

Getting a Notice from Your ISP

It's been a long day. You pull the snail mail out of its box. You find a letter from your ISP, your internet service provider. Maybe it's a special offer to such a loyal customer? You open it and find a notice that your subscriber information has been subpoenaed as part of a lawsuit for copyright infringement. You have a few weeks. Here's what to do:

Breathe. Your world is not ending. You will get through this by calm thinking.

Figure Out What Happened. This letter does not mean, necessarily, that you being sued. What it means is that someone used your internet access to download copyrighted content.

- Someone outside of your home may be using your wireless modem. One family found out that a boat moored nearby their home was using the family's signal to download stuff. The family is not liable for it.
- Someone in your family besides you may be downloading copyrighted content; for example, an 85 year old grandmother found out that her grandson, who had installed the wireless modem for her, was using it for his own purposes. Grandma is not liable for grandson. Grandma should find counsel to contact the copyright holder's lawyer to explain the situation, and just as importantly, not spill the beans on grandson.
- You downloaded the copyrighted material, and you know it. You are faced with a few choices.

Whoops. You Did It, and You Know It.

- Refer back to **Breathe**, above.
- Do Not Erase Anything. Erasing evidence could not only cause you to lose the case, you can be prosecuted for it. As tempting as it may seem, do not erase anything.
- But Stop Digging The Hole You're In. Stop using whatever you used to download other people's copyrighted material. And yes, pornography is subject to copyright under current law.
- Use **Avvo** to find an intellectual property lawyer in your area that handles copyright infringement cases.
- Fighting Back. You can fight back, but you don't have many options.
 1. **Quashing the Subpoena.** The notice usually says that the ISP will turnover your information if you do not file a motion to quash the subpoena. It's more complex than it sounds. "I don't want the information released" is not a good reason to quash the subpoena.

Claiming that it violates your right to privacy hasn't shown much success, either. It would take some unusual set of circumstances for a motion to quash to succeed. Speak with your lawyer about the options and risks.

2. **Defend the Lawsuit.** If you downloaded the copyrighted material you can try to defend the case in court, but if you know that you did it there are some difficult hurdles to overcome:

- First, a lawyer is very expensive -- \$250 an hour and up in California – and defending a full federal case can take hundreds, even thousands of hours, as well as thousands of dollars in expenses. In addition, you would have to spend time on it, and if you are spending time talking to lawyers about it, that has its own expense to you – you could be doing something else that makes money for you. Then there is the worst part – the emotional toll, the tossing and turning at night. If the copyrighted material is something you would be embarrassed to show your family, that takes an emotional toll, too.
- Secondly, the law often allows the winner in a copyright infringement case to get the loser to pay for the winner's attorneys' fees. Those fees are easily in the tens of thousands of dollars, and could reach into the high hundreds of thousands of dollars. That doesn't even count the damages that can be awarded, which can often be \$15,000 to \$150,000 for each item infringed. Losing can get expensive, really fast.
- If the infringements occurred by a peer-to-peer process like Bit Torrent, all the copyright holder needs to do to collect evidence is to join the "swarm" of a particular work, and the process automatically provides the IP address of everyone who used that swarm. It doesn't cost the copyright holder any more to join than it did for the swarm members to do so.

Settling Quickly.

- In most cases, the copyright holder is perfectly happy to settle with you, without even knowing your name. This is especially true if the work deals with pornography—the copyright holder knows that your anonymity is the copyright holder's best leverage. The copyright holder's goal is to cash in—not embarrass you.
- In recent years, copyrighted pornography owners collect databases of IP addresses that use Bit Torrent to download their copyrighted

content. It is a simple matter of sorting through hits by IP address to compile a list.

- Usually, the settlement is between \$250 to \$500 per infringed work, but your lawyer can advise on what is likely to work for you.
 1. Your lawyer can show income tax records (with your name deleted) to show a lack of income. However, this isn't guaranteed to work; talk to your lawyer about what is right for you.
 2. Don't try to do this without a lawyer. They usually pay for themselves many times over.
- Make sure there is a settlement agreement—your lawyer can usually sign for you—to make sure that you are getting a release.

The Aftermath.

- With a signed settlement agreement in hand, NOW remove the program that allowed you to download other people's content. Do not tempt fate again—respect other people's rights.
- **Breathe.** It's over.

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