

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH**

**IN THE MATTER OF THE SEARCH
OF WWW.DISRUPTJ20.ORG THAT
IS STORED AT PREMISES OWNED,
MAINTAINED, CONTROLLED, OR
OPERATED BY DREAMHOST**

Special Proceedings No. 17 CSW 3438

**UNITED STATES'S SUBMISSION OF PROPOSED
ORDER FROM AUGUST 24 HEARING**

The United States of America by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits the attached proposed order in response to the Court's request for the parties to prepare such an order at the conclusion of the hearing before the Court on August 24, 2017. Although the parties have attempted jointly to prepare an order, DreamHost and the government have not been able to reach agreement on all of the provisions of the order. The United States's proposed order is attached hereto as Exhibit A; DreamHost's proposed order, which was provided to the government by email on August 28, 2017, is attached hereto as Exhibit B. The United States notes the following in support of its proposed order:

1. On August 30, 2017, DreamHost advised the government that DreamHost does not object to providing a log to the government that will provide a general identification of any materials that DreamHost will withhold pursuant to the Privacy Protection Act. Although the parties did not have an opportunity to discuss this subject with the Court at the August 24 hearing, the parties believe that such a log is appropriate under the circumstances. The language addressing that log appears in the United States's proposed order. (Ex. A at 2, n.2.) Although DreamHost initially objected to the language in the proposed order requiring such a log (Ex. B at 2 n.1), DreamHost proposed replacement language in an email dated August 30 that is acceptable to the government. (Ex. C.)

2. DreamHost submits that the Court's order should include a provision requiring the government to provide DreamHost with a copy of *ex parte* submissions to the Court. (Ex. B. at 4.) The government believes such a provision is not consistent with the Court's direction to the government that such filings must be *ex parte*.

3. DreamHost submits that the Court's order should include a provision requiring that the government cannot begin in its review of any materials provided by DreamHost until the Court approves "all aspects" of the government's report on its plan for execution of the search. (Ex. B at 4.) The government believes that such a proposal would require a further order from the Court before beginning the two-step review process, which does not seem consistent with the Court's direction that this warrant would be executed in the two-step process typically used for searches of electronic media.

4. DreamHost submits that the Court's order should include a provision that the government should make a sealed "not *ex parte*" filing with the Court on all data that has been "permanently deleted and cannot be restored or recovered." (Ex. B at 4.) The government believes that such a provision was not contemplated by the Court's direction on August 24 that the return for the search warrant would be filed *ex parte*.

5. DreamHost submits that the Court's order should include a provision which would stay the Court's order "pending any appeal of this Order" and "that the government [be] forbidden from reviewing, processing, or otherwise accessing the data and information in any manner during the pendency of the appeal." (Ex. B at 5.) The government submits that the Court issued no such direction at the August 4 hearing and, in any event, such a stay would not be justified in this matter. Indeed, DreamHost would need to meet a separate legal standard in order for a stay to be warranted and for purposes of the instant order that standard has not been met.

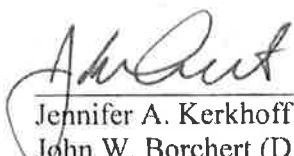
CONCLUSION

For the foregoing reasons, the government requests that the Court enter the United States's proposed order attached hereto as Exhibit A and direct DreamHost immediately to comply with its provisions.

Respectfully submitted,

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September 1, 2017

EXHIBIT A

United States's Proposed Order

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE SEARCH
OF WWW.DISRUPTJ20.ORG THAT
IS STORED AT PREMISES OWNED,
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Special Proceedings No. 17 CSW 3438

ORDER

This matter having come before the Court pursuant to the motion to show cause filed by the government seeking to compel DreamHost, LLC. (“DreamHost”) to comply with a search warrant issued by the Court on July 12, 2017, No. 17 CSW 3438 (hereinafter, the “Warrant”), and upon consideration of the representations and arguments made by the parties in their filed pleadings and during a hearing in this matter on August 24, 2017, it is hereby,

ORDERED that, pursuant to that Warrant, DreamHost shall disclose to the government all information that is within the possession, custody, or control of DreamHost for the account **www.disruptj20.org** (hereinafter, the “Account”), including any messages, records, files, logs, or information that have been deleted but are still available to DreamHost, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), and meets the following criteria:

1. **For the time period from October 1, 2016, through and including all of January 20, 2017 (Eastern Time)**, all records or other information, pertaining to the Account, including all files, databases, and database records stored by DreamHost in relation to that Account;¹ AND
2. All information in the possession of DreamHost that might identify the DreamHost subscribers related to the Account, including names, addresses, telephone numbers and other identifiers, e-mail addresses, business information, the length of service (including start date), means and source of payment for services (including any credit

¹ The information to be provided by DreamHost for the Account shall include the contents of all email accounts with the domain “@disruptj20.org,” all “blog” posts, and all electronic mailing lists.

card or bank account number), and information about any domain name registration;
AND

3. All records pertaining to the types of service utilized by the user; AND
4. All records pertaining to communications between DreamHost and any person regarding the account or identifier, including contacts with support services and records of actions taken; EXCEPT
5. DreamHost shall not disclose records that constitute HTTP request and error logs; AND EXCEPT
6. DreamHost shall not disclose the content of any unpublished draft publications (e.g., draft blog posts), including images and metadata that were associated with draft publications; AND EXCEPT
7. DreamHost shall not disclose the content of any other material or data that is protected by the Privacy Protection Act ("PPA"); AND

IT IS FURTHER ORDERED that, to the extent there is material or data that DreamHost believes is protected by the PPA and not subject to disclosure to the government, DreamHost shall prepare a log identifying the type of data (i.e., draft blog post, recording) that DreamHost excludes from the production of material, and shall provide that log to the government without identifying the content of such records;² AND

IT IS FURTHER ORDERED that, the government may seize all information provided by DreamHost pursuant to this Order that constitutes evidence of a violation of D.C. Code § 22-1322, as described in the Affidavit in support of the Warrant, including: (a) evidence concerning the nature, scope, planning, organization, coordination, and carrying out of the above-described offense; (b) communications relating to the planning, organization, coordination, and carrying out of the above-described offense; (c) evidence, including Internet Protocol ("IP") addresses, email addresses, and any

² If the government disputes the application of the PPA to any type of data that DreamHost excludes from its production, the government may seek review with this Court on the issue of whether the type of data falls within the protection of the PPA. The government and DreamHost will file any copies of this log or filings containing information from this log under seal absent further order from the Court.

other evidence that will help identify individuals who participated in the above-described offense, planned for the above-described offense, organized the above-described offense, or incited the above-described offense; and (d) evidence about the state of mind of individuals who participated (or, knowing about planned violence, refused to participate) in the above-described offense, planned for the above-described offense, organized the above-described offense, or incited the above-described offense (collectively, the "Scope of Seizure"); AND

IT IS FURTHER ORDERED that, so long as it falls within the Scope of Seizure as defined above, the government may seize all information relating to the development, publishing, advertisement, access, use, administration or maintenance of the Account, including:

1. Files, databases, and database records stored by DreamHost on behalf of the subscriber or user operating the Account, including:
 - a. HTML, CSS, JavaScript, image files, or other files;
 - b. SSH, FTP, or Telnet logs showing connections related to the website, and any other transactional information, including records of session times and durations, log files, dates and times of connecting, methods of connecting, and ports;
 - c. MySQL, PostgreSQL, or other databases related to the website;
 - d. The contents of all e-mail accounts that are within the @disruptj20.org domain (including info@disruptj20.org).
2. DreamHost subscriber information for the Account, to include:
 - a. Names, physical addresses, telephone numbers and other identifiers, email addresses, and business information;
 - b. Length of service (including start date), types of service utilized, means and source of payment for services (including any credit card or bank account number), and billing and payment information;
 - c. The date that the domain name disruptj20.org was registered, the registrant information, administrative contact information, the technical contact information and billing contact used to register the domain and the method of payment tendered to secure and register the Internet domain name; AND

IT IS FURTHER ORDERED that, prior to a review of the data and information provided by DreamHost to the government (except that the government may conduct a general review of the data and information to determine the procedures it will use for the detailed review), the government shall file a report with the Court identifying the following: (a) the individuals who will be involved in or are authorized to participate in the review of the data and information; (b) the process the government will use to review the data and information; (c) to the extent not already addressed by that process, the procedures the government will implement to minimize the review of data and information that does not fall within the Scope of Seizure; and (d) to the extent it can be determined based on the general review, the government's plan for deleting from its files and servers all data and information that does not fall within the Scope of Seizure following the search and seizure of evidence; AND

IT IS FURTHER ORDERED that, upon completion of the government's review of the data and information provided by DreamHost to the government, and having identified the data and information that is within the Scope of Seizure from that which is outside of the Scope of Seizure, the government shall: (a) delete from its servers or any other storage medium any data or information that does not fall within the authorized Scope of Seizure; and (b) file with the Court, *ex parte* and under seal, all such data and information, which the government may comply with by filing the full scope of the original material disclosed by DreamHost; AND

IT IS FURTHER ORDERED that, after filing a copy with the Court of the data or information that does not fall within the authorized Scope of Seizure, the government shall not have any access to this data or information without a further Court order; AND

IT IS FURTHER ORDERED that the government shall not distribute, publicize, or otherwise make known to any other person or entity, to include any other law enforcement or government entity, the data and information that does not fall within the authorized Scope of Seizure; AND

IT IS FURTHER ORDERED that all data and information that falls within the Scope of Seizure may be copied and retained by the government; AND

IT IS FURTHER ORDERED that, upon completion of the government's review of the data and information provided by DreamHost to the government, the government shall file, *ex parte* and under seal, an itemized list of the data and information that the government has copied and retained as