

The Internet's Private Cops



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The Internet's Private Cops

- Early view: The Internet can "route around" law
- Later view: Maybe it can't. We need to work with the law itself.



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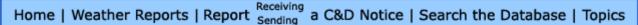
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RIAA v. Verizon

- 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



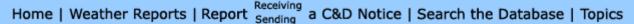


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"Law enforcement" is not just the government





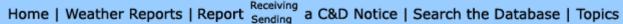




Private actors have many legal mechanisms at their disposal

- 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



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- 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 ...



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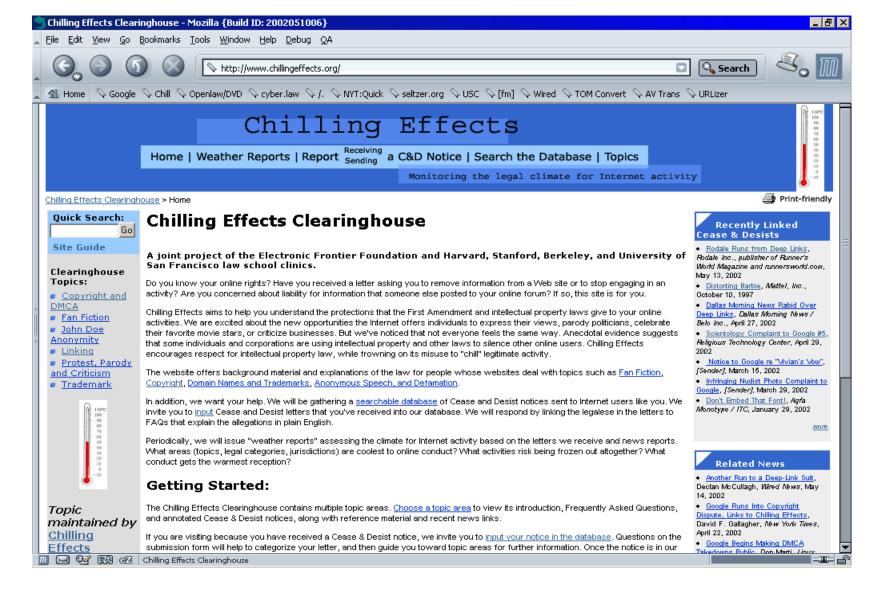


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the shadow of the law

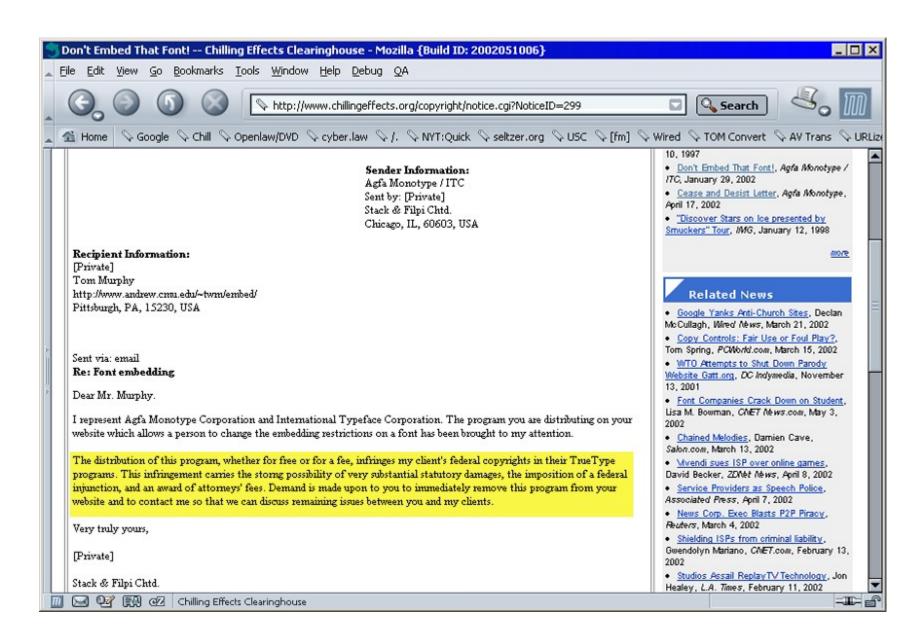
- Legal threats may not have merit...
- ...but still deter online activity
- Threats such as: "an injunction, disgorgement of revenues and/or statutory damages, as well as attorneys fees and costs for such litigation"



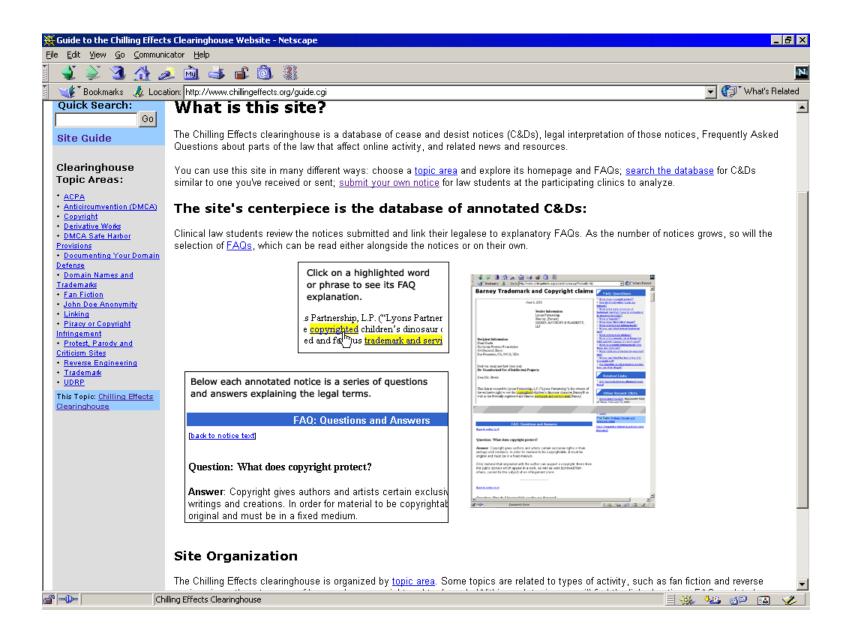


http://www.chillingeffects.org/











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Resisting the Chill

- Legal threats are often used against "obnoxious" but not illegal activities.
- To resist the chill, know the law and legal defenses.



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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



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Trademark

- Trademark and unfair competition
- Dilution
- Fair and nominative use
- Non-commercial use
- Parody
- Criticism



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- Trespass to chattels
- Contract
- Trade Secret
- Private rights under anti-hacking laws



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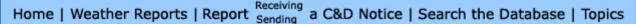




First Amendment

"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.





