
[\[Author Prev\]](#)[\[Author Next\]](#)[\[Thread Prev\]](#)[\[Thread Next\]](#)[\[Author Index\]](#)[\[Thread Index\]](#)

EFF is looking for Tor DMCA test case volunteers

- *To:* or-talk@xxxxxxxxxxxxxx
- *Subject:* EFF is looking for Tor DMCA test case volunteers
- *From:* Roger Dingledine <arma@xxxxxxx>
- *Date:* Wed, 26 Oct 2005 16:55:36 -0400
- *Delivered-to:* archiver@seul.org
- *Delivered-to:* or-talk-outgoing@seul.org
- *Delivered-to:* or-talk@seul.org
- *Delivery-date:* Wed, 26 Oct 2005 16:55:49 -0400
- *Reply-to:* or-talk@xxxxxxxxxxxxxx
- *Sender:* owner-or-talk@xxxxxxxxxxxxxx
- *User-agent:* Mutt/1.5.9i

Fred asked me to forward this to the list. If you have legal questions (and probably most questions about this count as legal questions), you should contact Fred and Kevin directly (fred at eff.org and bankston at eff.org). Fred also reminds us that any correspondence you have with me or others here would be discoverable, so that's an added incentive to go to them directly.

Please look through this checklist, and decide if you match the profile they're looking for. I'd like to encourage you to contact them even if there are a few points you don't match so well -- I'd rather have a big pile of pretty-good volunteers than have everybody hold off because they are not perfectly suited -- then Fred and Kevin can make their own decisions from there.

Thanks,
--Roger

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If record label and movie studio representatives continue sending infringement notices to Tor node operators and their upstream ISPs, it will become increasingly important to set a clear legal precedent establishing that merely running a node does not create copyright liability for either node operators or their bandwidth providers. In order to establish such a precedent, it will be necessary to bring or defend a test case. EFF is actively seeking clients willing to be the test case.

Picking the right client is half the battle in any test case. Accordingly, we cannot promise that we will be able to defend any and all Tor node operators. There are several factors that are relevant in finding the right test case client. Here are some of them:

1. You must have received a complaint from a copyright owner about operating a Tor node. Complaints from your ISP about running a proxy do not count, even if they mention copyright infringement as the reason for their objection -- that's a contractual fight between you and your bandwidth provider. We are looking for node operators who have either received copyright complaints directly, or forwarded to them from their ISPs.
2. You should not be an infringer yourself, or be engaged in any other kind of unlawful activity. In litigation, the copyright owners will want to examine every hard drive and email message in your possession or control, looking for evidence that you are running Tor because you want to encourage people to infringe copyright. So if you are a big file-sharer, warez trader, or are involved in any other unlawful activities (even if unrelated to Tor), you are probably not the right person.

3. You should have a legitimate reason to run Tor. If you are the client for the test case, you will be deposed under oath and asked why you run Tor. You should be able to truthfully respond in a way that does not suggest that you are doing it to encourage any illegal activity, including copyright infringement. For example, running it because you value free speech is a legitimate reason. Same if you are running it for research purposes. Any documentary evidence from your past (e.g., emails, papers presented, etc) should not contradict your story. Most Tor node operators will qualify under this criteria, but if you wrote a bunch of emails and bulletin board posts describing how great Tor will be for the coming copyright revolution, you are probably not the ideal client.

4. You should be willing to see the case through. Litigation takes time -- often several years. The process will occasionally involve some inconvenience, including depositions and allowing the other side to go through most documents in your possession or control (including email, hard drives, etc). EFF will provide the legal services for free. But there is some risk of personal liability for damages, perhaps amounting to several thousand dollars, if we lose. We will do everything to minimize the risk, but cannot eliminate it altogether.

5. You should be located in the United States. Your Tor server should also be located in the United States.

6. You should have an upstream bandwidth provider who will stand by you. It would be less than ideal if your upstream ISP terminates your account before we ever get to court.

Fred

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 - Index(es):
 - [Author](#)
 - [Thread](#)