

# Software and Business Method Patents in the U.S.

## More Harm than Good

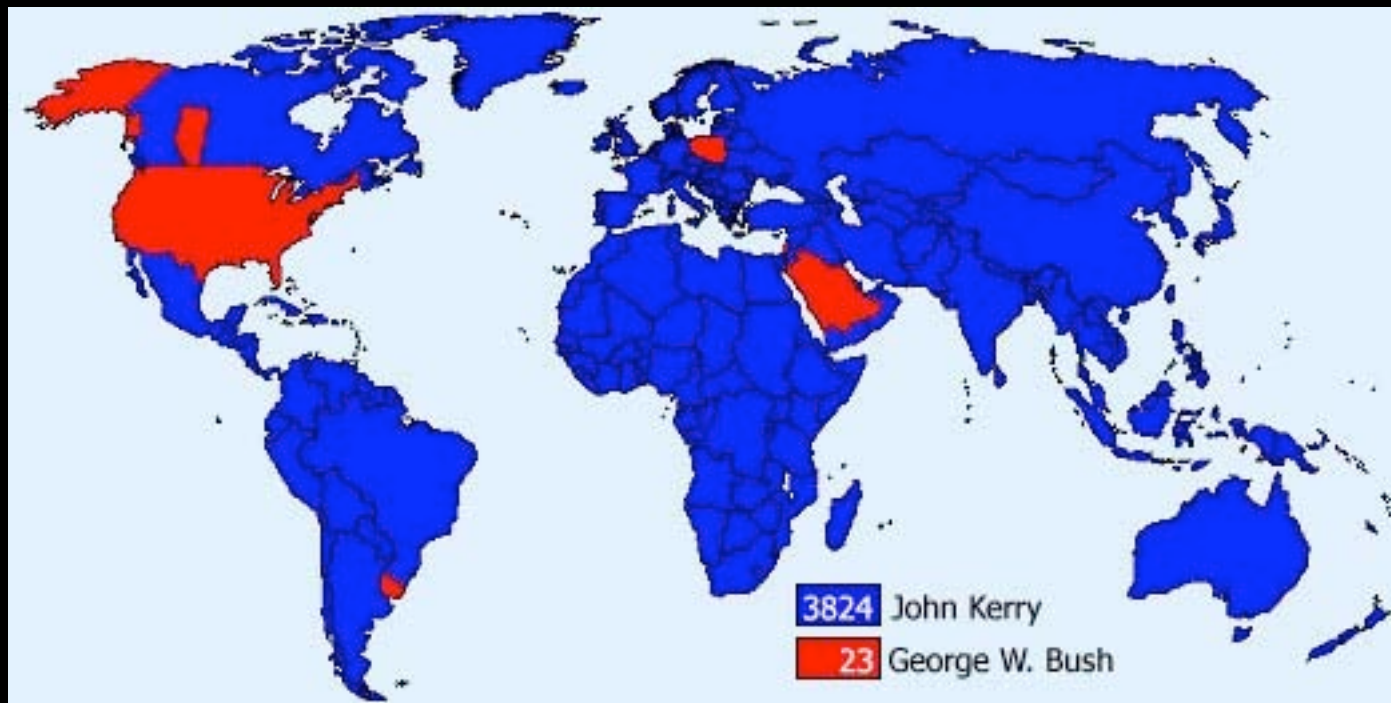
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Staff Attorney, Electronic Frontier Foundation

<http://www.eff.org/patents/>

FFII Conference, November 10, 2004

# Another good idea from the U.S.?



# Seriously...



is a non-profit, non-partisan organization  
defending civil liberties in the online world

patents are a relatively recent focus,  
led by member concerns



# Patents and civil liberties

Software and business method patents  
differ from older patents

- Different technological environment
- Different targets
- Different patterns of enforcement

Disproportionate effect on individuals, small  
businesses, and non-profits

# Technological Environment

complex technologies

evolutionary change

non-patent prior art

open-source development

interoperability concerns

Lots of questionable software and  
business method patents granted

... and enforced strategically  
through licensing demands

# Enforcement Targets

individuals, small businesses, non-profits

educators, publishers

end-users of technology

# Enforcement Patterns

- portfolio cross-licensing among big companies excludes small businesses
- trolls attack small companies first



# Collective action problem

cost of hiring a lawyer,  
not to mention litigation,  
can be more than the license  
demanded

Patents are being used to  
squash small companies,  
squelch speech

# Chilling Effects

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Monitoring the legal climate for Internet activity



Chilling Effects Clearinghouse > Home

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## Quick Search:

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## Clearinghouse Topics:

- [Copyright and DMCA](#)
- [Fan Fiction](#)
- [John Doe Anonymity](#)
- [Linking](#)
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- [Protest, Parody and Criticism](#)
- [Trademark](#)



## Chilling Effects Clearinghouse

A joint project of the Electronic Frontier Foundation and Harvard, Stanford, Berkeley, University of San Francisco, University of Maine, and George Washington School of Law clinics.

Do you know your online rights? Have you received a letter asking you to remove information from a Web site or to stop engaging in an activity? Are you concerned about liability for information that someone else posted to your online forum? If so, this site is for you.

Chilling Effects aims to help you understand the protections that the First Amendment and intellectual property laws give to your online activities. We are excited about the new opportunities the Internet offers individuals to express their views, parody politicians, celebrate their favorite movie stars, or criticize businesses. But we've noticed that not everyone feels the same way. Anecdotal evidence suggests that some individuals and corporations are using intellectual property and other laws to silence other online users. Chilling Effects encourages respect for intellectual property law, while frowning on its misuse to "chill" legitimate activity.

The website offers background material and explanations of the law for people whose websites deal with topics such as [Fan Fiction](#), [Copyright](#), [Domain Names and Trademarks](#), [Anonymous Speech](#), and [Defamation](#).

**In addition, we want your help.** We are gathering a [searchable database](#) of Cease and Desist notices sent to Internet users like you. We invite you to [input](#) Cease and Desist letters that you've received into our database, to document the chill. We will respond by linking the legalese in the letters to FAQs that explain the allegations in plain English.

Periodically, we will issue "weather reports" assessing the climate for Internet activity based on the letters we receive and news reports. What areas (topics, legal categories, jurisdictions) are coolest to online conduct? What activities risk being frozen out altogether? What conduct

## Recently Linked Cease & Desists

- [Starstudioarts.com Requests Blogger Takedown of Image](#), *starstudioarts.com*, October 11, 2004
- [Star's Edge Claims Newsgroup Posts Infringe \(#21\)](#), *Star's Edge International*, October 12, 2004
- [Star's Edge Claims Newsgroup Posts Infringe \(#20\)](#), *Star's Edge International*, October 1, 2004
- [Request to Google to Remove Links to Poems \[Sender\]](#), September 28, 2004
- [HP C&Ds Sun over President's blog, Hewlett Packard Company](#), September 28, 2004
- [Writer Wants Articles Removed from Google Groups \(#5\)](#), *www.royalty.nu*, September 24, 2004
- [Google Requested to Remove Links to Celebrity Pornography](#), *The Rabuck Agency*, September 15, 2004

# Chilling Effects



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## Site Guide

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### Related Topics

- [Patent](#)

This Topic:  
[E-Commerce Patents](#)

Topic maintained by  
University of Maine

## E-Commerce Patents

In 1998, The Federal Circuit Court of Appeals recognized a right to patent business methods, provided they produce a useful, concrete and tangible result. *State Street Bank & Trust Co. v. Signature Financial Group*, 149 F.3d 1368 (Fed. Cir. 1998). Shortly after the *State Street Bank* decision, the U.S. Patent Office began granting e-commerce patents, which protect methods of buying or selling something over the Internet. For an excellent discussion of e-commerce patents, see <http://www.bannerwitcoff.com/articles/ecommerce.pdf>.

An example of a famous e-commerce patent is U.S. patent number 5,960,411, for Amazon.com's "one-click" technology, which describes a method of allowing an online customer to order a product instantly by clicking a single button. Reaction to this patent's issuance was swift and largely negative. Read more: [Wired News](#), [Tim O'Reilly](#).

Amazon.com sued its primary competitor, Barnesandnoble.com, for patent infringement. Although Amazon.com obtained a preliminary injunction from a federal district court, [an appellate court reversed](#), and the parties settled before trial.

Another often-cited example of a broad e-commerce patent is U.S. patent number 5,715,314 (entitled "Network Sales System") issued to Open Market, Inc for a technique for using an electronic shopping cart to purchase goods on the Internet. Read more: <http://news.com.com/2100-1017-221259.html?tag=rm>

Read on for some specifics on broadly asserted e-commerce patents:

[PanIP](#) | [Divine](#) | [SBC](#) | [Acacia](#) | [References](#)

## Pangea Intellectual Properties (PanIP)

U.S. Patent numbers [5.576.951](#) & [6.289.319](#)

### Recent C&Ds

- [Acacia claims patent on Internet streaming technology](#), *Acacia Media Technologies Corporation*, January 28, 2003
- [You've been framed... by an e-commerce patent](#), *SBC Intellectual Property*, January 10, 2003
- [divine e-commerce patents \(2\)](#), *Divine, Inc.*, November 15, 2002
- [divine e-commerce patents \(1\)](#), *divine, Inc.*, November 4, 2002

### Related News

- [Kodak Wins Java Suit](#), Ben Rand, *Democrat & Chronicle*, October 2, 2004
- [Sex.com CEO joins fight against Acacia](#), John Borland, *CNet News.com*, October 20, 2004
- [Patent owner stakes claim in Net ad suit](#), Stefanie Olsen, *CNet News*, January 4, 2004
- [Patent piracy or Goliath's comeuppance?](#), Bob Sullivan, *MSNBC.com*, April 30, 2004
- [Porn Sites Fight for Right to Stream](#), Rick Karr, *NPR*, February 6, 2004

# Chilling Effects



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Monitoring the legal climate for Internet activity

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## Acacia claims patent on Internet streaming technology

January 28, 2003

### Sender Information:

Acacia Media Technologies Corporation  
Sent by: [Private]  
Senior V.P. Business Development and General  
Counsel  
Newport Beach, CA, 92660, USA

### Recipient Information:

[Private]  
ioMedia Partners, Inc.  
Jacksonville, FL, 32256, USA

Sent via: Via Federal Express

Re:

Congratulations on the success of radioio. We appreciate your efforts to legitimately bring music and videos to the online community while respecting the [intellectual property](#) rights of artists, composers, and publishers.

Acacia is a publicly traded company that develops and acquires [patented technologies](#) for licensing. We own a portfolio of [five U.S.](#) and seventeen International Patents covering the transmission and receipt of digital audio and video content via various means, including the Internet. We call the [technology covered](#) by these patents "DMT" or Digital Music Transmission technology. Our engineers and lawyers have reviewed the streaming services made available at the radioio.com website and have determined that these activities are covered by our [DMT Patents](#).

### FAQ: Questions

- [What is intellectual property?](#)
- [What is a patent?](#)
- [Where can I find U.S. patent law?](#)
- [What can be patented?](#)
- [What may not be patented?](#)
- [What does it mean to "infringe" a patent?](#)
- [What does it mean to obtain a license for a patent?](#)
- [What is "prior art"?](#)
- [What are patent "claims"?](#)
- [What is due diligence?](#)
- [What are the defenses to patent infringement?](#)

### Related Links

- <http://www.radioio.com/>
- [Acacia Research website](#)

### Other Recent C&Ds

- [Acacia claims patent on Internet streaming technology, Acacia Media Technologies Corporation, January 28, 2003](#)
- [You've been framed... by an e-commerce patent, SBC Intellectual Property, January 10, 2003](#)
- [divine e-commerce patents \(2\), Divine, Inc., November 15, 2002](#)
- [divine e-commerce patents \(1\), divine,](#)

# Patent-Busting

Collect bad software and business method patents affecting online speech

Collect prior art

File re-examination requests to invalidate



CRIMES AGAINST THE PUBLIC DOMAIN; WILLFUL IGNORANCE  
OF PRIOR ART; EGREGIOUS DISPLAY OF OBVIOUSNESS

# WANTED

## BY EFF MARSHALS



### ACACIA RESEARCH:

Audio and video receiving and transmission system; threatening dozens of small companies, including many home-grown adult websites.



### ACCERIS:

Method and apparatus for implementing a computer network-internet telephone system; threatening 14 VoIP companies with expensive legal disputes if they do not pay licensing fees.



### IDEAFLOOD:

System apparatus and method for hosting and assigning domain names on a wide area network; Threatening community site LiveJournal, with 3 million users who each have their own subdomain.



### TEST.COM:



### CLEAR CHANNEL ENTERTAINMENT:

System and method of creating digital recordings of live performances; claims to own a monopoly on all-in-one technologies that produce post-concert live recordings on digital media.



### SHELDON F. GOLDBERG:

System and method for playing games on a network; threatening small online gaming websites.



### NEOMEDIA TECHNOLOGIES:

System and method for automatic access of a remote computer over a network; threatening small info-aggregating companies such as ScanBuy, AirClic, Inc., and LScan Technologies.



### NINTENDO:

These aren't implementation bugs,  
they're endemic "features"  
of a software and business method  
patent regime