

**Prepared Statement of  
The Federal Trade Commission**

**Before the  
Committee on Oversight and Government Reform  
United States House of Representatives**

**Washington, D.C.**

**July 24, 2007**

## I. Introduction

Chairman Waxman, Ranking Member Davis, and members of the Committee on Oversight and Government Reform, I am Mary Engle, Associate Director for Advertising Practices at the Federal Trade Commission (the “Commission” or “FTC”). I appreciate this opportunity to provide an update regarding the Commission’s work involving Peer-to-Peer (“P2P”) file-sharing technology issues.<sup>1</sup>

As the federal government’s principal consumer protection agency, the Federal Trade Commission has a broad mandate to prevent unfair and deceptive acts or practices in the marketplace. The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy.<sup>2</sup> The agency enforces laws that prohibit business practices that are harmful to consumers because they are anticompetitive, deceptive, or unfair, and it promotes informed consumer choice and understanding of the competitive process.

Although P2P technology confers significant benefits, such as allowing for faster file transfers, conserving bandwidth and storage requirements, and saving on maintenance and energy costs, it also has been associated with risks to consumers.<sup>3</sup> When consumers download and use

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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 the views of the speaker and do not necessarily reflect the views of the Commission or any Commissioner.

<sup>2</sup> The FTC has broad law enforcement responsibilities under the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.* With certain exceptions, the statute provides the agency with jurisdiction over nearly every economic sector. Certain entities, such as depository institutions and common carriers, as well as the business of insurance, are wholly or partly exempt from FTC jurisdiction. The agency has enforcement responsibilities under more than 50 statutes and more than 30 rules governing specific industries and practices, in addition to the FTC Act.

<sup>3</sup> *See, e.g., P2P File-Sharing Technology: Consumer Protection and Competition Issues*, Federal Trade Commission Staff Report (June 2005).

P2P file-sharing software programs, they face risks such as downloading spyware or adware programs that come bundled with some P2P file-sharing programs, or receiving files infected with viruses that could impair the operation of their personal computers. In addition, through their use of P2P technology, consumers may unintentionally share personal or other sensitive files residing on their hard drives. Individuals also risk receiving or redistributing files that may subject them to civil or criminal liability under laws governing copyright infringement and pornography. Finally, because of the way some files are labeled, consumers, including children, may be exposed to unwanted pornographic images.

Over the past three years, the FTC has worked to address the risks to consumers presented by P2P file-sharing software programs through three key efforts. First, FTC staff have worked with industry to improve the disclosure of risk information on P2P file-sharing web sites so that consumers can make informed choices regarding their use of P2P file-sharing programs. Second, the FTC has brought law enforcement actions related to P2P file-sharing programs against particularly egregious actors. Finally, the agency has taken steps to educate consumers and businesses about the risks associated with these programs and provide guidance so that they are better able to protect themselves.

## **I. FTC's Involvement with Peer-to-Peer File-Sharing Technology Issues**

### **A. Policy Development – Peer-to-Peer File-Sharing Technology Workshop**

As part of the FTC's ongoing efforts to examine consumer issues relating to new technologies, in December 2004, the FTC held a two-day public workshop to consider the consumer protection, competition, and intellectual property issues raised by P2P file-sharing. The workshop included seven panels featuring more than 40 representatives from the P2P file-

sharing software industry, entertainment industry, high-technology research firms, government agencies, academic institutions, and consumer groups. Participants explored such topics as how P2P file-sharing technology works and what risks consumers may face when using this technology. Panelists and commenters also discussed efforts by both the government and private sector to address some of these risks.

In June 2005, the FTC released a staff report based on the information received in connection with the workshop.<sup>4</sup> The report analyzed a wide range of public policy issues relating to P2P file-sharing programs. The FTC staff concluded that P2P file-sharing, like many other consumer technologies, is a “neutral” technology. That is, its risks result largely from how individuals use the technology rather than being inherent in the technology itself.

The staff report emphasized that many of the risks to consumers associated with P2P file-sharing are not unique, but also exist when consumers engage in other Internet-related activities such as surfing web sites, using search engines, downloading software, and using e-mail or instant messaging. At the Commission’s workshop, participants offered conflicting views as to whether the risks arising from P2P file-sharing were greater than other Internet-related activities. For example, one commenter argued that P2P file-sharers were substantially more likely to be infected with spyware than Internet users in general.<sup>5</sup> In contrast, one participant opined that the

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<sup>4</sup> *P2P File-Sharing Technology: Consumer Protection and Competition Issues*, Federal Trade Commission Staff Report (June 2005), available at [www.ftc.gov/reports/p2p05/050623p2prpt.pdf](http://www.ftc.gov/reports/p2p05/050623p2prpt.pdf).

<sup>5</sup> *See id.*, Comment 9, The CapAnalysis Group (citing Stefan Saroiu, Steven D. Gribble, Henry M. Levy, “Measurement and Analysis of Spyware in University Environment” (Mar. 2004) (finding that spyware infection rate among university computers using KaZaA file-sharing software was 5 to 22 times greater than infection rates among computers using the Internet alone)).

spyware risks are the same, because those risks are attributable to problems with the design of Windows-based operating systems. Overall, however, workshop participants submitted little empirical evidence concerning the relative risks arising from P2P file-sharing compared to the risks from other Internet-related activities.

In the report, the staff recommended that industry decrease risks to consumers through technological innovation and development, industry self-regulation (including improved risk disclosures), and consumer education. The report also recommended that government investigate and bring law enforcement actions when warranted, work with industry to encourage self-regulation, and educate consumers about the risks associated with using P2P file-sharing software. Finally, the report recommended that policymakers balance the protection of intellectual property and the freedom to advance new technologies, thereby encouraging the creation of new artistic works as well as economic growth and enhanced business efficiency.

#### **B. Review of Peer-to-Peer File-Sharing Program Risk Disclosures**

In response to industry complaints and Congressional inquiries,<sup>6</sup> in 2004, FTC staff reviewed the risk disclosures on the web sites of the ten most popular P2P file-sharing program distributors to determine if the web sites misrepresented or failed to disclose risks associated with downloading and using their programs. Commission staff concluded that, although the risk disclosures were not false or misleading, they could be improved. Accordingly, in summer 2004, the Commission staff sent letters to the ten largest distributors of P2P file-sharing programs

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<sup>6</sup> See, e.g., Letter from the Committee on Government Reform, United States House of Representatives, to Timothy Muris, Chairman, Federal Trade Commission (Aug. 10, 2004) (on file with the Commission) (expressing concerns about the risks posed by P2P file-sharing programs).

recommending that the distributors better inform consumers about the risks inherent in downloading and using P2P file-sharing programs.<sup>7</sup> As additional guidance to these distributors, the staff enclosed copies of the FTC's brochure for consumers about the risks of file-sharing and the FTC's business guidance document addressing how to disclose information online.<sup>8</sup>

In December 2004, the two main P2P industry trade associations at that time, P2P United and the Distributed Computing Information Association, both announced self-regulatory measures under which member P2P file-sharing program distributors would disclose risk information on their web sites and during the installation process, including warnings about copyright infringement, data security, unwanted exposure to pornography, spyware, and viruses.<sup>9</sup> Since then, FTC staff has periodically reviewed P2P file-sharing programs and download sites to

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<sup>7</sup> See Letter from Mary K. Engle, Associate Director, Division of Advertising, Bureau of Consumer Protection, to P2P file-sharing distributors (June and July 2004, on file with the Commission).

<sup>8</sup> See *Dot Com Disclosures: Information About Online Advertising*, available at [www.ftc.gov/bcp/online/pubs/buspubs/dotcom/index.pdf](http://www.ftc.gov/bcp/online/pubs/buspubs/dotcom/index.pdf).

<sup>9</sup> See *P2P File-Sharing Technology: Consumer Protection and Competition Issues*, Federal Trade Commission Staff Report (June 2005), at pp. 17-18 and Appendix B and C. Whereas the P2P United Code of Conduct announced in 2003 only touched on risk disclosures regarding copyright infringement and the exposure to children of inappropriate file content, the self-regulatory measures that P2P United announced in December 2004 contained detailed descriptions of the risk disclosures that members promised to make concerning copyright infringement, data security, unwanted exposure to pornography, spyware, and viruses. The Code of Conduct also covered principles beyond the scope of risk disclosures, including members' commitments to only install P2P software after receiving a user's informed consent and to provide an uninstall tool; to require confirmation of which folders the user wishes to make available to others; to design P2P software to prevent the inadvertent designation of the user's entire hard drive as material available to other users; to comply with the Children's Online Privacy Protection Act; to cooperate with government agencies to combat child pornography; to post privacy principles; to incorporate features, where technically feasible, into their software that enable adults to restrict use of the software to certain members of the household; and to not disclose information about the user. P2P United is no longer in existence.

monitor industry implementation of its risk-disclosure promises. In addition, in 2005, the FTC sent letters to P2P file-sharing distributors reminding them of their commitments to comply with the industry self-regulatory program.<sup>10</sup> FTC staff's reviews have confirmed that the major P2P file-sharing programs steadily improved their risk disclosures. In March 2006, FTC Chairman Deborah Platt Majoras sent interested members of Congress an update on the staff's most recent review of P2P sites.<sup>11</sup> In summary, as of March 2006, only one major operating P2P site, Blubster, failed to make the promised risk disclosures. Blubster is located in Spain, and Commission staff referred its findings to the appropriate consumer protection authorities there.

The FTC staff also has reviewed P2P sites to determine if they were failing to disclose bundled adware or spyware. As part of that investigation, in fall 2005, the FTC staff downloaded and installed the ten largest P2P file-sharing programs to determine whether P2P file-sharing program distributors were bundling adware or spyware with their programs and, if so, whether the distributors were disclosing that fact. Of those ten programs, eight either did not contain any bundled spyware or adware, or contained bundled adware but disclosed that fact. Of the two programs that did not disclose bundled spyware or adware, one is no longer being distributed, and the other has been referred to foreign consumer protection authorities.

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<sup>10</sup> *See, e.g.*, Letter from Lydia B. Parnes, then-Acting Director, Bureau of Consumer Protection, Federal Trade Commission, to P2P file-sharing distributors (Mar. 1, 2005, on file with the Commission).

<sup>11</sup> *See, e.g.*, Letter from Deborah Platt Majoras, Chairman, Federal Trade Commission, to Henry Waxman, Member of the House of Representatives (Mar. 6, 2006) (on file with the Commission).

### **A. FTC Law Enforcement Actions Involving Peer-to-Peer File-Sharing**

In addition to protecting consumers by encouraging the disclosure of risk information, the FTC has brought two successful law enforcement actions related to P2P file-sharing programs. In *FTC v. Cashier Myricks Jr.*,<sup>12</sup> the Commission filed suit against the operator of the web site MP3DownloadCity.com for making allegedly deceptive claims that it was “100% LEGAL” for consumers to use the file-sharing programs he promoted to download and share music, movies, and computer games. The defendant entered into a settlement agreement with the FTC that barred misrepresentations about P2P file-sharing products or services, required the operator to disclose the civil and criminal liability risks of downloading copyrighted material without the owner’s permission, and required the operator to refund more than \$15,000 to the customers he allegedly duped into buying memberships to the web site.

In *FTC v. Odysseus Marketing, Inc.*,<sup>13</sup> the FTC filed suit against the operator of the web site Kazanon.com. According to the FTC’s complaint, the defendants encouraged consumers to download free software that they falsely claimed would allow consumers to engage in anonymous P2P file-sharing. The FTC also alleged that the defendants deceptively failed to disclose that their free software installed spyware and adware on consumers’ computers. The defendants entered into a settlement agreement with the FTC that prohibits secret downloads in the future, prohibits the operators from exploiting security vulnerabilities to download software, and bars future misrepresentations. In addition, the defendants agreed to disgorge their alleged ill-gotten gains.

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<sup>12</sup> Civ. No. CV05-7013-CAS (FMOx) (C.D. Cal., filed Sept. 27, 2005).

<sup>13</sup> Civ. No. 05-330 (D.N.H., filed Sept. 21, 2005)



Combating twenty-first century consumer protection issues such as P2P file-sharing requires cutting-edge, twenty-first century law enforcement tools. For example, the FTC maintains Consumer Sentinel, a secure, online fraud and identity theft complaint database. Consumer Sentinel contains over 3.9 million fraud and identity theft complaints and is accessible to more than 1,650 law enforcement agencies, which use the database to share information, coordinate investigations, and pursue case leads. The FTC also has an Internet Lab, which provides FTC lawyers and investigators with high-tech tools to investigate high-tech consumer problems. It allows investigators to search for fraud and deception on the Internet in a secure environment. To capture web sites that come and go quickly, the lab also provides FTC staff with the necessary equipment to preserve evidence for presentation in court.

#### **B. Consumer and Business Education**

Education of consumers and businesses is integral to the Commission's consumer protection mission. With respect to P2P issues, the FTC has sought to inform consumers of the potential risks of file-sharing so that they can better protect themselves. In July 2003, the FTC issued a consumer alert entitled, "File-Sharing: A Fair Share? Maybe Not."<sup>14</sup> The alert warns consumers about the potential risks from downloading and using P2P file-sharing software, including the risk of inadvertently sharing files or receiving spyware, viruses, infringing materials, or unwanted pornography mislabeled as something else. The alert recommends that consumers carefully set up the file-sharing software, checking the proper settings when the software is installed, so that consumers do not open access to information on their hard drives

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<sup>14</sup> The FTC updated and renamed this consumer alert in December 2006. *See P2P File-Sharing: Evaluate the Risks*, available at [www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt128.shtm](http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt128.shtm).

such as tax returns, e-mail messages, medical records, photos, or other personal documents. It also recommends that consumers run trusted anti-spyware and anti-virus programs on a regular basis if they are using P2P file-sharing programs, and that consumers close their Internet connections when not online to prevent file-sharing from continuing at any time. The consumer alert has been accessed on the FTC's web site over 1.3 million times since it was released.

In addition, the FTC's Internet education web site, OnGuardOnline.gov, contains downloadable information about the risks of P2P file-sharing software, including quick facts about P2P file-sharing, an interactive quiz, and additional lessons, resources, and activities from i-SAFE, an organization involved in Internet-safety education.<sup>15</sup> OnGuardOnline.gov is an innovative multimedia web site designed to educate consumers about basic computer security practices. OnGuardOnline has become the hallmark of the Commission's larger cybersecurity campaign. The site is built around seven timeless tips about online safety,<sup>16</sup> and information on topics such as P2P file-sharing, social networking, identity theft, phishing, spyware, and spam. OnGuardOnline features up-to-date articles from the Department of Homeland Security's U.S. Computer Emergency Readiness Team (US-CERT), including a piece entitled "Risks of File Sharing."

OnGuardOnline serves about 250,000 unique visitors each month. The site, which was developed through a partnership with cybersecurity experts, consumer advocates, online marketers, and other federal agencies, is an excellent example of public-private cooperation. The

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<sup>15</sup> See [www.onguardonline.gov](http://www.onguardonline.gov).

<sup>16</sup> Such tips include: protect your personal information; know who you are dealing with; user security software and a firewall; make sure your operating system and web browser are set up properly; protect your passwords; back up important files; and learn who to contact if something goes wrong online.

agency deliberately branded OnGuardOnline independently of the Federal Trade Commission to encourage other organizations to make the information their own and to disseminate it in ways that reach the most consumers.

As stated above, none of the risks associated with P2P file-sharing programs is exclusive to that technology. For example, P2P file-sharing is just one technology by which personal data can be unintentionally disclosed. Thus, other consumer and business education outreach initiatives that the FTC has undertaken apply equally in the P2P file-sharing arena. For example, the FTC recently published a general data security business education guide, *Protecting Personal Information, A Guide for Businesses*,<sup>17</sup> designed to assist different types of businesses in addressing data security issues. In that publication, the Commission recommends a sound data security plan built on five key principles: know what personal information you have in your files and on your computers (“Take stock”); keep only what you need for your business (“Scale down”); protect the information that you keep (“Lock it”); properly dispose of what you no longer need (“Pitch it”); and create a plan to respond to security incidents (“Plan ahead”). Many of these same methods of securing personal data will help prevent the inadvertent disclosure of that data caused by P2P file-sharing programs.

In addition, the FTC’s online publication *Dot Com Disclosures: Information About Online Advertising*, provides guidance to businesses regarding how to make clear and conspicuous disclosures online.<sup>18</sup> This publication received almost 70,000 unique visitors last

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<sup>17</sup> Available at [www.ftc.gov/bcp/edu/pubs/business/privacy/bus69.pdf](http://www.ftc.gov/bcp/edu/pubs/business/privacy/bus69.pdf).

<sup>18</sup> See *Dot Com Disclosures: Information About Online Advertising*, available at [www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.pdf](http://www.ftc.gov/bcp/conline/pubs/buspubs/dotcom/index.pdf).

year. As mentioned earlier, the FTC provided copies of this publication to the ten largest distributors of P2P file-sharing programs to guide them in better informing consumers about the risks inherent in downloading and using P2P file-sharing programs.

### **III. Conclusion**

The FTC will continue to assess the risks associated with P2P file-sharing technology, educate consumers, monitor and encourage industry self-regulation, and investigate and institute law enforcement actions when appropriate in the P2P file-sharing arena. The FTC thanks this Committee for the opportunity to describe how the FTC has addressed the consumer protection issues raised by P2P file-sharing technology.