

Report asserts Kazaa makes the rules
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Setting aside Sharman Networks' objections, an Australian judge accepted on Friday an affidavit with potentially damaging assertions about Kazaa's handling of copyrighted material.

The affidavit contains a report from George Barker, director of the Australian National University's Center for Law and Economics, and focuses on the financial consequences of the Kazaa system, which is run by Sharman Networks.

According to the report, the Kazaa system is a "marketplace" that brings together people who have copyrighted works and people who want to make unauthorized copies of those works. The report adds that Kazaa "designs the rules, facilitates the 'market' for exchange of copyright works, and enforces or has the capacity to enforce the rules of that market."

"The attractiveness of the system to users, and the success of Sharman's network growth strategy is verified by the fact that Sharman claims that Kazaa has more than 60 million subscribers and is the most downloaded program in history--approximately 20 million downloads per month," the report says. "As the network grows in size, it becomes more attractive to potential users--because more content will be available--and more valuable to Sharman."

The affidavit is part of a trial in which major record labels Universal Music Australia, EMI, Sony/BMG, Warner, Festival Mushroom and 25 additional applicants are suing Sharman Networks and associated parties--including Brilliant Digital Entertainment, Altnet, Sharman Networks CEO Nikki Hemming and others--over alleged music copyright infringement made using the Kazaa software. The trial, which started this week, is taking place in Sydney.

Barker's report also included details on how Kazaa makes its profits from unauthorized music sharing and the damage this causes to the music industry and the Australian economy.

Kazaa's unauthorized distribution system makes money from global advertising, commercial referrals to Web sites, direct marketing and market research, Barker's report states.

Sharman Networks counsel Anthony Meagher tried to prevent the affidavit's admission into the trial by asserting that Barker's report is not relevant to the issue of filtering--which deals with the Kazaa system's ability or inability to stop the sharing of copyrighted music files--or the authorization issue raised by the record companies.

Judge Murray Wilcox, however, rejected the objections from Kazaa's operators saying it was "blindingly obvious it would be to Kazaa's financial advantage" if people could use it as widely as possible. And if that meant using unauthorized material "that would be to Kazaa's benefit...of course it will pay people to freeload on others—it happens all the time."

Tom Mizzone, vice president of data service at antipiracy company MediaSentry, was also cross-examined on Friday. The previous day, he testified that his company can trace IP addresses of Kazaa users and can communicate with them about copyright infringement via instant messaging.

Under cross-examination, Mizzone acknowledged that only 22 percent of the "warning" instant messages were received by Kazaa users.

However, Mizzone also said that instant messaging could be disabled by the Kazaa users, therefore blocking attempts to send warnings about copyright infringement.

The hearing will continue on Tuesday.

Kristyn Maslog-Levis of ZDNet Australia reported from Sydney