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April 7, 2011

The Honorable John Morton
Director
U.S. Customs and Immigration Enforcement
500 12th Street SW
Washington, DC 20536

Dear Director Morton:

Thank you for meeting with me last month to discuss the recent seizures of Internet domain names by U.S. Immigrations and Customs Enforcement (ICE) in "Operation in Our Sites." I continue to have serious concerns that these seizures may suppress constitutionally-protected speech without due process of law and may be inconsistent with core principles in U.S. copyright law, including the Digital Millennium Copyright Act (DMCA). In the longer term, I also worry that these seizures will undermine the integrity and operation of the global domain name system, while setting precedents for the censorship and fragmentation of the Internet by other governments around the world. I do, however, appreciate your willingness to discuss these concerns. As we discussed at our meeting, I have the following questions:

1. In determining whether to seize the domain names of particular websites for copyright infringement related to online media (either downloads or streaming), what additional investigation did ICE conduct after receiving complaints of infringement from copyright owners?
 - a. Did ICE conduct an independent investigation of the allegations of infringement by copyright owners to determine their validity? If so, please describe the specific actions involved.
 - b. Did ICE conduct any investigation related to possible defenses against the allegations of copyright infringement, such as fair use or evidence of authorization by the copyright owner?
 - c. Did ICE investigate whether the owners of the seized domains complied with the DMCA—specifically, whether they received any takedown notices from copyright

owners for the allegedly-infringing content, whether they responded to these notices, and whether they qualified for any of the safe harbors from infringement liability established by 17 U.S.C. § 512?

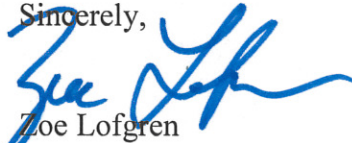
- d. Did ICE investigate whether the owners of the seized domains were located in the United States and whether the allegedly-infringing content was hosted on servers located within the United States?
2. If an infringing website is hosted in the United States, meaning that its servers and/or data are within the physical reach of U.S. law enforcement, is a seizure of that website's domain name still necessary? If so, why?
3. The seizures in Operation in Our Sites were executed without any prior notice to or contact with the domain owners. Why was this necessary? For seizures related to online media, why did ICE not attempt to contact the website operators and give them a short amount of time to respond to the allegations of infringement?
4. Do you believe that a website that hosts no content of its own but instead merely links to other websites can be guilty of criminal copyright offenses under existing U.S. law and subject to a seizure of its domain name? If so, what legal authority can you provide for this view?
5. Would ICE refrain from seizing the domain name of a website for copyright infringement related to online media if the website's operators fully comply with the DMCA?
 - a. Would ICE refrain from seizing the domain name of a website for infringing online content posted or uploaded by that website's users if the website qualifies for the safe harbor from liability provided by 17 U.S.C. § 512(c)?
 - b. Would ICE refrain from seizing the domain name of a website for links or other information location tools pointing to infringing online content if the website qualifies for the safe harbor from liability provided by 17 U.S.C. § 512(d)?
6. One of the domain names seized in Operation in Our Sites was torrent-finder.com. This website reportedly hosted no infringing content of its own, but instead provided a search engine for links to other websites. How does ICE distinguish between this website and more popular search engines like Google and Bing, where links to a substantial amount of infringing content can also be found?
7. In deciding whether to seize the domain names of particular websites for infringement related to online media, did ICE consider the existence of constitutionally-protected speech on each website, or weigh the amount of legitimate speech versus the extent of alleged infringement on each site?

8. In general, do you agree that domain seizures in copyright enforcement actions should be reserved for the "worst of the worst"—those websites that are conducting large-scale commercial infringement and whose violations of criminal copyright statutes are beyond doubt?
9. What criteria does ICE use to prioritize possible targets for investigations of online copyright infringement?
 - a. Operation in Our Sites resulted in the seizure of several domains for blogs dedicated to hip hop music—rapgodfathers.com, onsmash.com and dajaz1.com. How are these seizures consistent with ICE's priorities in such investigations, which guide the use of scarce law enforcement resources?
10. In the course of a separate action against online child pornography, ICE seized the domain name mooo.com, including 84,000 of its sub-domains, many of which hosted innocent websites. What steps is ICE taking to ensure that this mistake is not repeated in future domain seizures, including those related to copyright infringement?
 - a. For enforcement actions against websites hosted on sub-domains, can ICE selectively seize a single sub-domain through the registry operator (such as Verisign for .com domains), or must it work with the domain owner (such as the owner of mooo.com) in order to avoid disabling all other sub-domains in addition to the target?
11. In February of this year, the domain names of six different websites were reportedly seized in Operation in Our Sites, for alleged infringement related to streams of sports broadcasts. A recent news report indicated that five of those six websites continue to be accessible through other domain names. The only exception is the website located at channelsurfing.net, which also migrated to other domain names immediately after the seizure and was shut down only after its owner was arrested. In light of this record, do you continue to believe that domain seizures are effective in significantly disrupting online infringement? How does ICE measure the continued effectiveness of its domain seizures in cutting off access to the targeted websites?
12. Of the domains that have been seized in Operation in Our Sites, how many of their owners have been arrested for the underlying offenses? For the seizures that have not been followed by an arrest, has ICE attempted to make arrests? If not, why not?
13. Is it appropriate for ICE to use an allegation of criminal copyright infringement to seize a domain name without also pursuing the arrest of those who are responsible for the infringement?
14. The traditional authority of ICE's predecessor—the United States Customs Service—was over goods that crossed international borders. Are there any similar limits to ICE's authority over the Internet? Is it your position that ICE has investigative and

enforcement authority over any Internet transaction, even one between a website based in the United States and a user in the United States?

As you know, both the House and Senate may soon consider legislation that would expand the U.S. government's authority to order the blocking of domain names due to copyright infringement. I therefore ask that you provide a written response to my questions no later than April 29. If you have any questions or require any clarification, please contact Ryan Clough of my staff. Thank you for your attention to this matter.

Sincerely,



Zoe Lofgren
Member of Congress