



## EFF Challenges Subpoenas to ISPs for Identities of Anonymous Posters

July 22, 2010

On July 14, 2010, the Electronic Frontier Foundation (EFF), a group that defends the privacy and online rights of computer and Internet users, served a motion to quash two dragnet subpoenas issued by the plaintiffs in a high-profile New York state court case to Internet service providers (ISP's) Google and Yahoo. The subpoenas demanded the identities of a wide range of anonymous online critics who posted comments on various blogs and websites.

The subpoenas stem from a state lawsuit instituted by New York couple Michael and Miriam Hersh, alleging a "sweeping conspiracy led by family members and their acquaintances to accuse the Plaintiffs of mistreating their children and to cause a public controversy." The couple made headlines in 2008 when news reports were published saying that they had their then 16-year-old son, Isaac, forcibly taken to a privately owned Jamaican boot camp known for its abuse and harsh conditions. The story created a public outcry of support for Isaac, who was ultimately released from the Jamaican institution with the help of members of the Jewish community.

The couple's complaint alleges various causes of action, including tortious interference with contract and intentional infliction of emotional distress. Specifically targeted in their subpoenas to Google and Yahoo are the identities of users of 10 e-mail accounts, the operators of 30 blogs and a website, and potentially hundred of users who posted comments on those sites. In addition to identity-related information, the plaintiffs seek the content of stored communications with an ISP or electronic communications facility.

EFF's motion to quash urges the court to protect the privacy and anonymity of these online critics, noting that "[u]nder the broad protections of the First Amendment, speakers have not only a right to publicly express criticism but also the right to do so



anonymously.” The motion further argues that the First Amendment requires those who see to unmask the identities of online speakers must balance the right to speak versus their legitimate need to pursue a claim. According to EFF, the plaintiffs showed no such need in issuing their broad subpoenas.

The New York state court’s decision on EFF’s motion to quash will test how far the concept of free speech should be extended. In a post-9/11 world, there are certainly extenuating circumstances — such as life-threatening situations — that would justify unmasking the identities of anonymous bloggers. However, absent such a need, litigants shouldn’t be able to engage in fishing expeditions as to the identities of entire communities of online speakers simply because they are curious or simply because people said things about them that they didn’t like.

Even if litigants could demand the identities of anonymous posters, unmasking those identities may not always be feasible. Some blogs and websites don’t require posters to verify their email addresses, and some posters prevent blogs from tracking them via IP address by using different Internet connections. Tracking the identities of those posters may prove costly or impossible.

Anonymous posting is not only an option for online speakers, but a way of life in today’s blogosphere. Simply disagreeing with an anonymous poster’s viewpoint is not enough to overcome the First Amendment protections afforded to these posters or to change the way in which online outlets operate.

*Crime in the Suites is authored by the [Ifrac Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

*The commentary and cases included in this blog are contributed by Jeff Ifrac and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrac and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!*