

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC FRONTIER)	
FOUNDATION, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 08-1599 (RMC)
)	
OFFICE OF THE UNITED STATES)	
TRADE REPRESENTATIVE,)	
)	
Defendant.)	
_____)	

JOINT MOTION TO STAY PROCEEDINGS AND AMEND BRIEFING SCHEDULE

Plaintiffs commenced this action on September 17, 2008, pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110-175, 121 Stat. 2524, seeking access to certain records of the Office of the United States Trade Representative pertaining to the Anti-Counterfeiting Trade Agreement (ACTA). (See Pl.'s Compl., filed Sept. 17, 2008.) Defendant filed its Answer on October 30, 2008. (See Def.'s Answer, filed Oct. 30, 2008.)

On November 21, 2008, the parties submitted a Joint Proposed Records Processing and Briefing Schedule to the Court. (See Joint Schedule, filed Nov. 21, 2008.) On November 25, 2008, the Court approved the parties' proposed schedule and ordered that: defendant would provide an interim response to plaintiffs by December 22, 2008; defendant would complete its processing of plaintiffs' FOIA request and provide plaintiffs with a final response to its request by January 16, 2009; defendant would provide plaintiffs with a draft Vaughn Index for any withheld documents by January 23, 2009; and parties would then confer and advise the Court as

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to the remaining issues to be resolved in a joint status report to be filed by January 30, 2009. The Court further ordered that: defendant would file its motion for summary judgment by February 27, 2009; plaintiffs would file their opposition and, if any, their cross-motion for summary judgment by March 20, 2009; defendant would file its reply in support of its motion for summary judgment and, if any, its opposition to plaintiffs' cross-motion for summary judgment by April 3, 2009; and plaintiffs would file their reply to defendant's opposition, if any, by April 17, 2009.

In accordance with the Court's November 25, 2008 Order, defendant provided an interim response to plaintiffs on December 22, 2008, and completed its processing of plaintiffs' FOIA request and provided a final response to plaintiffs on January 16, 2009. Pursuant to these interim and final responses, defendant released ten pages to plaintiffs and withheld, either in full or in part, 1390 pages pursuant to Exemptions 1, 5, and 6 of the FOIA, 5 U.S.C. § 552(b)(1), (5), and (6).¹ In accordance with the Court's November 25, 2008 Order, defendant provided plaintiffs with a draft Vaughn Index for the withheld documents on January 23, 2009.

Additionally, pursuant to the Court's November 25, 2008 Order, counsel for plaintiffs and defendant have conferred with respect to the remaining issues to be resolved before the Court. Counsel for plaintiffs and defendant have agreed that, as a preliminary matter, plaintiffs will not challenge defendant's application of Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6), to the documents at issue. Counsel for plaintiffs and defendant have also conferred regarding a recent development in Executive Branch FOIA policy -- specifically, the issuance to the heads of federal

¹ An additional fifty-four documents had already been released to plaintiffs in defendant's first interim response dated November 14, 2008.

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departments and agencies of a January 21, 2009 memorandum on the FOIA from President Obama. In light of this development, the parties have agreed that effective adjudication of the issues currently before the Court would best be served by a stay of these proceedings pending further articulation of FOIA policy by the Attorney General. Pursuant to his January 21, 2009 memorandum, the President directed the Attorney General to issue new guidelines governing the FOIA to the heads of executive departments and agencies. No deadline for these guidelines was issued. The parties have agreed that staying the current proceedings until the Attorney General's guidelines are issued will serve the interest of judicial economy and possibly preclude unnecessary litigation. Accordingly, the parties respectfully propose, subject to the approval of the Court, that: these proceedings be stayed until thirty days after such time as the Attorney General issues guidelines pursuant to the President's January 21, 2009 memorandum; once the Attorney General's guidelines are issued, defendant would review its determinations on the documents at issue and inform plaintiffs of any changes to its prior determinations; and, within thirty days of the issuance of the Attorney General's guidelines, the parties would confer and advise the Court in a jointly filed status report as to the remaining issues to be resolved and proposed amendments to the briefing schedule.

The parties respectfully suggest that in light of the recent change in Executive Branch FOIA policy, and because Attorney General guidelines on this policy remain to be issued, it is premature to proceed with briefing at this time, and the proceedings should therefore be stayed until thirty days after the issuance of the Attorney General's FOIA guidelines.

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Conclusion

For the foregoing reasons, the parties respectfully request that the Court grant their joint motion to stay the proceedings and amend the current briefing schedule. A proposed Order is submitted herewith.

Respectfully submitted,

/s/
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Dated: January 30, 2009

/s/
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