



310: The Digital Millennium Copyright Act: Offensive & Defensive Uses

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Faculty Biographies

Sarah B. Deutsch

Sarah B. Deutsch is vice president and associate general counsel for Verizon Communications. Her practice covers legal issues in the area of global Internet policy, including liability, privacy, intellectual property policy, and Internet jurisdiction. She currently represents Verizon on a host of domestic and international Internet issues ranging from digital rights management, the Hague Convention, Europe's IPR Enforcement Directive, ICANN, and legal issues arising from Internet-related legislation and litigation.

Ms. Deutsch was formerly vice president & chief intellectual property counsel for Bell Atlantic (now Verizon) managing a large intellectual property practice, including registration and enforcement of patents, trademarks, and copyrights worldwide. She also worked in the intellectual property group of Morgan, Lewis & Bockius.

Ms. Deutsch served as private sector advisor to the U.S. Delegation to the World Intellectual Property Organization's 1996 Conference on the WIPO Copyright Treaties. She was one of five negotiators for the U.S. telecommunications industry in the negotiations that resulted in the passage of the Digital Millennium Copyright Act. She has also served as a private sector expert to the Hague Convention on Recognition and Enforcement of Foreign Judgments and was an industry representative to the G8 meetings on cybercrime.

She has her BA from Emory University and her JD from American University.

Jay Monahan

Jay Monahan is vice president and deputy general counsel, litigation & intellectual property for eBay Inc., the world's leading on-line marketplace. He manages worldwide litigation, as well as management of the Verified Rights Owner program ("VeRO"), the company's copyright, patent, and trademark portfolios, domain name recovery, and other intellectual property enforcement, anti-spam measures, shareholder derivative suits, patent litigation, and interdiction of unauthorized robotic access to the eBay site.

Prior to joining eBay, Mr. Monahan was vice president, worldwide anti-piracy for Walt Disney Pictures & Television. He has been a high technology litigator with Brown & Bain in Palo Alto, California and a general litigator with the Los Angeles office of Morrison & Foerster.

Mr. Monahan is a frequent speaker at seminars concerning the internet, ecommerce, and intellectual property matters.

He attended the University of California at Berkeley, where he graduated *Phi Beta Kappa*, and he is a graduate of the University of California, Hastings College of Law, where he was editor-in-chief of *COMM/ENT, the Hastings Journal of Communications and Entertainment Law*.

Thomas C. Rubin

Associate General Counsel
Microsoft Corporation

DIGITAL MILLENNIUM COPYRIGHT ACT

SEC. 202. LIMITATIONS ON LIABILITY FOR COPYRIGHT INFRINGEMENT.

(a) IN GENERAL- Chapter 5 of title 17, United States Code, is amended by adding after section 511 the following new section:

‘Sec. 512. Limitations on liability relating to material online

‘(a) TRANSITORY DIGITAL NETWORK COMMUNICATIONS- A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider’s transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if--

‘(1) the transmission of the material was initiated by or at the direction of a person other than the service provider;

‘(2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;

‘(3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;

‘(4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

‘(5) the material is transmitted through the system or network without modification of its content.

‘(b) SYSTEM CACHING-

‘(1) LIMITATION ON LIABILITY- A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the intermediate and temporary storage of material on a system or network controlled or operated by or for the service provider in a case in which--

‘(A) the material is made available online by a person other than the service provider,

‘(B) the material is transmitted from the person described in subparagraph (A) through the system or network to a person other than the person described in subparagraph (A) at the direction of that other person, and

'(C) the storage is carried out through an automatic technical process for the purpose of making the material available to users of the system or network who, after the material is transmitted as described in subparagraph (B), request access to the material from the person described in subparagraph (A),

if the conditions set forth in paragraph (2) are met.

(2) CONDITIONS- The conditions referred to in paragraph (1) are that--

'(A) the material described in paragraph (1) is transmitted to the subsequent users described in paragraph (1)(C) without modification to its content from the manner in which the material was transmitted from the person described in paragraph (1)(A);

'(B) the service provider described in paragraph (1) complies with rules concerning the refreshing, reloading, or other updating of the material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available, except that this subparagraph applies only if those rules are not used by the person described in paragraph (1)(A) to prevent or unreasonably impair the intermediate storage to which this subsection applies;

'(C) the service provider does not interfere with the ability of technology associated with the material to return to the person described in paragraph (1)(A) the information that would have been available to that person if the material had been obtained by the subsequent users

described in paragraph (1)(C) directly from that person, except that this subparagraph applies only if that technology--

'(i) does not significantly interfere with the performance of the provider's system or network or with the intermediate storage of the material;

'(ii) is consistent with generally accepted industry standard communications protocols; and

'(iii) does not extract information from the provider's system or network other than the information that would have been available to the person described in paragraph (1)(A) if the subsequent users had gained access to the material directly from that person;

'(D) if the person described in paragraph (1)(A) has in effect a condition that a person must meet prior to having access to the material, such as a condition based on payment of a fee or provision of a password or other information, the service provider permits access to the stored material in significant part only to users of its system or network that have met those conditions and only in accordance with those conditions; and

'(E) if the person described in paragraph (1)(A) makes that material available online without the authorization of the copyright owner of the material, the service provider

responds expeditiously to remove, or disable access to, the material that is claimed to be infringing upon notification of claimed infringement as described in subsection (c) (3), except that this subparagraph applies only if--

'(i) the material has previously been removed from the originating site or access to it has been disabled, or a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled; and

'(ii) the party giving the notification includes in the notification a statement confirming that the material has been removed from the originating site or access to it has been disabled or that a court has ordered that the material be removed from the originating site or that access to the material on the originating site be disabled.

'(c) INFORMATION RESIDING ON SYSTEMS OR NETWORKS AT DIRECTION OF USERS-

'(1) IN GENERAL- A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider--

'(A)(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;

'(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

'(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

'(B) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

'(C) upon notification of claimed infringement as described in paragraph (3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

'(2) DESIGNATED AGENT- The limitations on liability established in this subsection apply to a service provider only if the service provider has designated an agent to receive notifications of claimed infringement described in paragraph (3), by making available through its service, including on its website in a location accessible to the public, and by providing to the Copyright Office, substantially the following information:

'(A) the name, address, phone number, and electronic mail address of the agent.

'(B) other contact information which the Register of Copyrights may deem

appropriate.

The Register of Copyrights shall maintain a current directory of agents available to the public for inspection, including through the Internet, in both electronic and hard copy formats, and may require payment of a fee by service providers to cover the costs of maintaining the directory.

'(3) ELEMENTS OF NOTIFICATION-

'(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

'(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

'(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

'(iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

'(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

'(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

'(vi) A statement that the information in the 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.

'(B)(i) Subject to clause (ii), a notification from a copyright owner or from a person authorized to act on behalf of the copyright owner that fails to comply substantially with the provisions of subparagraph (A) shall not be considered under paragraph (1) (A) in determining whether a service provider has actual knowledge or is aware of facts or circumstances from which infringing activity is apparent.

'(ii) In a case in which the notification that is provided to the service provider's designated agent fails to comply substantially with all the provisions of subparagraph (A) but substantially complies with clauses (ii), (iii), and (iv) of subparagraph (A), clause (i) of this subparagraph applies only if the service provider promptly attempts to contact the person making the notification or takes other reasonable steps to assist in the receipt of notification that substantially complies with all the provisions of subparagraph (A).

'(d) INFORMATION LOCATION TOOLS- A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider--

'(1)(A) does not have actual knowledge that the material or activity is infringing;

'(B) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or

'(C) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

'(2) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

'(3) upon notification of claimed infringement as described in subsection (c)(3), responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity, except that, for purposes of this paragraph, the information described in subsection (c)(3)(A)(iii) shall be identification of the reference or link, to material or activity claimed to be infringing, that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate that reference or link.

'(e) LIMITATION ON LIABILITY OF NONPROFIT EDUCATIONAL INSTITUTIONS- (1) When a public or other nonprofit institution of higher education is a service provider, and when a faculty member or graduate student who is an employee of such institution is performing a teaching or research function, for the purposes of subsections (a) and (b) such faculty member or graduate student shall be considered to be a person other than the institution, and for the purposes of subsections (c) and (d) such faculty member's or graduate student's knowledge or awareness of his or her infringing activities shall not be attributed to the institution, if--

'(A) such faculty member's or graduate student's infringing activities do not involve the provision of online access to instructional materials that are or were required or recommended, within the preceding 3-year period, for a course taught at the institution by such faculty member or graduate student;

'(B) the institution has not, within the preceding 3-year period, received more than 2 notifications described in subsection (c)(3) of claimed infringement by such faculty member or graduate student, and such notifications of claimed infringement were not actionable under subsection (f); and

'(C) the institution provides to all users of its system or network informational materials that accurately describe, and promote compliance with, the laws of the United States relating to copyright.

'(2) INJUNCTIONS- For the purposes of this subsection, the limitations on injunctive relief contained in subsections (j)(2) and (j)(3), but not those in (j)(1), shall apply.

'(f) MISREPRESENTATIONS- Any person who knowingly materially misrepresents under this section--

'(1) that material or activity is infringing, or

'(2) that material or activity was removed or disabled by mistake or misidentification,

shall be liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

'(g) REPLACEMENT OF REMOVED OR DISABLED MATERIAL AND LIMITATION ON OTHER LIABILITY-

'(1) NO LIABILITY FOR TAKING DOWN GENERALLY- Subject to paragraph (2), a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

'(2) EXCEPTION- Paragraph (1) shall not apply with respect to material residing at the direction of a subscriber of the service provider on a system or network controlled or operated by or for the service provider that is removed, or to which access is disabled by the service provider, pursuant to a notice provided under subsection (c)(1)(C), unless the service provider--

'(A) takes reasonable steps promptly to notify the subscriber that it has removed or disabled access to the material;

'(B) upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under subsection (c)(1)(C) with a copy of the counter notification, and informs that person that it will replace the removed material or cease disabling access to it in 10 business days; and

'(C) replaces the removed material and ceases disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notice, unless its designated agent first receives notice from the person who

submitted the notification under subsection (c)(1)(C) that such person has filed an action seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network.

'(3) CONTENTS OF COUNTER NOTIFICATION- To be effective under this subsection, a counter notification must be a written communication provided to the service provider's designated agent that includes substantially the following:

'(A) A physical or electronic signature of the subscriber.

'(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

'(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

'(D) The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person.

'(4) LIMITATION ON OTHER LIABILITY- A service provider's compliance with paragraph (2) shall not subject the service provider to liability for copyright infringement with respect to the material identified in the notice provided under subsection (c)(1)(C).

'(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--

'(A) a copy of a notification described in subsection (c)(3)(A);

'(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.

'(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.

'(i) CONDITIONS FOR ELIGIBILITY-

'(1) ACCOMMODATION OF TECHNOLOGY- The limitations on liability established by this section shall apply to a service provider only if the service provider--

'(A) has adopted and reasonably implemented, and informs subscribers and account holders of the service provider's system or network of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network who are repeat infringers; and

'(B) accommodates and does not interfere with standard technical measures.

'(2) DEFINITION- As used in this subsection, the term 'standard technical measures' means technical measures that are used by copyright owners to identify or protect copyrighted works and--

'(A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process;

'(B) are available to any person on reasonable and nondiscriminatory terms; and

'(C) do not impose substantial costs on service providers or substantial burdens on their systems or networks.

'(j) INJUNCTIONS- The following rules shall apply in the case of any application for an injunction under section 502 against a service provider that is not subject to monetary remedies under this section:

'(1) SCOPE OF RELIEF- (A) With respect to conduct other than that which qualifies for the limitation on remedies set forth in subsection (a), the court may grant injunctive relief with respect to a service provider only in one or more of the following forms:

'(i) An order restraining the service provider from providing access to infringing material or activity residing at a particular online site on the provider's system or network.

'(ii) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is engaging in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

'(iii) Such other injunctive relief as the court may consider necessary to prevent or restrain infringement of copyrighted material specified in the order of the court at a particular online location, if such relief is the least burdensome to the service provider among the forms of relief comparably effective for that purpose.

'(B) If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms:

'(i) An order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in the order, by terminating the accounts of the subscriber or account holder that are specified in the order.

'(ii) An order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States.

'(2) CONSIDERATIONS- The court, in considering the relevant criteria for injunctive relief under applicable law, shall consider--

'(A) whether such an injunction, either alone or in combination with other such injunctions issued against the same service provider under this subsection, would significantly burden either the provider or the operation of the provider's system or network;

'(B) the magnitude of the harm likely to be suffered by the copyright owner in the digital network environment if steps are not taken to prevent or restrain the infringement;

'(C) whether implementation of such an injunction would be technically feasible and effective, and would not interfere with access to noninfringing material at other online locations; and

'(D) whether other less burdensome and comparably effective means of preventing or restraining access to the infringing material are available.

'(3) NOTICE AND EX PARTE ORDERS- Injunctive relief under this subsection shall be available only after notice to the service provider and an opportunity for the service provider to appear are provided, except for orders ensuring the preservation of evidence or other orders having no material adverse effect on the operation of the service provider's communications network.

'(k) DEFINITIONS-

'(1) SERVICE PROVIDER- (A) As used in subsection (a), the term 'service provider' means an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

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'(B) As used in this section, other than subsection (a), the term 'service provider' means a provider of online services or network access, or the operator of facilities therefor, and includes an entity described in subparagraph (A).

'(2) MONETARY RELIEF- As used in this section, the term 'monetary relief' means damages, costs, attorneys' fees, and any other form of monetary payment.

'(l) OTHER DEFENSES NOT AFFECTED- The failure of a service provider's conduct to qualify for limitation of liability under this section shall not bear adversely upon the consideration of a defense by the service provider that the service provider's conduct is not infringing under this title or any other defense.

'(m) PROTECTION OF PRIVACY- Nothing in this section shall be construed to condition the applicability of subsections (a) through (d) on--

'(1) a service provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with a standard technical measure complying with the provisions of subsection (i); or

'(2) a service provider gaining access to, removing, or disabling access to material in cases in which such conduct is prohibited by law.

'(n) CONSTRUCTION- Subsections (a), (b), (c), and (d) describe separate and distinct functions for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.'

(b) CONFORMING AMENDMENT- The table of sections for chapter 5 of title 17, United States Code, is amended by adding at the end the following:

'512. Limitations on liability relating to material online.'



Verizon Avenue Corporation
Security and Legal Compliance
Two Conway Park
150 Field Drive, Suite 300
Lake Forest, Illinois 60045

August 20, 2003

IMPORTANT LEGAL NOTICE REGARDING DISCLOSURE OF YOUR ACCOUNT INFORMATION

Dear Verizon Avenue Customer:

While Verizon Avenue respects your privacy, we are sending this notice to inform you that we have received a court issued subpoena which requires us to produce certain information regarding your Verizon Avenue account (including at least your name, address and telephone number). A copy of the subpoena we received is attached.

This information has been subpoenaed under Section 512(h) of the Digital Millennium Copyright Act ("DMCA") by the owner (or representative of the owner) of copyrighted music, video or software. The person requesting this information asserts that your use of the material listed in the subpoena may constitute an infringement of the rights of the copyright owner.

Background.

As you may know, Verizon has been vigorously opposing attempts by the recording industry to obtain the identity of our customers through the use of subpoenas like the one attached to this letter. We believe that this subpoena violates your privacy and is inconsistent with constitutional rights and with the requirements of the law under which it is issued. Although the courts have rejected Verizon's repeated requests to keep its customers' account information confidential while the lawsuit between Verizon and the Recording Industry Association of America ("RIAA") continues, Verizon is pressing its positions in court and the case will be argued before the Court of Appeals for the District of Columbia in September. Unfortunately, until the case is decided, Verizon is legally compelled to comply with the court's order to turn over your account information.

What can you do?

The court subpoena requires Verizon Avenue to produce the information requested expeditiously, which we will do UNLESS we receive a court order (typically called a "protective order") directing Verizon Avenue not to comply with the subpoena.

If you wish to take legal action to block the disclosure of your account information, you will need to obtain a protective order from an appropriate court and provide us with a copy of the order signed by a judge or appropriate court officer. Verizon Avenue cannot seek a



Verizon Avenue Corporation
Security and Legal Compliance
Two Conway Park
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Lake Forest, Illinois 60045

protective order on your behalf or pay for any costs that you incur in seeking/obtaining such an order.

You may wish to contact your personal attorney in this regard, or visit www.subpoenadefense.org, a website that contains information about the Verizon-RIAA lawsuit, your rights as a consumer, and a list of attorneys who may be able to provide you with information about your rights or seek a protective order on your behalf. The attorneys listed on this site are not affiliated with nor endorsed by Verizon in any way, and the decision to contact them or to take any legal action is completely up to you.

IMPORTANT: If you intend to seek a protective order, please fax a letter us within **seven (7) days** of your receipt of this letter stating your intent to ***promptly*** seek a protective order. Our fax number is: 847.582.8801.

If we do not receive such a letter from you or your counsel within **seven (7) days** of the date of this letter, we will have no alternative but to release a copy of the information demanded in the subpoena to the person who requested it.

Any written correspondence to us may be sent to:

Verizon Avenue Security
Two Conway Park
150 Field Drive
Suite 300
Lake Forest, Illinois 60045

We appreciate your attention to this matter.

Sincerely,

Verizon Avenue
Security & Legal Compliance

**CONFIDENTIAL
CIVIL SUBPOENA RESPONSE**

RE: Subpoena in Docket No. 03-XXX

To:

In response to a subpoena issued in Docket No. 03-XXX:

IP Address: 000.000.000.000

Verizon has received notification from =====

Verizon will thus await notification of the outcome of any court proceedings from this attorney or RIAA before disclosing any subscriber information.

Objection: Verizon Internet Services Inc. and/or the particular Verizon affiliate providing this response (“Verizon”) objects to this subpoena as overbroad and calling for information outside the scope of Section 512(h) to the extent it purports to require Verizon to provide an e-mail address for this subscriber. Section 512(h)(3) states that the subpoena may require production of “information sufficient to identify the alleged infringer of the material described in the notification.” Verizon will produce the individual’s name, address, and telephone number as requested. An Internet user’s e-mail address, by contrast, is not “information sufficient to identify” the subscriber, as the e-mail address itself may not relate in any way to the user’s identity, and many of Verizon’s Internet access subscribers chose to use the e-mail services of other providers that are readily available on the Internet. As e-mail addresses are mentioned elsewhere in the statute, *see* 17 U.S.C. § 512(c)(3)(A)(iv), but not in Section 512(h), it seems clear that the statute does not authorize a subpoena demanding a subscriber’s e-mail address. Moreover, revelation of the e-mail address, to the extent it is accurate, would constitute an additional invasion of the subscriber’s privacy, allowing RIAA to monitor or track the subscriber’s activity beyond the specific use of peer-to-peer software specified in the notice and the subpoena. Depending upon RIAA’s intended use of the e-mail address, it might also raise issues of spamming, harassment, or other tort liability under various state laws. Verizon reserves the right to present further objections to the disclosure of e-mail addresses should RIAA seek to compel their production in any judicial forum, including objections under Fed. R. Civ. P. 45 and any other provision of law.

Verizon is producing the above information without waiving and specifically reserving its rights in connection with the pending litigation between Verizon Internet Services Inc. and the Recording Industry Association of America, Inc. and retains all its rights

regarding any legal objections it may have to any such subpoenas in the future. Should the United States Court of Appeals for the District of Columbia Circuit reverse or modify the judgments of the district court in those pending appeals (Docket Nos. 03-7015 & 03-7053), Verizon reserves all possible rights and remedies, including, but not limited to, immediate return of subscriber data, damages, attorneys fees, and injunctive and other relief. In addition, Verizon has the right to compensation for the time, effort, and expense of complying with this third-party subpoena and reserves all its rights to seek further relief in that regard.

All customer information contained in this response and any other response Verizon may provide to subpoenas issued pursuant to 17 U.S.C. § 512(h) is **CONFIDENTIAL AND PROPRIETARY BUSINESS INFORMATION** of the Verizon affiliate providing this response. Pursuant to an agreement between Verizon and RIAA certain protections apply to the handling, use, and return of this commercially and competitively sensitive information and this response is made in reliance upon, and is specifically subject to, that agreement.

Dear

Thank you for writing.

While Verizon Online does not condone the illegal infringement of a copyright owner's exclusive rights, Verizon Online Legal Compliance is unable to accept your copyright infringement report. Your report is not in full compliance with Verizon Online's policy concerning the reporting of a possible copyright infringement.

Verizon Online may only accept those copyright infringement reports which comply with Verizon Online's policy for reporting copyright infringement. Verizon Online's policy for reporting alleged copyright infringement may be found at:

<http://www22.verizon.com/copyright/>

This policy is in direct conformance with all requirements set forth under title 17 of U.S.C. §512(c)(3), otherwise known as the reporting requirements set forth in Title II of the Digital Millennium Copyright Act.

If you submit a future report that is in full compliance with Verizon Online's policy for reporting online copyright infringement, we will evaluate the report and proceed accordingly.

Sincerely,

Verizon Internet Services Security
<http://www2.verizon.net/policies>
security@verizon.net

Dear

Thank you for writing.

Verizon Internet Services Security cannot accept your Copyright Notice.

The report is not associated with a Verizon Online user.

Please re-evaluate your data and submit your notice to the correct Internet Service Provider.

Sincerely,

Verizon Internet Services Security
<http://www2.verizon.net/policies>
security@verizon.net

To:

Thank you for your e-mail to Verizon Internet Services Security, regarding the possible offending web site or user violating the Digital Millennium Copyright Act or other copyright infringement laws.

We will review the notice you have sent, and will take appropriate action. We will contact you if any further information is required.

Sincerely,

Verizon Internet Services Security
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