

Behind the FBI Crackdown on Indymedia: Big Brother is Acting

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Global Research, October 12, 2004

williambowles.info 12 October 2004

Region: [Europe, USA](#)

Theme: [Police State & Civil Rights](#)

“In the present matter regarding Indymedia, Rackspace Managed Hosting, a U.S. based company with offices in London, is acting in compliance with a court order pursuant to a Mutual Legal Assistance Treaty (MLAT), which establishes procedures for countries to assist each other in investigations such as international terrorism, kidnapping and money laundering.

Rackspace responded to a Commissioner’s subpoena, duly issued under Title 28, United States Code, Section 1782 in an investigation that did not arise in the United States. Rackspace is acting as a good corporate citizen and is cooperating with international law enforcement authorities. The court prohibits Rackspace from commenting further on this matter.”

Statement issued by Rackspace Managed Hosting [1]

Rackspace is the US-owned corporation which hosts a number of Indymedia Websites that got closed down around the planet last week including a number here in London. In all, a total 140 Websites in around 17 countries have been shut down, and although some of the UK Indymedia servers are apparently up and running once more using backup facilities many of the 140 Websites are still offline including a number of Internet radio sites that ‘happened’ to use the same servers.

The Metropolitan Police have denied any knowledge of the action and it’s unclear as to the basis of the action, who removed the servers or even who now has them but it has to be assumed that the actions were performed by the Home Office and/or an arm of the security agencies (see the RIPA Act below).

However, Rackspace also said that the investigation “did not arise in the United States”, so where did it arise? According to Dai Davis, an IT lawyer at the London law firm of Nabarro Nathanson, the Rackspace’s statement fails to clarify the legal basis of the raid

“If it was a RIPA warrant, Rackspace can’t refer to it. Most RIPA warrants can be issued by the Home Secretary...The FBI has no jurisdiction in the UK and would need to act in concert with UK authorities, such as the security services or police” [2]

MLAT, RIPA (see below for more on MLAT and RIPA)? Under our noses as it were, the state has passed a raft of laws that can be used under almost any condition to stamp on dissent. But what prompted this attack on free speech and on independent journalism?

According to the leftwing German newspaper Junge Welt (Young World), the entire episode was instigated by Italian neo-fascists Force Nationale. The following is part of an automated translation of the Junge Welt story

"[T]hursday night [7/10/04], the US Federal Bureau of Investigation (FBI) had ordered confiscation of host systems of internet provider Rackspace in San Antonio, Texas (USA) and London (UK)...

"Last weekend, the FBI has again announced that the seizure was not done on their own initiative but carried out within the scope of a "legal aid" for foreign authorities. "The request came from Switzerland and Italy", senior FBI official Joe Parris stated [to] [F]rench news agency AFP." [3]

An FBI statement

"... acknowledged that a subpoena had been issued but said it was at the request of Italian and Swiss authorities. "It is not an FBI operation," FBI spokesman Joe Parris told AFP. "Through a legal assistance treaty, the subpoena was on behalf of a third country." The FBI spokesman said there was no US investigation but that the agency cooperated under the terms of an international treaty on law enforcement." [4]

It appears that the pretext for the shutdown of the Indymedia servers follows the publication of photographs, names and addresses of two undercover Swiss cops during protests against a G8 meeting last November in Geneva who were it is alleged "agents provocateurs"

"Marc Olderlin, the attorney of the two [S]wiss members of the secret police, acknowledged contacts between [S]wiss federal authorities and the FBI, reports italian newspaper "Il Manifesto". "But, as far as I know, there has not been a request for detention of the Indymedia servers", the lawyer says."

The Junge Welt story goes on to report

"Meanwhile, federal prosecutor of Bologna (IT) Marina Piazzi stated that she is investigating against Indymedia because of a possible "support of terrorism". Apparently this is about supposedly positive contributions after an impact on [I]talian soldiers in iraqi city of Nassirija past [N]ovember. "We asked the FBI for help along the italian department of justice", federal prosecutor Piazzi states. The [I]talian minister of justice, Roberto Castelli, so far refused to speak out on the proceeding of the FBI."

According to a statement issued by International Federation of Journalists which represents 500,000 journalists worldwide

"The seizure follows visits by the FBI to Indymedia personnel in the US inquiring about the publication on the French site Indymedia Nantes of photographs of Swiss undercover police photographing protestors. The photographs remain available on other websites.

"The IFJ believes the seizure may be linked to a September 30 court case in San Jose California, in which Indymedia San Francisco and two students at

Swarthmore College in Pennsylvania successfully opposed an application by Diebold Election Systems Inc to remove documents claiming to reveal flaws in the design of electronic voting machines which are due to be used widely in the forthcoming US Presidential election.” [5]

Given the centrality of the Diebold voting machines to the legitimacy (or otherwise) of the forthcoming US presidential elections, it is obviously in the US state’s interests for there to be as little questioning of the reliability of the voting machines as possible.

The other aspect that reveals the dangers of such interlocking legislation like MLAT, is how it impacts on networked news distribution, for it appears that these laws are designed specifically to be used to shutdown a global network through the simultaneous use of national laws by coordinating the actions of the state across national borders.

The key issue here is the use of ‘blanket’ ‘anti-terrorism’ laws to shutdown an entire network of news and information outlets on the pretext of the ‘war on terrorism’. Laws that are interlocking and global in scope. Hence Italian and Swiss authorities acting on an alleged act that “supported terrorism” committed in November 2003 in Geneva, was able to utilise the US MLAT law to shut down around 140 Websites and radio stations almost a year later. The state security apparatus of four countries – Switzerland, Italy, the US and the UK – was used in the crackdown on Indymedia. And clearly the US authorities used this request as a pretext to shut down the California Indymedia servers, which in turn triggered the shutdown of the London-based Indymedia servers.

What is unique about this situation is how the laws act in concert, with the core MLAT law triggering the relevant national laws, with each law effectively ‘hiding’ behind MLAT, thus enabling the country in question to deny knowledge of the act, which as far as is known, is exactly what has happened in the UK. So far, all attempts at finding out who has the Indymedia servers or who removed them from Rackspace has hit a blank wall. Is this yet another case of ‘plausible deniability’?

What is also clear is that Rackspace ‘rolled over’ in its desire to prove that it is in its own words “a good corporate citizen”.

MLAT is the Security State writ large, illustrating the extreme danger of the creation and use of laws that are allegedly designed to be used against ‘terrorists’ but the framing of which is so vague as to be applicable to virtually any situation that the state (any state that has signed up to MLAT) deems a threat as the case of Indymedia quite clearly illustrates.

The implications of these actions for the future of a free and independent media is extremely grave and so far aside from two stories in the Guardian [6] and one on the BBC’s Website [7], the story has escaped the attention of the mass media. Yet the laws currently being used against Indymedia can be used against any media outlet and through the use of the MLAT law, across the planet.

Some Background information on MLAT and RIPA laws

So what is the Mutual Legal Assistance Treaty or MLAT? The following is taken from a US government Website:

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS TREATIES (MLATs) and OTHER AGREEMENTS

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Criminal Cases Mutual Legal Assistance in Criminal Matters Treaties: Mutual Legal Assistance in Criminal Matters Treaties (MLATs) are relatively recent development. They seek to improve the effectiveness of judicial assistance and to regularize and facilitate its procedures. Each country designates a central authority, generally the two Justice Departments, for direct communication. The treaties include the power to summon witnesses, to compel the production of documents and other real evidence, to issue search warrants, and to serve process. Generally, the remedies offered by the treaties are only available to the prosecutors. The defense must usually proceed with the methods of obtaining evidence in criminal matters under the laws of the host country which usually involve letters rogatory. See "Questions" below. [my emph. WB]

MLAT Treaties in Force:

I. The United States has bilateral Mutual Legal Assistance Treaties (MLAT) currently in force with: Anguilla*, Antigua/Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Brazil, British Virgin Islands, Canada, Cayman Islands*, Cyprus, Czech Republic, Dominica, Egypt, Estonia, Greece, Grenada, Hong Kong, Hungary, Israel, Italy, Jamaica, Korea (South), Latvia, Lithuania, Luxembourg, Mexico, Montserrat*, Morocco, Netherlands, Panama, Philippines, Poland, Romania, St. Kitts-Nevis, St. Lucia, St. Vincent, Spain, Switzerland, Thailand, Trinidad, Turkey, Turks and Caicos Islands*, Ukraine, United Kingdom, Uruguay.

OTHER INTERNATIONAL AGREEMENTS

Executive Agreements: A number of executive agreements have entered into force between the United States and the Cayman Islands, the British Virgin Islands, Montserrat, Anguilla, Turks and Caicos, Haiti, Nigeria and the United Kingdom. Generally speaking, executive agreements have been limited to narcotics cases and have served as the first step towards agreement on a more expansive mutual assistance treaty. For additional information, contact the Office of International Affairs, Criminal Division, Department of Justice or the Office of the Legal Adviser for Law Enforcement and Intelligence, Department of State. [my emph. WN] www.travel.state.gov/law/mlat.html

RIPA RIPA or the Regulation of Investigatory Powers Act 2000 empowers the following to issue a warrant to intercept electronic communications. The RIPA Act is complex and extremely long. For anyone wishing to find out more about the RIPA go to www.hms.gov.uk/acts/acts2000/20000023.htm#aofs

But one section is of importance in the context of the Indymedia servers namely where interception of a communication does not require a warrant when

(a) the interception is carried out for the purpose of obtaining information about the communications of a person who, or who the interceptor has reasonable grounds for believing, is in a country or territory outside the United Kingdom www.hms.gov.uk/acts/acts2000/00023-b.htm#3

List of those empowered to issue a warrant:

- (a) the Director-General of the Security Service;
- (b) the Chief of the Secret Intelligence Service;
- (c) the Director of GCHQ;
- (d) the Director General of the National Criminal Intelligence Service;
- (e) the Commissioner of Police of the Metropolis;
- (f) the Chief Constable of the Royal Ulster Constabulary;
- (g) the chief constable of any police force maintained under or by virtue of section 1 of the Police (Scotland) Act 1967;
- (h) the Commissioners of Customs and Excise;
- (i) the Chief of Defence Intelligence;
- (j) a person who, for the purposes of any international mutual assistance agreement, is the competent authority of a country or territory outside the United Kingdom.

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