

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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U.S. DISTRICT COURT
DISTRICT OF KANSAS
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UNITED STATES OF AMERICA,

Plaintiff,

vs.

SAMUEL KUONEN,

Defendant.

RAUL H. L. DELOACH
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ATTORNEY GENERAL

No. 07-200 27 -01- CM / DJW

INFORMATION

The United States Attorney charges that:

COUNT 1

(Conspiracy)

I. Background

1. At all times relevant to this Information, **SAMUEL KUONEN**, possessed, maintained, or had access to one or more computers connected to the Internet and communicated online using the alias "BANDWITH."

2. Peer-to-peer ("P2P") file sharing networks allow a group of computer users – or "peers" – with the same file sharing software program to connect with each other through the Internet and directly access files from one another's computer. Users of a P2P network are able to (1) find and download files located on another peer's computer; and (2) share with other peers files located on their own computers. The files referred to in this information are "content" files that include motion pictures, sound recordings, business and entertainment software and television shows.

3. BitTorrent is a newer generation of P2P file sharing technology that allows for faster and more efficient file sharing. Files transferred using a BitTorrent-based P2P network are broken into smaller chunks of data that collectively comprise a complete file, copies of which may reside on numerous computers belonging to different network peers. By breaking down files into smaller chunks of data, peers can access and download files in pieces from multiple other peers on the system instead of being dependent on a single peer.

4. By default, BitTorrent file sharing software also requires that as soon as a peer has downloaded a file chunk, that chunk becomes available for uploading to others. The process of downloading pieces of a file from multiple peers combined with immediately making those pieces available for others to download simultaneously results in faster and more efficient downloads compared to earlier peer-to-peer file transfer systems.

5. A BitTorrent system generally has "clients" and "trackers." Clients are programs that users run to download and upload files. A tracker computer, also known as a server, runs a program to track clients and maintain a list, or index, of which client computers are online sharing which files. Trackers do not store or relay the files themselves, but instead introduce client computers to one another to facilitate file sharing between peers.

6. Elite Torrents ("ET") was an online piracy organization whose members engaged in the illegal reproduction and distribution of copyrighted works over the Internet. The ET organization used a BitTorrent based peer-to-peer network to facilitate infringement by its members. Upon joining the ET network, members are assigned to one of 12 different member classifications identified on the ET site in increasing order of

responsibility and privilege. Administrators, Moderators and Uploaders are among the higher classifications on the ET network. Administrators are generally responsible for the day-to-day operations of the network. Moderators monitor the online chat among ET members and have authority to exclude members from the ET network. Uploaders introduce pirated works (copyrighted works illegally reproduced or distributed) onto the ET network.

II. The Conspiracy and its Objects

7. Beginning no later than September 2004, through in or about May 2005, in the District of Kansas and elsewhere,

SAMUEL KUONEN a/k/a/ "BANDWITH,"

did knowingly and willfully conspire, combine, confederate, and agree with other conspirators to commit an offense against the United States -- to wit, to willfully infringe the copyright of a copyrighted work for purposes of commercial advantage and private financial gain, by reproducing and distributing during a 180-day period ten or more copies of one or more copyrighted works, with a total retail value of more than \$2,500, in violation of Title 18, United States Code, Section 2319(b)(1), and Title 17, United States Code, Section 506(a)(1).

III. Manner and Means of the Conspiracy

8. It was a part of the conspiracy that **SAMUEL KUONEN** and other conspirators were members of Elite Torrents ("ET"), an online piracy organization using a BitTorrent based peer-to-peer network to facilitate infringement by its members.

9. It was further part of the conspiracy that, at various times from in or about

September 2004 through in or about May 2005, **SAMUEL KUONEN** served as an Uploader. As an Uploader, **SAMUEL KUONEN** introduced pirated copies of copyrighted works onto the ET network for others to download.

10. It was further a part of the conspiracy that **SAMUEL KUONEN** and other conspirators would obtain access to pirated copyrighted works including movies, software programs, computer games, and music and, without authorization from the copyright holder, would upload such works onto the ET network for others to access, reproduce and distribute. In addition, many of the copyrighted movies unlawfully uploaded were works being prepared for commercial distribution.

11. It was further a part of the conspiracy that, in exchange for making copyrighted works available for others on the ET network to download, **SAMUEL KUONEN** and other conspirators would expect to receive and did receive pirated copies of copyrighted works for their own personal use.

IV. Acts in Furtherance

12. In furtherance of the above conspiracy, and to accomplish its unlawful objectives, **SAMUEL KUONEN** and other conspirators transferred thousands of copyrighted works including movies, software applications, computer games and music to or from the ET network. Among these overt acts, which occurred in the District of Kansas and elsewhere, were the following:

- a. On December 18, 2004, **SAMUEL KUONEN** uploaded, or caused to be uploaded, to the ET network a pirated copy of the copyrighted motion picture "*Shaun of the Dead*";

- b. On December 23, 2004, **SAMUEL KUONEN** uploaded, or caused to be uploaded, to the ET network a pirated copy of the copyrighted motion picture "*Harold and Kumar Go To White Castle*";
- c. On December 24, 2004, **SAMUEL KUONEN** uploaded, or caused to be uploaded, to the ET network a pirated copy of the copyrighted motion picture "*Finding Neverland*"; and,
- d. On May 1, 2005, **SAMUEL KUONEN** uploaded, or caused to be uploaded, to the ET network a pirated copy of the copyrighted motion picture "*The Wedding Date*."

This was all in violation of Title 18, United States Code, Section 371.

COUNT 2

(Copyright Infringement)

On or about May 1, 2005, in the District of Kansas,

SAMUEL KUONEN,

did willfully infringe the copyright of a copyrighted work by the distribution of a work being prepared for commercial distribution, by making the motion picture "*The Wedding Date*" available on ET, a computer network accessible to members of the public, when he knew and should have known that the work was intended for commercial distribution.

This was all in violation of Title 18, United States Code, Section 2319(d)(2), and Title 17, United States Code, Section 506(a)(1)(C).

Forfeiture Notice

1. The allegations in this Information are realleged as if fully set forth here, for the purpose of alleging forfeiture, pursuant to Title 17, United States Code, Sections 506(b) and 509.

2. If convicted of the offenses set forth in the Information, **SAMUEL KUONEN**, the defendant herein, shall forfeit all infringing copies, all equipment used in the manufacture of infringing copies, all articles by means of which infringing copies may be reproduced, and all devices for manufacturing, reproducing or assembling infringing copies. Such property includes, but is not limited to, the following specific items found in the possession of **SAMUEL KUONEN** on or about May 25, 2005:

1. Compaq Deskpro Computer
2. Asus Computer
3. 3 Computer Hard Drives
4. Approximately 320 CD ROMs and Floppy Disks
5. Computer Raid Cabinet.
6. Miscellaneous Documentation

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Penalties:

- Ct. 1: NMT 5 years imprisonment; NMT \$ 250,000.00 fine; NMT 3 years supervised release; \$ 100.00 special assessment**
- Ct. 2: NMT 5 years imprisonment; NMT \$ 250,000.00 fine; NMT 3 years supervised release; \$ 100.00 special assessment**