

Digital anonymity and the law

Bits of Freedom, Sjoera Nas
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Agenda

- Bits of Freedom / EDRI
- Anonymity & European privacy-directives
- Anonymity in the US
- FFPI campaigns against file-sharers
- Future: IPRE Directive

Bits of Freedom

- Founded in 2000
- NGO, funded by private parties
- Themes: privacy, spam, e-voting, copyright
- Big Brother Awards

Big Brother Awards 2003



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- European Digital Rights

European Digital Rights

- Umbrella-organisation 14 members in 11 countries
- Lobbyist in Brussels
- Newsletter EDRI-gram: www.edri.org

Legal grounds for anonymity

- Anon. search of information
- Anon. e-mail correspondence
- Use of anon. self-help hotlines (espec. children!)
- Use of anon. sources
- Whistle blowing through anon. hotlines
- Use of anon. informants, witnesses
- Use of anon. to conclude contracts
- Use of anon. payments for online purchases

Anonymity in Europe

- No constitutional protection (not in ECHR)
- No legal provisions or case law that explicitly recognize a right to remain anonymous
- But: European institutions acknowledge the importance of anonymity in the digital environment
- And: together the European privacy directives create a level of protection in which the contours of an individual right to anonymity can be recognized

Privacy-directive 1995

- General rules on the lawfulness of the processing of personal data
 - Article 6: Principles relating to data quality
 - Article 7: Criteria for legitimate data processing
- Principle of transparency
- Right of access to data
- Right to object
- Voluntary disclosure of personal data **allowed only** when necessary for the purposes of the **legitimate interests** pursued by the controller or by the third parties, **except** where such interests are overridden by the interests for fundamental rights and freedoms of the data subject, in particular his **right to privacy**

Privacy-directive 2002

- Preamble: Anonymous means of accessing the telecommunication network and services should be made available
- Traffic and location data must be erased or made anonymous when no longer needed for the purpose of the transmission of a communication
- Protection of personal data in Whois Directories?

More EU defenses of anonymity

- Art 29 Working Party Data Protection Authorities: "The ability to choose to remain anonymous (inc. anonymous access to the internet and anonymous payment) is essential if individuals are to preserve the same protection for their privacy online as they currently enjoy offline." (November 1997)
- Council of Europe: "In order to ensure protection against online surveillance and to enhance the free expression of information and ideas, member states should respect the will of users of the Internet not to disclose their identity." (May 2003)
- E-commerce directive, recital 14: This Directive can not prevent the anonymous use of open networks such as the Internet.
(June 2000)

Freedom & AN.ON

- Many proxy-servers available, usually websurfing only, cost around 50 euro / year
- Exception: Freedom / Zero Knowledge Systems (1998 - †2001)
- Germany: AN.ON, websurfing only (2001 - today)
<http://www.anon-online.de>
 - Forced to retain IP nrs visitors in august 2003, but legal victory in september 2003

Current EU working programs

- **RAPID** - Roadmap for advanced research in privacy and Identity Management
- **APES** - Anonymity and privacy in electronic services
- **PRIME** - Privacy and identity management in Europe

Anonymity in the U.S.

- Right to anonymity acknowledged in several contexts
 - Anonymous publications
 - Spreading of handbills
 - 'Door to door canvassing'
 - Establishing political and religious organisations
 - Right to read anonymously
- This right to anonymity also applies to communication on the Internet.

Anonymity in the U.S.

Supreme Court: right to anonymity protected by the **First Amendment**

- “Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time have been able to criticize oppressive practices and laws either anonymously or not at all.” (Talley v. California).
- “Under our constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority.” (McIntyre v. Ohio).

John Doe procedures

- A 'John Doe' subpoena can be issued upon a provider to force him to reveal identifying data.
- Problems:
 - Providers didn't require a subpoena
 - Providers didn't notify the anonymous Internet user
- Case law: The Internet user has a right to anonymity that can only be set aside when the plaintiff demonstrates that an actionable wrong has in fact been committed (www.cyberslapp.org)

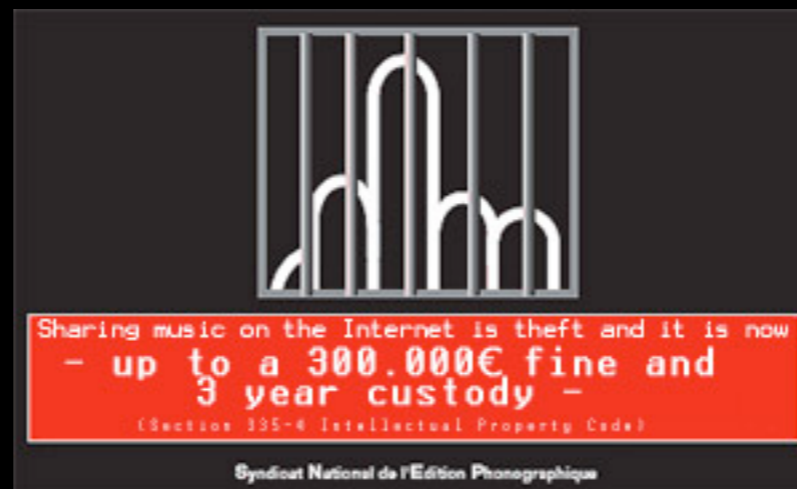
DMCA subpoenas

- §512(h) Digital Millennium Copyright Act: copyright owner may request district court to issue a subpoena to a provider for identifying information.
- Problems:
 - No judicial review
 - Statement by the Rights Holder is enough
 - No penalties for abuse
- Supreme Court: §512(h) does not apply to a provider that acts solely as a conduit for communications. Therefore it can not be used in the battle against P2P (RIAA v. Verizon).

Campaigns against file-sharers

- US: 3.000 cases since september 2003, average transaction 3.000 USD
- Europe: no John Doe procedures, providers pressed to voluntarily hand-over data users
- Lawsuits announced against users in Denmark, Germany, Italy, Switzerland, France

SNEP: free music has a price



Some answers



 <p>WARNING! BUYING THIS CD FUNDS LAWSUITS AGAINST CHILDREN AND FAMILIES RIAAradar.com DownhillBattle.org</p>	 <p>WARNING! THIS RECORD LABEL PAYS RADIO STATIONS TO KEEP INDEPENDENT MUSIC OFF THE AIR RIAAradar.com DownhillBattle.org</p>
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CCC: boycott the music industry



Future: IPRE directive

- Intellectual Property Rights Enforcement Directive (similar to DMCA) published 26.04.2004 (2004/48/EC)
- Article 8 - Right of information "The competent judicial authorities may order that information on the origin and **distribution networks** of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person <owns, uses, provides or distributes>."
- Problems:
 - Focus on classical counterfeiting
 - Applicable on providers? (Articles 9 and 11 - injunctions)
 - No safeguards for privacy and freedom of speech

Sources

- Working Party Recommendation on anonymity on the Internet (03.12.1997)
- Working document "Privacy on the Internet" - An integrated EU Approach to On-line Data Protection (21.10.2000)
- Book: Digital Anonymity and the law (bundled articles Tilburg conference 2001, nb Ian Walden, Alexandra Sims)
- EDRI-gram - www.edri.org