

Congress of the United States
Washington, DC 20515

August 30, 2012

Dear Attorney General Holder and Secretary Napolitano:

We are concerned about your Departments' seizure of domain names under Operation In Our Sites, launched in November 2010. Our concern centers on your Department's methods, and the process given, when seizing the domain names of websites whose actions and content are presumed to be lawful, protected speech. Without conceding whether your Department has the legal authority to seize these domains under these circumstances, if a website's domain is seized, it needs to be given meaningful due process that comports with the U.S. Constitution and U.S. law. To do otherwise risks unjustly suppressing lawful free speech and devastating legitimate businesses that rely on the seized websites. Complaints from several websites, in addition to press accounts, indicate that In Our Sites has resulted in the seizure of domains without sufficient due process and transparency, based on links and content that appear to have been lawfully provided to the sites.

At the Jun. 8, 2012, House Judiciary Committee's Oversight Hearing on the Dept. of Justice, Attorney General Holder answered questions regarding the domain name seizure of a website called Dajaz1. The website was taken down on an application by prosecutors working with Immigration and Customs Enforcement's (ICE) Operation In Our Sites. In that case, the affidavit on which the seizure was based ultimately proved to be inaccurate. Much of Dajaz1's information was lawful, and many of the allegedly infringing links to copyrighted songs, and specifically the links that were the basis of the seizure order, were given to the site's owner by artists and labels themselves.

Despite this, ICE and the Dept. of Justice (DOJ) suppressed this website for more than a year. Ultimately it was determined that there was a lack of probable cause and the seized domain was restored. ICE obtained a series of secret, ex parte extensions, hindering Dajaz1's ability to present its case thoroughly during the year the site was suppressed. According to court records unsealed six months after ICE restored the website, ICE requested extensions to allow the Recording Industry Association of America (RIAA) and other "rights holders" to evaluate content obtained from Dajaz1 and answer prosecutors' outstanding questions. As a result of ICE's improper targeting and RIAA's failure to respond to government requests for assistance, the censorship of what appears to be a legitimate website was unnecessarily prolonged while the website owner was unable to get his day in court to present his defenses.

Other complaints have been raised by websites seized under "In Our Sites" that bear similarities to the Dajaz1 case. These complaints center around unnecessary delays in advancing and resolving cases, difficulty in obtaining documents from the government that are fundamental to the underlying cases (such as affidavits), and difficulty even maintaining contact with the U.S.

Attorneys prosecuting the cases. The effect of these problems is to severely limit the ability of website owners to challenge the legality and merits of the domain name seizures.

As members of the House Judiciary Committee, we are deeply concerned that ICE and its sister agencies may be failing to properly investigate and prosecute cases brought under the PRO-IP Act. To assist our investigation of this matter, please answer the following questions:

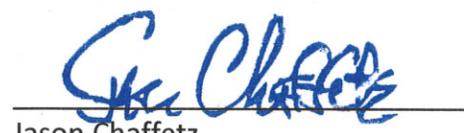
1. What is the process for determining which sites to target? Who is involved in that process? What specific steps do DOJ and ICE take to ensure that affidavits and other material are thoroughly reviewed for accuracy prior to seizing a domain?
2. To what extent are government agents required to evaluate whether the potentially infringing material to which target sites link – or which they host themselves – are non-infringing fair uses, impliedly licensed, and/or de minimis uses?
3. Do government agents consider whether a site complies with the DMCA safe harbors? If so, how does this affect the determination to target a site?
4. How many sites have attempted to retrieve their domains, via any process, judicial or informal, and what is the status of those cases?
5. Have you made any changes to your domain seizure policies or their implementation as a result of the issues arising from the Dajaz1 seizure or any other seizure? If so, what were those changes?
6. What specific steps has the DOJ and ICE taken to ensure that domain name seizure cases proceed without unnecessary delays, and that website owners seeking to restore their domain names have swift access to the officials and documents necessary to resolve their cases?
7. How many more seizures do you anticipate occurring in the next six months and year?

Please let us know your responses to the above questions as soon as possible. Your attention to this matter is appreciated.

Sincerely,



Zoe Lofgren
Member of Congress



Jason Chaffetz
Member of Congress



Jared Polis
Member of Congress