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**Embracing the Digital Age of Entertainment**

**Testimony Before the California Senate Select Committee on the  
Entertainment Industry  
Informational Hearing on Peer to Peer File Sharing**

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Senator Murray, members of the Senate Select Committee, we thank you for the opportunity to participate in today's Informational Hearing on Peer to Peer File Sharing. We recognize that while we are all here nominally to discuss peer-to-peer, or "P2P," the underlying question before us is both larger and more fundamental: how will we weather this tremendously challenging, complex transition into the digital age of entertainment?

Our company believes that a gathering in this context, a venue for sharing information, is an essential first step, as we will need to make fact-based strategic decisions, and all of us here need to know more than we do.

Our company BigChampagne is in the information business, and so we hope that we can contribute to and encourage dispassionate analysis of *all* of the implications of the digital age of entertainment, with our particular focus on peer to peer file sharing. We believe a closer understanding of all variety of digital technologies will be essential to the prosperity of the entertainment business going forward.

Our company was founded by members of the entertainment industry, market researchers and technologists. We believe that we appreciate and share the interests of parties on all sides of the equation; in fact, our company's future depends upon the health of the entertainment industry, but also the growth of entertainment *online*. We have a unique vantage point from which to view this new digital landscape, and our interest is in seeing the obvious potential here fully realized. To that end, we will share our observations about both opportunities and challenges, even if that means we bear some unwelcome news along the way.

BigChampagne measures activity on peer-to-peer networks. For nearly three years, 24 hours a day and seven days a week, we have collected information about these growing communities (comprised of hundreds of millions of participants and billions of exchanges); we have analyzed these data and provided information about content online to major record labels, artists, artist management, radio programmers, industry trade publications, consumer magazines, even television entertainment news programs.



We could spend a great deal of time presenting our findings, but to serve the agenda today we will focus on the headlines and keep our remarks brief.

To begin to understand the file sharing phenomenon, first you must appreciate its scope and penetration. Consider this: song for song, more music was acquired on peer-to-peer networks last year than through retail sales of compact discs worldwide. Or, to put it another way, file sharing is bigger than the record business. According to market research firm Ipsos-Reid, there are more than 60 million MP3 downloaders in this country alone. Nearly half (48%) of twelve- to seventeen-year-olds have downloaded MP3 files in the past month.

Perhaps more startling is this indicator of the rate of growth: the number of users of the Kazaa network at any given moment has more than doubled in less than one year. In August of 2002, the simultaneous user base topped two million. As we speak, at this instant in fact, more than four million Kazaa users are logged on to the network, picking and choosing from a library of hundreds of millions of files.

As we speak, it has been nearly four years since the peak of Napster's popularity. Tens of millions of consumers have been freely downloading popular music for four years. As a result, prevailing attitudes about P2P have cemented. According to Ipsos-Reid's TEMPO report, only nine percent (9%) of downloaders in this country agree that downloading unauthorized music is wrong, and only one-in-five (21%) agree that peer-to-peer file-sharing hurts artists. Only 16% believe that record labels are justified in attempting to shut down file-sharing services.

We are not, as many have suggested, in the middle of a consumer revolution -- we are regarding that revolution in the rear-view mirror.

In a recent New York magazine piece entitled "Stop, Thief!" Michael Wolff addressed what all of the parents here today will instantly recognize as the "everybody's doing it" mentality. Wolff wrote, "*everybody* can't be an outlaw. If everybody does it, it's normal rather than aberrant behavior. It's not so much the consumer who is on the wrong side of the [copyright] law, but the entertainment industry that's on the wrong side of economic laws."

Of course, file sharing has been much more than a teen phenomenon for years. Just last week, AARP, a nonprofit, nonpartisan membership organization for people age 50 and over, began advertising on the Kazaa network. Spokesperson Rick Bowers acknowledged that file sharing communities provide opportunities for AARP to recruit new members, adding, "We try to be conservative, but at the same time we try to be on the cutting edge."

Our thesis, based on our observations to date, is this: the problems associated with the digital age of entertainment, including but certainly not limited to file



sharing, can and will get worse. The entertainment industry needs a strategic, more than tactical, response.

High profile efforts to defeat online piracy through litigation, legislation and technological counter-measures have in our observation had little or no impact on the big picture -- the continuing growth and mainstream popularity of file sharing. In fact, frequently cited victories, like the Napster litigation, may have done more harm than good, practically speaking. Downloaders have not been deterred, (rather, they have thrived), and the surrounding publicity has helped spread the word about downloading music. To be pointed, those that did not learn about Napster from a friend learned about Napster from Newsweek.

Another obvious problem with even successful litigation against the creators or owners of a file sharing network is that only the creators or owners seem to be affected. What will we accomplish strategically if Sharman Networks, the owners of Kazaa, are thwarted, but end users, hundreds of millions of people, continue downloading, blissfully unaware?

For more than three years, our company has been aware of the wide variety of initiatives intended to combat online piracy. We have followed closely litigation, legislation, education, and technological remedies. We have read in the papers about successful efforts to cripple the Napster, Scour, Aimster, and AudioGalaxy networks.

But what we have *seen* is exactly this: tens of millions of Americans, and hundreds of millions of people worldwide, continue to embrace file sharing in record numbers.

Mr. Chairman, members of the Committee, I urge you all to recognize this fact: file sharing is both ingrained and fundamentally unstoppable. In a paper published last year, Microsoft researchers concluded that "all efforts to stop content swapping are in the long term futile." This same paper went on to suggest that schemes to protect online content are "inherently ineffective" and "doomed to failure." Ultimately, their recommendation to content owners was to compete with peer-to-peer networks on their own terms: "convenience and low cost rather than additional security."

Clearly, in addition to combating online copyright infringement, we must begin to focus on the cause of this mass infringement. Technologists recognize that Napster was only a symptom, as Kazaa is only a symptom. Perhaps the most difficult reality that we must confront here today is that ultimately, P2P is not really the problem at all. No, the problem is digital technology itself. The problem is the internet.



The tools of the digital age are *de facto* tools of infringement: email, instant messaging, the world wide web, search engines, wireless technology. Any communication technology, any desktop computer, any portable storage device can and will be used (knowingly or otherwise) for infringement, often on a massive scale.

Recently a record label executive asked me, “what happens if we just unplug the internet?” I believe he was being facetious, but I gave him a truthful answer. If it were possible to unplug the internet, I think that the “digital problem” would persist. Here’s one personal reason I think so: my wife Amanda is a school teacher, and she describes the lunch hour swap meet she witnesses every day. When I was growing up, we called these offerings mix tapes. Then, I could share dozens of songs with a friend on a cassette. Now, kids can share thousands of songs with dozens of friends on MP3 CDs or portable devices.

So, even if we believe we can solve the peer-to-peer problem, we can take little comfort that this will stem the tide. A new approach is overdue. The music industry in particular must seize this opportunity now, four years after the fact. Remarkably, it is still not too late.

Like most analysts, my colleagues and I are genuinely optimistic about the long-term opportunities for the entertainment industry online. We predict that the digital age will elevate both art and commerce to new highs. At the same time, we are very concerned about the immediate future. Despite the threat to traditional content controls, the industry must participate, first in the online music model that has outpaced the CD itself; opposing it is not enough.

I will conclude with the words of our colleagues, Sony CEO Nobuyuki Idei and RIAA chairperson Hilary Rosen, both of whom spoke recently about the state of the business and the mandate for change:

Speaking about the major record labels, Nobuyuki said, “they have to...encourage file-sharing so they can also get micro-payments for these files. The music industry has to re-invent itself, we can no longer control distribution the way we used to. Most entertainment executives understand this.”

And Hilary Rosen should have the last word here, as her stated conclusion sums up our own so elegantly. “We are all at a critical juncture in our relationship with music fans and now is our opportunity to put their interests first. Not ours. I firmly believe that when the music consumer is well served, so will we all be.”

I thank you, and I welcome questions as time allows.