The Internet’s Private Cops

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- 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
“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
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

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 and 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 database, our automatic database retrieval will guide you to a FAQ, introduction, or related Cease & Desist notices.
Sender Information:
Agfa Monotype / ITC
Sent by: [Private]
Stack & Filpi Cthld.
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 program. 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 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 Cthld.
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.

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 engineering.
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
- 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.