

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

In the Matter of)
)
BitTorrent, Inc.)
a corporation.) DOCKET NO.
)
_____)

COMPLAINT

The Federal Trade Commission, having reason to believe that BitTorrent, Inc., a corporation, has violated the Federal Trade Commission Act (“FTC Act”), and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent BitTorrent, Inc. (“BitTorrent”) is a California corporation, with its principal office or place of business at 303 2nd Street, Suite S600, San Francisco, CA 94107.
2. Respondent is the developer of a popular peer file-sharing system used to exchange software, music, movies, digital books, and other large files online.
3. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act.
4. Respondent has set forth on its website, www.bittorrent.com, privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (the “U.S.-EU Safe Harbor Framework”).

The Framework

5. The U.S.-EU Safe Harbor Framework provides a method for U.S. companies to transfer personal data outside of Europe that is consistent with the requirements of the European Union Directive on Data Protection (“Directive”). Enacted in 1995, the Directive sets forth European Union (“EU”) requirements for privacy and the protection of personal data. Among other things, it requires EU Member States to implement legislation that prohibits the transfer of personal data outside the EU, with exceptions, unless the European Commission (“EC”) has made a determination that the recipient jurisdiction’s laws ensure the protection

of such personal data. This determination is referred to as ~~complying~~ meeting the EU's "adequacy" standard.

6. To satisfy the EU adequacy standard for certain commercial transfers, the U.S. Department of Commerce ("Commerce") and the EC negotiated the ~~EU~~ Safe Harbor Framework, which went into effect in 2000. The ~~U.S.~~ Safe HarboFrameworkallows U.S. companies to transfer personal data lawfully from the EU. To join the ~~EU~~ Safe Harbor Framework a company must ~~self~~ certify to Commerce that it complies with seven principles and related requirements that have been deemed to meet ~~the~~ adequacy standard.
7. Companies under the jurisdiction of the U.S. Federal Trade Commission ("FTC"), as well as the U.S. Department of Transportation, are eligible to join the ~~EU~~ Safe Harbor Framework. A company under the FTC's jurisdiction that ~~has~~ self certified to the Safe Harbor principles, but failed to ~~self~~ certify to Commerce, may be subject to an enforcement action based on the FTC's deception authority under Section 5 of the FTC Act.
8. Commerce maintains a public website, www.export.gov/safeharbor where it posts the names of companies that have ~~self~~ certified to the U.S. EU Safe HarboFramework. The listing of companies indicates whether their ~~self~~ certification is "current" or "not current" and a date when recertification is due. Companies are required to ~~certify~~ every year in order to retain their status as "current" members of the ~~U.S.~~ Safe Harbor Framework.

Violations of Section 5 of the FTC Act

9. In January 2007, respondent submitted to Commerce ~~a~~ certification of compliance to the U.S.-EU Safe HarboFramework
10. In January 2008, respondent did not renew its ~~self~~ certification to the U.S. EU Safe Harbor Framework and Commerce subsequently updated respondent's status to "not current" on its public website.
11. From at least January 2007 until November 2013, respondent disseminated or caused to be disseminated privacy policies and statements on the www.bittorrent.com website, including, but not limited to, the following statements:

BitTorrent adheres to the European Union Safe Harbor principles as set forth by the United States Department of Commerce regarding the collection, use, and retention of personal information covered by the Privacy Policy from the European Union.

12.

