



February 13, 2009

VIA EMAIL, FAX AND POSTAL MAIL

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Re: Response of Ms. Kristina Clair to Grand Jury Subpoena of January 23, 2009

Assistant U.S. Attorney Pryor,

The Electronic Frontier Foundation (EFF) represents Ms. Kristina Clair in regard to her response to the Subpoena to Testify Before the Grand Jury in the United States District Court for the Southern District of Indiana, numbered 09-01-DLP-15-10, dated January 23, 2009 and received by her via certified postal mail on January 30 (The Subpoena).

The Subpoena, as you know, requests that Ms. Clair provide "All IP traffic to and from www.indymedia.us (65.23.159.255), June 25, 2008. Include IP addresses, times, and any other identifying information[.]" The Subpoena seeks this information "pursuant to Title 18, United States Code, Section 2703(c)(2)[.]"

As an initial matter, and as I informed Officer Arthur by telephone on February 6, Ms. Clair does not possess the information sought in the Subpoena. The logging policy for www.indymedia.us and all other domains on the relevant server is and always has been to regularly delete access logs after 5 weeks. Therefore, the logs for June 25, 2008 were deleted at the end of July 2008, per that log maintenance policy. Furthermore, it is also standard policy for indymedia servers, including the server hosting www.indymedia.us, to not log site visitors' IP addresses. See *Indymedia's Frequently Asked Questions*, available at <http://docs.indymedia.org/bin/view/Global/FrequentlyAskedQuestionEn#hits> ("Indymedia sites ... do not log IP addresses as a way of protecting the privacy of our visitors."). Therefore, even if the server still stored the logs for the requested date, which it does not, those logs would not contain the IP addresses sought in the Subpoena.

Considering that Ms. Clair does not possess any documents responsive to your request, and further considering that the Subpoena was not personally served on Ms. Clair by a marshal, deputy marshal, or nonparty of at least 18 years of age as required by F.R.Crim.P. 17(d), we will assume absent further communication from you that you no longer expect Ms. Clair to appear and testify before the grand jury on February 24, 2009.

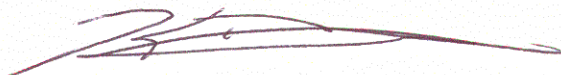
It is also worth noting that even if Ms. Clair did possess the information sought in the Subpoena, you could not require its disclosure using a grand jury subpoena based on the statutory authority that you cite. 18 U.S.C. § 2703(c)(2), the purported authority for the Subpoena, provides only for the disclosure of the basic subscriber information enumerated in that subsection. It does not provide for the disclosure of the detailed transactional logs that you request, which would instead require at least a court order issued under § 2703(d) as required by § 2703(c)(1).

Finally, the Subpoena purports to prohibit Ms. Clair from disclosing the existence of the Subpoena “unless authorized by the Assistant U.S. Attorney.” However, as you know, the secrecy requirements applying to grand jury proceedings do not reach grand jury witnesses (or prospective witnesses). See F.R.Crim.P. 6(e)(2); see also *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 425 (1983) (“Witnesses are not under the prohibition [of F.R.Crim.P. 6(e)(2)] unless they also happen to fit into one of the enumerated classes” in Rule 6(e)(2)(B), such as grand juror, interpreter, court reporter or attorney for the government.). Further considering that the Subpoena was not accompanied by a court order under 18 U.S.C. § 2705(b) precluding Ms. Clair from notifying any other person of the existence of the subpoena, there appears to be no legal basis for this prior restraint on Ms. Clair’s speech.

Therefore, and for all of the above reasons, Ms. Clair requests that you immediately withdraw the Subpoena, which seeks documents that Ms. Clair does not possess, has not been properly served, is based on inapposite statutory authority, and purports to restrict Ms. Clair’s First Amendment rights without any apparent basis. Ms. Clair further requests that you clarify the purported legal basis of that speech restriction, and without conceding that any prior authorization by you is required, seeks your written permission to disclose the existence of the Subpoena.

This letter is made without prejudice to any rights Ms. Clair may have, which are expressly reserved.

Thank you,



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