

**YOUR INTERNET PRIVACY TAKES A HIT or...
ON THE INTERNET, THEY MIGHT FIND OUT YOU'RE A DOG**

By Joseph Beckman

"On the Internet, no one knows you're a dog."

For the most part, that cartoon of a dog sitting at a computer and dating back to the early days of the Internet (circa late 1990's) still holds true today. Internet surfing is generally a private matter. Without cooperation, websites can gather only limited information regarding a visitor, such as their computer's operating system and the web browser they're using (Internet Explorer, Netscape or Mozilla). The website can also track an originating IP (Internet Protocol) address however, this address is not generally traceable to an individual computer, only a service provider's (ISP) network (Bellsouth or AOL, for instance). In contrast, a service provider can log their own network traffic, including a subscriber's surfing history. In a number of celebrated cases, plaintiffs seeking the identity of anonymous posters to websites have sued service providers to obtain the subscriber's identity. These "John Doe" cases tended to be slow and expensive propositions and met with mixed results.

When file-sharing services went mainstream a few years ago, internet anonymity encouraged people to share unlicensed music, software and even movies. I know attorneys, bankers and other professionals that wouldn't think of shoplifting but regularly downloaded unlicensed software and music from these services. Napster was a huge success. Associations such as the RIAA, representing the sound and music recording industry, ultimately crushed Napster, primarily due to its method of acting as a central database repository for the music files distributed among its membership. Without that central database, people couldn't find the music to download it. What the RIAA didn't do

was target the downloaders for prosecution. Kazaa, Gnutella and others have since taken Napster's place and learned from the experience. These are de-centralized peer-to-peer file sharing services. There is no Napster-like computer center to shut down. And so the trading goes on. The RIAA fumed for a while and adapted its strategy accordingly.

On January 21, 2003 the U.S. District Court for the District of Columbia granted the RIAA it's Motion to Enforce a subpoena served on Verizon Internet Services under the Digital Millennium Copyright Act (DMCA). In re: Verizon Network Services, Inc., Case No. 02-MS-0323 (JDB). The RIAA sought the identity of "an anonymous user of Verizon's service who is alleged to have infringed copyrights with respect to more than 600 songs downloaded from the Internet in a single day." Under the DMCA, to obtain a subsection (h) subpoena, three conditions must be met. First, the copyright owner must have a "good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law." Second, the copyright holder must provide a "statement that the information in the [DMCA] notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.." Finally, the copyright owner must submit 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.

Verizon unsuccessfully argued that the DMCA subpoena powers applied solely to materials stored on a service provider's network and not merely transmitted over it (the "conduit" theory). The district court recognized the wide proliferation of peer-to-peer software, its increasing contribution to copyright infringement and the need to provide a

copyright holder with an expedient method of combating that infringement. Verizon also suggested that a John Doe@ action was sufficient and to be preferred over the DMCA subpoena process. The district court turned its nose up at the "John Doe" subpoenas of Internet past, finding them a burden on the court and less protective of the subscriber's rights than the conditions imposed on the issuance of a DMCA subpoena. The court was not concerned that this simple and expedient procedure to obtain a subscriber's identity would encourage the RIAA to inundate the service provider industry with thousands of subpoenas in search of infringers and noted that Congress intended and, indeed, encouraged the expedited procedures offered under the DMCA.

In re: Verizon Network Services, Inc. was a test case. With this preliminary victory, the RIAA and other copyright watchdog associations such as the BSA (Business Software Alliance) have a new weapon to combat copyright infringement. This time however, that weapon is pointing at you, the subscriber. What used to be an anonymous playground is now just a little less private. If the RIAA wants to, it can now find out if you're just a dog.

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