

September 4, 2003

The Honorable Patrick J. Leahy
Ranking Member
Senate Judiciary Committee
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

The undersigned organizations commend you for calling a hearing of the Judiciary Committee to examine the issue of the Digital Millennium Copyright Act's subpoena process. We would also like to express our growing concern about the need to ensure that basic due process protections are followed, and a respect for privacy ensured, in the digital age.

Our concern arises out of a broad interpretation of the Digital Millennium Copyright Act by a Federal District Court that allows any copyright holder or delegate of a copyright holder to demand from any Internet service provider the name, address, telephone number and all other identifying information about a customer based on an uncorroborated allegation that the customer had infringed a copyright. The case was brought by the Recording Industry Association of America against Verizon Online, an Internet service provider. In practice, this means that anyone can submit a one-page form to a court and have it issue an enforceable subpoena demanding the identity of any other person. No judge is involved to evaluate the allegation, even at a minimal level, and no lawsuit need ever be filed. The process contains no obligation to inform the customer whose identity will be told that his or her privacy is threatened, or has been compromised, much less provide for a reasonable opportunity for the customer to intervene to protect his or her privacy.

Clearly, the process sanctioned by Federal court raises very serious concerns about the privacy rights, safety, and security of Internet users. Because of this, a broad, bipartisan coalition of 44 organizations and ISPs have joined forces to oppose the ruling, including groups as diverse as the Competitive Enterprise Institute, the American Civil Liberties Union and the Grange, and also including leading domestic violence and child protective organizations, along with nearly every major ISP in the country. While copyright infringement is an important problem, the need to ensure basic fairness to customers and to respect their reasonable expectation of privacy in their relationship with their ISP is no less important in this context than in any other.

Since the appellate court has denied a stay of its order to divulge the customer information, the RIAA has used this process to seek the identity of nearly one thousand Internet users, and the RIAA has said that a large number of lawsuits will follow. Therefore, we believe it is critical for swift action to clarify Section 512(h), to make clear that it only applies once a lawsuit has been filed and then according to the usual processes for subpoenas under federal law, which already provide for important safeguards for consumers.

We appreciate the tremendous work that you have dedicated to this and other related issues. Please let us know if we can be of further assistance.

Sincerely,

Alliance for Public Technology
American Association of Law Libraries
American Civil Liberties Union
American Legislative Exchange Council
American Library Association
ASPIRA Association, Inc.
Association of Research Libraries
@tanta Broadband
BellSouth Corporation
Broadband Institute of California
Chisp.net
Citizens for a Sound Economy
CoaXmedia
Colorado Internet Cooperative Association
Competitive Enterprise Institute
Computer & Communication Industry Association
Computer Professionals for Social Responsibility
Consumer Action
Consumer Federation of America
CyberStarz
Digital Future Coalition
DIMISI Internet
EDUCAUSE
Electronic Frontier Foundation
Electronic Frontiers Georgia
The Electronic Privacy Information Center
EMC Limited
Hispanic Technology and Telecommunications Partnership
Alianza Dominicana
American GI Forum
ASPIRA
Association for the Advancement of Mexican Americans
Cuban American National Council
Dialogue on Diversity
Greater Washington Ibero American Chamber of Commerce

Hispanic Federation of New York
Hispanics in Information Technology
Interamerican College of Physicians and Surgeons
Labor Council for Latin American Advancement
MANA, A National Latina Organization
National Association of Hispanic Publications
National Conference of Puerto Rican Women
National Hispanic Council on Aging
National Hispanic Medical Association
National Latina/o Lesbian, Gay, Bisexual and Transgender Organization
National Puerto Rican Coalition
New York State Federation of Hispanic Chambers of Commerce
TAMACC
U.S. Hispanic Chamber of Commerce
U.S. Mexico Chamber of Commerce
Veterans in Community Service
Illinois Coalition Against Domestic Violence
Illinois MDU Communications
Independent MultiFamily Communications Council
Infinisys
InKeeper Co
Interquest
League of United Latin American Citizens
MANA, A National Latina Organization
Media Access Project
Media Works
Mercury Network Corporation
National Association of Consumer Agency Administrators
National Black Chamber of Commerce
National Coalition Against Domestic Violence
National Consumers League
National Grange of the Order of Patrons of Husbandry
National Network to End Domestic Violence
National Puerto Rican Coalition
New York State Telecom Association
Noment
North Dakota Council on Abused Women's Services
NTC Communications
Odessay Communications
Pace Electronics
PCO Broadstar
Privacy Activism
Privacy Rights Clearinghouse
Progressive Internet Action
Public Knowledge
Rover Communications
SBC Telecommunications
SE Broadband

SeniorNet
Southern Star
STIC.NET. LP
Surfnet Corporation
Technology Committee of the National Taskforce to End Sexual and Domestic
Violence Against Women
Telecommunications Research and Action Center
Texas Internet Service Providers Association
United States Internet Industry Association
United States Telecom Association
U.S. PIRG
Washington Association of Internet Service Providers
ZZAPP Internet Services
Zcorum

cc: Members and Staff, Senate Judiciary Committee