Letter from the Director

EFF's sixteenth year was marked by landmark cases, milestone victories, and a host of precedents set.

Since 1990, we've been fighting to ensure that the civil liberties you enjoy offline continue to be protected in the digital world. In 2006, the realization of that goal took many forms; from making sure that your electronic votes are correctly recorded, to suing a telecom giant that provided your call records to the government, to ensuring your right to free speech online, we're constantly advocating on behalf of your digital rights.

And people are responding. In 2006, we gained more members, received more donations, and were awarded more grant funding than ever before. Thanks to the outpouring of financial support from individuals and foundations, EFF has been able to grow while continuing to challenge threats to your digital rights.

Unfortunately, these threats continue. The proliferation of DMCA abuses, privacy violations, bad patents, and secret government laws ensure that the struggle is still going strong.

In the following pages, you'll find highlights of our work to protect your digital freedom in 2006, covering the program areas that matter to us most: privacy, fair use, e-voting, innovation, free speech, and international. For a more comprehensive look at our past activities, please visit our website at www.eff.org.

We've been busy over the past year. Read on for more details about our work and how you can support it.

Shari Steele

Shari Steele
Executive Director

Highlights

Privacy

New technologies are radically advancing our freedoms, but they are also enabling unparalleled invasions of privacy. Technology isn't the real problem, though; rather, the law has yet to catch up to our evolving expectations of and need for privacy. In fact, new government initiatives and laws have severely undermined our rights in recent years.

EFF has a long history of taking on cutting edge digital civil liberties issues and cases before the rest of the world realizes their importance, and we work to hold the government accountable as it continues to seek surveillance authority to which it is not entitled. Some of our most timely and important work is outlined below.

EFF v. AT&T

On January 31, EFF filed a class-action lawsuit against AT&T, accusing the telecom giant of violating the law and the privacy of its customers by collaborating with the National Security Agency (NSA) in its massive program to wiretap and data-mine Americans' communications. News reports in late 2005 revealed that the NSA had been illegally intercepting and tracking Americans' phone calls and Internet activity in a surveillance program authorized by President Bush as early as 2001. EFF's lawsuit seeks to stop this illegal activity and hold AT&T accountable for violating both the law and the privacy of its customers.

On July 20, Judge Vaughn Walker of the Ninth Circuit Court denied the government and AT&T's motion to dismiss the case. The federal government and AT&T appealed the denied motion to dismiss in early November. The case remains on appeal in the Ninth Circuit Court.

EFF Senior Staff Attorney Kurt Opsahl and EFF Legal Director Cindy Cohn (photo by Quinn Norton)

Law Enforcement Surveillance: Cell Phone Tracking and Dialed Digit Surveillance

Law enforcement surveillance can often prove just as damaging to privacy rights as surveillance justified on national security grounds. Although there are comprehensive federal statutes regulating electronic surveillance by law enforcement, the government — in secret proceedings before magistrate judges across the country — is often able to reach beyond the authority given to it by law. Whenever these issues are publicly revealed, EFF stands ready to advise those judges and push back against the government's attempts to grab new surveillance power.

In 2005, EFF filed an amicus brief in the Eastern District of New York opposing the government's request to track cell phone location information without a warrant. Magistrate Judge Orenstein denied the government's request and set a precedent that has been cited in multiple court decisions since. In early 2006, district courts in Wisconsin (Eastern), New York (Western and Southern), Maryland, and the District of Columbia backed Orenstein's ruling through their own denials of illegal government requests. EFF has contributed amicus briefs regarding cell phone tracking to multiple judges at their requests and continues to be the primary organization to brief this issue.

In July, Magistrate Judge Smith of the Southern District of Texas held that the government must obtain a search warrant to collect the content of a telephone call, including dialed digits like bank account numbers, Social Security numbers or prescription refills, in a decision that paralleled the reasoning outlined in a requested amicus brief co-authored by EFF and the Center for Democracy and Technology.

RFID Surveillance

Along with the ACLU and the Privacy Rights Clearinghouse, EFF co-sponsored the Identity Information Protection Act (California Senate Bill 768), which would have placed restrictions on the use and tracking of radio frequency identification (RFID) chips embedded in state identification cards. The State Assembly passed the bill in August 2006 only to have it vetoed by Governor Schwarzenegger one month later, but the driving force behind SB 768, State Senator Joe Simitian (D-Palo Alto), reintroduced EFF-backed anti-RFID legislation in the Assembly's next session.

EFF is the voice of reason in today's debates about privacy, security, and the rights of individuals.

— Bruce Schneier, author, 'Beyond Fear'

Free Speech

In countless ways, the Internet is radically enhancing our access to information and empowering us to share ideas with the entire world. Speech thrives online, freed of limitations inherent in other media and created by traditional gatekeepers. Preserving the Internet's open architecture is critical to sustaining free speech. But this technological capacity means little without sufficient legal protections. EFF defends the Internet as a platform for free speech and believes that when you go online, your rights should come with you.

Anonymous Speech — Victory in Apple v. Does!

In May 2006, EFF won an appeal in Apple v. Does, which questioned the rights of companies to subpoena information revealing the confidential sources used for news stories. A California state appeals court held that online journalists have the same right to protect the confidentiality of their sources as offline reporters do.

In December 2004, Apple filed a lawsuit in Santa Clara county against unnamed individuals who allegedly leaked information about new Apple products to several online news sites, including AppleInsider and PowerPage. Apple sought information from these news sites regarding the identities of the sites' sources.

EFF, along with co-counsel Thomas Moore III and Richard Wiebe, represented the online journalists in their fight to protect their anonymous sources. EFF opposed Apple's discovery, because the confidentiality of the media's sources and unpublished information are critical means for journalists of all stripes to acquire information and communicate it to the public.

FOIA Litigation for Accountable Government (FLAG) Project

In September 2006, EFF launched a transparency project to learn about — and publicize — the government's use of emerging technology in the post-9/11 era. The project's activities focus on making open government requests, disseminating the information we obtain, and pursuing litigation where necessary and appropriate. EFF has already submitted nearly 30 FOIA requests to obtain information on the government's use of technology to keep tabs on the public.

As EFF receives government documents in response to our requests, we make them available to the public through our prominent and high-traffic website and EFFector, EFF's online newsletter. EFF also works closely with journalists to develop breaking news stories and in-depth investigative reports.

Legal Guides for Bloggers

In late October, EFF expanded our Legal Guide for Bloggers by releasing a new FAQ on Investi-

gating Government Agencies. The FAQ walks bloggers through making a FOIA request: addressing what to ask for, which government offices must comply, and what you can and cannot obtain through FOIA. We have created a variety of legal FAQs for bloggers, including a guide for student reporters, as well as FAQs for election law and reporter's privilege. You can learn more at: www.eff.org/bloggers

Fair Use

Fair use is a critical and necessary element of American copyright law — without it, the broad exclusive rights granted by our copyright law might violate the First Amendment. Among other things, fair use operates as a "safety valve" that allows courts to adjust copyright law in response to new technologies. Although the fair use doctrine plainly protects scholarly, research, and educational activities, it also applies to noncommercial, personal consumer uses.

EFF is fighting back to defend your digital media rights, as well as your right to be an online critic.

DMCA Takedowns — "Unsafe Harbors"

EFF has been using a little known aspect of the Digital Millenium Copyright Act (DMCA), section 512(f), to challenge bogus copyright claims and show DMCA abusers that their behaviors are not unchecked. Our goal is to create public awareness of the general trend to misuse copyright law to cross over into First Amendment protected speech. We are looking to set legal precedents in this area, for free speech and consumer protection are at stake.

In 2006, we challenged Landmark Education for sending threatening cease and desist letters to online service providers that hosted a documentary critical of its workshops. We also fought back against the takedown notice that controversial Internet figure Michael Crook sent to Internet magazine 10 Zen Monkeys, demanding that a single still image of him, which was clearly a fair use, be removed from the web under the DMCA. In both cases the complaints were dropped after we challenged them.

EFF also has been preparing briefing materials for universities and ISPs facing DMCA takedown and subpoena demands from the movie and recording industries. We have made a concerted effort to speak to university groups and to assist students in protesting invasive monitoring of their Internet use.

Broadcast Flag

When the motion picture studios decided they should have the power to dictate the design of software and devices that receive high-definition TV signals, EFF fought back on many fronts. We participated in standards-setting meetings, filed comments to the FCC when it was considering broadcast flag proposals, and joined the coalition of nonprofit groups fighting the broadcast flag both in court cases and in Congress. EFF has also written numerous papers defining the broadcast flag for laypeople and encouraging their involvement.

EFF also created "The Corruptibles," a short animation designed to educate the general public about the dangers that the broadcast flag and similar legislation pose to our rights as consumers. Over the past year, the Corruptibles received over 1.5 million views on YouTube.

Innovation

New ideas challenge the status quo. That's why people who make cool tools get so much heat from the old guard — and their lawyers. EFF thinks that innovation is inextricably tied to freedom of speech, and innovators need to be protected from established businesses that use the law to stifle creativity and kill competition. We achieved major victories with our Patent Busting project in 2006, and we challenged the expansion of arcane law that would compromise both privacy and innovation online.

Dangerous Patents

The Internet and general-purpose computers have unleashed extraordinary innovation, but some wield patents to stifle new development. Illegitimate, overbroad patents stop technologists from jumpstarting new projects with ideas and solutions that belong to everyone. Through our Patent Busting Project, EFF is collecting evidence to challenge the worst offenders while documenting the damage being done.

In 2006, EFF filed our first two re-exam requests on the Clear Channel "live recording" patent and the Test.com "online testing" patent. As of today, the U.S. Patent and Trademark Office has issued a final rejection of the Clear Channel patent and has approved our request regarding the Test.com patent, issuing an initial rejection of all of the patent's claims.

Internet Phones (VoIP)

The government wants to apply a 10-year-old telephone surveillance law (CALEA) to the Internet, making it so that those who create and offer privacy-enhancing Internet communications services like Voice-over-IP (VoIP) will be required to make their products less secure. EFF is challenging the expansion of the law to the Internet, battling to ensure that innovation and privacy survives on the Net.

Innovation is a natural outgrowth of thinking freely. Limitations on innovation are limitations on freedom, and EFF is here to make sure innovators are not stifled when they create new technologies that make our lives richer.

> **EFF protects our rights online, demonstrating the best of genuine patriotism. They're the real deal.**
>
> —Craig Newmark, founder, craigslist.org

E-Voting

For the past two years, EFF has served as a national organizer for both ongoing and potential legal challenges arising from problems related to the use of touch screen voting machines, with the goal of ensuring that the right to vote includes the right to have one's vote counted accurately.

Twenty states still do not require a paper record of all votes, despite the demonstrated technical failures of e-voting machines in the 2004 presidential election — including the complete loss of thousands of votes. All electronic voting machines currently in use include hidden software that hasn't been publicly reviewed for security. Indeed, when security researchers have been able to inspect the devices, they have repeatedly found serious vulnerabilities.

EFF is protecting your right to vote in the courts while working with legislators and election officials across the country to ensure fair, transparent elections.

Election Protection

EFF has been a key partner of the Election Protection Coalition (EPC), an alliance of nearly 50 voting-accuracy interest groups, since 2004. In 2006, EFF again served as the voting machine experts for the national EPC during the national mid-term elections. EFF spearheaded a team of lawyers who were deployed across the country on election day to respond to problems with electronic voting machines and to help document the experiences of voters, many of whom were using these technologies for the first time.

EFF expanded our leadership role for the 2006 general election, consulting and strategizing with partners in the Election Protection Coalition to gather critical data about Election Day technology performance and providing assistance to voters and election officials who were confronted with machine-related problems. EFF also released Electronic Voting Machine Information Sheets and other materials, which provided voters and the general public with instructions for use and past performance of certain types of voting machines.

Litigation

Following the 2006 elections, EFF and other organizations supportive of improved election integrity filed suit on behalf of voters from Sarasota County, Florida, after thousands of citizens were apparently disenfranchised when massive under-votes plagued the tight congressional race over former Rep. Katherine Harris' seat. The result was decided by 363 votes, yet over 18,000 ballots cast on Sarasota County's e-voting machines, manufactured by ES&S, registered no vote in the race. The suit seeks a revote if, after an analysis of the machines, serious problems are found.

International

The Internet is global, so it's not surprising that threats to online freedom are happening internationally. EFF expanded the scope of our international work significantly in 2006, securing grant money to open an EFF office in Europe, supporting a public interest group in Canada, and fighting for your digital rights around the world through legislation, coalition building, and activism.

EFF Europe

In late 2006, generous support of the Open Society Institute (OSI) and Mr. Mark Shuttleworth of the Shuttleworth Foundation laid the groundwork for EFF to open an office in Brussels, home to the European Parliament and European Commission. EFF Europe was launched in February 2007 and is focused primarily on the development of European Union law and digital activism in terms of fighting effectively for consumers' and technologists' interests.

EFF at the World Intellectual Property Organization (WIPO)

Throughout 2006, EFF was part of an international coalition, Group of Friends of Development, working at the World Intellectual Property Organization (WIPO) to protect the public interest and ensure that intellectual property laws protect human rights like access to knowledge and access to medicine. We distributed an open letter to WIPO signed by over 200 podcasters and podcasting organizations expressing concern over the overbroad rights-based approach taken in the broadcasting treaty. In October, it was decided that the treaty would use a signal-based approach instead of the messy, dangerous rights-based approach used in the current treaty text.

Online Rights Canada

In early 2006, EFF helped to launch Online Rights Canada (ORC), a grassroots organization that defends the public interest in Canadian technology and information policy issues and serves as an activism resource for Canadian copyright legislation. It has an action center for mailing letters to Members of Parliament, which is a rarity in Canada. The ORC helped shine light on Liberal politician Sam Bulte's ties to the recording industry and her role in drafting Canada's last failed copyright bill. Bulte was defeated in the January election after loads of agitating by bloggers and ORC.

The Internet and Oppressive Regimes

In February, EFF formulated an international code of conduct that we encouraged U.S. Internet companies active under authoritarian regimes (e.g., Microsoft, Google, Cisco, and Yahoo!) to follow. The code discourages data collection/retention and direct business with oppressive governments while advocating increased transparency, data encryption, and support of innovation that hinders censorship and surveillance.

EFF Timeline

1990

July 10 EFF founded by Lotus Development Corporation pioneer Mitch Kapor and Grateful Dead lyricist John Perry Barlow.

1991

May 1 Complaint filed in *Steve Jackson Games v. Secret Service*, claiming digital communications require same safeguards against unreasonable search and seizures as other communications.

October 24 EFF develops Open Platform Proposal, setting out principles for digital age telecommunications policy.

1993

April 16 EFF publishes criticism of Clipper Chip proposal, a government plan to force telephone providers to build surveillance backdoors in their products.

1996

February 1 Congress passes Communications Decency Act (CDA), which brought restrictions to Internet speech in the name of protecting minors.

December 19 A federal district court holds that software is speech in *Bernstein v. DOJ*.

February 12 EFF's Blue Ribbon Campaign is launched in defense of free speech online.

1997

June 26 The Supreme Court strikes down the CDA in *Reno v. ACLU*, establishing that online speech deserves the fullest protections of the First Amendment. EFF participated as plaintiff and co-counsel in the case.

1998

July 23 EFF announces that it has broken the government's Data Encryption Standard (DES) in less than three days using relatively simple equipment and engineering.

2000

January 20 EFF defends publishers of 2600 Magazine, which the MPAA had sued for distributing and linking to software that helps consumers make back-ups of their DVDs.

2001

March 20 EFF and other organizations file suit in *ALA v. USA*, challenging the constitutionality of the Children's Internet Protection Act (CIPA), another attempt at regulating speech on the Internet.

June 6 EFF brings suit in *Felten v. RIAA*, asserting security researcher Ed Felten's right to present a paper at a conference.

July 16 Russian programmer Dmitry Sklyarov is arrested for discussing software that could be used to circumvent restrictions on Adobe's e-Book. EFF helps with getting him released.

2002

June 6 In *Newmark v. Paramount*, EFF files suit against the entertainment industry in defense of customers' right to tape for later viewing and skip commercials.

2003

March 14 EFF files comments criticizing CAPPS II travel screening project.

June 30 EFF launches Let the Music Play campaign to oppose RIAA attempts to shut down P2P networks and sue music fans.

2004

September 30 EFF brings the first successful suit against abusive copyright claims in *Online Policy Group v. Diebold*.

November 2 EFF joins the Election Protection Coalition, leading a team of experts to address problems on Election Day.

2005

June 27 The Supreme Court rules in *MGM v. Grokster* that developers of devices with multiple uses can sometimes be held liable for user actions that may be illegal or infringing.

November 15 EFF represents harmed users in Sony Rootkit scandal, where Sony compensates users for including software on CDs that created security vulnerabilities and let the company spy on listening behavior.

2006

January 31 EFF sues AT&T for helping the National Security Agency spy on millions of ordinary Americans.

May 26 EFF successfully defends the right of online journalists to protect the confidentiality of their sources in *Apple v. Does*.

EFF Staff

Back row: Lee Tien, Corrynne McSherry, Peter Eckersley, Fred Von Lohmann, Leticia Perez, Danny O'Brien, Seth Shoen, Rebecca Jeschke, Hugh D'Andrade, Greg Sutter, Richard Esguerra, Matt Zimmerman **2nd Row:** Andrea Chiang, Kurt Opsahl, Alyssa Ralston, Derek Slater, Katina Bishop, Shari Steele, Julie Lindner **Front Row:** Kevin Bankston, Cindy Cohn, Kodi, Jason Schultz, Nicole Nguyen **Not pictured:** Ren Bucholz, Gwen Hinze, Marcia Hoffman, Eric Josefsson, Elly Millican, David Sobel

EFF Board of Directors


John Perry Barlow


Dave Farber


Ed Felten


John Gilmore


Brewster Kahle


Joe Kraus


Lawrence Lessig


Pamela Samuelson


Shari Steele


Brad Templeton

Events & Awards

Email: Should the Sender Pay?

On April 20, we hosted a debate at the Roxie Film Center in San Francisco. Moderated by Mitch Kapor, the debate featured renowned tech expert Esther Dyson and EFF activist Danny O'Brien having a lively discussion about the potential consequences of pay-to-send "certified" email systems. The debate was sponsored in part by Adaptive Path.

15th Annual Pioneer Awards

Our 15th annual Pioneer Awards ceremony was held on May 3 at the International Spy Museum in Washington D.C., in conjunction with the Computers, Freedom, and Privacy (CFP) conference. We honored Craigslist leaders Craig Newmark and Jim Buckmaster, Gigi Sohn of Public Knowledge, and Jimmy Wales of Wikipedia for their vital, community-building organizations dedicated to spreading knowledge in or about our digital world. The Pioneer Awards were sponsored by Sling Media and the Computer Electronics Association.

Awards

EFF wasn't the only group giving out awards. Some of our own were honored, too. Legal Director Cindy Cohn was named one of the 100 most influential attorneys in the country by the National Law Journal, while Senior Staff Attorney Fred von Lohmann was named one of California's Top 100 Lawyers by the Los Angeles Daily Journal. Staff Attorney Kurt Opsahl joined a few of his colleagues in being named a California Lawyer Attorney of the Year.

Sweet 16 Fundraiser

We turned another year older in 2006 and celebrated by throwing a Sweet 16 birthday party at 111 Minna Gallery in San Francisco on January 11, 2007. The event was packed with hundreds of civil libertarians and digital luminaries. DJs Kid Kameleon and Ripley kept the hundreds of attendees grooving to the beats all night. In addition to having fun and mingling with our many beloved supporters, EFF raised several thousand dollars in cash donations. As an added bonus, we had the pleasure of receiving a check in the amount of $3,561 from San Francisco webhosting company Laughing Squid.

Top: EFF Int'l Outreach Coordinator Danny O'Brien debates Esther Dyson (photo by Quinn Norton); **2nd from Top:** Gigi Sohn receives congratulations for winning a Pioneer Award (photo by Quinn Norton); **3rd from Top:** The coveted EFF Pioneer Award (photo by Quinn Norton); **2nd from Bottom:** EFF Senior Staff Attorney Kurt Opsahl receives his CLAY Award; **Bottom:** EFF Legal Director Cindy Cohn receives a check from Laughing Squid founder Scott Beale (photo by Quinn Norton)

Financials

Profit and Loss Standard – January through December, 2006

Ordinary Income/Expense

INCOME	
Corporation Contributions	$215,229.72
Event Income	57,630.10
Foundation Grants	466,858.36
Individual Major Contributions	1,423,444.26
Interest Income	18,161.86
Litigation	430,545.00
Matching Gifts	35,426.34
Membership Income	882,710.89
Combined Federal Campaign (CFC)	10,354.40
Minor Donations	9,739.50
Honorarium/Awards	1,300.00
Fiscal Sponsorship	156,225.89
Miscellaneous Income	19.50
Total Income	**3,707,645.82**
EXPENSE	
Salaries & Benefits	1,865,393.06
Building Expenses	192,684.57
Corporate Insurance	35,645.71
Office Expenses	153,142.46
Membership Expenses	48,258.50
Court Filing and Fees	20,557.99
Bank & Merchant Fees	31,236.87
Consultants	82,622.52
Staff & Board Enrichment	24,150.06
Travel & Entertainment	66,092.38
EFF Events	23,216.94
Grassroots Campaigning	41,868.30
Taxes	410.00
Fiscal Sponsorship Expense	189,899.23
Total Expense	**2,775,178.59**
Net Ordinary Income	$932,467.23

Other Income/Expense

OTHER INCOME	
Unrealized Gain or Loss	108,618.85
Total Other Income	108,618.85
Net Other Income	108,618.85
Net Income	$1,041,086.08

2006 was a particularly good fundraising year for us. In early 2007, we transferred $1 million of our 2006 net income into EFF's Endowment Fund for Digital Civil Liberties, to ensure the long term sustainability of the organization. We do not anticipate having a similar surplus of operating funds in 2007. We need your support as much as ever!