Government Walks Away from Another Controversial Domain Name Seizure

by David Sohn [1]
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The Government's controversial tactic of seizing domain names took another hit today when prosecutors backed down and walked away from a widely watched case.

Nineteen months ago, the Federal Government seized the domain names of Spanish website Rojadirecta for alleged copyright infringement. Today, in a one-page filing, the government announced that it is dismissing the charges [2].

The good news is, Rojadirecta now gets its domain names back. The bad news is, it was deprived of their use for nineteen months and had to engage in expensive litigation. As CDT argued in a legal brief [3] it filed with EFF and Public Knowledge, the seizure of Rojadirecta's domain names was an unconstitutional prior restraint on speech [4]. Giving back the domain names now can't change the fact that significant impairment to speech rights has already occurred. Even worse, the Government's decision to walk away from the case means that there won't be any appellate ruling on the important legal issues at stake. So if law enforcement engages in a similar seizure tomorrow – perhaps against an entity that lacks the resources to contest the seizure in court – there's nothing to stop this saga from repeating itself all over again. Indeed, new domain name seizures [5] were reported just a week ago.

The dismissal of the Rojadirecta case is further evidence that, as CDT urged in our recent comments to the Intellectual Property Enforcement Coordinator [6], the Federal Government needs to fundamentally reconsider its reliance on domain name seizures. Previous seizures of mooo.com [7] and dajaz1.com [8] show a similar pattern of mistakes and overreaching that restrain lawful speech. It's time for serious reevaluation, to protect basic principles of fairness, due process, and free expression.

At a minimum, the Government needs to conduct a full investigation into what went wrong in these cases. How is it that law enforcement can see fit to seize domain names, hold them for a year or more, and then suddenly say "oops, nevermind" and ask for the entire matter to be dropped and forgotten before their legal theories can be fully tested? Law enforcement missteps like this demand close scrutiny so that policies and safeguards can be put in place to prevent them from happening again and again.

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- Rojadirecta
- domain seizures

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