



2. Based on my employment duties and responsibilities, and in the ordinary course of business, I have personal knowledge of the facts set forth below. If called as a witness, I could and would testify competently to the facts set forth below.

### **Verizon Online's Services**

3. Verizon is an Internet Service Provider (ISP) that as of December, 2002 provided Internet access to more than 1.7 million subscribers. Verizon provides ISP services in all 50 states and the District of Columbia. Approximately 1.2 million of Verizon's subscribers use high speed DSL Internet access, and almost half a million subscribers use dial-up Internet access. Verizon offers server space to its customers so that they may upload personal websites onto Verizon servers. However, the vast majority of Verizon subscribers use Verizon's services merely as a conduit for e-mail and Internet access.

4. As explained fully in the Declaration of Scott Lebrede at ¶¶ 4-8 (executed on August 29, 2002 and filed with this Court on August 30, 2002) (hereinafter, "Lebrede Declaration"), Verizon's interaction with the subscriber for whom the Recording Industry Association of America (RIAA) seeks contact information is limited to providing transmission services through automatic technical processes, also known as conduit services.

5. Verizon provides conduit services to its more than 1.7 million subscribers for many purposes, including e-mail and web browsing. For example, whenever a Verizon subscriber sends or receives an e-mail, Verizon is acting only as the conduit for that e-mail. Similarly, when a Verizon subscriber browses the Internet by visiting websites at various addresses, Verizon merely provides the subscriber with the means to access the particular website that the user selects via a particular IP address represented by a particular uniform

resource locator (URL). For example, the IP address 206.46.189.11 corresponds to the URL “www.verizon.net.” Verizon does not direct the user’s web browsing in any way, and has no control over the content of the websites that are visited. When a Verizon subscriber uses Internet Relay Chat (IRC), Verizon merely provides the gateway access to the Internet; Verizon does not own or operate any IRC servers.

### **Verizon’s Privacy Principles and Potential Loss of Goodwill**

6. Verizon takes the privacy of its subscribers very seriously. When a subscriber or potential subscriber seeks information about Verizon’s privacy policies through the Verizon.com website (by clicking the Privacy Policy link at the bottom of the page), the first thing the consumer is told is “the privacy and security of your personal information is our #1 priority.” The consumer is also told that Verizon’s privacy policy is approved by TRUSTe, an independent, non-profit organization that reviews company’s privacy policies and provides a seal of approval if the policies meet stringent criteria regarding the handling of user’s personal information.

7. Verizon tells the subscribers of its ISP services (and all of its services) that it is committed to ten basic privacy principles. These include not sharing personally identifiable information about the subscriber with others, except if required to do so by law, and a statement that Verizon will work with policymakers to ensure that it continues to safeguard privacy, giving customers choices, flexibility and control. In my experience, Verizon ISP subscribers expect that their e-mail, web browsing, and other activities for which Verizon merely acts as a conduit will not be monitored or disclosed in any way. The perception created by Verizon suddenly monitoring and disclosing such information will be damaging to the goodwill Verizon has worked hard to engender by stating and maintaining high privacy standards.

8. Research indicates that most Internet users take their privacy very seriously. A 2002 study of consumer expectations regarding privacy conducted by Harris Interactive showed that more than half of all consumers specifically check for a seal or symbol certifying that a website has good privacy practices. The study also found that nearly two-thirds of all consumers are highly concerned with privacy, and have a great deal of concern that businesses will misuse their information. Privacy & American Business, *Privacy On and Off the Internet: What Consumers Want* (Feb. 7, 2002).

### **The Potential For Abuse of Conduit Subpoenas**

9. It would be quite simple, as a technical matter, for any individual to abuse the section 512(h) subpoena power if it is applied to conduit functions. It is very easy for copyright owners and others to determine the IP address from which a subscriber is accessing the Internet for e-mail, chat, or browsing. For example, when an individual visits a website that a person claiming to be a copyright owner controls, the website's server automatically collects the IP address from which the visitor came. The IP address of anyone who posts to an Internet newsgroup is permanently visible to every user and may be stored in a searchable archive of such postings. Some instant messaging systems provide the IP address of the person sending or receiving messages, so that all a person claiming to be a copyright owner would need to do in order to seek personal identification through the subpoena process is exchange a single instant message with the subscriber in order to have his or her IP address. E-mails generally include the IP address of the sender in the header of the message. The IP address provides all of the information needed to form the basis for a subpoena request.

10. "Web Bugs" provide additional opportunities for third parties to determine IP addresses and thus abuse the section 512(h) subpoena power if it is applied to conduit functions

even in the absence of deliberate two-way communication. These “bugs” include tools that in many cases enable the sender of an e-mail to identify the IP address of anyone who uses certain types of e-mail programs to read the message, even if they never respond to the e-mail. They also enable the creator of a web page to determine the IP address of anyone who looks at the page, even if the creator does not control the server hosting the page.

### **The Potential Burden of Conduit Subpoena Requests**

11. It has been our experience that a number of copyright owners and their agents exploit the fact that IP addresses are easily available for certain applications where Verizon acts only as a conduit by using automated processes to send notices to service providers informing them of their subscribers’ allegedly infringing peer-to-peer activities. For example, a company called Mediaforce utilizes automated programs (sometimes referred to as “bots,” which is short for robots) to scour the Internet looking for files its computers deem to be potentially infringing of its clients’ copyrights. Mediaforce then generates automated notices to service providers requesting that the material be removed.

12. In Verizon’s experience, copyright owners and their agents send take down notices even when it is clear that the file complained of does not reside on Verizon’s systems. In 2002, Verizon received more than 15,000 so-called “take down” notices from Mediaforce alone. In total, Verizon received more than 25,000 take down notices from several different groups acting on behalf of copyright owners. Of these notices, our staff informs me that the great majority relate to conduit functions, over which Verizon has no control because the complained-of files reside on the user’s computer rather than on Verizon’s systems. It is my understanding that such notices do not require a response by Verizon under the DMCA.

13. If the Court's order is permitted to go into force, we are concerned that a substantial portion of this large number of invalid take down notices will be converted to subpoena requests. Even if half of the existing invalid take-down notices are converted to subpoenas, Verizon would face a duty to respond to more than 900 new requests each month. This number of subpoenas will likely increase significantly as (i) copyright owners recognize the availability of this new weapon, (ii) others recognize the potential for abuse of the process to quickly and easily obtain personally identifying information about visitors to websites, chat room participants and others, and (iii) parties attempt to attach multiple IP addresses to a single subpoena, such as the subpoena served by Copyright.Net and described by Scott Lebrede, requesting the identities of nearly 240 Verizon subscribers in a single subpoena. Verizon, its subscribers, and all ISPs and Internet users would be harmed if this occurs.

I declare that the foregoing is true and correct to the best of my knowledge. Executed this 30 day of January, 2003.

  
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Douglas H. Place