ELECTRONIC FRONTIER FOUNDATION
Protecting Rights and Defending Freedom on the Electronic Frontier
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Anonymity and Other Civil Subpoenas

THINGS TO REMEMBER

#1: Understand Your Privacy Policy and Terms of Service. Your policies can strongly protect your interests or your users' interests, but there's frequently tension between the two. Policies that strongly weigh in your favor may permit you to disclose personal information with fewer restrictions but may not impress your users. On the other hand, policies that grant strong protections to your users may limit your ability to voluntarily turn over information and even legally obligate you to fight for their privacy.

#2: Promptly Notify the Target of a Subpoena. Develop procedures to promptly notify the target of subpoena that a litigant is attempting to discover her identity. This not only allows the target to consider her own options, it is legally required in some instances.

#3: Don't Be Afraid to Oppose a Subpoena. Courts don't ordinarily review the substance of a subpoena before it issues, and procedures are in place to slow down the process if you think that the subpoena goes too far. Follow the opposition procedures laid out in the subpoena, and the burden will then shift to the issuing party to pursue the matter further. In many cases, the matter will end there.

#4: "A Subpoena From *Where*?" Subpoenas are only valid from courts that have proper jurisdiction over you. If you received a subpoena from a court in another state where you don't do substantial business, you may not be obligated to respond. Check with your lawyer to be sure.

#5: Protecting User Anonymity: Factors Courts Consider. While not universal, courts increasingly weigh the following factors when deciding whether to enforce a subpoena seeking identifying information about a site user or customer.

(1) Whether the litigant has shown that she has viable claims;

(2) The specificity of the material sought in the subpoena;

(3) The existence of alternative means of getting that information;

(4) Whether the litigant has attempted to notify the anonymous target of the subpoena;

(5) The magnitude of the litigant's need for the information.

Legitimate questions about any of these factors will give you a good basis to challenge a subpoena seeking identifying information about your users.

#6: Keep The Lines Of Communication Open. Just because a subpoena asks for information by a certain date doesn't mean that that can't change. If you're unclear as to what a litigant is looking for, or think that the subpoena is overreaching, consider giving the attorney who issued the subpoena a call. It's not uncommon for deadlines to be pushed back or the scope of targeted information to narrow if you have a good reason.