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Federal Criminal Defense Lawyers Thursday, March 22, 2012 www.McNabbAssociates.com

The legal risks of having a .com domain

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 9:23 AM March 22, 2012

Tech Zim on March 21, 2012 released the following:

Sam Takunda

"If you have a .com, .net or .org domain you are subject to US domestic laws and jurisdiction. This allows the US government to seize your website or even seek your extradition to USA to stand trial, based on allegations of breaking their laws. You're also at risk from any mistakes and collateral damage according to an article on New Zealand website The National Business Review. There have been many stories of seizure by the US where foreign websites which violate US legislations were taken down.

The greater fear is that of the "premature" shutting down before full investigations. They usually shut you first before you clarify yourself. 84 000 domains went offline last year in February after the popular service FreeDNS was taken offline for three days when a court ruling stated there were links to child pornography on some of the domains. Over 70 websites were taken down again last year when they were accused to be trading counterfeit goods, it may have been true for some of them but not all were trading in the US. The list is here.

Bodog.com is an online entertainment brand that was launched in 1994 by Canadian entrepreneur Calvin Ayre which grew to be a popular online gaming and betting platform. After the US passed the Unlawful Internet Gambling Enforcement Act of 2006 (UIEGA) and lauched a war-on-gambling sites, Bodog was one of the many that were taken down despite gambling being legal in Canada. Bodog's domain was registered through a Canadian registrar. To date, they haven't won the legal battle. Another example is JotForm: an online service that helps websites to easily create online forms that they can integrate on their websites and use for data collection. It was taken down after the US Secret Service issued an order to GoDaddy. 2 million forms across the internet went down immediately and later when the matter was resolved the US Secret Service admitted it a mistake.

Verisign is one of the US based registrars and they administer all of .com, .net, .jobs, .cc and .tv domains. What these administering bodies had to say about all the takedowns was "They [US federal agencies] have the right to seize any .com, .net and .org domain as the companies with the contracts to administer them are located on American soil, and therefore fall under U.S. laws." This means if your website crosses paths with US laws, or is suspected to, it will be shut down and armoured fed will swing from choppers into your offices. Ok maybe that's an exaggeration, but the damage done to your domain and brand may be irreversible since you can't even put a banner notifying of your relocation (if you ever). It's also likely that those who use your website will label you criminals and only the knowledgeable among them will know the story behind.

So how does International Corporation for Assigned Names and Numbers, the global body that oversees the domain-naming system, feel about the U.S. government's actions? ICANN declined comment and forwarded a 2010 blog post from it's chief Rod Beckstrom, who said ICANN has "no involvement in the takedown of any website." ICANN, a non-profit established by the U.S., has never awarded a contract to manage the .com space to a company outside the United States — in fact VeriSign has always held it — despite having a contentious relationship with ICANN that's involved a protracted lawsuit. But, due to contract terms, VeriSign is unlikely to ever lose control over the immensely economically valuable .com handle.

The .com domains have proved viable economically in that to the general internet user it implies the website serves a global audience when compared to a .co.zw for example, but with the risks involved is it worthwhile? Finally, a note of caution to the complacent, to the people in the "I'm not doing anything wrong so why should I care" camp. When a government finds a means that works, the range of ends to which it feels justified to apply that means can expand very quickly - Vikram Kumar"

Douglas McNabb – McNabb Associates, P.C.'s

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Douglas McNabb and other members of the U.S. law firm practice and write and/or report extensively on matters involving Federal Criminal Defense, INTERPOL Red Notice Removal, International Extradition and OFAC SDN Sanctions Removal.

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Former San Juan, Puerto Rico, Police Department Officer Convicted for Role in Providing Security for Drug Transactions

(USDOJ: Justice News)

Submitted at 11:35 AM March 22, 2012

Arcadio Hernandez-Soto, 35, was convicted in San Juan of three counts of conspiracy to possess with intent to distribute more than five kilograms of cocaine, four counts of attempting to possess with the intent to distribute more than five kilograms of cocaine and four counts of possession of a firearm in furtherance of a drug transaction.

United States Files Lawsuit Against AT&T in Telecommunications Relay Services Fraud Case

(USDOJ: Justice News)

Submitted at 9:42 AM March 22, 2012

The United States has filed a complaint against AT&T Corporation under the False Claims Act for conduct related to its provision of Internet Protocol (IP) Relay services, the Justice Department announced today.

Supreme Court expands plea bargain rights of criminal defendants

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 9:03 AM March 22, 2012

The Washington Post on March 21, 2012 released the following:

"By Robert Barnes

A divided Supreme Court ruled for the first time Wednesday that the guarantee of effective legal representation applies to plea bargain agreements, significantly expanding the constitutional rights of defendants as they move through the criminal justice system.

In a pair of cases decided by 5 to 4 votes, the court opened a new avenue for defendants to challenge their sentences on grounds that their attorneys gave them faulty advice, lawyers on both sides of the issue said. The vast majority of criminal cases end with a guilty plea rather than a trial, and the ruling could affect thousands of cases.

"The reality is that plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities . . . that must be met to render the adequate assistance of counsel that the Sixth Amendment requires," Justice Anthony M. Kennedy wrote. He was joined by the court's liberal justices, Ruth Bader Ginsburg, Stephen G. Breyer, Sonia Sotomayor and Elena Kagan.

That is the case, the majority said, even if the defendant is unquestionably guilty or has received a fair trial after turning down a plea bargain.

Since more than nine in 10 cases involve a plea rather than trial, the decision will mean greater constitutional scrutiny of the negotiations central to almost every prosecution.

"It seems to me the court has created a new body of constitutional law," said Connecticut Assistant State's Attorney Michael J. Proto, who wrote a brief for 27 states urging the court not to extend the constitutional guarantee to plea bargains. "There are a lot of unanswered questions, and it is going to spawn a lot of litigation."

Margaret Colgate Love, who helped write an American Bar Association brief that advocated for the court's action, agreed about its impact.

"What makes these cases so important is the Supreme Court's full-on recognition of the centrality of plea bargaining in the modern criminal justice system and its extension of constitutional discipline to the outcome of the plea process," she said.

The decisions prompted a scathing rebuttal from Justice Antonin Scalia, delivered from the bench to signal his displeasure.

Scalia called the rulings "absurd" and said the majority had twisted the constitutional right to ensure defendants get a fair trial into one in which they have a chance "to escape a fair trial and get less punishment than they deserve."

He added in a written dissent, "Today, however, the Supreme Court of the United States elevates plea bargaining from a necessary evil to a constitutional entitlement."

The court's conservatives — Chief Justice John G. Roberts Jr. and Justices Clarence Thomas and Samuel A. Alito Jr. — voted with Scalia.

The court was considering two cases in which all parties agreed that the lawyers involved had failed their clients.

In one, Galin Edward Frye's attorney never told him of plea bargain offers from Missouri prosecutors on charges that he was driving with a revoked license. He later pleaded guilty and was sentenced to three years in prison. Prosecutors had offered Frye a couple of deals, one of which would have required 10 days in jail.

In the other, Anthony Cooper was charged under Michigan law with assault with intent to murder and other charges after shooting Kali Mundy in the buttock, hip and abdomen. She survived the attack.

Prosecutors offered Cooper a deal of 51 to 85 months in prison in exchange for a guilty plea. Cooper turned down that and other offers, allegedly because his attorney told him he could not be found guilty of the attempted murder charge, because he had shot Mundy below the waist.

Cooper went to trial, was convicted and was sentenced to 15 to 30 years in prison.

In the Frye case, the majority held that "when defense counsel allowed the offer to expire without advising the defendant or allowing him to consider it, defense counsel did not render the effective assistance the Constitution requires."

In Cooper's case, the court said the "defendant who goes to trial instead of taking a more favorable plea" may be harmed by receiving "either a conviction on more serious counts or the imposition of a more severe sentence."

The majority rejected the view of Scalia, the states and the Obama administration that any ineffective advice from Cooper's attorney was remedied by what Scalia called "the gold standard of American justice — a full-dress jury trial before 12 men and women tried and true."

That view, wrote Kennedy, "ignores the reality that criminal justice today is for the most part a system of pleas, not a system of trials."

"Ninety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas," he wrote.

Stephanos Bibas, a professor of criminal procedure at the University of Pennsylvania who wrote a law-review article cited in the majority opinion, said the opinion "erected standards" that will be difficult for some challengers to meet.

The majority opinion said defendants would need to show that they would have accepted the plea bargain if not for bad legal advice, that there was a reasonable probability prosecutors would not have withdrawn the offer before trial, and that a judge would have accepted it.

Scalia called this "retrospective crystal-ball gazing posing as legal analysis."

And Kennedy acknowledged the difficulty in coming up with a remedy for those who proved all that. In cases where the advantage was a lighter sentence, he said, the judge may decide whether the defendant should receive the sentence offered by prosecutors, the one he received at trial "or something in between."

In cases of a plea that offered a lowered charge, he said, the way to remedy the constitutional injury might be to "require the prosecution to reoffer the plea proposal."

Alito, a former U.S. attorney, criticized the majority's "opaque discussion" of the remedies. Requiring prosecutors to reoffer a deal, he said, would be an abuse of discretion in cases where new information about a defendant has come to light after the deal was rejected.

Proto said the decisions will not result in prosecutors offering fewer plea deals. Their resources are too stretched, he said, "to say we're just not going to offer plea bargains."

The cases are Missouri v. Frye and Lafler v. Cooper."

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