



December 31, 2004

The Honorable Barbara Boxer  
The Honorable John Cornyn  
The Honorable Richard Durbin  
The Honorable Gordon Smith  
United States Senate  
Senate Office Buildings  
Washington, DC 20510

Dear Senators Boxer, Cornyn, Durbin, and Smith:

We are writing, as promised, to update you regarding the implementation of P2P PATROL (Peer-to-Peer Parents And Teens React On Line) [ATTACHMENT A].

We need to begin by expressing disappointment, however, that you have not yet been able to meet with us to discuss "[P2P Software Risks](#)," a primary work product of the Consumer Disclosures Working Group (CDWG); or the [P2P Revenue Engine \(P2PRE\)](#), a well-coordinated project involving ten companies that we believe fully addresses the concerns of major music labels and movie studios regarding unauthorized content entered by consumers into P2P distribution [ATTACHMENTS B and C].

We look forward especially, as you requested, to providing you with our assessment of the kind of database, or rights-holder registry, which will be necessary to make the P2PRE project fully successful with respect to protecting the rights and interests of singers, songwriters, screenwriters, and other creators [ATTACHMENT D].

We understand that your schedules have been very full, so please allow us to reiterate our request to meet with you at your earliest convenience to discuss these matters. In the interest of time, attached are copies of P2PRE letters of intent (LOIs) being negotiated with a major music label and movie studio, and their current P2PRE due diligence requests [ATTACHMENTS E, F, G, and H].

Unfortunately, we must also communicate our distress regarding Senator Smith's [Congressional Remarks](#) at the [FTC P2P Public Workshop](#) on December 15<sup>th</sup>, which have to be viewed as a serious setback. We believe that it is necessary to respond to those comments before making our report on P2P PATROL. It is extremely important that you be kept apprised of the improvements being made on many fronts by the rapidly developing distributed computing industry [ATTACHMENT I].

As Senators Smith and Boxer may recall, [Les Ottolenghi, Founder & CEO of INTENT MediaWorks](#), one of DCIA's Member companies, testified at the June 23<sup>rd</sup> P2P hearing chaired by Senator Smith; and the DCIA voluntarily provided information to the Federal Trade Commission (FTC) and to you regarding your related inquiries [ATTACHMENTS J and K].

Promptly after your hearing, the DCIA's best practices leader, [Elaine Reiss](#), organized the [Consumer Disclosures Working Group \(CDWG\)](#), obtained voluntary participation of leading P2P software developers and distributors from around the world, and mounted a good-faith effort engaging with qualified federal regulators to improve upon consumer communications as requested at your hearing and in related [FTC findings](#). Their work product was subsequently highlighted in the December 6<sup>th</sup> letter to you from the FTC [ATTACHMENT L].

The goals of the [CDWG](#) are fully aligned with yours to "regularly and systematically provide information in clear and understandable language." We are at a loss to understand why this effort should be publicly condemned before it has been implemented with the intonation that it "does not go far enough," rather than supported and improved with constructive input as requested.

The CDWG would welcome a modification of its P2P Software Risks work product to “regularly and conspicuously” remind users that their software is active, for example. We would like to discuss this, as well as other issues such as simplifying [end user license agreements \(EULAs\)](#) that you also recommend, so that this standardized disclosures regime and other consumer communications can be fully responsive to Congressional concerns.

Concern over abusers of P2P software programs who may enter “misnamed files containing pornographic content” is also shared by our young industry, which has been particularly proactive in responding to this issue and has taken a zero tolerance stance against child pornography. You may recall these comments from your letter of October 7<sup>th</sup>:

**“We commend the DCIA for the P2P PATROL (‘Peer-to-Peer Parents And Teens React On Line’) effort you are taking to reduce the use of P2P software for distributing child pornography...The use of the P2P PATROL to identify and warn users with regard to child pornography is laudable...Thank you for what you have done, and for responding to our suggestions in this letter.”**

These efforts have increased and expanded significantly since then, and we do not understand why now, at a very public forum, this distribution technology and the industry leaders that support its legitimate commercial development should be maligned.

The current [Kazaa family filter](#), for instance, set at its maximum level and password-protected so it cannot be circumvented by children, will return no Elmo porn images or videos, while Yahoo will return 36,900 Elmo porn results; Kazaa will return no Baseball porn images or videos, while MSN will return 159,000 Baseball porn results; and Kazaa will return no Sleeping Beauty porn images or videos, while Google will return 339,000 Sleeping Beauty porn results.

As for protecting the security of personal information, ensuring privacy, and preventing consumer data from inadvertent distribution, FTC workshop panelists [Nathaniel Good and Aaron Krekelberg](#) found that, **“Kazaa is much improved and issues related to personal files being shared have all been corrected.” They also praised eDonkey for its similar work in such sharing-status clarification (ATTACHMENT M).**

Our prevailing view is that our still nascent industry’s opponents continue to have as their immediate goal to ban P2P technology, whether through actions of Congress or the courts, and now clearly also have as their ultimate objective to overturn the Betamax doctrine.

Currently their rhetoric has as its target audience the Supreme Court, in a wrongful attempt to pervert the judicial process by inaccurately implying that P2P, as a technology, is uniquely configured to serve as a conveyance for illegal child pornography – which is patently false. We are extremely concerned with the potential impact of such misinformation on the high court.

We believe the truth of this matter was stated succinctly in an observation by [BigChampagne's COO, Adam Toll](#), in the first panel at the FTC P2P Workshop:

**“Consumer risks associated with P2P are neither different from nor greater than those associated with the Internet generally (ATTACHMENT N).”**

We especially need your support overseeing progress in commercial development of authorized P2P distribution of copyrighted works, such as by means of the P2PRE project, which we fear will once again be sabotaged by major entertainment interests as they pursue a destructive course of influencing the Supreme Court to ban P2P technology and overturn Betamax.

Finally, here is our P2P PATROL update.

As previously reported, the first two programs of [P2P PATROL](#), related to law enforcement support and

deterrence, were launched in May and August respectively. The third program, focused on education, was launched as planned in November. At its core, the purpose of the education program is to provide tools enabling P2P users to recognize, remove, and report criminally obscene content inadvertently encountered online.

Specifically, major P2P PATROL developments since your October 7<sup>th</sup> letter have been the November 1<sup>st</sup> quarterly working session for law enforcement and private sector representatives, a November 7<sup>th</sup> meeting with representatives of State Attorneys General and follow-up communications, the November 30<sup>th</sup> launch of the [www.P2Ppatrol.com](http://www.P2Ppatrol.com) consumer website, a December 14<sup>th</sup> meeting with representatives of the National Association of Attorneys General (NAAG), a December 17<sup>th</sup> conference call with the National Center for Missing and Exploited Children (NCMEC), and planning for the February 1<sup>st</sup> quarterly working group meeting for private sector and law enforcement representatives (ATTACHMENTS O, P, Q, R, and S).

P2P PATROL participants include federal and state agencies as well as representatives of [Altnet](#), [ASACP](#), [BayTSP](#), [Cydata](#), [Digital Containers](#), [Digimarc](#), [Grokster](#), [INTENT MediaWorks](#), [NCMEC](#), [RazorPop](#), [Sharman Networks](#), [SMARTguard Software](#), and [SVC Financial](#).

All DCIA Members have agreed to participate in the law enforcement program. Altnet and Grokster have completed preparations, and Altnet has submitted an agreement to law enforcement for rolling-out the deterrence program. In addition, INTENT MediaWorks and RazorPop have launched and announced the deterrence program, meaning that certain P2P users of BearShare, BitTorrent, eDonkey, Gnutella, and Kazaa already receive deterrent warnings. After options for the automated reporting tool developed by Cydata and RazorPop have been reviewed at the February 1<sup>st</sup> working session, with the optimal version selected and completed for deployment, we will invite leading P2P software developers and distributors to participate in the education program by including a live link from their user interface to the P2P PATROL website and customizing this tool for their file-sharing applications. Our April 1<sup>st</sup> report will include a participant update.

**Be assured that our efforts are focused primarily on efforts such as the P2PRE project, which seek to address the issues of about-to-be-released works, as well as published CDs and DVDs – in fact, all major entertainment content released in whatever formats – entered into redistribution, not by rights holders, but by unauthorized software users. One of our goals is to make it possible for content owners to exert even greater levels of control in P2P distribution than they do in other channels.**

P2P software is designed to be a highly efficient and very competitive distribution channel for rights holders who choose to use it. Peer-to-peer digital rights management technologies (P2P DRMs) work for rights-holder-entered works; such solutions as the P2PRE add the remaining elements necessary for P2P to be a fully licensed distribution channel. Now it's up to rights holders to embrace P2P.

Respectfully,

Martin C. Lafferty  
CEO, DCIA

## ATTACHMENTS

- A) DCIA Letter of 11/05/04 to Senators Boxer, Cornyn, Durbin, and Smith
- B) P2P Software Risks – Work Product of Consumer Disclosures Working Group (CDWG)
- C) P2P Revenue Engine – DCIA's Project for Major Entertainment Content Providers
- D) P2PRE Rights Holder Registry – Information for Copyrighted Works Registration
- E) P2PRE Letter of Intent (LOI) – Major Music Label (Name Withheld upon Request)
- F) P2PRE Letter of Intent (LOI) – Major Movie Studio (Name Withheld upon Request)
- G) P2PRE Technical Due-Diligence Questions from Major Music Label (1 +2)
- H) P2PRE Technical Due-Diligence Questions from Major Movie Studio
- I) Comments Regarding 12/15/04 FTC P2P Workshop Congressional Remarks
- J) Testimony of Les Ottolenghi at 6/23/04 US Senate Subcommittee P2P Hearing
- K) DCIA Letters of 05/20/04 to Senators Boxer, Smith, et al and FTC Commissioners
- L) FTC Letter of 12/06/04 to Senators and Members of Congress Interested in P2P
- M) FTC P2P Workshop Presentation of Nathaniel Good (Berkeley) & Aaron Krekelberg (U MN)
- N) FTC P2P Workshop Presentation of Adam Toll, Chief Operating Officer, BigChampagne
- O) Minutes – 11/01/04 P2P PATROL Working Session for Law Enforcement and Private Sector
- P) Follow-Up to 11/07/04 Houston Meeting with Representatives of State Attorneys General
- Q) P2P PATROL Educational Consumer Website Launch 12/13/04 Press Announcement
- R) Protect Children – P2P PATROL Educational Consumer Website Initial Content and Links
- S) Agenda – 02/01/05 P2P PATROL Working Session for Law Enforcement and Private Sector

[Due to the length of the attachments, electronic copies of these documents have been transmitted to Danny Sepulveda for Senator Boxer, Beth Jafari for Senator Cornyn, Mark Keam for Senator Durbin, and Wally Hsueh for Senator Smith, rather than submitted via fax. Please call 888-864-3242 or e-mail [marty@dcia.info](mailto:marty@dcia.info) if you would like a hard copy of these attachments.]