

DC Circuit Rules: RIAA Cannot Subpoena ISPs

The Recording Industry Association of America (RIAA) is no longer able to use its favored tactic of issuing subpoenas to Internet service providers (ISPs) in order to obtain the identity of suspected copyright infringers. In December 2003, the Court of Appeals for the DC Circuit ruled in favor of Verizon Internet Services when it concluded that RIAA's use of the unique subpoena provision in the Digital Millennium Copyright Act (DMCA) to obtain the identities of suspected copyright infringers was a misuse of the statute. This ruling, *Recording Industry Association of America v. Verizon Internet Services, Inc.*, 351 F.3d 1229 (D.C. Cir. 2003), reverses a January 2003 order by the federal District Court in the District of Columbia which directed Verizon to comply with two RIAA subpoenas. The Court of Appeals remanded the case to the District Court and ordered it to vacate its previous order and grant Verizon's motion to quash.

Section 512(h) of the DMCA allows copyright holders or their representatives to obtain a subpoena from a clerk of a federal district court in order to compel an ISP to disclose the information. However, DC Circuit Chief Judge Douglas Ginsburg's opinion upheld Verizon's contention that, "512(h) does not authorize the issuance of a subpoena to an ISP acting solely as a conduit for communications the content of which is determined by others" CNETNews.com reported that the ruling does not address the lawsuits pending as a result of RIAA subpoenas, nor does it prohibit the RIAA from continuing to sue suspected infringers. (See "RIAA Subpoenas Those who Allegedly Download Music" in the Summer 2003 issue of the *Silha Bulletin*.) Rather, the court's ruling specifically addresses the use of the DMCA's subpoena provision for obtaining consumer's identifying information. RIAA issued 532 new lawsuits in January against unnamed individuals. The "John Doe" lawsuits include specific Internet Protocol (IP) addresses of the suspected individuals. Previously, RIAA would indicate the IP address in its subpoena to an ISP and the service provider would use that address, a unique number for every online user, to obtain the identifying information. Verizon had previously suggested this tactic as an alternative to subpoenaing ISPs. In the January 2003 ruling, the District Court determined that ". . . there is absolutely nothing in the DMCA or its history to indicate that Congress contemplated copyright owners utilizing John Doe actions in federal court to obtain the identity of apparent infringers, rather than employing the subsection (h) process specifically designed by Congress to address that need."

(*Recording Industry Association of America v. Verizon Internet Services*, 240 F. Supp. 2d 24 (D.D.C 2003)) That court also found that because the threshold of proof for executing a John Doe action is so low, it might offer less protection for the consumers than the subpoena process which required the requester to provide evidence, usually a list of songs that appeared to be unlawfully obtained by a particular user, of his or her “good faith belief” that the downloading was not legal.

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