

DON'T DELETE INTERNET PRIVACY

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ABSTRACT

Other porn sites and gambling sites can track down visitors and demand payment not to reveal the user's identity, all under the pretext of enforcing the site's "copyright." * The most common use may be that of Web site operators who want to identify their visitors for marketing purposes or for more nefarious reasons, including identity theft, fraud or stalking. * Private investigators will gain an unstoppable way to turn any e-mail address into a person's name and street address.

FULL TEXT

Overlooked in the battle between the recording industry and those who download copies of their favorite music has been the privacy of all those who surf the Internet or send e-mail. As a result of a recent court decision in the case between the Recording Industry Association of America and the Internet service provider Verizon Online, every consumer's identity, home address and phone number are now available to anyone who can fill out a one-page form. Congress can and should step in to fix this problem immediately.

The problem began in late 2002, when the recording association demanded that Verizon Online identify one of its customers based on an accusation that the person may have violated copyright laws by swapping files. Verizon declined, citing the threats to customer privacy, due process and the First Amendment. Was Verizon over-reacting? No.

Unfortunately, the court ruled in favor of the recording association, setting a precedent that will enable copyright owners to identify Internet users' real-life names, home addresses and phone numbers. Verizon has appealed the ruling and will argue its case again next month.

Privacy is destroyed because it has become so easy to reveal the identity of Internet users. Now, a copyright holder simply fills out a one-page form and a federal clerk immediately issues the subpoena to the Internet service provider (Verizon Online, AOL, MSN, etc.). The service provider must then release the name, home address and phone number of that user. Internet service providers risk large penalties if they even question the validity of the subpoena.

This procedure violates due process, as there is no judicial oversight and only the flimsiest showing of cause. The openness of the Internet is restrained and the First Amendment is undermined when anyone can trace every e-mail and Web page post to a home address and phone number.

Perhaps the most dangerous consequence, the ruling puts subpoena power in the hands of anyone willing to pretend to have a copyright claim. Without a judge's review, these fraudulent requests are impossible to distinguish from

legitimate ones. This flood of legally sanctioned harassment will quickly become the "New Spam," with the kinds of abuses as limitless as the Internet itself:

* A gay pornography Web site has already issued subpoenas to SBC Communications to try to learn the identity of visitors to the porn site. Other porn sites and gambling sites can track down visitors and demand payment not to reveal the user's identity, all under the pretext of enforcing the site's "copyright."

* The most common use may be that of Web site operators who want to identify their visitors for marketing purposes or for more nefarious reasons, including identity theft, fraud or stalking.

* Private investigators will gain an unstoppable way to turn any e-mail address into a person's name and street address.

Fortunately, a better alternative is clear. Courts have already used "John Doe" procedures, in which users can object anonymously to having their identity revealed. The judge looks at the facts and, if the person is engaged in illegal piracy, then the judge reveals the name and orders effective sanctions. If the copyright holder or scam artist does not have a winning case, then the user name remains private. John Doe legislation of this sort has been proposed in California and should become a priority on Capitol Hill. The Recording Industry Association of America lawsuits against users are beginning now, long before the appeal of the Verizon proceeding will be decided. Before the new spam proliferates, we should have fair procedures in place that will protect intellectual property while protecting privacy, free speech and due process.

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