

Amicus Brief of CDT, EFF, and Public Knowledge in Support of Rojadirecta

September 26, 2011

Supporting Documents

This case raises a novel issue of extraordinary importance: the novel and important issue of whether the First Amendment permits the seizure of the domain names of websites that contain both allegedly infringing content and clearly non-infringing expressive materials, based solely on a finding of probable cause, without a prior adversarial hearing, and without consideration of whether the burden on speech interests is more than necessary to further an important government interest. Amici urge the Court to find that it does not.

Careful First Amendment scrutiny of the seizure in this case is particularly crucial given its context. This is the first opportunity any appellate court has had to consider the speech implications of a new government campaign involving the mass seizure of domain names under the guise of intellectual property law enforcement. Unfortunately, that campaign is causing significant collateral damage, as happened here. The government's seizure of the Rojadirecta domain names was an unlawful prior restraint that violated both the procedural and the substantive requirements of the First Amendment. The Southern District of New York erred in failing to fully consider those requirements, let alone recognize them. Indeed, the district court's cursory analysis not only failed to justify its ruling, it directly contradicted black-letter law.

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