

Serious Questions about Domain Name Seizures

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Earlier this week, Immigration and Customs Enforcement (ICE) apparently launched a new round of domain name [seizures](#) [2] in its ongoing effort to combat infringement. These seizures focused on sites accused of unauthorized distribution of sports programming; the fact that the timing coincides with the Super Bowl this weekend is likely no coincidence. This round of seizures follows the [seizure](#) [3] of 82 domain names back around Thanksgiving.

ICE's broader strategy here seems to be to go after -- well, what exactly? That's part of what Senator Ron Wyden [asked in a](#) [4] [letter](#) [5] this week to ICE. The letter poses pointed and important questions. (Full disclosure: I used to work for Senator Wyden.) Sure, there are websites out there that exist solely to foster infringement. But prior seizures have revoked the names of [music blogs](#) [6]. And the latest set of seizures included a Spanish site, rojadirecta, that has been challenged and ultimately [ruled legal](#) [7] in Spanish courts. Now, I don't purport to know all that much about the workings or behavior of these various sites. But are these really the most blatant, malevolent infringers ICE could find? And how would the United States feel if other governments started trying to seize the domain names of U.S. sites that have been determined legal by U.S. courts? Has ICE considered whether this kind of action effectively gives the green light to aggressive attempts by countries everywhere to try to impose domestic laws on foreign websites? If that kind of practice became widespread, the impact on the Internet and Internet-based speech could be dramatic.

Regardless of what you think about any individual seizure, though, here are several things to keep in mind.

First, seizures of this kind aren't likely to have any lasting impact. The websites whose names are seized just relocate to domain names that are not administered from the United States. The main sites from this week's seizures are already up online at new addresses, and they are easy to find. The Spanish site moved to an .eu domain, for example. So the seizures don't actually shut down the sites -- they just drive the site operators to use offshore registrars and registries.

Second, seizing domain names with no adversarial process is a pretty extreme step. There's no advance opportunity for a site to defend itself and very little in the way of procedural safeguards. With law enforcement officials presenting their case unopposed, the risk of mistakes or overaggressive action is high.

Third, it follows that this is a tactic that, if it is to be used at all, needs to be used sparingly. The more it becomes a primary, "go-to" tool in the enforcement arsenal, the less effective it will be. Sites will learn to be careful to use names administered from outside U.S. jurisdiction. And the idea that users will have trouble finding sites is ridiculous, even if Congress were to pass proposed [legislation](#) [8] to block lookup requests for targeted names. The more common the interference with the domain name system, the more sites and users will build and adopt new navigation methods. Evading domain name blocking is trivial, and simple workarounds will go viral. Secrets don't keep well on the Internet.

Meanwhile, frequent use of the domain seizure tactic could do substantial collateral damage. There are cybersecurity risks to driving people away from the established DNS system. The one-sided process means that mistakes and overbroad name seizures are inevitable, which in turn will impair lawful speech. And other countries may follow the example, starting a jurisdictional scrum in which many countries try to use the domain name system to enforce domestic laws.

In short, ICE's current tactic of seizing domain names promises sharply diminishing returns and sharply escalating costs. It's one thing to seize an occasional name in pursuit of the "worst-of-the-worst." It's quite another to make it a cornerstone of an anti-infringement strategy and

then expand and codify the practice through legislation. Senator Wyden is right to be asking pointed questions.

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- [Senator Ron Wyden](#)
- [Immigrations and Customs Enforcement](#)
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[6] <http://www.techdirt.com/articles/20101130/00245312049/if-newly-seized-domains-were-purely-dedicated-to-infringement-why-was-kanye-west-using-one.shtml>

[7] <http://www.techdirt.com/articles/20110201/10252412910/homeland-security-seizes-spanish-domain-name-that-had-already-been-declared-legal.shtml>

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