

Homeland Security Admits That It's The Private Police Force Of The Entertainment Industry

from the *your-taxpayer-money-at-work* dept

by **Mike Masnick** Wed, Dec 1st 2010 8:29am

We've been quite concerned about the legality of Homeland Security's domain name seizures -- especially in cases where they took down sites that had a ton of legitimate content, such as various hip hop blogs, with no due process and no adversarial hearings. One other concern was where Homeland Security's direction on this was coming from. As we noted, in an earlier similar domain name seizure situation, Homeland Security announced the seizures from Disney's headquarters -- which should raise lots of eyebrows. As we said at the time, imagine any other government agency announcing a third party action that benefits a particular company from that company's offices. For example, imagine the FTC announcing antitrust actions against Google from Microsoft's offices. Wouldn't people question the legitimacy of that?

Well, apparently, Homeland Security and the folks in its Immigration & Customs Enforcement (ICE) group have no qualms at all about being quite upfront and frank about both the fact that they're acting as Hollywood's private police force and that they have little concern for due process. Entertainment Weekly spoke with Erik Barnett, the "assistant deputy director" for ICE, and he readily admitted that they were taking orders from the industry:

"In general, what we can say is, there are specific complaints from rights holders that these sites were infringing on copyrights."

That alone should give you pause. Rights holders have a long and very detailed history of greatly over-exaggerating when their rights were supposedly being "infringed" upon. Remember Jack Valenti of the MPAA claiming that the VCR was the Boston Strangler to the movie industry? Why didn't Customs "swoop in" and block all VCRs from being sold? Why? Because that would be ridiculous. So why is it effectively doing the exact same thing here?

As for due process, Barnett apparently doesn't care, and pretends that due process is basically ICE says you're guilty, so you are:

"I mean, when we're conducting criminal investigations, we don't notify criminals that you need to abate your criminal conduct or there's going to be an enforcement action against you," says Barnett. He is not particularly sympathetic to bloggers who might feel that the shutdowns have damaged their livelihoods without due process. "I understand that this is a question that gets raised," he says. "But from a law enforcement agency standpoint, there's criminal activity. The process that's set up to address that is a law enforcement agency investigates, which is what

Homeland Security Investigations does. The Justice Department determines if the elements of the criminal statute have been met. And then a judge determines if the enforcement action that's proposed -- in this case, a seizure warrant -- is appropriate. So that's the process."

Notice he never mentions an actual *trial* where the other side gets to put forth its arguments. Of course, for those of us who actually understand *due* process -- as opposed to just Barnett's cowboy process, we understand that normally you have an adversarial hearing where the other side gets to present its case before summarily being declared guilty. If there's "criminal activity" (and even that's questionable -- as it's difficult to see how what these blogs did goes beyond civil infringement, if it really was infringing at all), then you arrest them and put them on trial. You don't just seize the domains.

Barnett also claims that this is no different than Customs seizing shipments of counterfeit goods as they enter the US, but that's a huge stretch. Customs' job is to guard what crosses the borders. That's it. Seizing entire domain names because there may be some infringing material on the site (which, again, was never established at a trial) has absolutely nothing to do with protecting the borders. And the very fact that Barnett's already admitted to relying on the industry's say so that these things are infringing is downright scary. Why are our tax dollars being used to protect legacy entertainment industry companies that refuse to adapt?