



DCIA Addresses Australian Federal Court Decision in Universal v. Sharman Case Trade Association Offers Alternatives to Litigation

September 12, 2005 – Arlington, VA – The Distributed Computing Industry Association (www.DCIA.info), a trade organization with fifty-six Members representing peer-to-peer (P2P) software providers, content rights holders, and service-and-support companies, responded to last Monday's Australian Federal Court decision in the Universal v. Sharman case (Universal Music Australia Pty Ltd v Sharman License Holdings Ltd [2005] FCA 1242) by reaffirming its commitment to foster commercial development of the distributed computing industry.

"This was an initial ruling and the case is not yet completed, and while the DCIA is optimistic that its ultimate conclusion will lead to continued expansion of this global industry, we must also re-emphasize the greater importance of achieving long-term commercial solutions based on marketplace and technological realities," said DCIA CEO Marty Lafferty.

The DCIA urges renewed efforts to develop and deploy market solutions as a more valuable and enduring approach than seeking answers in the courts. Enormous challenges in harnessing digital technologies for the distribution of popular entertainment content still remain, but can best be addressed by parties working together rather than pursuing litigation.

The Distributed Computing Industry Association was formed in 2003 to assist all affected parties – content, P2P, and support interests – in finding common ground and building a robust new digital marketplace.

The hope that these parties would devote at least as much attention to the business of finding new business models as they have devoted to the litigation that was raging in 2003 has not been fully realized. Some parties have refrained from serious pursuit of commercial solutions with the false hope that litigation would solve their problems. Driving Napster out of business did not stop copyright infringement; nor will attempting to drive current leading P2P companies out of business.

The DCIA is not a party to any litigation; nor does it take sides in litigation except to promote its mission, the commercial development of distributed computing. The trade association provides a neutral forum for Members and other industry players to work together to advance new business models.

Of the major lawsuits prosecuted by the content community, the Australian case, once it reaches its conclusion through the completion of an ongoing appeal process, will mark the end of one of the major disputes. And the primary takeaway from Judge Wilcox's initial ruling was his exhortation of the parties to work together.

The court cited two areas for collaboration as perhaps the most promising, although beyond the scope of this case: "more widespread licensing of copyrighted works" and "making compact discs (CDs) less susceptible to ripping." The DCIA provides a forum to explore various approaches for implementing such measures on a practical level.

Judge Wilcox committed "not to make an order which the respondents are not able to obey, except at the unacceptable cost of preventing the sharing of files which do not infringe the applicants' copyright." Again, the best, if not only way, to accomplish this is through cooperative efforts. As the judge noted, "There needs to be an opportunity for the respondents to modify the Kazaa system in a targeted way, so as to protect the applicants' copyright interests (as far as possible) but without unnecessarily intruding on others' freedom of speech and communication."

The DCIA supports a timely exploration of the feasibility of the court's prescribed, "keyword filtering and gold-file flood filtering" given that "the injunctive order will be satisfied if the respondents take either of these steps" and that "continuation of the Kazaa Internet file-sharing system shall not be regarded as a contravention if that

system is modified so that the software program received by all new users contains” one of these solutions. The DCIA’s interest is in the broader implications of such approaches.

To this end, promptly upon the final conclusion of the judicial proceedings in this case, the DCIA proposes the formation of a working group of voluntary participants with a diversity of interests to develop recommendations for optimal approaches to P2P filtering based on real-world conditions. Alternatives such as Macrovision’s recently announced Hawkeye, Audible Magic’s relevant solutions, and Loudeye’s OverPeer offerings should also be evaluated in this context.

The court acknowledged that “even with the best will in the world, the respondents cannot totally prevent copyright infringement by users.” But by working together with the applicants, certainly much more can be achieved than has been by prolonged estrangement.

As Judge Wilcox stated, “Even an imperfect filter would go far to protect copyright owners, provided they were prepared to go to the trouble of providing and updating a list of keywords (titles, performers etc.)”. Again, this type of collaboration – rather than litigation – is essential to make progress in curtailing online copyright infringement and has always been at the heart of the DCIA’s mission.

Indeed, the cooperative measures needed to implement gold-file flood filtering comprise the major steps required to license content for monetized P2P distribution, and perhaps will pave the way for that ultimate outcome, which would be the most beneficial result for the parties.

It is also worth noting that Judge Wilcox concluded that, “It is not realistic to believe legal action against individual infringers will stamp out, or even significantly reduce, file-sharing infringements of copyright.”

The DCIA questions whether litigation will accomplish the ultimate objectives of the parties here: new business models that leverage technological advancements and respect content owners’ rights. With this ruling, content interests have now taken refuge in the courts in their attempts to drive Napster out of business, taken refuge in the courts to in their attempts to drive Grokster and Morpheus out of business; and taken refuge in the courts in their attempts to drive Kazaa and Altnet out of business.

But the content industry may be farther than ever from reining-in file sharing, according to recent statistics. P2P utilization is now at an all time high, marked by a 41% increase in average simultaneous users in the past year, according to DCIA industry data resource BigChampagne.

The DCIA sees the futility of relying primarily on courts to fashion commercial solutions, and will work to ensure that the content industries’ wins in MGM v. Grokster and Universal v. Sharman do not herald another five years of failure to create viable new business models.

Representatives of DCIA Member companies and officials of the trade organization are available to comment on Monday’s decision. Please contact DCIA Communications leader Kelly Larabee to arrange interviews.

These DCIA officials are available: DCIA Chief Executive Officer (CEO) Marty Lafferty, DCIA Government Relations leader Doug Campbell, DCIA Member Services leader Karen Kaplowitz, and DCIA Best Practices leader Elaine Reiss.

About the DCIA:

The Distributed Computing Industry Association (DCIA) is a non-profit trade organization focused on commercial development of peer-to-peer (P2P) file sharing and related distributed computing technologies. The DCIA conducts working groups and special projects, such as the Consumer Disclosures Working Group (CDWG), P2P PATROL, MGM v. Grokster Response Working Group (MGRWG), and the P2P Revenue Engine (P2PRE). It also publishes the weekly online newsletter DCINFO.

Media Contact:

Kelly Larabee
602-258-1416
kelly@dcia.info