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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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October 17, 2007

The Honorable Deborah Platt Majoras
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Majoras:

We are writing to urge the Federal Trade Commission (FTC) to investigate promptly recent disclosures regarding inadvertent file sharing over peer-to-peer (P2P) networks and to take steps to ensure that potential risks posed by P2P networks are incorporated into the Commission's ongoing efforts to combat identity theft.

Although we recognize that P2P networks have the potential to deliver innovative and lawful applications that will enhance business and academic endeavors, reduce transaction costs, and increase available bandwidth, these networks must also be used in a way that protects sensitive government, personal, and corporate information and copyright laws. In our view, the FTC should play an important role towards that end.

Background

On July 24, 2007, the Committee on Oversight and Government Reform held a hearing on inadvertent file sharing over P2P networks. The hearing was part of an ongoing bipartisan effort to investigate and understand the uses and risks of P2P networks.¹

The Committee first started studying the uses and risks of P2P networks in 2003. Through its hearings and investigations, the Committee learned that pornographic content was widely available on P2P networks and that highly personal data -- such as individual tax returns

¹ Committee on Oversight and Government Reform, *Inadvertent File Sharing Over Peer-to-Peer Networks* (July 24, 2007)(information available online at www.oversight.house.gov/story.asp?ID=1424).

and financial information -- were being made available to individuals using popular P2P applications like KaZaA, Morpheus, LimeWire, and Grokster.²

On August 10, 2004, 17 members of the Committee wrote then Chairman Murriss asking that the FTC investigate several of the issues raised by the Committee's inquiry.³ The Committee noted that although P2P technology is "proving to have important and valuable uses," members were concerned about the risks of P2P networks and the potential impact on consumers. The Committee also asked the FTC to consider whether additional legislation in this area might be warranted.

In response to congressional interest in this matter, in December 2004, the FTC held a public workshop entitled "Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues." At this workshop, leading P2P distributors declared that the problem of inadvertent file sharing was resolved by industry adoption of a voluntary *Code of Conduct*.

In May 2005, the Commission reported to the Committee that "P2P file-sharing program distributors appear to have made substantial progress in conveying risk information to consumers" and that the FTC would "hold distributors to their promises to provide consumers with risk information."⁴

Earlier this year, the United States Patent and Trademark Office (PTO) released a report suggesting that inadvertent file sharing might be more than an issue of adequate consumer disclosure and education.⁵ The PTO report concluded that the distributors of five popular P2P file sharing programs have "repeatedly deployed features" for the purpose of tricking users into sharing files that they might not otherwise share.⁶

² Committee on Government Reform, *Children's Exposure to Pornography on Peer-to-Peer Networks* (Mar. 2003); Committee on Government Reform, *The Threats to Privacy and Security from File Sharing Networks* (May 2003) available online at www.oversight.house.gov/search/search.asp.

³ Letter from Chairman Tom Davis, Rep. Henry A. Waxman, *et al.* to Timothy J. Murriss, Chairman, the Federal Trade Commission (Aug. 10, 2004).

⁴ Letter from FTC Chairman Deborah Platt Majoras to Rep. Henry A. Waxman (May 9, 2005).

⁵ Office of International Relations, *Filesharing Programs and Technological Features to Induce Users to Share*, A Report to the United States Patent and Trademark Office from the Office of International Relations (Nov. 2006).

⁶ *Id.* at 1.

2007 Committee Investigation and Hearing

In response to the PTO report, Committee staff commenced an investigation into the question of whether inadvertent file sharing is prevalent and continues to pose risks to consumers, businesses, and government. The results were alarming. In a series of searches using common search terms through a popular P2P program, Committee staff obtained numerous documents that by any reasonable measure would be considered highly sensitive or confidential. Included in these documents were personal bank records and tax forms, attorney-client memos, corporate strategy documents, corporate accounting documents, government emergency response plans, and even military operation orders.

Concurrent with the Committee's testing of a popular P2P program, Chairman Waxman and Ranking Member Davis wrote to two of the largest P2P distributors, LimeWire and StreamCast, requesting responses to a series of questions about inadvertent file sharing and asking what steps, if any, the companies had taken to alert consumers to the risks associated with file sharing.⁷ Chairman Waxman and Ranking Member Davis also asked a number of specific questions about the PTO report and the above-referenced *Code of Conduct*.

In July 2007, both LimeWire and StreamCast submitted written responses to the Committee's questions. These responses, attached hereto, included a number of promised steps that the companies would take to make instances of inadvertent file sharing less commonplace.

At the Committee's July 24, 2007, hearing, government and independent witnesses testified about the sensitive data of all types that are available through popular P2P programs. A demonstration at the hearing showed Committee members -- in real time -- the millions of searches being conducted through P2P networks from computers around the world. Although much of the searching is for the purpose of illegally downloading music and movies, an alarming number of searches targeted personal financial information or security data.

Based on this demonstration and on several heavily redacted documents turned over to the Committee for review, we believe that the problem of inadvertent file sharing is a much more significant problem than previously thought.

⁷ Letter from Chairman Henry A. Waxman and Rep. Tom Davis to Mark Gorton, Chief Executive Officer, The Lime Group; Letter from Chairman Henry A. Waxman and Rep. Tom Davis to Michael Weiss, Chief Executive Officer, StreamCast Networks (June 19, 2007) (available online at www.oversight.house.gov/documents/20070620172423.pdf and oversight.house.gov/documents/20070620172402.pdf).

The FTC Response

We are aware of the Commission's past work on P2P file-sharing and commend the agency for its efforts to educate the public about the risks posed by file-sharing. In light of the Committee's recent investigation and hearing, however, we believe the FTC should expand its efforts to protect consumers from inadvertent P2P file sharing.

At the July 24, 2007, hearing, the agency testified that the FTC views P2P file-sharing as on par with "other Internet-related activities such as surfing web sites, using search engines, downloading software, and using e-mail or instant messaging."⁸ We question this assessment. We have not seen evidence that any of these other "Internet-related activities" leads to the wholesale information disclosures described at the Committee's hearing.

Recent developments underscore the potential threats posed by P2P file-sharing. Last month the Department of Justice (DOJ) announced its first indictment against an individual for ID theft using computer file sharing programs. According to DOJ, the individual used file sharing programs "to search the computers of others for federal income tax returns, student financial aid applications, and credit reports that had been stored electronically by other people on and in their own private computers."⁹ This is exactly the type of information uncovered by the Committee's own testing. According to DOJ, the suspect is linked to 80 victims and more than \$70,000.00 in fraud.

On September 21, 2007, the Associated Press reported the inadvertent release of more than "5,000 Social Security numbers and other personal details about customers of ABN Amro Mortgage Group," a division of Citigroup.¹⁰

In order to assist the Committee with its ongoing investigation into this matter and in order to inform our understanding of the FTC's activity in this area, we respectfully request your response to the following questions by November 1, 2007:

⁸ Prepared Statement of the Federal Trade Commission before the Committee on Oversight and Government Reform, at 3 (July 24, 2007) (available online at www.oversight.house.gov/documents/20070724103011.pdf).

⁹ Department of Justice, United States Attorney Jeffrey C. Sullivan, Western District of Washington, *Seattle Man Indicted for ID Theft Using Computer File Sharing Programs* (Sept. 6, 2007).

¹⁰ Anick Jesdanun, *Mortgage Data Leaked Over File Network*, Associated Press (Sept. 21, 2007) (online at www.msnbc.com/id/20912098/from/ET/).

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1. Does the FTC still consider the risks posed by P2P file sharing to be similar to “other Internet-related activities such as surfing web sites, using search engines, downloading software and using e-mail or instant messaging?”
 - a. If so, please explain how these risks are similar.
 - b. If not, please explain how the agency plans to protect consumers from the enhanced risks of utilizing P2P file sharing programs.
2. Has the FTC reviewed the report issued by the PTO earlier this year? If so, please indicate if the agency is conducting additional tests to determine whether its assessment of the risks posed by P2P need to reevaluated.
3. Has the agency followed up with remaining P2P distributors since December 2004 to determine whether they have adhered to the *Code of Conduct*? If so, please provide details about these inquiries and their results.
4. In its efforts to combat identity theft, has the FTC considered the impact of P2P file sharing?
 - a. Was P2P file sharing considered as a potential risk by the President’s Identity Theft Task Force?
 - b. Will recent DOJ activity in this area lead to more explicit linkage between identity theft and file sharing?
5. Does the FTC have sufficient enforcement authority to address problems associated with inadvertent file sharing or does it need additional authority?

We look forward to your response and working with you to protect consumers from the dangers posed by P2P networks.

Sincerely,



Henry A. Waxman
Chairman



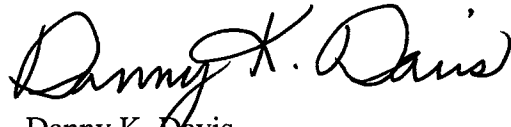
Tom Davis
Ranking Minority Member



Edolphus Towns
Member of Congress



Elijah E. Cummings
Member of Congress



Danny K. Davis
Member of Congress



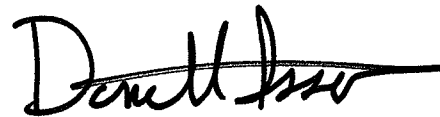
Chris Cannon
Member of Congress



William Lacy Clay
Member of Congress



Stephen F. Lynch
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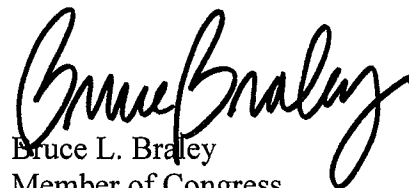
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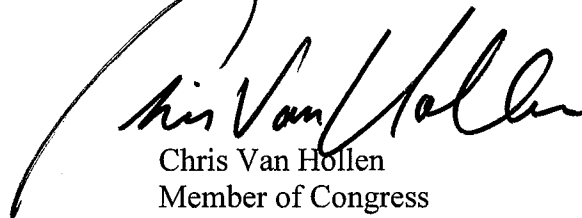
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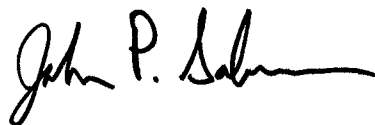


Chris Van Hollen
Member of Congress

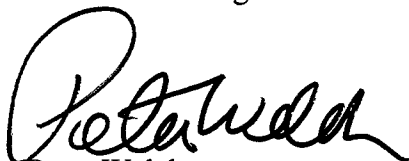
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Paul W. Hodes
Member of Congress



John P. Sarbanes
Member of Congress



Peter Welch
Member of Congress

Enclosures