

COMCAST HIT WITH SUIT ALLEGING IT BLOCKS P2P SHARING

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Portfolio Media, New York (July 22, 2008) -- An Internet network professional and Comcast Corp. customer has lodged a proposed class action against the company over its alleged policy of blocking peer-to-peer file-sharing programs.

Robert M. Topolski filed suit Friday in the U.S. District Court for the District of Oregon, accused Comcast of deliberately blocking several of the P2P programs, including BitTorrent, Gnutella and Lotus Notes, while advertising that it "does not block access to any Web sites or online applications, including peer-to-peer services," according to the complaint.

Topolski has testified before the Federal Communications Commission on these issues and works for two media reform public interest groups, Free Press and Public Knowledge.

The proposed class would include all Comcast customers in the U.S. who purchased the company's high-speed Internet service between July 18, 2002, and class certification.

The complaint alleges that Comcast blocks the programs by sending "reset packets" to the computer attempting to share a file that acts like an electronic signal from the other computer and tells the first computer to stop sending the data.

If file sharing were a phone call, then "Comcast is like an operator who breaks in, disguises his or her voice as one of the callers, says 'we have a bad connection,' and abruptly disconnects the call," the plaintiff argued.

"Comcast's clandestine techniques are similar to those used by totalitarian governments to censor the use of the Internet. No doubt Comcast would characterize this behavior as illegal and malicious hacking if perpetrated by others on Comcast and its customers," Topolski said in the complaint.

Gilbert Randolph LLP has filed similar suits in several state courts in the past several months, including the District of Columbia on Feb. 19 and California, New Jersey and Illinois on June 5.

Topolski approached the firm about filing the Oregon suit after learning of the earlier litigation, according to plaintiff's attorney Alyson Foster.

"When we discovered what was going on, we frankly just wanted to cross our 't's and dot our 'i's before we took legal action against Comcast. These are precisely the lawsuits that come out of the activities we've been seeing for quite some time," Foster said.

The complaint accuses Comcast of unfair competition and of violating consumer protection statutes in all 39 states in which it operates as well as the District of Columbia.

It seeks equitable relief, refund of money Comcast acquired through its "unlawful conduct," statutory damages, actual damages, treble damages, punitive damages, reasonable attorneys' fees, filing fees and reasonable costs.

"To me the most interesting thing about the suit is how badly, we think, Comcast has treated its customers. It promised them fast access and that it wouldn't block applications, and then it turned around and did the opposite, and it did so in a deceptive and underhanded manner. It hurt a lot of consumers," Foster said.

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In early 2007, public interest groups and consumers began accusing Comcast of limiting certain file-sharing applications, according to the complaint. Later that year, digital rights interest group Electronic Frontier Foundation and the Associated Press tested the system and concluded Comcast was using the "reset packets" to interfere with P2P file sharing. Comcast denied the allegations both times.

On Feb. 12 in response to complaints filed with the FCC, Comcast admitted that it used "minimally intrusive" techniques to manage "certain" P2P software requests but said it did so only during times of peak network traffic to keep from degrading the service it provides to other uses, according to the public comments the company made to the agency.

Following those comments, an independent group conducted additional studies and found that Comcast maintained its P2P management policy throughout the day, which the company admitted to the FCC July 10, according to the complaint.

The next day FCC Chairman Kevin J. Martin announced he would try to stop the company from continuing to slow these P2P file transfers, according to the complaint.

Comcast is also involved in several other litigation matters.

On June 2, Comcast filed a trademark infringement lawsuit in the U.S. District Court for the District of Colorado against Qwest Communications International Inc. saying Qwest's claim that its Internet service is faster than Comcast's is intentionally deceptive.

In May a federal judge certified a Philadelphia class in an antitrust suit that alleges Comcast has established a monopoly in the region.

The suit, filed in December 2003 in the U.S. District Court for the Eastern District of Pennsylvania, alleges that Comcast and other large cable providers cooperated to become exclusive providers for separate sections of the market, then increased prices once competition in a section was eliminated.

A representative for Comcast declined to comment on pending litigation.

The plaintiff is represented in the matter by the Law Offices of Kari E. Hong, Gilbert Randolph LLP, SimmonsCooper LLC and Hanly Conroy Bierstein Sheridan Fisher & Hayes LLP. Gilbert Randolph, SimmonsCooper and Hanly Conroy also represent the plaintiffs in the California, Illinois and New Jersey litigation.

The case is Topolski v. Comcast Corp. et al., case number 08-cv-00852, in the U.S. District Court for the District of Oregon.

--Additional reporting by Ben James and Brendan Pierson