blubster 2.5 in the wake of the latest litigious efforts by the RIAA and MPAA to erode consumer privacy and monopolize control of the P2P entertainment market. As Verizon has been handed a court decision forcing the company to reveal the identity of Internet subscribers accused of music piracy, Blubster has re-launched with a new secure, decentralized, self-assembling network that provides users with private, anonymous accounts. (www.blubster.com).

In June 2003, P2P provider “Blubster” announced that users could “go anonymous” with the new release of its software

Blubster expressly claims that this software protects user identities from detection and was released in reaction to “the latest litigious efforts of the RIAA and MPAA”

Many of Blubster 2.5's new communications features provide listeners with new means to discover and introduce new artists and music. This provides content creators and rights holders a new opportunity to reach potential buyers, which reduces marketing costs. The new web links feature enables artists and labels the opportunity to serve up music previews on their website directly from the Blubster network offering a drastic reduction in streaming costs. P2P entertainment distribution has proven to be the most cost effective means of delivering content on demand.

Blubster is available for download through www.blubster.com.

ABOUT OPTISOFT

Optisoft S.L., distributor of the popular Blubster program, is a world-leading provider of peer-to-peer technology. Blubster enables musicians and fans, through a serverless and anonymous peer-to-peer network, to share MP3 and OGG files over the Internet. Blubster is the leading music-only peer-to-peer network on the Internet and is a registered trademark of OptiSoft S.L. Madrid.

For more information contact:
Hal Bringman
(323) 650-1328
hal@hbpr.com

Copyright © Blubster.com 1999-2004. All Rights Reserved.
Blubster does not condone activities and actions that breach copyright owners, and it is user's responsibility to obey all laws governing copyright in each country.

Meanwhile, at the very bottom of the press release, in small font and well separated from the remainder of the text, Blubster disclaims liability for copyright violations by its users

The Recent Proposal by the P2P Providers Does Not Address Past Violations Nor Solve the Current Problem

- Based on their past actions, promises of future cooperation by the current major P2P providers are highly suspect
- Future cooperation is no remedy for past and ongoing acts of deception based on downloads of prior versions of P2P software
- The proposal as presented does not solve the problem, for example:

The screenshot shows the Kazaa v2.7 Free website. At the top, there are language options: Français, Deutsch, Italiano, Español, Korean, Portuguese. Below that, it says "Downloads: Last Week : 1,496,700 Total : 365,176,227". The main heading is "Kazaa v2.7 Free" with a list of features: Exclusive Search Features, Lightning Fast Downloads, Built-in Virus Protection, and Having Kazaa is 100% Legal. A "Get it Now!" button is prominently displayed. Below this, there is a section titled "What you get with Kazaa" with four columns: SEARCH, SAFE, EASY, and REACH. A yellow box on the right contains the text: "Hyperlink disclosures inadequate to qualify prominent claims that 'Kazaa is 100% legal'". Arrows point from this box to the "Get it Now!" button and a link that says "Click here for important information about P2P software risks." A blue diagonal line is drawn across the entire screenshot.

Hyperlink disclosures inadequate to qualify prominent claims that "Kazaa is 100% legal"

Rulemaking and Litigation

- These and other examples suggest that P2P providers will move in the wrong, not right, direction to protect their current business models
- Therefore, in addition to consumer education and requests for voluntary cooperation, more forceful action is required to protect consumers:
 - Rulemaking
 - Litigation

Rulemaking

- The FTC should commence a Trade Regulation Rule (“TRR”) directed against the deceptive practices of the major P2P software providers
- At a minimum, the TRR should require clear and conspicuous disclosures concerning the risks of:
 - All third party software, including spyware, bundled with P2P software
 - Viruses on P2P networks
 - The use of computers as distribution centers on P2P networks
 - Downloading copyrighted material
 - Distributing child pornography

Rulemaking

- The TRR also should mandate that P2P software incorporate certain features, such as:
 - Filters to prohibit the stealing of copyrighted material
 - More effective adult content filters
- The initiation of a TRR proceeding would give P2P providers immediate incentives to change their current practices

Litigation is Warranted

- Despite the FTC's calls for voluntary cooperation and reform proposals from some in the industry, the major P2P providers still don't get the message
- State and territory attorneys general recently warned that they may seek enforcement action unless current P2P providers take "concrete and meaningful steps" to better inform consumers
- Senators Leahy, Hatch, Boxer, Stevens and Smith urged in May 2004 that "the dangers of file-sharing software are real, and consumers need to be protected."

Litigation is Warranted

- To take just one example, KaZaA's claims such as "KaZaA is 100 percent legal" and that KaZaA does not bundle spyware are facially deceptive and cannot be qualified by hyperlinks to lengthy legalese
- The FTC should tell P2P providers such as KaZaA to stop making such facially deceptive claims immediately
- If the P2P providers refuse the FTC's demand, the Commission should use all of the legal tools in its arsenal to end such practices
- Enforcement action would be consistent with the longstanding deception standard and continue the FTC's role as the chief guardian of consumer sovereignty on the Internet

Constant Surveillance

- Nature of the P2P software industry is prone to deception
- History of nonconformance with FTC law and regulation
- The FTC must engage in constant surveillance to make sure its policies are being followed . . .
- . . . and back its efforts with quick and decisive litigation whenever its policies are violated