



# Hepting v. AT&T

## *The Electronic Frontier Foundation's Class-Action Lawsuit Against AT&T for Collaboration with the NSA's Illegal Dragnet Surveillance*

**Background** The Electronic Frontier Foundation (EFF) filed a class-action lawsuit on behalf of AT&T's customers against AT&T on January 31, 2006. The suit accuses the telecom giant of violating the law and the privacy of its customers by collaborating with the National Security Agency (NSA) in its massive, illegal program to wiretap and data-mine Americans' communications. The case is based on evidence of ongoing dragnet surveillance of millions of ordinary Americans.

The EFF lawsuit arose from news reports in December 2005, which first revealed that the NSA has been intercepting Americans' phone calls and Internet communications without any court oversight and in violation of the privacy safeguards established by Congress and the U.S. Constitution. Recent evidence indicates that the surveillance began well before September, 2001.

But the government did not act—and is not acting—alone. EFF's case includes undisputed evidence that AT&T installed a fiberoptic splitter at its facility at 611 Folsom Street in San Francisco that made copies of all emails, web browsing and other internet traffic to and from AT&T customers, and provided those copies to the NSA. This copying includes both domestic and international Internet activities of AT&T Worldnet customers. EFF is suing to stop this illegal conduct and hold AT&T responsible for violating the law and the fundamental freedoms of the American public.

**Where the Case Stands Now** On July 20, 2006, a federal judge allowed the case to go forward, denying the government's and AT&T's motions to dismiss the case, which were asserted chiefly on the ground of the states secrets privilege. As Chief Judge Vaughn Walker wrote when dismissing AT&T's immunity claims, "AT&T cannot seriously contend that a reasonable entity in its position could have believed that the alleged domestic dragnet was legal." Judge Walker also flatly rejected the government's secrecy argument: "The compromise between liberty and security remains a difficult one. But dismissing this case at the outset would sacrifice liberty for no apparent enhancement of security."

The government and AT&T appealed Judge Walker's ruling to the Ninth Circuit Court of Appeals. On August 15, 2007, EFF urged a three-judge panel to allow AT&T customers to continue to fight against illegal spying on their telephone and Internet communications. The appeals court is still considering its decision.

While the complaint was filed in early 2006, the case remains at the earliest states of litigation. So far AT&T has not filed an answer to the complaint, nor has any party produced any documents in discovery, nor have any depositions been held.

**Amnesty for Lawbreakers?** The Bush Administration and telecommunications companies have now demanded that Congress grant retroactive immunity to the telecommunications companies that have been participating with the National Security Agency in the illegal warrant-less surveillance. Their goal is to prevent the courts from ever ruling on whether the surveillance is legal and from imposing needed restraints. This would subvert the rule of law, and effectively grant the President the power to ignore the law with impunity. Congress should not participate in this cover-up of illegal activities affecting millions of ordinary Americans.