



COMPUTER & COMMUNICATIONS
INDUSTRY ASSOCIATION
Open Markets, Open Systems, Open Networks

January 8, 2007

The Honorable Mark Everson
Commissioner,
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224-0002

Dear Mr. Commissioner:

As you may be aware, the Computer & Communications Industry Association (CCIA) has a significant history of involvement in policy and technology matters concerning electronic tax filing, and was one of the original proponents in the creation of the Free File initiative in 2002. We also have a strong commitment to a free and open Internet, which serves the broad public interest.

I am writing to you at this time about serious and alarming problems related to a controversial Web-based entity known as "IRS.com". This site is in significant respects masquerading as an official Government Website, confusing and misleading the taxpayer, and interfering with the proper conduct of the public business. Since the IRS is a law enforcement agency of the United States, this problem is particularly egregious. Something urgently needs to be done to put an immediate stop to it now, before the tax return season takes place.

We are concerned about the confusing and disturbing presence on the Internet of this "IRS.com" Website, and similar "shadow" sites. The site is outrageously misleading to the public at large, and by being accidentally accessed, through simple inadvertence or error by the unsuspecting citizen, is a source of abuse, deception, misrepresentation and slamming. Although we have studied the IRS.com site in particular depth, there are two more Websites operating in the same unacceptable and misleading manner: "IRS.org" and "IRS.net".

This problem is reminiscent of the "WhiteHouse.com" pornographic site of eight years ago, which caused a major controversy and public embarrassment for government authorities.

CCIA has just concluded an independent national survey of American consumers to gain an understanding of actual taxpayer perceptions about such IRS shadow Websites. I have attached the findings of our national consumer survey research.

For simplicity, our consumer survey research focused specifically on “IRS.com”, but the findings have obvious relevance to any analysis of the similar “IRS.org” and “IRS.net” sites as well. We have included our full study for your use, but our findings include the following:

- Before viewing any Website, fully 47% of respondents believed that **IRS.com** “is or may be the internet address for the website of the Internal Revenue Service.”
- After seeing the **IRS.com** site, fully 1/3 of respondents still thought it was an official US Treasury Website;
- After viewing both the **IRS.com** and **IRS.gov** sites, fully ¼ of respondents still did not understand that **IRS.com** was not an official Government Website;
- Lower income and less well educated individuals are particularly vulnerable to misinterpretation and confusion about the true nature of the **IRS.com** Website;
- While two-thirds accurately entered the correct site name **IRS.gov** when asked for an internet address, almost half still believed that **IRS.com** “is or may be the internet address for the Website of the Internal Revenue Service.”
- 72% of respondents felt there “should be a full-page disclaimer explaining that **IRS.com** is not a government site, and users should have to click ‘enter’ to acknowledge that they actually understand.”
- 92% felt that **IRS.com** should be required to “tell people more clearly that it is not a government website.”

We interviewed more than 1200 Web-savvy consumers. While our survey sample accurately represents every demographic cross section of American life, it is comprised of those who are already computer and Web literate. We believe the very troubling findings in this survey research would show results even more compelling and disturbing if conducted among the general taxpayer population, where only a small percentage of the taxpayers is fluent in the use of the Web. In that broader population we believe the numbers would be overwhelming.

Legal Analysis

The United States Internal Revenue Service (IRS) has the ability---and perhaps even the obligation---to protect American taxpayers from the continuing intentional confusion created by the website www.irs.com and other similar “shadow” sites. Remarkably, in the case of “IRS.com”, that site is even currently published and operated by a company calling itself “Internet Revenue Services, Inc.”, or “IRS”, further preying upon the public’s perceptions and confusion.

The IRS can and should act immediately with other government authorities to invoke the consumer protection provisions of the **Lanham Act** to force the purveyors of www.irs.com and similar such sites to **cease and desist** publishing these websites which: (a) appear to be purposely designed to look very similar to the real IRS.gov website; (b) contains only extremely small disclaimers at the very bottom of the site, which are themselves combined with other confusing references; and (c) diverts unsuspecting taxpayers away from the real IRS.gov website and toward paid advertising content, all for the personal enrichment of the website’s operators.

Legal Analysis and Authorities:

As clearly evidenced by the attached survey, many tens of thousands of tax-payers – including the most vulnerable taxpayers in our society – continue to be confused by the so-called Internet Revenue Services' www.irs.com website, even after almost 6 years of operation. Reasons could include the fact that, over a six-year period: (a) the website has continued to evolve in its design to look more and more like the IRS.gov website; (b) the entity who operates the site recently changed its name so that it is nearly identical to that of IRS; and (c) the disclaimers of affiliation with IRS have become smaller and smaller over time.

Based on the results of the survey, it appears that IRS has various claims under the Lanham Act, including:

1. Trademark infringement (15 U.S.C. 1114) based on likelihood of confusion and actual confusion among tax-payers;
2. False designation of origin /passing off (15 U.S.C. 1125(a)) based on all of the issues referenced above, including the URL, the company name and the similarity of the parties' respective websites;
3. Dilution (15 U.S.C. 1125(c)), based on all of the aforementioned; and
4. Cyber-squatting (15 U.S.C. 1125(d)) based on the registration and use of the domain name "irs.com" to divert taxpayers away from their intended destination.

It is clear from case law and expert sources in the trademark field that government entities can assert rights in their names or the names of their services. See, e.g., McCarthy on Trademarks (Section 9:7.50), and cases referenced therein.

In addition to these provisions of the Lanham Act, IRS could also explore various claims under common law theories, including those of unfair competition, unfair business practices, and fraud. An administrative claim (UDRP claim) pursuant to the Uniform Domain Name Dispute Resolution Policy of ICANN, which can be found at <http://www.icann.org/udrp/udrp.htm>, may also be available.

IRS should strongly consider directing its own legal counsel and/or seeking the appropriate assistance of the U.S. Department of Justice, as well as requesting the FTC to intervene immediately, and demand that these websites be taken down completely given their interference in the fulfillment of the mission of an agency of the United States Government. At a minimum, such sites would have to be significantly and immediately changed so that:

- they operate off a URL utterly unlike the official IRS Internet address;
- they no longer look anything like the IRS.gov website;
- they contain very prominent disclaimers of any affiliation and endorsement; and
- they explain in a clear and conspicuous manner, and in the simplest terms, that it they are privately-owned, for-profit websites containing advertising for private for-profit services.

Overall, before another tax season gets underway the IRS should urgently undertake to make IRS.com and all such similar sites immediately cease and desist their activities. The Federal Trade Commission which has the most profound knowledge of this area of law, should also be asked to undertake a full investigation and enforcement action against IRS.com, IRS.org and

IRS.net for misrepresentation and deceptive practices. Ideally, given their blatant interference in the unique statutory mission of the Internal Revenue Service, such sites such should be shut down.

Support for Free File

CCIA has great respect for the important work of the Internal Revenue Service, and your leadership as its Commissioner, and have been supportive of the Service's electronic filing mission and agenda, including it's successful public-private partnership with the technology industry. We believe the public is being harmed by these imitation sites, and the good work of the IRS in the area of e-filing is being undermined.

CCIA praises the Service, your personal leadership, the Electronic Tax Administration, and the Taxpayer Advocate, for the championship of the major reforms now being undertaken by the Free File program. We have long advocated an aggressive reform effort to make Free File a stronger, better and a more consumer friendly and safe program. The landmark program reforms now underway are a huge step forward to solidify a philanthropic program of great worth that helps bridge the Digital Divide, while preserving Voluntary Compliance, by harnessing the innovations and investments of the private sector to public purpose.

Making *both* electronic tax preparation and e-filing available for free to the 93 million lower and middle income taxpayers who need it, without cost to the government or the end user, Free File represents the largest and broadest taxpayer assistance service sponsored or offered by the IRS. Free File is available to tens of millions more people than any other IRS program, including the Walk-In Centers, VITA services, or the elderly assistance program. But unlike any of those other worthy programs, Free File costs the Federal budget virtually nothing, allowing IRS, Treasury and Congress to invest scarce public resources in other critical areas such as Modernized E-File and Tax Systems Modernization.

Given all of the above, Free File represents a public service initiative that holds great promise for the future. Moreover, as you know, outside of Free File in the regular commercial marketplace, *electronic filing* is free to *all* taxpayers who use online electronic tax preparation products and services, and for which there are many competitive choices available.

The private sector in the United States in cooperative partnership with the Government has brought electronic filing from a zero to 54% take-up rate in a very short period of time, and the growth rate points to achieving 60% this tax season. This represents a fundamental change taking place in consumer behaviors in new technology adoption which, in addition to invention and innovation, is a specific area of expertise resident in the American high technology industry. This sharply contrasts with what Government alone has been able to achieve in the tax area in a country like the United Kingdom. Nevertheless, it has been asserted by some here in the US that the UK not only successfully provides both tax preparation and e-filing to all, but does it better than we do here in the US, and does so in a manner that "works perfectly and costs nothing". Such advocates have argued that the US should therefore adopt the British government-centric model for our tax system. However, a careful study of the facts shows that the tax preparation systems and services provided by the UK government have cost hundreds of millions of Pounds to create, and annually cost hundreds of millions of Pounds to operate, and that system is plagued by serious problems and shortcomings.

The British Treasury and Parliament reported in 2006 that Inland Revenue's (IR) costs are 22 Pounds Sterling per return – or the equivalent of more than \$ 40 USD for each tax return created and processed through their government-centric tax system. This stands in remarkable contrast to the US system, where IRS has released figures citing a processing cost of \$ 2.49 per paper return, and only \$0.78 per electronically filed return. Unlike the UK, US returns are prepared and e-filed to the government by the private sector in a citizen-centric model.

Importantly, in the UK model there is no meaningful competitive private sector alternative to the tax system debacle they are experiencing, including it's reported 27% error rate. In Britain the government monopoly has gradually driven the private sector electronic products and services industry out of the market. And unfortunately, the UK strategy is particularly unsuccessful in terms of e-filing. In 1998 they set a national target of achieving 50% e-filing by the middle of this decade, and 100% by the end of the decade. However, today their e-filing rate stands at only 17%. Indeed, these failures led IR to dramatically lower the British national e-filing targets, reducing the goals to only 25% near term, and 35% long term.

When you look at the costs and the results in the UK, and compare and contrast them to the accomplishments here in the US, we believe the US Treasury Department and Internal Revenue Service should be rightfully proud of the remarkable successes being achieved with the US model, and the results-driven value of the partnership and division of labors that has been wisely forged between the IRS and the private sector in this country.

We have a great many things we need to fix or improve in the US tax system, beginning with tax simplification. New, positive initiatives need to be actively pursued -- such as licensing and registering tax preparers, simplifying the e-file process to reduce reject rates, and mandating e-filing by tax practitioners. But at the same time we must recognize that electronic tax preparation and e-filing is, in fact, one of our nation's most noteworthy and significant tax successes. Indeed, it is *precisely* because of the dramatic success of the US electronic tax model, and the importance of its continued success to the preservation of our Voluntary Compliance citizen-centric system, that we must act aggressively to drive out blots on that success where we find them.

Conclusion

The significant consumer reforms IRS has adopted in the operation of Free File is an excellent example of the right solution to an identified problem. And it is to advance that same good government objective that the "shadow" Websites that masquerade as the IRS, and mislead the taxpaying public, *must be stopped*. It is an essential consumer-friendly reform that is urgently needed to preserve and continue the success of the strategies the US has executed so long and so well for both voluntary tax compliance and e-filing. These faux-IRS Websites put all the good that has been done at risk.

CCIA is committed to consumer protection, preservation of Voluntary Compliance, the continued innovation of the US electronics industry, and an open and consumer friendly Internet which greatly benefits our society. We stand ready to support the US Government in pursuit of this matter of such obvious and urgent public interest. Please contact me if we can be of assistance in any respect.

Sincerely,



Edward J. Black,
President and CEO
Computer & Communications Industry Association

cc:

Bert DuMars, IRS, Electronic Tax Administration
Nina Olson, IRS, Office of the Taxpayer Advocate
Lydia Parnes, FTC, Bureau of Consumer Protection