

# The Internet's Private Cops



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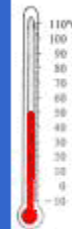
DEFCON 11, August 2, 2003

## Chilling Effects

Home | Weather Reports | Report Receiving  
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Monitoring the legal climate for Internet activity





## The Internet's Private Cops

- Early view: The Internet can “route around” law
- Later view: Maybe it can't. We need to work with the law itself.



## ***RIAA v. Verizon***

- **subpoena:** RIAA demands identities of four alleged KaZaA users from Verizon
- **challenge:** Verizon withholds names, goes to court for user privacy
- **court order:** Reveal the names
  - *decision currently being appealed*

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**“Law enforcement” is  
not just the government**



## Private actors have many legal mechanisms at their disposal

- cease-and-desist letters
- subpoenas
- civil lawsuits
- private investigation (discovery)
- cooperation with state and federal prosecutors



## Internet architectures facilitate private control

- Law and technology create chokepoints: centralization in the decentralized network
  - ISPs, backbone providers, DNS
- “Public” content on the Net is stored on private servers

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- Internet enables more people to publish, cheaply, to more other people;
- It also enables more people and corporations to monitor that speech
  - Claims of copyright infringement
    - The work draws inspiration from (“copies”) another
    - or interoperates with (“circumvents”) another
  - Claims of trademark infringement
  - Claims of patent infringement ...



## Chilling Effects

### the shadow of the law

- Legal threats may not have merit...  
...but still deter online activity
- Threats such as: “an injunction, disgorgement of revenues and/or statutory damages, as well as attorneys fees and costs for such litigation”

Chilling Effects Clearinghouse - Mozilla {Build ID: 2002051006}

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Chilling Effects Clearinghouse > Home Print-friendly

**Quick Search:**

**Site Guide**

**Clearinghouse Topics:**

- Copyright and DMCA
- Fan Fiction
- John Doe Anonymity
- Linking
- Protest, Parody and Criticism
- Trademark

*Topic maintained by Chilling Effects*

## Chilling Effects Clearinghouse

**A joint project of the Electronic Frontier Foundation and Harvard, Stanford, Berkeley, and University of San Francisco law school clinics.**

Do you know your online rights? Have you received a letter asking you to remove information from a Web site or to stop engaging in an activity? Are you concerned about liability for information that someone else posted to your online forum? If so, this site is for you.

Chilling Effects aims to help you understand the protections that the First Amendment and intellectual property laws give to your online activities. We are excited about the new opportunities the Internet offers individuals to express their views, parody politicians, celebrate their favorite movie stars, or criticize businesses. But we've noticed that not everyone feels the same way. Anecdotal evidence suggests that some individuals and corporations are using intellectual property and other laws to silence other online users. Chilling Effects encourages respect for intellectual property law, while frowning on its misuse to "chill" legitimate activity.

The website offers background material and explanations of the law for people whose websites deal with topics such as [Fan Fiction](#), [Copyright](#), [Domain Names and Trademarks](#), [Anonymous Speech](#), and [Defamation](#).

In addition, we want your help. We will be gathering a [searchable database](#) of Cease and Desist notices sent to Internet users like you. We invite you to [input](#) Cease and Desist letters that you've received into our database. We will respond by linking the legalese in the letters to FAQs that explain the allegations in plain English.

Periodically, we will issue "weather reports" assessing the climate for Internet activity based on the letters we receive and news reports. What areas (topics, legal categories, jurisdictions) are coolest to online conduct? What activities risk being frozen out altogether? What conduct gets the warmest reception?

### Getting Started:

The Chilling Effects Clearinghouse contains multiple topic areas. [Choose a topic area](#) to view its introduction, Frequently Asked Questions, and annotated Cease & Desist notices, along with reference material and recent news links.

If you are visiting because you have received a Cease & Desist notice, we invite you to [input your notice in the database](#). Questions on the submission form will help to categorize your letter, and then guide you toward topic areas for further information. Once the notice is in our

**Recently Linked Cease & Desists**

- [Rodale Runs from Deep Links](#), *Rodale Inc., publisher of Runner's World Magazine and runnersworld.com*, May 13, 2002
- [Distorting Barbie](#), *Matte!, Inc.*, October 10, 1997
- [Dallas Morning News Rabid Over Deep Links](#), *Dallas Morning News / Belo Inc.*, April 27, 2002
- [Scientology Complaint to Google #5](#), *Religious Technology Center*, April 29, 2002
- [Notice to Google re "Mvian's 'vow'"](#), *[Sender]*, March 15, 2002
- [Infringing Nudist Photo Complaint to Google](#), *[Sender]*, March 29, 2002
- [Don't Embed That Font!](#), *Agfa Monotype / ITC*, January 29, 2002

[more](#)

**Related News**

- [Another Run to a Deep-Link Suit](#), *Declan McCullagh, Wired News*, May 14, 2002
- [Google Runs Into Copyright Dispute, Links to Chilling Effects](#), *David F. Gallagher, New York Times*, April 22, 2002
- [Google Begins Making DMCA Take-downs Public](#), *Doc Marti, Linux*

Chilling Effects Clearinghouse

<http://www.chillingeffects.org/>

Don't Embed That Font! -- Chilling Effects Clearinghouse - Mozilla {Build ID: 2002051006}

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http://www.chillingeffects.org/copyright/notice.cgi?NoticeID=299

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**Sender Information:**  
 Agfa Monotype / ITC  
 Sent by: [Private]  
 Stack & Filpi Chtd.  
 Chicago, IL, 60603, USA

**Recipient Information:**  
 [Private]  
 Tom Murphy  
 http://www.andrew.cmu.edu/~twm/embed/  
 Pittsburgh, PA, 15230, USA

Sent via: email  
**Re: Font embedding**

Dear Mr. Murphy.

I represent Agfa Monotype Corporation and International Typeface Corporation. The program you are distributing on your website which allows a person to change the embedding restrictions on a font has been brought to my attention.

The distribution of this program, whether for free or for a fee, infringes my client's federal copyrights in their TrueType programs. This infringement carries the strong possibility of very substantial statutory damages, the imposition of a federal injunction, and an award of attorneys' fees. Demand is made upon to you to immediately remove this program from your website and to contact me so that we can discuss remaining issues between you and my clients.

Very truly yours,  
 [Private]  
 Stack & Filpi Chtd.

10, 1997

- [Don't Embed That Font!](#), *Agfa Monotype / ITC*, January 29, 2002
- [Cease and Desist Letter](#), *Agfa Monotype*, April 17, 2002
- ["Discover Stars on Ice presented by Smuckers" Tour](#), *IMG*, January 12, 1998

[more](#)

**Related News**

- [Google Yanks Anti-Church Sites](#), *Declan McCullagh, Wired News*, March 21, 2002
- [Copy Controls: Fair Use or Foul Play?](#), *Tom Spring, PCWorld.com*, March 15, 2002
- [WTO Attempts to Shut Down Parody Website Gatt.org](#), *DC Indymedia*, November 13, 2001
- [Font Companies Crack Down on Student](#), *Lisa M. Bouman, CNET News.com*, May 3, 2002
- [Chained Melodies](#), *Damien Cave, Salon.com*, March 13, 2002
- [Vivendi sues ISP over online games](#), *David Becker, ZDNet News*, April 8, 2002
- [Service Providers as Speech Police](#), *Associated Press*, April 7, 2002
- [News Corp. Execo Blasts P2P Piracy](#), *Reuters*, March 4, 2002
- [Shielding ISPs from criminal liability](#), *Gwendolyn Mariano, CNET.com*, February 13, 2002
- [Studios Assail Replay TV Technology](#), *Jon Healey, L.A. Times*, February 11, 2002

Chilling Effects Clearinghouse

Guide to the Chilling Effects Clearinghouse Website - Netscape

File Edit View Go Communicator Help

Location: <http://www.chillingeffects.org/guide.cgi>

What's Related

**Quick Search:**

**Site Guide**

**Clearinghouse Topic Areas:**

- [ACPA](#)
- [Anticircumvention \(DMCA\)](#)
- [Copyright](#)
- [Derivative Works](#)
- [DMCA Safe Harbor Provisions](#)
- [Documenting Your Domain Defense](#)
- [Domain Names and Trademarks](#)
- [Fan Fiction](#)
- [John Doe Anonymity](#)
- [Linking](#)
- [Piracy or Copyright Infringement](#)
- [Protest, Parody and Criticism Sites](#)
- [Reverse Engineering](#)
- [Trademark](#)
- [UDRP](#)

This Topic: [Chilling Effects Clearinghouse](#)

## What is this site?

The Chilling Effects clearinghouse is a database of cease and desist notices (C&Ds), legal interpretation of those notices, Frequently Asked Questions about parts of the law that affect online activity, and related news and resources.

You can use this site in many different ways: choose a [topic area](#) and explore its homepage and FAQs; [search the database](#) for C&Ds similar to one you've received or sent; [submit your own notice](#) for law students at the participating clinics to analyze.

## The site's centerpiece is the database of annotated C&Ds:

Clinical law students review the notices submitted and link their legalese to explanatory FAQs. As the number of notices grows, so will the selection of [FAQs](#), which can be read either alongside the notices or on their own.

Click on a highlighted word or phrase to see its FAQ explanation.

...Partnership, L.P. ("Lyons Partner e **copyrighted** children's dinosaur c ed and fa" thus **trademark and servi**

Below each annotated notice is a series of questions and answers explaining the legal terms.

**FAQ: Questions and Answers**

[back to notice text](#)

**Question: What does copyright protect?**

**Answer:** Copyright gives authors and artists certain exclusive writings and creations. In order for material to be copyrighted original and must be in a fixed medium.

**Barney Trademark and Copyright claims**

June 1, 2003

**Sender Information:**  
Lyons Partnership  
6000 W. 12th Ave.  
DENVER, COLORADO 80202  
USA

**Receiver Information:**  
Barney's Diner  
1000 Broadway  
DENVER, CO, USA 80202

Do not read, send, distribute, or disseminate this information without the express written consent of Lyons Partnership, L.P. ("Lyons Partnership") the owner of the trademark rights in the "Barney's Diner" service mark, as well as the federally registered and service marks "Barney's Diner" and "Barney's".

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FAQ: Questions and Answers

**Question: What does copyright protect?**

**Answer:** Copyright gives authors and artists certain exclusive writings and creations. In order for material to be copyrightable, it must be original and must be in a fixed medium.

Only material that originates with the author can receive a copyright. Items from the public domain which appear in a work, as well as work borrowed from others, cannot be the subject of an infringement claim.

**Site Organization**

The Chilling Effects clearinghouse is organized by [topic area](#). Some topics are related to types of activity, such as fan fiction and reverse

Chilling Effects Clearinghouse



## Resisting the Chill

- Legal threats are often used against “obnoxious” but not illegal activities.
- To resist the chill, know the law and legal defenses.



## Copyright

- Infringement and secondary liability
- DMCA
  - DMCA subpoenas
  - DMCA safe harbor, notice & takedown
  - DMCA anticircumvention
  - State super-DMCAs
- Fair use, parody, commentary, criticism
- Reverse engineering, security testing, interoperability



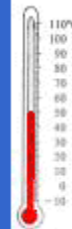
## Trademark

- Trademark and unfair competition
- Dilution
  
- Fair and nominative use
- Non-commercial use
- Parody
- Criticism

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- Trespass to chattels
- Contract
- Trade Secret
- Private rights under anti-hacking laws



## First Amendment

“Congress shall make no law ... abridging the freedom of speech, or of the press”



## Resources

- EFF: <http://www.eff.org>
- Chilling Effects and law school clinics  
<http://www.chillingeffects.org>
- Get involved! Help change the law.



