

MOTION PICTURE ASSOCIATION OF AMERICA, INC.

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December 20, 2007

Special Agent Kiffa Shirley
Special Agent Lori Jensen
Federal Bureau of Investigation
9797 Aero Drive
Sand Diego, CA 92123

Re: EliteTorrents BitTorrent Tracker

Dear Agents Shirley and Jensen,

I am the Director of United States Anti-Piracy Operations for the Motion Picture Association of America (MPAA)¹ and I write to refer for investigation and possible prosecution members of a massive piracy ring operating in the Southern District of California and elsewhere in the United States. The members of this piracy ring are stealing copyrighted materials on a massive scale in violation of the criminal copyright statutes: Title 17, United States Code, Section 506, and Title 18, United States Code, Section 2319. In addition, the agreement between these subjects to help each other steal copyrighted works is itself a violation of Title 18, United States Code, Section 371 (conspiracy). We hope that you will investigate this piracy ring and bring the most culpable members of the organization to justice.

The piracy ring that is the subject of this referral is a criminal organization called "EliteTorrents." EliteTorrents is an organization dedicated to helping its members steal copyrighted works, and the members are, in fact, rewarded for being the first to make copyrighted works available to the other members of the organization. As of February 12, 2005, there were 133,794 members of the EliteTorrents organization, a wide majority of which had a record of exchanging copyrighted material over the Internet. There are many members of the EliteTorrents organization residing within the Southern District of California, and other members, including some of the most culpable, are scattered throughout the United States. EliteTorrents maintains a web site at <http://www.elitetorrents.org>.

As a preliminary matter, you should know that the MPAA has never before made a criminal referral of this type. Although we actively investigate many cases of online piracy, we routinely pursue our own civil remedies in these matters rather than burden

¹ The Motion Picture Association of America is a trade association representing the interests of Columbia Pictures Industries, Inc., Disney Enterprises, Inc., Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures Corporation, TriStar Pictures, Inc., Twentieth Century Fox Film Corporation, United Artists Pictures, Inc., United Artists Corporation, Universal City Studios LLLP, Universal City Studios Productions LLLP, and Warner Bros Entertainment Inc.

criminal investigators with our complaints. However, the Administrators and Originators for the EliteTorrents organization are some of the most significant and egregious online pirates in the world, and there simply is no adequate civil remedy that would adequately punish these offenders and deter them and others from engaging in piracy on a massive scale. EliteTorrents is world renowned among online pirate communities, and an investigation and prosecution of these criminals by the United States Government would deter millions of similarly situated individuals who engage in large-scale piracy everyday.

The MPAA has been investigating the EliteTorrents organization since August 2004. In late 2004 and early 2005, individuals claiming to run the EliteTorrents site contacted the MPAA to offer a rare opportunity to investigate the EliteTorrents organization from the inside. The two individuals offering this opportunity run the EliteTorrents system by directing two EliteTorrents "System Operators," the individuals with the highest level of technical privileges and access on the system. They directed the System Operators to configure the EliteTorrents servers to log everything occurring on the servers. This wealth of information provided an extremely rare opportunity for the MPAA to investigate the site from the inside, and the scale of piracy we've observed on the site is staggering. The piracy covers not only movies but also television content, software, and music.

In order to evaluate the offer of cooperation from the EliteTorrents directors, the MPAA requested a complete copy of all data contained on the EliteTorrents servers so that the MPAA could evaluate the data. The directors provided the MPAA with a complete copy of all data from the EliteTorrents server as of February 12, 2005, and the MPAA has had that data analyzed and it was genuine. With this data, we have been able to identify and investigate some of the largest scale pirates in the world. This referral focuses on the most culpable leaders and contributors of the EliteTorrents organization.

APPLICABLE STATUTES

The members of the EliteTorrents organization are stealing copyrighted materials in violation of 18 USC 2319 and 17 U.S.C. 506. These criminal statutes provide as follows:

1. Title 18, United States Code, Section 2319: Criminal Copyright Infringement.
 - (a) Whoever violates section 506(a) (relating to criminal offenses) of title 17 shall be punished as provided in subsections (b) and (c) of this section and such penalties shall be in addition to any other provisions of title 17 or any other law.
 - (b) Any person who commits an offense under section 506 (a)(1) of title 17—
 - (1) shall be imprisoned not more than 5 years, or fined in the amount set forth in this title, or both, if the offense consists of the reproduction or distribution, including by electronic means, during any 180-day period, of at least 10 copies or phonorecords, of 1 or

more copyrighted works, which have a total retail value of more than \$2,500;

(2) shall be imprisoned not more than 10 years, or fined in the amount set forth in this title, or both, if the offense is a second or subsequent offense under paragraph (1); and

(3) shall be imprisoned not more than 1 year, or fined in the amount set forth in this title, or both, in any other case. . . .

2. Title 17, United States Code, Section 506:

(a) Criminal Infringement— Any person who infringes a copyright willfully either—

(1) for purposes of commercial advantage or private financial gain, .

. . .

shall be punished as provided under section 2319 of title 18, United States Code.

OVERVIEW OF THE ELITETORRENTS FILE SHARING NETWORK

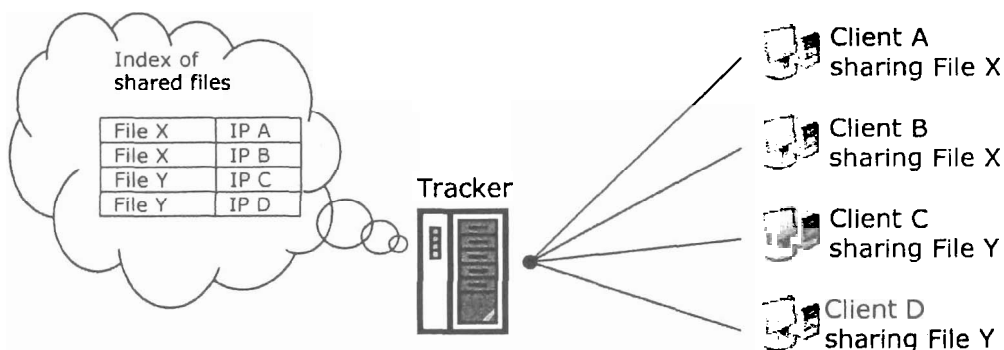
The MPAA has a close working relationship with Dr. Kelly Truelove, PhD, a computer scientist who frequently consults with the MPAA on the MPAA's most important peer-to-peer investigations. Dr. Truelove earned his Ph.D. in physics in 1997 from the University of California, Berkeley, where his research focused on complex computer simulations. He started working on Internet end-user applications immediately thereafter, first as a consultant and then as a venture-capital-backed entrepreneur. Dr. Truelove began technical studies of peer-to-peer systems on behalf of his investors in early 2000, and he wrote and spoke publicly about the technology during that work. Since late 2001, Dr. Truelove has served as an independent consultant to the MPAA, the Recording Industry Association of America, and the National Music Publishers' Association in support of their most important peer-to-peer litigation and related investigations. In this role, Dr. Truelove maintains a detailed familiarity with peer-to-peer technology and piracy, including the BitTorrent system and sites that put that system to an infringing use.

I and other employees at the MPAA directed Dr. Truelove to examine the data from EliteTorrents that had been provided to the MPAA as described above, and to opine on the authenticity of that data. Dr. Truelove found that the data correspond both broadly and specifically with data publicly accessible on the EliteTorrents site, and that the data appear to be the authentic data of a functioning BitTorrent system. Dr. Truelove noted that, although it is technically possible the directors or operators removed some data from the copy produced to the MPAA, it does not seem likely that the data produced was fabricated. I have had many discussions with Dr. Truelove about the EliteTorrents data and during those discussions I learned the following:

1. The technology used by EliteTorrents is called BitTorrent. BitTorrent is a system for locating and transferring files between computers on the Internet. Mechanically, files shared over a BitTorrent system are broken down into separate parts that are separately shared. A user downloading over a BitTorrent network will begin sharing the parts of a file as he acquires them, which is even before he or she has

acquired all of the parts of the larger file. The BitTorrent system is designed so that users will obtain the missing parts of the files they are acquiring faster if they upload the parts they acquire as they acquire them. This combination of partial-sharing and tit-for-tat techniques generally results, especially for larger files such as movies, in BitTorrent providing faster downloads than competing peer-to-peer file transfer systems.

2. There are two sorts of programs that comprise the BitTorrent system: "clients" and "trackers." Clients are programs that users run to download and upload files. Trackers are programs that certain motivated parties run to tell the clients where they can locate the files they want. This file-location service is critical to the functioning of the BitTorrent system. A tracker tracks clients and maintains a list, or index, of which clients are online sharing which files. Trackers do not store or relay the files themselves, but instead introduce clients to one another to make file sharing by individuals easier. A client communicates with a tracker to ask it for the Internet Protocol (IP) addresses of clients sharing the file that the client wishes to download. The client then automatically communicates directly with those other clients to download the desired file from them. The figure below shows the architecture of a BitTorrent system.

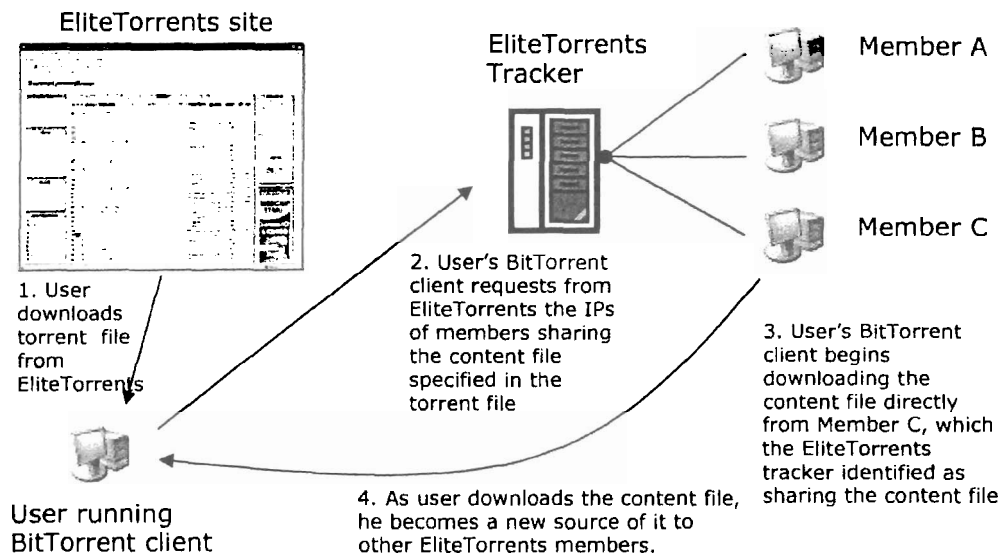


3. The BitTorrent system enables users to download many types of files, including movies, music, and software files, which are called "content" files. In order to download a content file with BitTorrent, a user must first find and download an associated "torrent" file. The EliteTorrents organization operates its own torrent site and its own tracker. Torrent files contain the information BitTorrent clients need to download associated content files. Namely, a torrent file includes the address of a tracker, the name of a content file, the size of the content file, the size of the parts into which the file is divided, and unique file identifiers for each part. Torrent files are small files that essentially tell one computer where and how to get a content file directly from another computer.

4. Applying this technology to the case at hand, members of EliteTorrents use this technology to trade copyrighted works. For example, an EliteTorrents member who wants to download the movie Spider-Man 2 will log onto the EliteTorrents torrent site and type the filename Spider-Man 2 into the search engine. The appropriate torrent file will be located and the member clicks on the name to download the file. After the

torrent file is downloaded, the member's BitTorrent software communicates with the tracker, learns the Internet Protocol (IP) addresses of other EliteTorrents members who have the movie file, and the member will begin to receive the movie file from the other EliteTorrents members.²

5. The details of this process are largely invisible to the user. From an EliteTorrents member's perspective, he or she merely clicked on a Spider-Man 2 link on a website and, with no further action, found a copy of the movie on his computer some time later. From the user's perspective, it is as though the EliteTorrents site itself supplied the movie. The figure below illustrates the process of downloading a file using BitTorrent and the EliteTorrents site.



ELITETORRENTS OPERATIONAL STRUCTURE AND ITS MEMBER CLASSES

6. There are 133,794 members of the EliteTorrents organization, and each of these members has a unique Login ID and password. Every username is unique and

² An IP Address is a unique numeric address used by computers to communicate on the Internet. An IP Address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet must be assigned a unique IP Address so that Internet traffic sent from and directed to that computer may be directed properly from its source to its destination. An IP Address acts much like a home or business street address for Internet communications, and enables Internet routers to properly route traffic to each other so that communications reach the intended destination computers. There are two types of IP Addresses, dynamic and static. To assign dynamic IP Addresses, the ISP randomly assigns one of the available IP Addresses in the range of IP Addresses controlled by the provider each time a customer dials in or connects to the provider in order to connect to the Internet. The customer's computer retains that IP Address for the duration of that session (i.e., until the user disconnects), and the IP Address cannot be assigned to another user during that period. Once the user disconnects, however, that IP Address becomes available to other customers who dial in at a later time. Thus, an individual customer's dynamic IP Address may, and almost always will, differ each time he dials into or connects to the ISP. To designate static IP Addresses, the ISP assigns the customer a permanent IP Address. The customer's computer would then be configured with this IP Address every time he or she dials in or connects to the Internet.

constant, and only an individual with the password associated with a particular username can log onto the site as that user. Each user is assigned to a class, and there are 12 different user classes on the EliteTorrents site: (1) Leech, (2) User, (3) Power User, (4) Extreme User, (5) Elite User, (6) VIP, (7) Support, (8) Uploader, (9) FMOD, (10) Moderator, (11) Administrator, and (12) Sysop. The lowest class with the least amount of privilege is the "Leech" class, and the highest class with the most amount of privilege is the "Sysop" class. There are two Sysops on the EliteTorrents site, and these were the two individuals working under the direction of the two individuals who provided the data from the EliteTorrents servers as described above. The highest class other than the Sysops is Administrator, and the Administrators run the day-to-day operations of the EliteTorrents site. There are six Administrators for the site, and all of them have a high degree of control over the site. Three of these Administrators are located in the United States, and these three administrators use the following three usernames: (1) sk0t, (2) prezto, and (3) duffman. All three of the U.S.-based Administrators are being referred to you, each under separate cover. These three Administrators are the most culpable leaders of the EliteTorrents organization that we could identify and refer.

7. The individuals who obtain original content for the EliteTorrents organization are members that we term the "Originators." Originators are an elite class (class "Uploader" from the paragraph above) on the site which are individually selected by the site administrators. In some cases, members had to apply to one of the administrators to be an originator, advising of their capability of getting new releases and having high bandwidth for uploading. Twelve Originators believed to reside in the United States originated 10 or more movies and television episodes to the EliteTorrents organization, which means they were the very first individuals to supply a particular title to the EliteTorrents organization. In our opinion, these Originators are the second most culpable class of individuals in the EliteTorrents organization who have most damaged the movie industry. The EliteTorrents tracker keeps a record of the Originator of each torrent file available on the EliteTorrents site. On February 12, 2005, there were 1,830 torrent files associated with content tracked by the EliteTorrents site. In BitTorrent lingo, the tracker was tracking 1,830 torrents. These 1,830 torrents had 376 different originators between them. The biggest originator was responsible for 208 torrents, the second-biggest was responsible for 84, and the third-biggest, 83. The twelve Originators whose IPs indicate US locations, and who have originated the most movies and television episodes are being referred to you as appendices attached to this document. Interestingly, two of these Originators appear to be the same people as two of the four U.S. Administrators. Specifically, Administrator "sk0t" appears to be the same individual as Originator "MindHunter," and Administrator "duffman" appears to be the same individual as Originator "McCalister." The other 11 U.S.-based Originators that are being referred are usernames "r313007," "stonyvision," "mattb," "cipher," "punker22," "neeksor," "Nick4753," "G," "StanTek," and "bandwith."

8. Dr. Truelove also explained to me the role of seeders on the EliteTorrents site. A "seeder" is a user who shares a full copy of a content item (the item may consist of many different files). A user can become a seeder simply by downloading a full file and keeping his BitTorrent client open for some time afterwards to enable other EliteTorrents member to obtain the file from him or her. EliteTorrents maintains a

database that makes it possible to determine which users are seeding the most files. That is, it is possible to determine which users are sharing the largest number of full files (as opposed to sharing only part of a file, which all users do while downloading files). Out of 133,794 users on record, 93,132 (70%) had uploaded content using the tracker's services as of February 12, 2005. Among that 70%, the average amount of data uploaded was 22 gigabytes.³ The largest Uploader uploaded 28,000 gigabytes, or over 1,000 times the average. Out of the 133,794 members of the EliteTorrents organization on February 12, 2005, 94,418 (71%) had downloaded content. Among that 71%, the average amount of data downloaded was 20 gigabytes.

9. The appendices that follow were written using data extracted from the EliteTorrents database. Appendix 1 is a full template for the administrator registered as Sk0t. Appendices 2-11 cover the probable cause sections for ten additional originators. Full templates for each individual were omitted to prevent redundancy. We will provide additional appendices as they become available or necessary.

Sincerely,

James W. Spertus
Vice President and Director
United States Anti-Piracy Operations
Motion Picture Association of America

³ A single gigabyte of storage space, or 1,000 megabytes, is the equivalent of 500,000 double-spaced pages of text. 1,500 GB of data, if printed on 8.5" x 11" paper, would print out in 750,000,000 pages of text. Infringing copies of movies found on the Internet are often about 1 gigabyte in size.