

Do We Have a First Amendment Right to Mock the Government?

By [Donald Scarinci](#)

The Department of Homeland Security (DHS) and the National Security Administration (NSA) apparently were not amused by the clever t-shirts Dan McCall created and sold via Zazzle.com. The two agencies sent cease and desist letter to the online retailer requesting the immediate removal of all merchandise using their names and logos.

One item removed by Zazzle displayed the NSA's official seal with the words "spying on you since 1952." Another featured a variation of the NSA seal with the statement "The NSA: The only part of government that actually listens." A third included a Department of Homeland Security seal, which had been altered, along with the description, "Department of Homeland Stupidity."

The DHS relied on a federal statute that prohibits the mutilation or alteration of a seal of any department or agency of the United States, while the NSA cited a law that specifically makes it illegal to misuse the NSA [trademark](#) or logo. Now, McCall is fighting back with a federal lawsuit, which alleges that his First Amendment rights have been infringed.

The [complaint for declaratory relief](#) states:

Defendants violated the First Amendment to the United States Constitution by threatening to enforce 50 U.S.C. § 3613 and 18 U.S.C. §§ 506, 701, and 1017 to forbid McCall from displaying his NSA Listens Parody, his NSA Spying Parody, and his DHS Stupidity Parody, from placing the Parodies on products to identify the targets of his criticism, or from selling mugs, T-shirts or other items bearing those designs to customers who want to display the items to express their own criticisms of NSA and DHS.

McCall further argues that he made fair use of the NSA and DHS seals to identify federal government agencies as the subject of criticism. Moreover, he maintains that no reasonable viewer is likely to believe that any of the materials is affiliated with or sponsored by the agencies. The suit specifically asks the court to declare the federal laws are unconstitutionally overbroad in violation of the First Amendment.

The NSA and DHS have received their fair share of criticism in recent months. Next on the list may be that they lack a sense of humor.

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