

WiredSafety and the DMCA Subpoena

March 17, 2003
parry@aftab.com

Note that the legal arguments and some descriptions are substantially curtailed and summarized in this powerpoint and we recommend that you visit Verizon's site and RIAA's site to review the pleadings filed and the arguments made

This is an important issue, and one that Internet users need to understand. To weigh in on the subject, visit WiredPatrol.org and respond to our confidential poll.

What's this all about?

- RIAA (the recording industry trade association) works to protect the copyrights of the recording industry
- RIAA takes various legal actions to stop online music pirating, especially peer-to-peer (P2P)
- The DMCA (the U.S. digital copyright law) allows for special expedited methods for finding out who is behind an online address
- RIAA used this method to streamline requests for each of the ISPs to disclose the real names, addresses and telephone numbers behind the online addresses they have identified
- Most of the ISPs complied with the requests and turned over the information requested by RIAA
- Verizon refused to do so for several reasons, asserting that the law is unconstitutional as applied and that Internet users could be preyed upon by unscrupulous people misusing the system to obtain private information about people online
- WiredSafety and its family of program and sites joined Verizon in opposition to the broad application of the Section 512(h) subpoena power to help protect Internet users from abuse

Where does this stand now?

- RIAA served Verizon with the subpoena
- Verizon filed a motion contesting the subpoena
- The DC Federal District Court heard argument and decided the case for RIAA and against Verizon
- Verizon asked the court to “stay” the enforcement of the subpoena until they have a chance to appeal the decision.
- We are awaiting the District Court’s decision on the stay
- If the stay is granted, all parties will proceed to the appeal. If it is denied, Verizon will apply to the appellate court for a stay

Our step-by-step guide to understanding what's going on

- We'll explain who the players are...
- We'll explain who is impacted...
- We'll explain the law...
- We'll explain the legal arguments...
- We'll explain what this is and what this isn't about...
- We'll explain how you can make your voice heard...

Who are the players?

- **Verizon**, in this case a large national Internet service provider
- **RIAA**, the Recording Industry Association of America the trade group of the recording industry
- **Advocacy and public interest groups**, including WiredSafety and its family of sites and programs
- Those **people whose real identities are being sought by the RIAA** for downloading music from P2P services

Who is impacted?

- Songwriters, performers, arrangers and the recording studios and producers
- Everyone who downloads copyrighted music online without paying for it
- All Internet users
- All Internet Service Providers

What's the law?

The DMCA (The Digital Millennium Copyright Act, 17 U.S.C.)

- **Section 512(h) Subpoena to identify infringer.**

(1) **Request.** A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

(2) **Contents of request.** The request may be made by filing with the clerk--

(c)(3)(A);

- (A) a copy of a notification described in subsection
- (B) a proposed subpoena; and
- (C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

(3) **Contents of subpoena.** The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

Law cont'd: Rules for granting and complying with the Subpoena

■ **DMCA Section 512(h)**

- (4) **Basis for granting subpoena.** If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.
- (5) **Actions of service provider receiving subpoena.** Upon receipt of the issued subpoena, either accompanying or subsequent to the receipt of a notification described in subsection (c)(3)(A), the service provider shall expeditiously disclose to the copyright owner or person authorized by the copyright owner the information required by the subpoena, notwithstanding any other provision of law and regardless of whether the service provider responds to the notification.
- (6) **Rules applicable to subpoena.** Unless otherwise provided by this section or by applicable rules of the court, the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena duces tecum

The Legal Arguments - RIAA

- DMCA is designed to protect copyright owners from online infringement
- Without this power, Internet users will continue to steal copyrighted materials
- Section 512(h) applies to all service providers, whether they are providing storage or access to P2P
- It is constitutional and provides for adequate checks and balances
- Requiring commencement of a law suit is impractical in all cases and frustrates the purposes of the DMCA

Legal Arguments - Verizon

- DMCA special subpoena was never designed to apply to requests from service providers about their Internet subscribers, only to online services offering storage or hosting
- Section 512(h) as interpreted by the District Court violates due process under the U.S. Constitution
- Public policy requires that the expansive reading of Section 512(h) be curbed to protect user of the Internet from abuse

This isn't about...

- denying copyright holders their rights
- permitting piracy
- bleeding hearts
- opposition to valid laws
- supporting copyright infringement or the unlawful downloading of music
- making it easier for people to violate the law and not be caught

This is about...

- Protecting the legal rights of people who haven't broken the law
- Keeping personal information private unless there is a valid reason to force its disclosure
- Keeping people safe in cyberspace
- Protecting law enforcement's ability to conduct online investigations
- Preventing predators from obtaining private information about their victims
- Keeping child molesters from obtaining a child's address and last name by pretending to be a copyright holder
- Preventing abuse of process and constitutional safeguards

Want to weigh in on the subject?

- Respond to the online poll at <http://www.WiredPatrol.org>
- Visit Verizon's website <http://newscenter.verizon.com/kit/riaa/>
- Visit RIAA's website <http://www.riaa.org>
- e-mail DMCAabuse@wiredsafety.org (we'll protect your privacy, check out our privacy policy at the site)