

**ELECTRONIC FRONTIER FOUNDATION**

# Annual Report



2007

# About Us

From the Internet to the iPhone, technologies are transforming our society and empowering us as speakers, citizens, creators, and consumers. When our freedoms in the networked world come under attack, the Electronic Frontier Foundation (EFF) is the first line of defense. EFF broke new ground when it was founded in 1990 — well before the Internet was on most people's radar — and continues to confront cutting-edge issues defending free speech, privacy, innovation, and consumer rights today. From the beginning, EFF has championed the public interest in every critical battle affecting digital rights.

Blending the expertise of lawyers, policy analysts, activists, and technologists, EFF achieves significant victories on behalf of consumers and the general public. EFF fights for freedom primarily in the courts, bringing and defending lawsuits even when that means taking on the U.S. government or large corporations. By mobilizing more than 80,000 concerned citizens through our Action Center, EFF beats back bad legislation. In addition to advising policymakers, EFF educates the press and public. Sometimes just defending technologies isn't enough, so EFF also supports the development of freedom-enhancing inventions.

# Support EFF!

All of the important work EFF does would not be possible without the generous support of individuals like you. In 2007, nearly half of our operating income came from individuals and members.

We try to make it easy for you to show your support, accepting everything from cash, check and credit card donations to Paypal and stock donations. We can set up automatic monthly distributions from your credit card, and we participate in many employer payroll deduction plans, including the Combined Federal Campaign (CFC).

We can work with you to include EFF in your estate — a simple way to support us while keeping your assets available to you while you need them. EFF also welcomes contributions to the EFF Endowment Fund for Digital Civil Liberties to ensure the long-term sustainability of the organization.

Please feel free to contact [development@eff.org](mailto:development@eff.org) to learn more about how you can support our work. We are available to provide you with more information about various opportunities for supporting EFF that fit your financial and philanthropic goals.

Learn more on our site at: [eff.org/support](http://eff.org/support)

# Letter from the Director



Dear Friend of Freedom,

2007 was another landmark year in the fight for civil liberties. EFF was central in major battles over government surveillance and law enforcement overreaching its authority. We stepped in when copyright law was used to shut down critics and stifle innovation and when embarrassed wrongdoers tried to silence anonymous speakers.

EFF also stood up for small businesses threatened by bogus patents, fought ISP discrimination against certain types of applications, and forced the government to release records about its systematic collection of data about innocent Americans.

Throughout the year, EFF was there, fighting to defend your rights to privacy, free speech and innovation. As I look through the pages of this annual report, I can't help but feel proud of all we've accomplished.

But there's still so much more to do. The government must stop its illegal, unconstitutional, and ongoing dragnet surveillance of Americans' communications and communications records. Telecoms must be held responsible for their role in sharing your private call information without proper warrants. More unreasonable patents need to be challenged. Anonymous speech must remain protected. Entrenched technologies must be stopped in their attempts to stifle innovation. In short, EFF needs to continue to be vital well into the future.

Enjoy reliving our work from 2007. And don't forget to support EFF in 2008 and beyond. We need your support!

Sincerely,

A handwritten signature in black ink that reads "Shari Steele". The signature is written in a cursive, flowing style.

Shari Steele, Executive Director  
Electronic Frontier Foundation  
[eff.org/support](http://eff.org/support)



# Privacy

EFF is dedicated to protecting privacy rights in the digital world. Our work in 2007 focused on blocking government invasions of privacy and strengthening legal protections to keep pace with technological advances.

### AT&T Litigation

In January of 2006, EFF sued to hold AT&T accountable for violating its customers' privacy by collaborating with the National Security Agency (NSA)'s illegal wiretapping program. In June of 2007, we were able to unseal and post to our website some of the documents from the case that provided details of the government surveillance. In August, before a packed Ninth Circuit courtroom in San Francisco, EFF fought against the government's attempt to have the case thrown out on state secrets grounds after its defeat by EFF in the district court the year before. In September, we launched [stopthespying.org](http://stopthespying.org), a website dedicated to urging Congress to stop the President's abuse of power. By the end of the year, EFF staffers and lobbyists were working closely with key members of Congress in Washington, trying to keep lawmakers from giving the telcos immunity from liability.

### Fighting Secret Surveillance Requests

EFF continued our unique role of advising federal magistrate judges faced with secret requests by law enforcement for surveillance authorization without probable cause. In 2007, federal judges in the Eastern District of New York and the Southern District of Texas asked EFF to brief them on the legality of secret law enforcement applications for the collection of the content of telephone calls. In both cases, the judges took EFF's advice and held that the government must obtain search warrants before collecting this information — even when that content is dialed digits like bank account numbers, Social Security numbers or prescription refills.

"EFF is on the front lines in the critical legal battles to protect our Constitutional liberties and reverse the attacks on democratic rights."

— Mark Klein, former AT&T technician



# Free Speech

In 2007, EFF was instrumental in safeguarding the Internet as an open platform for free speech, including anonymous speech.

## Protecting Linking

EFF defended the First Amendment rights of a citizen-journalist to republish internal documents related to problems with Eli Lilly's best-selling drug, Zyprexa. The citizen-journalist, working on a wiki called ZyprexaKills, posted links to Zyprexa documents on another site that showed the pharmaceutical giant intentionally downplayed Zyprexa's side effects and marketed the drug for "off-label" uses not approved by the Food and Drug Administration. Eli Lilly obtained an injunction against the citizen-journalist, mandating the removal of the links. In February, after hearing argument from EFF, the court held that the injunction was unenforceable, allowing citizen-journalists to continue to link to information about this controversial medication.

## Anonymous Government Critics

In November, EFF challenged a subpoena from the township of Manalapan, New Jersey, seeking the identity of *datruthsquad*, an anonymous blogger who wrote about a local government controversy. In EFF's motion to quash the subpoena, we argued that *datruthsquad* had a First Amendment right to protect his identity, especially from the township officials he was criticizing. In granting EFF's motion, the court recognized that critics such as *datruthsquad* should not be intimidated into silence by fear of government exposure or reprisal.

"The EFF win [means that] people won't have to worry as much about being sued and shut down for copyright violation."

—Spocko, blogger, [spockosbrain.com](http://spockosbrain.com)



# Innovation

In 2007, EFF continued to protect innovators from attempts at using the law to inhibit creativity, block competition, or otherwise hamper innovation.

### Overly Broad Patents

Since its inception in 2004, EFF's Patent Busting Project has promoted integrity in innovation by documenting and challenging meritless patents that harm business and the Internet-using public.

In March, we learned that the U.S. Patent and Trademark Office (PTO) "busted," or invalidated, a bogus patent from Clear Channel/Live Nation in response to EFF's official challenge. This patent had claimed a monopoly in all-in-one technologies that produced post-concert live recordings on digital media. We proved that another company had developed similar technology more than a year before Clear Channel filed for its patent.

In October, the PTO granted EFF's re-examination request for another meritless patent — NeoMedia Technologies' patent for using identification codes to access particular computers on a network, including the use of bar codes to look up information about products. A re-exam is a big step toward invalidating a patent; the PTO has narrowed or revoked roughly 70 percent of patents it has decided to reexamine.

In November, yet another re-exam was granted for Ideaflood/Hoshiko's patent on personalized sub-domains, such as [action.eff.org](http://action.eff.org). EFF's research shows that the method Ideaflood claims to have invented was well known before the patent was issued, yet Ideaflood still used the invalid patent to threaten companies like LiveJournal. We're hoping the PTO will invalidate this patent soon.

### Interference With Technology

In November, EFF published a comprehensive account of giant Internet service provider Comcast's packet-forging activities, and we released software and documentation instructing Internet users on how to test for packet forgery or other forms of interference by their own ISPs. EFF and others had conducted tests that showed Comcast was forging small parcels of digital data, known as packets, in order to interfere with its subscribers' and other Internet users' ability to use file-sharing applications, like BitTorrent and Gnutella. Protocol-specific discrimination gives ISPs a tremendous amount of power over the kinds of new applications and services that can be deployed by innovators and competitors. To the extent that practices like those employed by Comcast change the "end-to-end" architecture of the Internet, those practices jeopardize the Internet's vibrant innovation economy.



# Intellectual Property

EFF's groundbreaking intellectual property work continued in 2007 with more important legal victories shoring up Americans' rights.

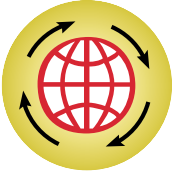
## Fair Use And User Generated Content (UGC)

Thanks to video hosting services such as YouTube, creators of all kinds are now able to post their original works and reach broad audiences on the Internet. As these sites get more popular, laws meant to protect copyright owners from unauthorized posting of their works are instead used to scare hosting services into removing legitimate speech. Throughout the year, we represented creators in fighting these baseless copyright complaints.

In March, EFF successfully asserted the fair use rights of MoveOn.org Civic Action and Brave New Films, opposing a copyright complaint by Viacom to a satire of Stephen Colbert entitled "Stop the Falsiness." We also helped protect the fair use rights of a webzine editor confronted with an unwarranted takedown notice for video footage he had posted for social commentary. And thanks to action by EFF in May, the man who claimed to have created the Electric Slide agreed to stop threatening anyone using the popular line dance for non-commercial purposes.

Also in May, EFF filed suit on behalf of Brian Sapiant, a critic who uploaded to YouTube an excerpt from a documentary that critiqued psychic Uri Geller's performances and abilities. Despite the fact that only eight seconds of the over 13-minute video contained footage allegedly under copyright owned by Geller's corporation, Explorologist Ltd. — a classic fair use of the material for criticism purposes — Geller filed a takedown demand with YouTube under the Digital Millennium Copyright Act (DMCA). Because of Explorologist's unlawful DMCA notice, Sapiant's YouTube account was suspended, and his videos were not available for over two weeks. The case eventually settled, with Explorologist agreeing to license the disputed footage under a non-commercial Creative Commons license.

In October, EFF issued a white paper outlining six guidelines for hosts and providers of user-generated content to minimize potential collateral damage from copyright enforcement. These "fair use best practices" were designed to protect free expression and prevent unnecessary litigation.



# International

Throughout 2007, EFF helped advocate for citizens' rights and civil liberties in a range of international policy venues.

### Protecting Intellectual Property In The European Union

EFF's international team spent 2007 educating European Union (EU) institutions on the hidden dangers of proposals aimed at expanding draconian intellectual property regimes and intrusive Internet regulation. One key battle focused on IPRED2 — a Europe-wide directive that would have increased the range and force of criminal sanctions in Europe for intellectual property infringements — even for merely "inciting" infringement online. As part of the fight against IPRED2, EFF created CopyCrime, an activism campaign and website that expressed the concerns of over 13,000 EU citizens to the European Parliament.

### Other International Work

EFF continued our role as a public interest watchdog at the World Intellectual Property Organization (WIPO), fighting to block the Broadcasting Treaty and its scheme for copyright-like controls over Internet transmissions. EFF worked with a broad international public interest and tech industry coalition and led an activist campaign that included an open letter to WIPO signed by over 1,500 podcasters worldwide. WIPO Member States agreed to postpone adopting the draft treaty and to give more time to analyzing its consequences.

At the Internet Governance Forum (IGF), we joined with Yale University's Information Society Project to launch a new Dynamic Coalition on Digital Education, focusing on the needs of developing countries. We also worked to strengthen ties between the various communities and stakeholders working to promote global digital education. We played a significant role at the Organization for Economic Co-operation and Development (OECD) ministerial, where we warned of the threats to citizens' freedom of expression and privacy and the impact on technological innovation engendered by the Anti-Counterfeiting Trade Agreement (ACTA).

"In Geneva, in Brussels, in Africa, in the Andean Nations, EFF fights to win. International tech policy has long been dominated by special interests — they're withering before us like moths in a blowtorch."

— Cory Doctorow, EFF Fellow and author





# Transparency

In 2007, EFF continued to fight for government transparency. Our FOIA Litigation for Accountable Government (FLAG) Project publicly exposed multiple government invasions of ordinary citizens' privacy. We also continued to track and expose security problems with electronic voting technologies.

## Freedom Of Information Act (FOIA) Litigation

In March of 2007, the Department of Justice's own Inspector General released a report confirming extensive misuse of National Security Letters (NSLs) in a sample of four FBI field offices. In the wake of the inspector general's report, EFF filed a FOIA lawsuit seeking detailed information about the FBI's abuse of these letters to collect Americans' personal information. The FBI dragged its feet in responding to the request, forcing EFF to file suit. On June 16, 2007, a federal judge ordered the FBI to process 2,500 pages a month and release them to EFF. The first batch of documents, received in early July, revealed years of chronic misuse of NSLs, including unlawful access to phone records and email, and were cited during the Senate investigations that led to the resignation of then-Attorney General Alberto Gonzales.

Other records released to EFF indicate that the FBI asked telecommunications companies to turn over information about people in contact with individuals the FBI was investigating, even though they were a degree removed from any suspicious activity and presumably innocent. These "community of interest" requests were clearly illegal under any analysis.

All of the documents we receive through the FLAG project are posted on our website, and we invite journalists and the public to peruse and comment on them.

## Electronic Voting

EFF led activism in support of the Voter Confidence and Increased Accessibility Act of 2007, a bill that included much-needed reforms for America's voting procedures. Despite demonstrated technical failures — including the loss of thousands of votes — nearly half of all states still do not require a voter-verified paper ballot on electronic voting machines. Most of the voting machines in operation today haven't been sufficiently reviewed for security, and pollworkers frequently do not receive adequate training to deal with machine problems. Along with requiring machines to produce a voter-verified paper ballot, the Voter Confidence and Increased Accessibility Act mandated random audits, the mandatory availability of voting machine computer code for review by experts and litigants, and many other critical reforms that EFF has been advocating for. The bill made it out of committee but was tabled before it reached a vote in the full House of Representatives.

# 2007 PHOTOS

## EFF Staff

**From top left:** Richard Esguerra, Danny O'Brien, Julie Lindner, Hugh D'Andrade, Michael Kwun, Seth Schoen, Kevin Bankston, Chris Contolini, Gregory Sutter, Marcia Hofmann, Rebecca Jeschke, Fred von Lohmann, Shari Steele, Alyssa Ralston, Peter Eckersley, Kurt Opsahl, Katina Bishop, Nicole Ngyuen, Gwen Hinze, Leticia Perez, Corynne McSherry, Matt Zimmerman, Andrea Chiang, Eva Galperin, Tim Jones, Cindy Cohn, Kodi, Jennifer Granick, Loki



## EFF Board of Directors



John Perry Barlow



John Buckman



Lorrie Faith Cranor



Dave Farber



Ed Felten



John Gilmore



Brewster Kahle



Joe Kraus



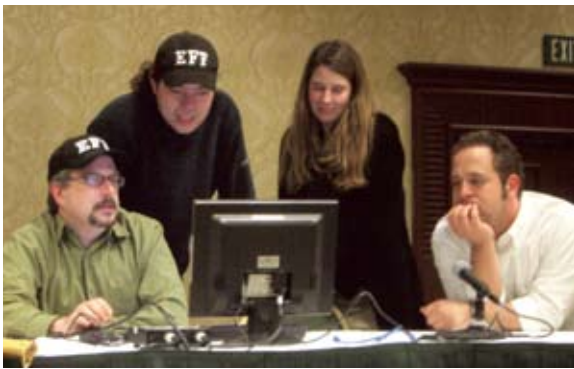
Pamela Samuelson



Shari Steele



Brad Templeton



**Clockwise from top left:** • Staffers Kevin Bankston, Kurt Opsahl, Danny O'Brien, and Derek Slater at a Birds of a Feather presentation at ETech (photo by Scott Beale); Fellow Cory Doctorow brings to life his comic self at the Pioneer Awards (photo by Quinn Norton); Membership Director Nicole Nguyen and Fellow Jason Schultz work the membership booth at South by Southwest (photo by Jason Schultz); Senior Staff Attorney Fred von Lohmann and keynote speaker Mark Cuban debate at the Pioneer Awards (photo by Scott Beale); 2007 Pioneer Award recipient Bruce Schneier (photo by Scott Beale); Staffers Kurt Opsahl, Fred von Lohmann, Katina Bishop, and Kevin Bankston at ETech (photo by Jason Schultz); Staffers Derek Slater, Kurt Opsahl, and Kevin Bankston flank ACLU Technology and Civil Liberties Policy Director Nicole Ozer at the *Hepting v. AT&T* hearing in August (photo by Jason Schultz)

# 2007 PRESS HEADLINES

## **The New York Times** "Documents Borne By Winds Of Free Speech"

**January 15, 2007**

"The [Eli Lilly] case has attracted the attention of the Electronic Frontier Foundation, the venerable digital rights group based in San Francisco, and one of its lawyers, Fred von Lohmann, who is now representing an anonymous Internet user caught up in the fracas.

"One of the core missions of the foundation's 16-year history has been to establish that when you go online, you take with you all the same civil rights you had with you in prior media,' said Mr. von Lohmann. 'But of course, you need to fight for that principle.'"

## **InformationWeek** "Advocacy Inc."

**January 15, 2007**

EFF is the "granddaddy of tech advocates, ready to agitate and litigate."

## **San Jose Mercury News** "Ad Creator Wins YouTube Battle"

**September 13, 2007**

"With the help of the Electronic Frontier Foundation, Knight challenged the takedown notice he received from YouTube, and Viacom apparently backed down. YouTube, a unit of Google, informed Knight this evening that it had restored the video to YouTube."

**San Francisco Chronicle**  
NORTHERN CALIFORNIA'S LARGEST NEWSPAPER

## "Digital Defenders Bent Out Of Shape By Uri Geller Copyright Claims"

**July 8, 2007**

"All it takes is a single e-mail to completely censor someone on the Internet,' said Jason Schultz, a lawyer with the online civil rights group the Electronic Frontier Foundation. The San Francisco foundation is suing [Uri] Geller for getting YouTube to remove an unflattering clip over which he claimed copyright ownership through his London company Explorologist Ltd....

"It's the fifth such federal lawsuit the foundation has filed against people it says have sent bogus takedown notices to YouTube and other online video forums. It won the previous four cases."



## "Media Outlets Battle It Out Over Free-Speech Rights"

**January 31, 2007**

"In a dispute between the 'new media' of the Internet and the 'old media' of broadcasting, liberal bloggers and conservative talk-radio hosts are accusing each other of trampling the First Amendment's guarantees of free speech..."

"Spocko's website (spockosbrain.com) returned to cyberspace Jan. 6 through another Web host. The blog has free legal representation from the San Francisco-based Electronic Frontier Foundation (EFF), which advocates free speech on the Internet.

"Matt Zimmerman, an EFF lawyer, says the first Web host surrendered too quickly to ABC's 'saber-rattling.' Spocko's use of the KSFO content comes 'squarely' under federal law that protects 'fair use' of copyrighted material for criticism and commentary, Zimmerman says."



## "Immunity For Telecom Firms Might Not Kill Wiretap Suits"

**October 20, 2007**

"But even if the measure [to shield telecoms like AT&T from lawsuits] becomes law, current suits against telecommunications firms won't be dropped without a fight, said attorney Lee Tien of the Electronic Frontier Foundation..."

"Tien, of the Electronic Frontier Foundation, called the immunity provision a 'blank check' and added, 'It's not good for privacy, and it's not good for democratic government.'"



## "Top 100 Lawyers In California"

**September 20, 2007**

"For the millions sharing their videos on YouTube, [Fred] von Lohmann is the best friend they didn't know they had. Under his guidance, the [Electronic Frontier Foundation] has become the standard bearer for a more generous view of 'fair use' online, often taking on and defeating old-media giants."

# Profit and Loss Standard

January through December 2007

## Income

Corporation Contributions	\$537,854.04
Event Income	\$53,763.57
Foundation Grants	\$750,000.00
Individual Major Contributions	\$776,880.62
Interest Income	\$10,501.23
Litigation	\$515,683.02
Matching Gifts	\$35,221.33
Membership Income	\$904,509.08
Minor Donations	\$9,530.07
Combined Federal Campaign (CFC)	\$15,415.54
Honorarium/Awards	\$12,978.93
Fiscal Sponsorship	\$113,162.60
<b>Total Income</b>	<b>\$3,735,500.03</b>

## Expense

Salaries & Benefits	\$2,329,121.32
Building Expenses	\$217,714.82
Corporate Insurance	\$50,303.62
Office Expenses	\$143,911.96
Membership Expenses	\$64,666.59
Court Filing and Fees	\$11,479.82
Bank & Merchant Fees	\$43,576.50
Consultants	\$143,717.41
Staff & Board Enrichment	\$32,083.85
Travel & Entertainment	\$71,293.10
EFF Events	\$21,972.19
Grassroots Campaigning	\$45,719.16
Taxes	\$925.00
Fiscal Sponsorship Expense	\$99,193.59
<b>Total Expense</b>	<b>\$3,275,678.93</b>

**Net Ordinary Income** **\$459,821.10**

In 2007, EFF also raised \$2,250,000 for the EFF Endowment Fund for Digital Civil Liberties to ensure the long term sustainability of the organization.



**ELECTRONIC FRONTIER FOUNDATION**

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Privacy  
Free Speech  
Innovation  
Fair Use  
Transparency  
International

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