

FEDERAL TRADE COMMISSION

Public Workshop: Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice Announcing Public Workshop and Requesting Public Comment and Participation.

SUMMARY: The FTC is planning to host a public workshop, “Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues,” to explore consumer protection and competition issues associated with the distribution and use of peer-to-peer file-sharing technology.

DATES: The workshop will be held on December 15 and 16, 2004 at the Federal Trade Commission’s Satellite Building located at 601 New Jersey Avenue, N.W., Washington, D.C. The event is open to the public and there is no fee for attendance. Pre-registration is not required. Additional information about the workshop will be posted on the FTC’s website at www.ftc.gov/bcp/workshops/filesharing/index.htm.

REQUESTS TO PARTICIPATE AS A PANELIST: As discussed below, written requests to participate as a panelist in the workshop must be received on or before Monday, November 15, 2004. Persons filing requests to participate as a panelist will be notified on or before Monday, November 29, 2004, if they have been selected. For further instructions, please see the “Requests to Participate as a Panelist in the Workshop” section below.

WRITTEN AND ELECTRONIC COMMENTS: Regardless of whether they are selected to participate, persons may submit written or electronic comments on the topics to be discussed by the panelists. Such comments must be received on or before Monday, November 15, 2004. For further instructions on submitting comments, please see the “ADDRESSES” and the “Form and

Availability of Comments” sections below. To read our policy on how we handle the information you submit, please visit www.ftc.gov/ftc/privacy.htm.

ADDRESSES: Comments and requests to participate as a panelist in the workshop filed in paper form should be mailed or delivered, as prescribed in the “Form and Availability of Comments” sections below, to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H (Annex B), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Because paper mail in the Washington area and at the Agency is subject to delay, please consider submitting your comments via electronic mail. Comments and requests to participate filed in electronic form (except comments and requests containing any confidential material) should be sent, as prescribed in the “Form and Availability of Comments” section below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Delaney, 202-326-2903, Bureau of Consumer Protection; Theodore Gebhard, 202-326-3699, Bureau of Competition; or Hajime Hadeishi, 202-326-2320, Bureau of Economics. The above staff can be reached by mail at: Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. A detailed agenda and additional information on the workshop will be posted on the FTC’s website at www.ftc.gov/bcp/workshops/filesharing/index.htm by Monday, November 15, 2004.

SUPPLEMENTARY INFORMATION:

Background and Workshop Goals

The FTC’s workshop, “Peer-to-Peer File-Sharing Technology: Consumer Protection and Competition Issues,” will continue the Commission’s long-standing efforts to assess the impact on consumers and businesses of new and significant technologies, such as peer-to-peer (P2P) file-sharing technology. P2P file-sharing technology provides individuals with the ability to

share files, including music, video, or software files, with other users. The files do not reside in a central location, but rather are stored on the hard drives of the users of the software.¹ Users download particular file-sharing software that gives the user access to selected files on the computer hard drives of other users on the same P2P file-sharing network. Users may also place files that they have labeled into a shared folder on their hard drive, thereby making these files available for sharing with users of the same network. By eliminating the need for a central storage point for files, P2P file-sharing technology allows for faster file transfers and conservation of bandwidth.

There appear to be many current and potential business and consumer applications for P2P file-sharing technology. However, some commentators have pointed out that perhaps the most common use has been the exchange of copyrighted materials, including music, movies, video games and software.

Downloading and using current P2P file-sharing software programs can create risks for users.² When users download P2P file-sharing software programs, they may download other, unwanted, software, such as “spyware” or “adware,” with the P2P file-sharing software

¹ See “File-Sharing Programs: Peer-to-Peer Networks Provide Ready Access to Child Pornography,” General Accounting Office Report to the Chairman and Ranking Minority Member, Committee on Government Reform, U.S. House of Representatives, Feb. 2003, at 21-24; and “P2P Fear and Loathing: Operational Hazards of File Trading Networks,” John Hale, Nicholas Davis, James Arrowood, and Gavin Manes, Center for Information Security, University of Tulsa, Sept. 2002, at 2.

² The FTC has developed an online brochure to provide consumers with information about the risks associated with P2P file-sharing software. See Federal Trade Commission, Consumer Alert: “File-Sharing: A Fair Share? Maybe Not,” July 2003, available at: www.ftc.gov/bcp/online/pubs/alerts/shareart.htm.

program.³ Some users may not understand how to configure properly the P2P file-sharing software's "shared folder" and may inadvertently share sensitive personal files residing on their hard drives.⁴ Users also may receive files with viruses and other programs when sharing files using P2P programs, and these viruses could impair the operation of their personal computers.⁵ Individuals may receive or redistribute files that may subject them to civil or criminal liability under laws governing copyright infringement and pornography. Finally, because of the way some files are labeled, users, including children, may be exposed to unwanted and disturbing pornographic images.⁶

The FTC's workshop is intended to provide an opportunity to learn how P2P file-sharing works and to discuss current and future applications of the technology. It will discuss the risks to consumers related to file-sharing activities. The workshop also will address self-regulatory initiatives, technological efforts, and legislative proposals. It will discuss competition issues

³ See "File Sharing Programs and Peer-to-Peer Networks Privacy and Security Risks," Staff Report Prepared for Rep. Tom Davis and Rep. Henry A. Waxman, United States House of Representatives Committee on Government Reform, May 2003, at 9-10; and "P2P Fear and Loathing: Operational Hazards of File Trading Networks," *supra* note 1, at 2.

⁴ See "File Sharing Programs and Peer-to-Peer Networks Privacy and Security Risks," *supra* note 3, at 5-9; and "Usability and Privacy: A Study of Kazaa P2P File-Sharing," by Nathaniel S. Good (HP Laboratories) and Aaron Krekelberg (University of Minnesota), June 2002.

⁵ See "File Sharing Programs and Peer-to-Peer Networks Privacy and Security Risks," *supra* note 3, at 11-12; and "P2P Fear and Loathing: Operational Hazards of File Trading Networks," *supra* note 1, at 2.

⁶ See "Children's Exposure to Pornography on Peer-to-Peer Networks," Staff Report Prepared for Rep. Tom Davis and Rep. Henry A. Waxman, United States House of Representatives Committee on Government Reform, Mar. 2003, at 7-11; and "File-Sharing Programs: Peer-to-Peer Networks Provide Ready Access to Child Pornography," *supra* note 1, at 14-15.

such as the models for distributing music and the impact of file-sharing on copyright holders.

Questions to be addressed at the workshop may include:

A. Use of P2P File-Sharing Technology

1. What are the differences between P2P file-sharing technologies and technologies that use central server or other models?
2. What are the different models of P2P file-sharing technology? Please describe the differences between the models and the applications that use each model.
3. Who uses P2P file-sharing technology or programs? What proportion of users are children, teenagers or college students? Are these proportions likely to change with the development of future uses of P2P file-sharing technology?
4. What must consumers do to uninstall P2P file-sharing software programs? Are there P2P file-sharing programs that are more difficult to uninstall than others?

B. The Role of P2P File-Sharing Technology in the Economy

1. What are the current commercial, scientific, and/or industrial uses for P2P file-sharing technology?
2. Can current P2P file-sharing technology enhance business and industrial efficiency? If so, how? How are the benefits different from those available under a central server model?
3. What are the future commercial, scientific, and/or industrial uses for P2P file-sharing technology?
4. How will these future uses of P2P file-sharing technology enhance business and industrial efficiency? How are these benefits different from those that would be available under a central server model?

5. If P2P file-sharing technology will enhance business and industrial efficiency, what effect will that have on the nature and extent of competition in the economy?
6. What are the current business models for P2P file-sharing software companies? What are the anticipated business models for the future?
7. What is the likely future competitive and/or economic impact of P2P file-sharing technology across the economy as the technology improves (speed, amount of data that can be cost-effectively transmitted, etc.) and as the number and variety of P2P file-sharing applications expand over time? Which industries will be most likely affected? How will they be affected? How will P2P file-sharing technology change competition in affected industries in the future?
8. To what extent does P2P file-sharing technology have the promise to impact the manufacture, inventorying, and delivery of goods and services?

C. Identification of P2P File-Sharing Software Program Risks

1. What are the risks to consumers caused by the downloading and use of P2P file-sharing software?
2. Does the use of P2P file-sharing software pose a security risk to the personal information of consumers? If so, what is the nature and extent of this risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?
3. Does the use of P2P file-sharing software inadvertently expose consumers, particularly children, to pornographic or other inappropriate materials? If so, what is the nature and extent of this risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?
4. Does the distribution and use of P2P file-sharing software pose a risk to consumers for

installing spyware? If so, what is the nature and extent of the risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

5. Does the distribution and use of P2P file-sharing software cause consumers to install adware? Does adware pose a risk to consumers? If so, what is the nature and extent of the risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

6. Does the use of P2P file-sharing software expose consumers to viruses or other malicious code? If so, what is the nature and extent of this risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

7. Does the installation and use of P2P file-sharing software impair computer functionality, such as processing speed? If so, what is the nature and extent of this risk? Can consumers avoid this risk? Is this risk different from the risk that a central server model or other models pose? If so, how?

D. Disclosure of P2P File-Sharing Software Program Risks

1. What do studies, surveys, or other empirical research reveal about the extent to which users of P2P file-sharing software programs are aware of the risks associated with these programs? Are there differences in awareness between children and adults? Are there differences in awareness between teenagers and parents?

2. To the extent that users are unaware of the risks associated with P2P file-sharing software programs, would disclosure requirements be an effective method of educating consumers about these risks? If disclosures would not be effective, is there a more effective means of

communicating such information? To whom (e.g., parents, children, all users) should the disclosure of risk information be made?

3. Do P2P file-sharing software programs currently disclose risks adequately to users? If not, how could these disclosures be modified to make them more effective? What are the costs associated with making disclosures more frequent or prominent?

4. What methods, other than risk disclosures, can be used to educate consumers about potential risks associated with P2P file-sharing software?

E. Technological Solutions to Protect Consumers From Risks Associated with P2P File- Sharing Software Programs

1. What types of blocking and filtering technology exist to protect users from the risks associated with P2P file-sharing software programs? How do they compare with blocking and filtering available with a central server model?

2. Are existing blocking and filtering programs effective? If not, what steps can the P2P file-sharing software industry take to improve blocking and filtering technology included with its programs?

3. What future changes to blocking and filtering technologies might enhance the protection of users from the risks associated with P2P file-sharing software programs?

4. What changes to the architecture of P2P file-sharing software programs (e.g., the configuration of shared folders or the addition of anti-virus software) might reduce the risks associated with P2P file-sharing software programs for users?

F. P2P File-Sharing and Music Distribution

1. What are the economic models of music distribution that use P2P file-sharing technology?

How is music likely to be distributed in the future using P2P file-sharing technology?

2. How is P2P file-sharing technology different from single server downloading sources such as Walmart.com?

3. To what extent do P2P file-sharing software programs currently compete with pay-per-download services such as iTunes? Would existing or future technology enable copyright holders to be compensated when users of P2P file-sharing software programs transfer copyrighted files? If so, what would be the effect on competition?

4. Does P2P file-sharing technology lower the cost of music dissemination? If so, how much? What do the data show?

5. Are record labels willing to distribute music through P2P file-sharing? Why or why not?

6. Is there empirical support for P2P file-sharing technology increasing music sales through sampling or greater awareness of artists? What do the data show?

7. Are music files on P2P file-sharing networks being intentionally “polluted” or “corrupted”? What effect does the intentional pollution or corruption of files have on P2P file-sharing software as an evolving technology?

G. P2P File-Sharing and Its Impact on Copyright Holders

1. What is the impact of P2P file-sharing on copyright holders?

2. Is it possible to measure downloading of copyrighted materials by users of P2P file-sharing programs? If so, how would such a study be designed?

3. Can P2P file-sharing program providers effectively protect against copying in violation of

copyright laws? Can P2P file-sharing program providers protect against content degradation?
What effect would such protective measures have on consumers and competition?

4. Is there technological capability for the P2P file-sharing technology industry to implement a system that either prevents the unauthorized sharing of content or only permits the sharing of content when there is compensation to the copyright holder?

5. Will technological changes allow content providers to protect their copyrighted materials from infringement by P2P file-sharing software program users? If so, what effects would these changes have on competition and consumers?

6. Would consumers and competition benefit from or be harmed by industry-wide standards for the protection of copyrighted materials, e.g., encryption or other digital rights management?

What, if any, information should consumers be given about the effect of these standards on their use of copyrighted materials?

7. Are licensing proposals available that would address the impact of P2P file-sharing on copyright holders?

Requests to Participate as a Panelist in the Workshop

Parties seeking to participate as panelists in the workshop must notify the FTC in writing of their interest in participating on or before Monday, November 15, 2004. Requests to participate as a panelist should be submitted electronically by email to filesharingworkshop@ftc.gov or if mailed, should be submitted in the manner detailed in the “Form and Availability of Comments” section below, and should be captioned “P2P File-Sharing Workshop – Request to Participate, P034517.” Parties are asked to include in their requests a statement setting forth their expertise in or knowledge of the issues on which the workshop will

focus and their contact information, including a telephone number, facsimile number, and email address (if available), to enable the FTC to notify them if they are selected. For requests filed in paper form, an original and two copies of each document should be submitted. Panelists will be notified on or before Monday, November 29, 2004, if they have been selected.

Using the following criteria, FTC staff will select a limited number of panelists to participate in the workshop:

1. The party has expertise in or knowledge of the issues that are the focus of the workshop.
2. The party's participation would promote a balance of interests being represented at the workshop.
3. The party has been designated by one or more interested parties (who timely file requests to participate) as a party who shares group interests with the designator(s).

In addition, there will be time during the workshop for those not serving as panelists to ask questions.

Form and Availability of Comments

The FTC requests that interested parties submit written comments on the above questions and other related issues to foster greater understanding of these topics. Especially useful are any studies, surveys, research, and empirical data. Comments should be captioned "P2P File-Sharing Workshop – Comment, P034517"; must be received on or before Monday, November 15, 2004; and may be filed with the Commission in either paper or electronic form.

1. A public comment filed in paper form should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room 159-H (Annex B), 600 Pennsylvania Avenue, N.W., Washington, D.C.

20580. Both the comment itself and its envelope should be captioned “P2P File-Sharing Workshop – Comment, P034517.” If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled “Confidential.”⁷

2. A public comment that does not contain any material for which confidential treatment is requested may instead be filed in electronic form by clicking on the following weblink: <https://secure.commentworks.com/ftc-p2pfilesharing/> and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the <https://secure.commentworks.com/ftc-p2pfilesharing/> weblink.

3. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. Regardless of the form in which they are filed, all timely and responsive public comments will be considered by the Commission, and will be available to the public on the FTC web site, to the extent practicable, at www.ftc.gov. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives, before placing those comments on the FTC web site. More information, including routine uses permitted by the Privacy Act, may be found in the

⁷ Commission Rule 4.2(d), 16 CFR § 4.2(d). The comment must also be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR § 4.9(c).

FTC's privacy policy, at www.ftc.gov/ftc/privacy.htm.

By direction of the Commission, Commissioner Leibowitz not participating.

Donald S. Clark
Secretary