

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

January 16, 2009

By E-Mail

Ms. Gwen Hinze
Electronic Frontier Foundation
454 Shotwell Street
San Francisco, CA 94110

Dear Ms. Hinze:

This is our final response to your Freedom of Information Act (FOIA) request of June 11, 2008, as amended by your fax of July 24, 2008, in which you sought certain records concerning the Anti-Counterfeiting Trade Agreement (ACTA).

In our prior letter to you dated December 22, 2008, we provided you with a final determination on 806 pages of records responsive to your request. At that time, we also advised you that we were continuing to process the remaining records responsive to your request, which required further consultation and review before we could provide you with a determination.

Our review of the remaining records is now complete. I have determined that ten pages are appropriate for release without excision, and copies are enclosed. Also enclosed are four pages which are appropriate for release in part, with excisions made pursuant to Exemptions 5 and 6 of the FOIA of the FOIA, 5 U.S.C. § 552(b)(5) and (6). In addition, 580 pages are being withheld in full pursuant to Exemption 1 of the FOIA, 5 U.S.C. § 552(b)(1), as well as to Exemption 5. Exemption 1 pertains to information that is properly classified in the interest of national security pursuant to Executive Order 12,958, as amended. Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process and attorney-client privileges. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. The withheld records do not contain any substantive information which can reasonably be segregated for release.

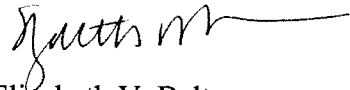
Additionally, to the extent that the withheld records contain private e-mail addresses and/or telephone numbers, such information is also protected by Exemption 6.

Finally, in our December 22, 2008 interim response, we withheld 186 e-mail chains, totaling 493 pages, pursuant to the deliberative process privilege of Exemption 5. We advised you that these e-mails may also be protected pursuant to Exemption 1, and that we would provide you with a final determination of the applicability of Exemption 1 in our final response. Please be advised that, upon further review of these e-mails, we have now determined that seven pages are protected only by Exemption 1. The remaining 486 pages are protected by both Exemptions 1 and 5.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right

to file an administrative appeal. If you have any questions regarding this response, please contact Vanessa Brinkmann at (202) 616-5462.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth V. Baltzan", with a long horizontal flourish extending to the right.

Elizabeth V. Baltzan
Associate General Counsel

Enclosures

Maintaining Confidentiality of Documents

The policy underlying the following approach is to maintain the confidentiality of documents, while at the same time allowing our sides to develop negotiation positions and communicate internally and with each other.

First, we agree that documents relating to the proposed Anti-Counterfeiting Trade Agreement (ACTA) will be held in confidence. This means that the documents may be given only to government officials or persons outside government who participate in the party's domestic consultation process and have a need to review or be advised of the information in these documents. Anyone given access to the documents will be alerted that they cannot share the documents with people not authorized to see them. The United States plans to hold ACTA documents in confidence for a fixed period of time after negotiations conclude.

Second, while ACTA documents are confidential, we may mail, e-mail, fax, or discuss these documents over unsecured lines with the two groups of people mentioned above (i.e., government offices and persons with a "need to know"). We may also store these documents in a locked file cabinet or within a secured building; that is, the documents do not need to be stored in safes. We can also create and store these documents on unclassified computer systems.

Third, all parties will mark the documents they create in a manner that makes clear that the documents will be held in confidence. The United States plans to mark documents generated by us as "Confidential, Foreign Government Information – Modified Handling Authorized" and include a brief instruction following the marking on how the documents will be handled.