March 8, 2005

Lydia B. Parnes
Acting Director
Bureau of Consumer Protection
Federal Trade Commission

Dear Acting Director Parnes:

Thank you for your sharing your letter of March 1, 2005 to leading peer-to-peer (P2P) software providers regarding the status of implementing consumer alerts about risks associated with P2P file-sharing programs. We agree that this continues to be an important priority.

As you'll recall, the DCIA sponsored a Consumer Disclosures Working Group (CDWG), which developed "P2P Software Risks," a proposal for such consumer alerts, that we presented at the FTC P2P Public Workshop on December 15, 2004 (a copy of the proposal is available online at http://www.dcia.info/demo.ppt).

We have recommended that DCIA Member companies engaged in the development and distribution of P2P software applications, as well as non-Member participants in CDWG, implement a home-page above-the-fold message-box reading "Click Here for Important Information about Using P2P Software Safely" and link to a disclosures page similar to the ATTACHMENT, and inform you of their having done so or their commitment to do so, within the time-frame indicated in your letter.

We view this as an interim step, however, and intend to do more as originally planned and further discussed below. Our process for completion of the consumer disclosures regime was interrupted when Senator Smith indicated in his Congressional Remarks at the Workshop that our work product and another similar proposal presented there were unsatisfactory. In an attempt to be responsive, industry asked offices of key US Senate and House of Representatives members involved in P2P issues for their input on what changes would improve the proposed disclosures.

None of these have yet provided their input. Because the change represents a significant commitment for participating companies, and to avoid implementing measures to which policymakers would immediately seek changes, we want to complete this vetting process before the full disclosures regime is implemented. In addition, the US Supreme Court granted certiorari in the MGM v. Grokster case, and has scheduled oral arguments for March 29, 2005. The outcome of this case could also change the landscape in the industry significantly, including the nature of consumer disclosures. Nevertheless, we would like to resume the process for completion expeditiously.

As we noted at the FTC P2P Workshop:

"Since the draft work product was completed, we have received preliminary feedback from qualified industry observers that this warning should focus on eliminating consumer confusion between software and content, particularly in the case of ad-free versions of file-sharing programs sold for a fee (i.e., 'You buy the VCR and you separately rent the movies – you buy the P2P software and you separately license the content'). We have committed to work with Parry Aftab at WiredSafety to improve on this."

That effort is now in process and should be completed before March 31, 2005. It has since expanded to encompass the issue of messages displayed on P2P software provider websites and other user-interfaces concerning the legal status of file-sharing applications and, as noted below, conforming this P2P Software Risks proposal with a work product subsequently developed by another group so that there can be a standard industry solution.

More urgently at this juncture, we are also awaiting necessary Congressional input as to the acceptability of the CDWG P2P Software Risks proposal. This is particularly important in the context of this initiative, because P2P software developers and distributors are very small companies with extremely limited resources and, with respect to what will be for them a major undertaking, want to ensure that they "get this right the first time."

In order for these firms to invest the considerable effort, time, and money required to introduce, maintain, and manage the implementation of P2P Software Risks, as proposed, it is essential that there be an understanding with appropriate governmental authorities that this work will be deemed satisfactory.

Here is an excerpt from our December 31, 2004 letter to Senators Boxer, Cornyn, Durbin, and Smith, the designated leaders among federal legislators on P2P technologies, that addresses this issue:

"…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)…[ATTACHMENT B]…

…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…

Unfortunately, we must also communicate our distress regarding Senator Smith's Congressional Remarks at the FTC P2P Public Workshop on December 15th, 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 23rd 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 6th 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 7th:

"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…"

We are awaiting a response to this letter and our follow-up requests for a meeting or meetings with Senate staff and their counterparts in the House of Representatives to obtain this important feedback.

At the Workshop, we also noted that:

"We welcome comments as to the value and usefulness of these disclosures, as well as any recommended changes. Our original idea was to obtain industry-wide consensus on this important issue, and we would be glad to integrate this work product with other efforts to complete the project in a way that is best for consumers."

To that end, we have carefully reviewed the proposal that was subsequently developed by P2P United and presented at the FTC P2P Workshop, based in part on the CDWG work product, and have offered to integrate P2P Software Risks with that proposal, which we believe extends the work of CDWG in several ways that will be more beneficial to P2P users, notably including the integration of a consumer communications program.

Therefore, we envision these as the necessary steps to complete the development of this project, and recommend the following timeline to do so:

1) **Integrate Parry Aftab's input into P2P Software Risks and conform this work product with the P2P United proposal so that there is a single recommended industry standard disclosures regime, and present this to Congress and the FTC. – March 31, 2005**

2) **Obtain input from the FTC and interested representatives of Congress on this revised proposal, and complete a final version of the consumer disclosures work product integrating these comments. – June 30, 2005**

3) **Present this final version to P2P software suppliers and obtain their individual voluntary commitments to implement it and their projected timing to do so to report to the FTC and Congress. – September 30, 2005**

Please let me know if this is acceptable. Our understanding is that individual P2P companies will also be responding directly to you as to their immediate actions in response to your letter. Above all, we would greatly appreciate your assistance in obtaining the required input from Congress as expeditiously as possible.

Sincerely,

Martin C. Lafferty
CEO, DCIA

ATTACHMENT

The following information is provided as a public service by this peer-to-peer (P2P) file-sharing software provider. Please also read the important Consumer Alert concerning P2P software from the US Federal Trade Commission.

P2P SOFTWARE USER ADVISORIES

Copyright Infringement Liability - P2P technology makes it possible to share all kinds of information. Some information is protected by copyright, which means that you generally need the copyright owner's permission before you make it available to other P2P users. **Popular music, movies, games, and software are often protected by copyright.**

Copyright infringement can result in significant monetary damages, fines and even criminal penalties. Some copyright owners have filed civil lawsuits against individuals that they believe unlawfully distributed large numbers of copyrighted songs.

Click here for information about how to use this P2P software application to minimize or avoid copyright infringement.

Data Security - P2P software programs let users share information with other users around the globe. They allow users to view the contents of each others' "shared folders." If you have personal information in your shared folder, anyone else using the same P2P software has access to it. Another user could use that information to commit identity theft, or to embarrass you. Please pay attention to the files that you place in, or download to, your shared folder. Don't put information in your shared folder that you aren't comfortable sharing with strangers.

In particular, do not put tax, medical, banking, correspondence or any other sensitive personal files in the same folder as files that are shared via your P2P software program.

Click here for information about how to use this P2P software application to minimize or avoid these data security problems. To report identity theft, or for more information about identity theft, please consult the US Federal Trade Commission's Identity Theft Clearinghouse.

Unwanted Exposure to Pornography - P2P software may give users, including children, access to pornography. Some files containing pornography may be deliberately mislabeled to attract young or otherwise unsuspecting viewers. Distributing illegal pornography is a serious crime. Users whose shared folders contain illegal pornographic material, particularly child pornography, could be subject to criminal prosecution.

Click here for information about how to use this P2P software application to minimize or avoid inadvertent exposure to pornography or the illegal redistribution of such materials.

This P2P software provider believes strongly that we all must stamp out child pornography. Click here to report suspected child pornography or pornographers to US law enforcement.

Spyware - Files downloaded from the Internet (including those obtained via P2P software) may contain other software. While some such programs, such as "adware," may send you advertising, including pop-up ads, other software, such as "spyware" can track your Internet activities and report them to a third party. Spyware can even be used to take control of your computer.

Click here for information about how to use this P2P software application to minimize or avoid spyware and for information about the differences between legitimate adware and spyware.

Viruses - Files downloaded from the Internet (including those obtained via P2P software) may contain viruses that can infect your computer. These files typically are mislabeled to disguise their true purpose. You may want to install anti-virus software, and keep it up-to-date.

Click here for information about how to use this P2P software application to minimize or avoid computer viruses.

For more information, P2P software provider strongly recommends that the public consult the US Federal Trade Commission's Website and the Commission's Consumer Alert.