

# United States Senate

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**Statement of Senator Gordon H. Smith**  
**Federal Trade Commission**  
**Peer-to-Peer (P2P) File-Sharing Technology Workshop**  
**December 15, 2004**

Madame Chairman, Members of the Commission, thank you for giving me the opportunity to help kick off this workshop. I want to commend you and your staff for your efforts in putting together these panels.

As many of you know, the Senate Commerce Committee spent a good deal of time in the 108<sup>th</sup> Congress examining the Internet and the way our day-to-day lives have been forever changed by the PC, blackberry, instant messaging, online banking and so many other services made available by instant, wireless, global telecommunications. There is no questions that the Internet has revolutionized many aspects of our lives - much of it in very beneficial ways, but some of it in a manner that raises new concerns.

I chaired a hearing on peer-to-peer file distribution technology - known as P2Ps - on June 23, 2004. My friend Barbara Boxer and I made inquiries of P2P with this Commission, trade associations representing P2Ps, and others knowledgeable about this burgeoning and exciting new technology.

This issue has been a "hot topic" throughout the country. Not only have concerns about P2Ps been addressed by the Senate Commerce Committee, but also in the Senate Judiciary Committee, several House Committees, the General Accounting Office, various federal agencies, and by many state attorneys general and local government agencies.

You will undoubtedly hear differing descriptions of the activity conducted over P2P networks. For example, there are the tens of millions of users of P2P software who trade nearly a billion files a month. They call their activity file-"sharing." Then there is America's entertainment industry which is incensed that the siren call of "free" music or movies or video games or software is what lures people to the P2P sites. They call this activity "theft." Then there are the P2P companies that make money through pop-up ads and marketing data based on the number of people who use their software. They say they play no role in determining how their programs are used.

Especially disturbing to me is the amount of pornographic material that is not only traded over these P2P networks, but disseminated through intentionally misnamed files that intrude into our homes and families. I am not naïve - I know that one can go to Google and ask for explicit images. But on Morpheus when children type in a search for "Elmo" or "Sleeping Beauty" or "baseball" they invariably receive files containing unspeakable images - often involving children and pre-teens.

Many studies show that P2Ps threaten consumer security and privacy because of the viruses, adware and spyware prevalent on P2P networks. Too many consumers are too casual about downloading P2P software, and click through the screens by hitting '*next, next, next, next*' until the program is loaded. Not only is that the expedient way to go, it is to be expected because the adhesion contracts are incomprehensible. The type is small, the paragraphs long and the legal and technical jargon is difficult to decipher.

Worse yet, when one family member or office mate installs P2P software on a shared computer or local network, the others may not know that their personal, private files may be "shared" with others. I have seen P2P demonstrations that call up tax returns, financial and medical records and credit cards of total strangers. Public safety was compromised as far back as August 2002 when a Toronto man accessed Aspen Colorado's computer network - including passwords and logins of the police Department - through Kazaa. In August 2004, Conrad Burns, my Commerce Committee colleague, sent a letter to the Army Secretary because of the national security implications raised when a computer user in Germany found military duty rosters, discussions of tactics and other secret files on the P2P program Lime-Wire.

I recognize that there are some using P2P networks to legitimately distribute content, including software, video games and music. I was encouraged to read recent reports about a venture called "Snocap" where copyright owners are working with P2P companies who want to play by the rules and compensate the artists who entertain us.

Some scientists use closed and secure P2P networks to aid their collaborative efforts at medical research and global weather prediction. University officials are investing in closed P2P services for traditional educational and academic pursuits among people authorized to be on their network. Penn State's Lionshare is an especially good example of a secure P2P environment and may be a precedent for other schools.

However, given the abundance of viruses and adware on the most popular, public P2Ps, and the breaches of privacy, security and property rights that they facilitate, it is clear that open P2Ps put American consumers and families at great risk.

This forum will likely give the agency the record that it needs to rein in the bad actors. But if you find that the Commission does not have the legal tools that it needs to protect consumers, I look forward to working with you to craft legislation that will enable you to do so.

At the very least, we need to regularly and systematically inform consumers about the P2Ps they are using. And we need to do so in clear and understandable language. I was pleased to see that the trade association for P2P operators have promised to improve the disclosures made to P2P users. But I am reminded of the wise advice offered by President Reagan -- "Trust, but verify." I will be watching to see whether the notices are implemented by the biggest P2Ps, and how they are implemented. I certainly hope that the FTC will dedicate a team of its famous "mystery shoppers" to that task, and that you will insist on quarterly reports from the associations that made this announcement.

And I am not at all convinced that this disclosure program goes far enough. They do not tackle the pornography problem. They do not necessarily address my privacy concerns because people still may not know the "share" function is on - and it may be that we should insist P2P software regularly and conspicuously remind consumers of that fact. If the P2Ps can send their users pop-up ads to make money, they can most definitely send other pop-ups to keep consumers safe. If they want to be legitimate players, they should provide links for permanently and completely uninstalling the software, as well as the adware and spyware that goes along with it.

Why am I so skeptical? The parental "filters" offered by the P2Ps when the software is first downloaded can be easily circumvented by the kids we seek to protect. If the P2Ps can filter for porn, they should be able to filter for copyrighted works posted without the permission of the creator. Be it Shawn Fanning's 'Snocap,' Audible Magic's box or other digital fingerprinting technologies, filtering has shown real promise.

It is absurd that I can go to BitTorrent or eDonkey and find an 'about-to-be-released' song or album, or one still on the Billboard charts, or a movie still in the theaters, or a DVD not yet released. If the P2Ps want to be legitimate actors, they should focus their efforts to filter out illegally copyrighted movies, music, and software on their networks. I want to see such filters not only to protect these great American artists and industries, but also to keep people from being sued because they use services that, let's face it, are designed to facilitate copyright theft.

Madame Chairman, I appreciate your courtesies, and the Commission's attention to these issues, and look forward to working with you to better protect America's consumers from the misuse of a promising and exciting new technology.