

# LITIGATION

## INTELLECTUAL PROPERTY >> ALERT

### GOVERNMENT SEIZES WEBSITES ON SUSPICION OF COPYRIGHT INFRINGEMENT

U.S. Immigration and Customs Enforcement (ICE), a unit of the Department of Homeland Security (DHS), recently seized several websites on suspicion of posting downloadable copyrighted materials without the authority of the copyright owners. According to its website, ICE is the principal investigative arm of the DHS and the second largest investigative agency in the federal government. ICE is responsible for, among other things, developing and coordinating investigations into theft of intellectual property rights.

Last week, in advance of the Super Bowl, ICE seized the domain names of several websites it claims were illegally streaming live sports events. In addition, at the end of last year, the websites – onsmash.com, torrent-finder.com, rmx4u.com, djaz1.com and rapgodfathers.com –

were seized without receiving notice from ICE or the copyright holders. The warrant obtained by ICE directed the registry for the websites' domain names to restrain and lock the domain names and to point them to a notification (pictured below) informing visitors that the domain name has

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#### THE BOTTOM LINE

ICE seizures sound an alarm for websites containing downloadable copyrighted content. Website owners should be wary of informal statements made by artists, record labels or representatives claiming the authority to grant permission to post online copyrighted materials for downloading and should verify who the rights holders are and obtain written authorizations directly from them before posting their content. For content owners, alerting ICE to websites that are posting infringing content can be an additional weapon in their arsenals in combating online infringement and should be considered in addition to taking direct private action against infringers.



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been seized by ICE under federal forfeiture laws for distribution of copyrighted materials. As of the writing of this alert, these websites have remained inactive since ICE seized them.

The website owners claim that neither ICE nor copyright owners provided any notice of the charges that were being brought against them before the seizures occurred. Some of the website owners, which the warrant application claims provided visitors with downloadable music and movie content, contend that the copyright holders actually provided them with the materials in issue and encouraged them to publish it.

### BASIS FOR ICE SEIZURES

The warrant application provides insight into ICE's selection of the seized websites. According to the warrant, the ICE investigation indicates that the websites shared the following features:

- >> Visitor access to downloaded music and video content,
- >> Availability of "pirated" music or movies, particularly content otherwise unavailable for downloading (e.g., movies still showing in theatres and music not available for purchase by legal downloading or CDs),
- >> Confirmation by investigators from the Recording Industry Association of America (RIAA) or the Motion Picture Association of America (MPAA) that copyright holders did not authorize third party distribution,
- >> Indication that websites' employees posted the copyrighted materials, (this feature of the seized websites distinguishes them from websites like YouTube that may claim protection under the Digital Millennium Copyright Act's (DMCA) safe harbor provision), and
- >> Efforts to place advertisements on the website.

### IMPLICATIONS OF ICE SEIZURES

ICE seizures have serious implications for website owners that allow downloading of copyright protected content from their sites, as well as for the owners of the copyrighted materials that are being infringed on websites. The warrant requires website owners to seek a court order before the websites are restored. PR blogs and websites promoting artists are particularly vulnerable if they make the artists' materials available or link to websites containing artists' content without permission or even with informal permission from the artists, record labels or their representatives. For example, the owner of djaz1.com claims to have provided emails from record label executives, promoters and artists purportedly on behalf of the copyright holder encouraging the site to post the music for promotional purposes.

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In addition to complying with the requirements of the DMCA's safe harbor provision, website owners who are directly posting others' copyrighted materials should also obtain signed authorization from the copyright holder that they have clearance to post copyrighted materials owned by others and should not rely on just the artists' or record label representatives' informal statements granting permission to post the content. Website owners unsure of whether they have permission to post materials from the owners may contact organizations responsible for policing the publication of music and movie content. In fact, ICE investigators asked the RIAA Vice President of Anti-Piracy Legal Affairs to confirm whether music posted on onsmash.com and djaz1.com websites were posted with authority by the owners of the works.

### COMBATING ONLINE PIRACY

ICE has the authority to seize the websites under both criminal and civil statutes. ICE's collaboration with the RIAA and MPAA indicates a willingness to work with representatives of copyright holders to identify websites and to exercise its authority to seize them on suspicion of copyright infringement.

Also, the Senate Judiciary Committee recently voted in favor of submitting the Combating Online Infringements and Counterfeits Act (COICA) bill to the full Senate. Under the COICA, the U.S. Attorney General would have greater authority to seize domain names found "dedicated to infringing activities," defined in the bill as any site "designed primarily to offer goods or services in violation of federal copyright law." However, the current version of the COICA does not propose private remedies and has met with opposition from groups claiming that it is tantamount to censorship and will severely restrict trade on the internet.

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