

United States District Court

CENTRAL

DISTRICT OF

CALIFORNIA

In the Matter of the Seizure of
(Address or Brief description of property or premises to be seized)

THE FOLLOWING DOMAIN NAMES:

RAPGODFATHERS.COM,
TORRENT-FINDER.COM,
RMX4U.COM,
DAJAZI.COM, and
ONSMASH.COM

APPLICATION AND AFFIDAVIT
FOR SEIZURE WARRANT

CASE NUMBER:

10-2822M

I, ANDREW REYNOLDS, being duly sworn depose and say:

I am a Special Agent with the Homeland Security Investigations, Immigration and Customs Enforcement and have reason to believe that in the CENTRAL District of CALIFORNIA there is now concealed a certain person or property, namely the following Internet domain names: (describe the person or property to be seized)

RAPGODFATHERS.COM, registered with Enom, Inc., which has its headquarters at 15801 NE 24th Street, Bellevue, Washington 98008;

TORRENT-FINDER.COM registered with Blue Razor Domains, Inc., which has its headquarters at 14455 North Hayden Road, Suite 226, Scottsdale, Arizona 85260;

RMX4U.COM registered with Enom, Inc. which has its headquarters at 15801 NE 24th Street, Bellevue, Washington 98008;

DAJAZI.COM registered with Fast Domain, Inc., which has its headquarters at 1958 South 950 East, Provo, Utah 84606; and

ONSMASH.COM registered with Godaddy.com, Inc., which has its headquarters at 14455 N. Hayden Road, Suite 219, Scottsdale, Arizona 85260.

which is (state one or more bases for seizure under United States Code)

subject to seizure and civil forfeiture under 18 U.S.C. §§ 2323(a)(1)(B) and § 981(b); concerning a violation of Title 17, United States Code, Section 506(a) and Title 18, United States Code, Section 2319. The facts to support a finding of Probable Cause for issuance of a Seizure Warrant are as follows:

Continued on the attached sheet and made a part hereof. Yes No

Sworn to before me, and subscribed in my presence

Date

Signature of Affiant

ANDREW T. REYNOLDS
SPECIAL AGENT
IMMIGRATION AND CUSTOMS
ENFORCEMENT, HOMELAND SECURITY
INVESTIGATIONS

at Los Angeles, California

City and State

MARGARET A. NAGLE

Signature of Judicial Officer

Hon. Margaret A. Nagle, U.S. Magistrate Judge
Name and Title of Judicial Officer

A F F I D A V I T

I, Andrew Reynolds, being duly sworn, hereby state as follows:

I.

INTRODUCTION

1. I am employed as a Special Agent ("SA") with the Department of Homeland Security ("DHS"), United States Immigration and Customs Enforcement ("ICE"), Homeland Security Investigations ("HSI") and have been so employed since August 2009. I am currently assigned to the Office of the Special Agent In Charge, Los Angeles ("SAC/LA") Intellectual Property Rights ("IPR") group. While a SA with ICE HSI, I have investigated and assisted other agents in investigating numerous investigations involving violations regarding fraud and Intellectual Property Rights (IPR). Prior to my employment with ICE HSI as a SA, I served as a Student Trainee (Criminal Investigator) with ICE for approximately one year at the SAC/LA Border Enforcement Security Task Force (BEST), SAC/LA Narcotics and Smuggling groups. My duties included assisting agents in investigating narcotics trafficking and human smuggling violations. Furthermore as an ICE student trainee, I participated and assisted other state and federal agencies in a wide variety of investigations.

II.

PURPOSE OF AFFIDAVIT

2. I make this affidavit in support of the government's application, pursuant to Title 18, United States Code, Sections 2323(a)(1)(A)-(B) and 981, for warrants to seize the following property (in this case, website domains):

- a. The domain name WWW.RAPGODFATHERS.COM, registered with Enom, Inc., which has its headquarters at 15801 NE 24th Street, Bellevue, Washington 98008;
- b. The domain name WWW.TORRENT-FINDER.COM registered with Blue Razor Domains, Inc., which has its headquarters at 14455 North Hayden Road, Suite 226, Scottsdale, Arizona 85260;
- c. The domain name WWW.RMX4U.COM, registered with Enom, Inc. which has its headquarters at 15801 NE 24th Street, Bellevue, Washington 98008;
- d. The domain name WWW.DAJAZ1.COM, registered with Fast Domain, Inc., which has its headquarters at 1958 South 950 East, Provo, Utah 84606; and
- e. The domain name WWW.ONSMASH.COM, registered with Godaddy.com, Inc., which has its headquarters at 14455 N. Hayden Road, Suite 219, Scottsdale, Arizona 85260

(collectively referred to as "THE SUBJECT DOMAIN NAMES").

3. The procedure by which the government will seize the SUBJECT DOMAIN NAMES is described in Attachment A hereto and below.

4. As set forth below, there is probable cause to believe that the SUBJECT DOMAIN NAMES are property used, or intended to be used to commit or facilitate criminal copyright infringement, in violation of 18 U.S.C. § 2319 and 17 U.S.C. § 506(a), and are subject to seizure and forfeiture pursuant to 18 U.S.C. § 2323(a).

5. The facts set forth in this affidavit are based upon my personal observations, my training and experience, and information and reports obtained from other agents and individuals. This affidavit is intended to show merely that there is probable cause for the requested seizure warrants and does not purport to set forth all of my knowledge of or investigation into this matter.

III.

TECHNICAL BACKGROUND

6. Based on my training and experience and information learned from others, I am familiar with the following terms:

a. Internet Protocol Address: An Internet Protocol address (IP address) is a unique numeric address used by computers on the Internet. An IP Address is a series of four numbers, each in the range 0-255, separated by periods (e.g., 121.56.97.178). Every computer attached to the Internet must be assigned an IP address so that Internet traffic sent from and

directed to that computer may be directed properly from its source to its destination. An IP address acts much like a home or business street address -- it enables computers connected to the Internet to properly route traffic to each other. The assignment of IP addresses to computers connected to the Internet is controlled by ISPs.

b. Domain Name: A domain name is a simple, easy-to-remember way for humans to identify computers on the Internet, using a series of characters (e.g., letters, numbers, or other characters) that correspond with a particular IP address. For example, "usdoj.gov" and "cnn.com" are domain names.

c. Domain Name System: The domain name system ("DNS") is, among other things, a hierarchical convention for domain names. Domain names are composed of one or more parts, or "labels," that are delimited by periods, such as "www.example.com." The hierarchy of domains descends from right to left; each label to the left specifies a subdivision, or subdomain, of the domain on the right. The right-most label conveys the "top-level" domain. For example, the domain name "www.example.com" means that the computer assigned that name is in the ".com" top-level domain, and the "example" second-level domain, and that same computer is the web server.

d. Domain Name Servers: DNS servers are computers connected to the Internet that convert, or resolve, domain names into Internet Protocol ("IP") addresses. For each top-level domain (such as ".com"), there is a single company, called a "registry," that determines which second-level domain resolves to which IP address. For example, the registry for the ".com" and ".net" top-level domains is VeriSign, Inc., which has its headquarters at 21355 Ridgetop Circle, Dulles, Virginia.

e. Registrar & Registrant: Domain names may be purchased through a registrar, which acts as the intermediary between the registry and the purchasers of the domain name. The individual or business that purchases, or registers, a domain name is called a "registrant." Registrants control the IP address, and thus the computer, to which their domain name resolves. Thus, a registrant may easily move a domain name to another computer anywhere in the world. Typically a registrar will provide a registrant with the ability to change the IP address a particular IP address resolves through an online interface. Registrars typically maintain customer and billing information about the registrants who used their domain name registration services.

f. Internet Service Provider ("ISP"): Many individuals and businesses obtain access to the Internet through businesses known as Internet Service Providers ("ISPs"). ISPs provide their customers with access to the Internet using telephone or other telecommunications lines; provide Internet e-mail accounts that allow users to communicate with other Internet users by sending and receiving electronic messages through the ISP's servers; remotely store electronic files on their customers' behalf; and may provide other services unique to each particular ISP. ISPs maintain records pertaining to the individuals or businesses that have subscriber accounts with them. Those records often include identifying and billing information, account access information in the form of log files, e-mail transaction information, posting information, account application information, and other information both in computer data and written record format.

g. WhoIs query: A standardized query or method for identifying a particular computer on the Internet by obtaining information from a registry database that identifies the registrar for a particular IP address. For example, if you enter a domain name such as "microsoft.com," Whois will return the name and address of the domain's owner (in that case, Microsoft

Corporation). A "Whois" query can be found on numerous different websites, including www.domaintools.com.

h. Cam: The term "Cam" is a term used to describe multimedia video and audio content which is illegally recorded in a cinema or theater where films are shown. After the content is illegally recorded, the multimedia video and audio is then enhanced in preparation for illegal distribution.

i. Screener: A screener, also known as a work print, normally refers to a Digital Video Disc ("DVD") containing a full length motion picture that is specifically prepared for and sent to movie critics and censors for reviewing purposes before that content is available to the public. It is common practice for "screener" footage to contain watermarks or subtitles which reflect the copyright holder's ownership over the material. Screeners, however, are sometimes illegally obtained and copied or "downloaded" to digital format to allow for illegal distribution. When diverted before or during a motion picture's theatrical release, a screener DVD provides a significantly higher quality of pirated motion picture content compared to content that is obtained through the use of a camcorder in a movie theater. This level of quality is normally not available until the official release date of the motion picture's DVD,

which normally occurs between 60 days and six months after theatrical release.

j. Internet Forum: An "Internet forum," "message board," or "forum" is an online discussion webpage where people can hold conversations in the form of posted messages. They differ from chat rooms in that messages are stored on the server or computer of the website that displays them. Depending on the access level of a user and/or the forum set-up, a posted message might need to be approved by an administrator before it becomes visible to the general public. It is common for forums to require that the general public register with the website in order to become a forum "user" who is able to post messages in the forum. Forums have their own language; e.g. a single conversation is called a "thread." A forum is hierarchical or tree-like in structure: forum - subforum - topic - thread - reply.

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IV.

SUMMARY OF INVESTIGATION AND EFFECT OF INTERNET PIRACY

7. This application arises from an ongoing nation-wide investigation into websites that illegally distribute copyright-protected content, particularly movies, songs, albums and computer software, over the Internet.

8. I know from my participation in the investigation that the Motion Picture Association of America (MPAA) is an industry trade group that represents various major United States motion picture studios that own the rights to the movies that are discussed in this affidavit, and provides investigative analysis and evaluation services for products owned and maintained by their member representatives. According to statistics compiled by the MPAA for 2008, the motion picture and television production industries (the "industry") employ approximately 2.4 million people and paid over \$140 billion in total wages. Over 450,000 of those jobs are in related businesses that distribute motion pictures and television shows to consumers. The industry employs more than 95,000 businesses in all 50 states, businesses such as caterers, dry cleaners, florists, hardware and lumber suppliers, and retailers, to name a few. Approximately \$15.7 billion in federal taxes were collected in 2008 as a result of the industry's activities.

9. Based on my participation in the investigation, I have learned that there is a "domino effect" to online piracy. Online piracy deprives the industry of revenue derived from the "downstream" distribution of movies, software, music and television shows after those products are released in theaters or on television. Downstream revenue funds are used, among other things, to further investment in the industry and to fund pension and healthcare plans for unionized workers in the industry. According to the MPAA, 75% of a motion picture's revenue comes from markets after the initial theatrical release, and more than 50% of scripted television revenues are generated after the first run on television. Domestic industries lose approximately \$25.6 billion a year in revenue to piracy, the domestic economy loses nearly 375,000 jobs either directly or indirectly related to online piracy, and American workers lose more than \$16 billion in annual earnings as a result of copyright infringement.

10. As a result of statistics and yearly reports from the International Federation of the Phonographic Industry (IFPI)¹, I

¹The IFPI represents the interests of international musical artists and recording industry ("member") companies and firms. The IFPI's mission is to promote the value of recorded music by safeguarding the rights of record producers through international anti-piracy coordination, to include the submission of cease and desist (C & D) requests to violators and involved third parties.

have also learned that in 2008, the digital music business internationally grew by approximately 25 percent to \$3.7 billion. Digital platforms now account for about 20 percent of recorded music sales up from 15 percent in 2007. The recorded music industry generates a greater proportion of its revenues through digital sales than the film industry by a five to one ratio. The United States is the world leader in digital music sales, accounting for some 50 percent of the global digital music market value. Single track downloads crossed the one billion mark for the first time in 2008, totaling 1.1 billion; and digital album sales totaled 66 million. IFPI estimates that more than 40 billion files were illegally file-shared in 2008, giving a piracy rate of around 95 percent.

11. Many of the websites that are involved in the illegal distribution of copyright-protected content over the Internet may be divided into three classes: "linking" websites, "cyberlocker" websites and "Bit torrent" websites.

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12. I know from my participation in the investigation that "linking" websites generally collect and catalog links² to files on third party websites that contain illegal copies of copyrighted content, including movies, television shows, software and music.³ Linking websites organize these links by, for example, movie title or genre, to make them easily accessible. Users simply click on a link to begin the process of downloading or streaming (real-time viewing/listening) to their own computer an illegal copy of a movie, television show, software program or music file from the third party website at which it is stored. Linking websites are popular because they allow users to quickly browse content and locate illegal copies that would otherwise be more difficult to find through manual searches of the Internet.

² For purposes of this affidavit, a "link" is code which specifies a particular webpage or file on the Internet. If clicked on by a user, a link can, for example, bring up the relevant web page in an Internet browser or run a program. For example,

"<http://movies.nytimes.com/2010/06/18/movies/18toy.html?scp=1&sq=toy%20story%203&st=cse>" is a link to a webpage containing the New York Times' review of the movie "Toy Story 3." A "link" may also be referred to as a "Uniform Resource Locator" or "URL."

³ I know from my participation in the investigation that illegal copies of motion pictures are frequently made by surreptitiously videotaping movies while they are being shown in theaters. These infringing copies are then quickly distributed over the Internet, sometimes within hours of a movie's initial release. Illegal copies of motion pictures are also made by illegally copying authorized DVD's of those movies.

Linking websites also often allow users to post links to infringing content. Some linking websites are "forum-based," meaning that the links to pirated content are contained in the website's Internet forum.

13. I also know from my participation in the investigation that the third party websites on which the illegal copies of movies and television shows are stored for later downloading or streaming are sometimes referred to as "cyberlocker" websites. Cyberlockers allow users to upload infringing content and often feature high-capacity data connections that allow users conveniently to download or stream that content relatively quickly. Cyberlocker websites also may allow users to search for and download specific content directly without first going through a linking website. Finally, a cyberlocker may use different servers to host its webpage, receive uploads, and handle downloading or streaming content. Each computer server connected to the Internet is identified by one or more IP addresses.

14. I also know from my participation in the investigation that the websites through which illegal copies of movies and television shows are shared and transferred are known as "Bit torrent" websites. A Bit torrent (referred to in short as "torrent" or "torrent file") is a files distribution system used

for transferring files across a network of people. As you download a file to your computer, Bit torrent makes what you download available for other people to download straight from your computer; when multiple people are downloading the same file at the same time, they provide (or "upload") pieces of the file to each other. Bit torrent pieces together the file you are downloading, so it does not matter whether you have the first part of the file or the last part of the file, or in what order you download it. As you continue to retrieve the file, Bit torrent also prioritizes how to connect people to one another for file sharing based on the pieces of the file they have obtained. For example, a person with 98 percent of the file done is directed to the people with the 2 percent of the file they still need. Bit torrent websites allow users to upload infringing content and often feature high-capacity files while allowing users conveniently to download or stream that content relatively quickly from large numbers of other people also downloading the file. Bit torrent websites also may allow users to search for and download Bit torrent files through a linking site. Finally, a Bit torrent website may use different servers to host its webpage, receive uploads, and handle Bit torrent content. Each computer server connected to the Internet is identified by one or more IP addresses.

15. This investigation has identified five linking, cyberlocker or Bit torrent websites that are among the most popular such websites on the Internet for distributing illegal copies of movies, television shows, software and music files. These websites are: (1) RapGodFathers.com (hereinafter "RAPGODFATHERS.COM"); (2) torrent-finder.com (hereinafter "TORRENT-FINDER.COM", (3) RMX4U.COM (hereinafter "RMX4U.COM"), (4) dajaz1.com (hereinafter "DAJAZ1.COM"), and (5) onsmash.com (hereinafter "ONSMASH.COM"). Based on the facts set forth below, I believe that each of these websites are actively facilitating the distribution of pirated content. Based on the investigation, it appears that website administrators and/or representatives from each of these five websites supply access to, and advertising for, the pirated content via their websites and/or provide access for any Internet users to download such pirated content.

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database lists the registrant of the RMX4U.COM as WhoisGuard.com, a company which protects the identity of domain registrants by placing their information in WhoIs and providing an option to redirect email and regular mail to the customer's real address.

75. Publicly available WhoIs records also revealed that the RMX4U.COM site is hosted on a computer assigned IP address 212.117.166.2, which is owned by "root SA," located at 35, Rue John F. Kennedy, 7327 Steinsel, Luxembourg.

The DAJAZ1.COM Website

A. General Description

76. Based on my review of webpages that are available at the DAJAZ1.COM website, I have learned the following:

a. DAJAZ1.COM is a linking website. The site's homepage displays album covers and recording artist photographs, short descriptions, and links for numerous pirated songs. For example, on or about October 26, 2010, the DAJAZ1.COM homepage displayed album covers and recording artist photographs, descriptions and links for, among other songs, "Jamie Foxx ft. Drake- Fall For Your Type," "High Off Life - Cassidy feat Jr. Reid," "I Can't Help It - T.I. feat Rocko," and "Purified Thoughts - Ghostface." I was also able to click on a link titled "Older Entries" which allowed me to individually view prior home

pages from the website; these home pages, taken together, included what appeared to be hundreds of links to pirated songs.

b. On the initial DAJAZ1.COM homepage is a section titled "About Me" which contained the (alleged) website administrator's contact information:

Location: Queens, New York, United States
DAJAZ1.COM (DUH-JAZZ-ONE)
Twitter - @splash_dajaz1
Bigsplash1024@aol.com
Splashmixtapes@tmail.com
Splash.Dajaz1@gmail.com
MYSPACE.COM/MIXTAPESPLASH

c. The DAJAZ1.COM website homepage contained a link titled "MP3 Downloads." Upon clicking the "MP3 Downloads" link, the user is directed to a new page which displays additional album covers and recording artist photographs, short descriptions, and links for numerous pirated songs. For example, on or about October 26, 2010, the DAJAZ1.COM "MP3 Downloads" web page displayed album covers and recording artist photographs, descriptions and links for, among other songs, "Jamie Foxx ft. Drake- Fall For Your Type," "Long Gone - Nelly feat Chris Brown and Plies," "Making a Movie - Ne-Yo," and "T.I. - Ya Hear Me."

77. Upon clicking a link for one of the songs, the user is directed to a new page containing the title of the song, the artist(s) who produced it, a description, the date which it was posted on the website, a photograph of the artist or album which

featured the song, the administrative user responsible for uploading the file or message and multiple download links.

78. On or about October 26, 2010, I noted that approximately 14 administrative message postings had been created by the website administrator with the username "Splash." During my investigation, I concluded that the user "Splash" is an Administrator and representative of DAJAZ1.COM. I came to this conclusion based on two significant facts. First, "Splash" created the above-referenced DAJAZ1.COM message postings which later contained pirated song files. Based on my training and experience, I know that Administrative user access is required in order for a message to be created and viewable on the DAJAZ1.COM homepage and "MP3 Downloads" webpage. Secondly, I noticed that the "Splash" username matched the name listed in the "About Me" section of the DAJAZ1.COM homepage and was further contained in several of the email addresses listed on the DAJAZ1.COM homepage. Based on my training and experience, I know that administrator access is required to create and modify sections of websites and webpages, such as the above-referenced "About Me" section.

B. Downloads of Infringing Content via DAJAZ1.COM

79. I used the DAJAZ1.COM website to link to cyberlockers and stream and/or download illegal copies of songs. On or about the dates listed in the chart below, I clicked on links for the

below listed songs on the DAJAZ1.COM website and streamed and/or downloaded the songs from the below-listed cyberlocker sites. Where indicated in the below chart, one or more of the available download links had been removed on the designated cyberlocker websites, replaced by the message "This file is either removed due to Copyright Claim, has Expired or is deleted by the uploader." The "Reason for deletion" was described as "International Federation of the Phonographic Industry (IFPI)".

Date	Song Title	Artist	Cyberlocker	One or More Links contained IFPI message
10/26/2010	Fall For Your Type	Jamie Foxx	usershare.net	No
10/26/2010	Dueces	Chris Brown	Filezee.com	Yes
10/26/2010	Long Gone	Nelly	Filezee.com	Yes
10/26/2010	Mechanics	Reek Da Villian	Usershare.net	No

80. Based on my review of public records listings, as well as conversations with RIAA representatives, I know that as of October 26, 2010, all of the above-referenced songs were determined to be "Pre-release" or not yet released for purchase to the general public, three were copyrighted, and the copyright holders did not authorize their third party distribution over the Internet by DAJAZ1.COM or any other website.

81. On October 27, 2010, ICE agents submitted samples of the above-referenced multimedia files to RIAA Vice President of Anti-Piracy Legal Affairs Carlos Linares.

82. On or about October 28, 2010, Linares examined samples of the pirated songs that I obtained from DAJAZ1.COM. Linares informed me that the pirated songs were unauthorized copies of rights holder's works.

C. Advertisements on DAJAZ1.COM

83. Advertisements appear on various portions of the DAJAZ1.COM website, including on pages that include download links to pirated music.

84. On or about October 28, 2010, I obtained information from ValueClick, Inc. indicating that an account had been created for the DAJAZ1.COM website. The account was established on or about September 24, 2010 but "no money [had been] earned yet." According to documents produced by ValueClick, bigsplash1024@aol.com was the contact email address for the account listed under "Account Information" and held the status of "Superuser" and the title of "Owner".²⁹ The information obtained from Value Click indicates that while DAJAZ1.COM had not yet earned any advertising revenue because its account was recently

²⁹ Bigsplash1024@aol.com contained the above referenced DAJAZ1.COM administrative username "Splash" and is one of the email addresses listed under the "About Me" section of the DAJAZ1.COM homepage.

opened, the website is set up to earn advertising revenue from ValueClick in the future.

D. The DAJAZ1.COM Domain

85. According to valuethewebsite.com, as of on or about November 12, 2010:

- a. The Alexa.com ranking for DAJAZ1.com shows it was the 71,024th most popular website in the United States;
- b. DAJAZ1.com had 3,555 daily page views;
- c. DAJAZ1.com had an estimated worth of \$ 25,907.00.

86. A search of publicly available WhoIs domain name registration records revealed that the DAJAZ1.COM domain was registered on or about February 29, 2008 through the registrar Fast Domain, Inc. which has its headquarters at 1958 South 950 East, Provo, Utah 84606. The publicly available WHOIS database lists the registrant of the DAJAZ1.COM site as HostMonster.Com, a company which protects the identity of domain registrants by placing their information in WhoIs and providing an option to redirect email and regular mail to the customer's real address.

87. Publicly available WhoIs records also revealed that the DAJAZ1.COM site is hosted on a computer assigned IP address 74.220.215.217, which is owned by Bluehost, Inc. located at 1958 South 950 East, Provo, Utah 84606.