



To: David Larson, Deputy Director of the Federal Bureau of Investigation

Cc: Brian Binney, Asst. General Counsel of the Federal Bureau of Investigation

July 30, 2010

Dear Deputy Director Larson,

First, thank you for taking my call Thursday, and congratulations on your imminent retirement after so many years of service. It's unfortunate that on such an otherwise happy occasion I must inform you that the Bureau's reading of 18 U.S.C. 701 is both idiosyncratic (made especially so by your strategic redaction of important language) and, more importantly, incorrect.

I'm writing you, of course, regarding your recent letter reiterating the Bureau's invocation of 18 U.S.C. 701 and your demand for removal of the image of the FBI Seal on Wikipedia (images of which are widely available elsewhere, including on the Encyclopedia Britannica website, last I checked). You may recall that in my initial email response to your estimable Assistant General Counsel, Mr. Binney, I pointed to cases construing Section 701 and that, in a subsequent email, I broadly hinted that *ejusdem generis*, a standard accepted canon of statutory construction, demonstrates that this statute is inapposite to the use of an image of the seal on an encyclopedia.

It's clear that you and Mr. Binney took the hint, although perhaps not in the way I would have preferred. Entertainingly, in support for your argument, you included a version of 701 in which you removed the very phrases that subject the statute to *ejusdem generis* analysis. While we appreciate your desire to revise the statute to reflect your expansive vision of it, the fact is that we must work with the actual language of the statute, not the aspirational version of Section 701 that you forwarded to us.

In your letter, you assert that an image of an FBI seal included in a Wikipedia article is "problematic" because "it facilitates both deliberate and unwitting violations" of 18 U.S.C. 701. I hope you will agree that the adjective "problematic," even if it were truly applicable here, is not semantically identical to "unlawful." Even if it could be proved that someone, somewhere, found a way to use a Wikipedia article illustration to facilitate a fraudulent representation, that would not render the illustration itself unlawful under the statute. As the leading case interpreting Section 701 points out, "The enactment of § 701 was intended to protect the public against the use of a recognizable assertion of authority with intent to deceive." *United States v. Goeltz*, 513 F.2d 193 (1975). Our inclusion of an image of the FBI Seal is in no way evidence of any "intent to deceive," nor is it an "assertion of authority," recognizable or otherwise. If you read the cases construing Section 701, you find they center on



situations in which defendants represented themselves as federal authorities. I think you will be compelled to agree that the Wikimedia Foundation has never done this.

May we talk a little bit further about *ejusdem generis* and your creative editing of the statute? I have reproduced the full statute below. (It is helpfully titled “§ 701. Official badges, identification cards, other insignia” – I note that your idealized version of the statute omitted the section title.)

Certain words that you redacted, which are central to the interpretation, are bolded and underlined for your convenience:

Whoever manufactures, sells, or possesses any **badge, identification card, or other** insignia, of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such **badge, identification card, or other** insignia, or any colorable imitation thereof, except as authorized under regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

The underlined words are conclusive proof that the canon of statutory construction *ejusdem generis* applies. Under that principle, “where general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-15 (2001). Courts use *ejusdem generis* in conjunction with common sense and legislative history to discern the legislature’s intent in writing a statute.

You will note that the phrase “or other” precedes the word “insignia”, both of which follow the enumerated items “badges” and “identification cards.” This constrains the definition of insignia to those objects which are similar in nature to badges and identification cards. This definition comports with case law interpreting 701. As I have noted above (I’m quoting this passage because I truly love it), “the enactment of section 701 was intended to protect the public against the use of a recognizable assertion of authority with intent to deceive.” *United States v. Goeltz*, 513 F.2d 193, 197 (10th Cir. 1975) (contrasting political use of insignia with defendants’ conduct, which “was of the dirty-trick variety and was for the purpose of enraging its victims”). Badges and identification cards are physical manifestations that may be used by a possessor to invoke the authority of the federal government. An encyclopedia article is not. The use of the image on Wikipedia is not for the purpose of deception or falsely to represent anyone as an agent of the federal government. Using both *ejusdem generis* and common sense, we can see that 701 does not apply to the use of an image on an online encyclopedia.

Finally, while I sympathize with your footnoted desire to claim that “the plain meaning” of the statute supports your broad view of Section 701’s scope, we note that you specifically removed the language that communicates the plain meaning of “other insignia.” In context, this seems an ironic stroke.



In short, then, we are compelled as a matter of law and principle to deny your demand for removal of the FBI Seal from Wikipedia and Wikimedia Commons. We are in contact with outside counsel in this matter, and we are prepared to argue our view in court.

With all appropriate respect,

A handwritten signature in black ink that reads 'Mike Godwin'. The signature is written in a cursive, flowing style.

Mike Godwin
General Counsel
Wikimedia Foundation