

Ruling won't slow file swapping, experts say

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Created 28/06/2005 - 12:08pm

Submitted by srlinuxx on Tuesday 28th of June 2005 12:08:26 PM Filed under [Legal](#) [1]

In its ruling, the nation's top court found that file-swapping companies Grokster and StreamCast Networks should be held liable for the widespread copyright infringement their technologies enable.

The decision casts uncertainty on the fate of Grokster and other file-swapping companies, but not on the viability of file-swapping itself, an activity that has only flourished under legal attacks, observers said. That's because the software that underlies peer-to-peer networks, used now by more than 8 million people simultaneously around the world, is designed to function and evolve without the aid of any particular commercial venture.

"It operates in a decentralized way," said Wendy Seltzer, an attorney at the Electronic Frontier Foundation, which has represented Streamcast Networks. "It doesn't need to call into a home base; it doesn't need product updates from anyplace. What's out there continues to function and can continue to work on a completely distributed basis."

One need only look at Napster for an indication of how persistent file swapping has become and will continue to become, she said. The courts shut the peer-to-peer pioneer down in 2001, sidelining file swapping on the network because Napster computers were central to the system. But other software developers, many of them working independently, soon developed next-generation software that's now more sophisticated and more popular than ever.

As a result, illegal file swapping has only skyrocketed in recent years. In the United States, the average number of people swapping media files simultaneously on major peer-to-peer networks rose from nearly 3 million in 2003 to more than 6 million this year, according to BigChampagne, the Nielsen/NetRatings of file sharing. The vast majority are sharing unauthorized MP3 music files, said Eric Garland, head of BigChampagne.

What Monday's ruling may stop--or at least delay--are further innovations in peer-to-peer technology, said Adam Eisgrau, a lobbyist for P2P United, a trade association. "The reality is, if you've got the next best (peer to peer) mousetrap on your blackboard, you may well have used your eraser defensively today because those plans could be used against you in court."

"The only thing we can say for certain is that there will be more confusion, more litigation, more and more copyright infringement online and a long road ahead."

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