

**Court Decision on DMCA Subpoenas Raises Privacy Concerns
Law Must Balance Copyright Enforcement With Privacy, Free Expression**

Statement of the Center for Democracy and Technology
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CDT strongly sympathizes with the need of copyright holders to identify potential copyright infringers in order to enforce their legal rights in the challenging online environment. At the same time, the unique subpoena provision in Section 512(h) of the Digital Millennium Copyright Act, and the interpretation of that provision in the recent Federal district court ruling in *RIAA v. Verizon*, raises important policy and privacy concerns. Those concerns must be addressed – either by the courts or by Congress - if we are to preserve the appropriate balance between copyright enforcement and other important values like free expression and privacy online.

The digital age and the growing use of peer-to-peer networks have created tremendous new problems for copyright holders. A reasonable desire to enforce their rights leads copyright holders to seek out bad actors who massively infringe through widespread copying of works.

Easing enforcement was an important goal of the Section 512(h) subpoena power, but the court's broad interpretation of the statute reveals new risks for Internet users. The court's ruling, coupled with the explosive growth of Internet usage, makes it clear that millions of people who communicate online could have their identity revealed without their knowledge and without adequate legal process.

Privacy risks are raised by several elements of the subpoena provision, as interpreted by the district court. Section 512(h) would permit any copyright holder – possibly millions of organizations and individuals – to compel an ISP to disclose the identity of an Internet user, based on an allegation of copyright infringement. This disclosure of sensitive identifying information would take place without any notice to the end user that their identity had been unmasked, and without legal review or any judicial oversight as to the likely truth of the allegations. An ISP could now be compelled to disclose the identity of any user of its networks – such as someone downloading a web page – who is alleged to be a copyright infringer, not just those who host materials at an ISP. Such an interpretation puts millions of Internet users at risk that their identity will be revealed without their knowledge due to misuse, abuse, or mistake, casting a chill on their privacy and security.

CDT Associate Director Alan Davidson said, “Effective copyright enforcement need not come at the expense of individual privacy. CDT believes that a better balance can and should be struck.”

For example, providing end users with notice when their identity is revealed would go a long way toward preventing abuse by giving those with the greatest interest in correcting mistakes an opportunity to contest release of their information. Courts could be required to exercise greater oversight or to issue findings of fact. Sanctions could be put in place for misuse. Either the courts must find a way to safeguard user interests or such additional policy measures will be needed to protect privacy and free expression online.

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