

Freedom Through Justice Foundation

2111 Wilson Blvd #700
Arlington, VA 22201
703.875.8625

September 2, 2011

VIA CERTIFIED MAIL & EMAIL

Ms. Catrina Pavlik-Keenan
Director, Freedom of Information Act Office
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
ice-foia@dhs.gov

Re: Freedom of Information Act Request

Dear Ms. Pavlik-Keenan:

The Freedom Through Justice Foundation is a 501(c)(3) nonprofit corporation that uses public policy and legal reform strategies to ensure greater transparency in government, protect taxpayer interests and promote social and economic freedoms. Because we are a nonprofit committed to public service, we are seeking a public interest fee waiver under 5 U.S.C. § 522(a)(4)(A)(iii).

It has come to our attention that Immigration and Customs Enforcement (“ICE”) division of the U.S. Department of Homeland Security has seized approximately eighty-two (82) website domain names under the action named “Operation In Our Sites” (“Operation”).¹ It appears that major special interests in copyright may have been involved in the investigation. Such interested groups include the Motion Picture Association of America, to the Recording Industry Association of America, the Directors Guild of America, and the International Alliance of Theatrical Stage Employees.² Pursuant to the provisions of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, the Freedom Through Justice Foundation hereby requests that ICE produce the following within twenty (20) business days:

1. All documents referring or relating to identifying lists of the seized websites under the Operation, including the registered owner of the site, the registrar of the domain name, and any Internet Service Providers associated with the seizure.
2. All records pertaining to any other website seizure based upon alleged copyright law violations during the last two (2) years.
3. All records referring or relating to the Motion Picture Association of America (“MPAA”) during the last two (2) years.

¹ PRESS RELEASE, IMMIGRATION AND CUSTOMS ENFORCEMENT, ‘Operation In Our Sites’ targets Internet movie pirates; ICE, Manhattan U.S. Attorney seize multiple Web sites for criminal copyright violations (June 30, 2010), available at <http://www.ice.gov/news/releases/1006/100630losangeles.htm> (last visited Aug. 30, 2011).

4. All records referring or relating to the Recording Industry Association of America (“RIAA”) during the last two (2) years.
5. All records referring or relating to the Directors Guild of America (“DGA”) during the last two (2) years.
6. All records referring or relating to communications with the International Alliance of Theatrical Stage Employees (“IATSE”) during the last two (2) years.
7. All records referring or relating to 15Bank, Paypal, and any other investment bank, commercial bank, savings & loan, or other financial entity in connection with the Operation.
8. All records referring or relating to Mozilla, Google, Microsoft, Apple, and any other web browser software company in connection to the Operation.
9. All records referring or relating to requests for assistance from ICE to a private entity regarding copyright violations during the last two (2) years.
10. All records referring or relating to requests by copyright claimants to ICE regarding requests for investigation of possible copyright violations during the last two (2) years.
11. Copies of any other requests for information made by outside groups through FOIA regarding the Operation.

We call your attention to President Obama’s January 21, 2009 Memorandum concerning the Freedom of Information Act, in which he states:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . .The presumption of disclosure should be applied to all decisions involving FOIA.³

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

In an effort to facilitate record production within the statutory time limit, the Freedom Through Justice Foundation prefers to accept documents in electronic format (e.g. e-mail, .pdfs).

³ PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, (Jan. 21, 2009), available at <http://www.whitehouse.gov/the-press-office/freedom-information-act> (last visited August 30, 2011).

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When necessary, the Freedom Through Justice Foundation will accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately via Tyler Martinez at 703-875-8625. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Encl. "Responding to Records Requests" and "Definitions" for the purposes of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Martinez". The signature is stylized and cursive.

Tyler Martinez
Associate Attorney
Freedom Through Justice Foundation

Responding to Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Freedom Through Justice Foundation.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Freedom Through Justice Foundation's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce documents, you should identify the paragraph in the Freedom Through Justice Foundation's request to which the documents respond.
5. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Freedom Through Justice Foundation staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

11. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual’s business address and phone number.

6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.