



International Tribunal for the
Prosecution of Persons
Responsible for Serious Violations of
International Humanitarian Law
Committed in the Territory of the
former Yugoslavia since 1991

Case No. IT-95-5/18-PT
Date: 5 March 2009
Original: English

IN TRIAL CHAMBER III

Before: Judge Iain Bonomy, Pre-Trial Judge
Judge Christoph Flügge
Judge Michèle Picard

Acting Registrar: Mr. John Hocking

Submission date: 5 March 2009

PROSECUTOR

v.

RADOVAN KARADŽIĆ

PUBLIC

**REGISTRY SUBMISSION
REGARDING THE ELECTRONIC DISCLOSURE SYSTEM**

The Office of the Prosecutor:

Mr. Alan Tieger
Mr. Mark B. Harmon
Ms. Hildegard Uertz-Retzlaff

The Accused:

Radovan Karadžić

I Introduction

1. Pursuant to Rule 33(B) of the Rules of Procedure and Evidence ("Rules") of the International Criminal Tribunal for the former Yugoslavia ("Tribunal"), the Registry respectfully makes this submission in relation to the "Motion for Disclosure of Rule 68 material", filed by the Accused Radovan Karadžić ("Accused") on 6 February 2009 ("Motion")¹ and the "Prosecution Response to Karadžić's Motion for Disclosure of Rule 68 Material" filed on 17 February 2009 ("Response").²
2. Both the Motion and the Response contain, *inter alia*, certain claims regarding the Electronic Disclosure System ("EDS").³ The Registry, as the System Administrator of the EDS, deems it appropriate to provide the Trial Chamber with further information regarding aspects of the parties' submissions.

II Discussion

3. In the Motion, the Accused asserts that the Prosecution can monitor the time and frequency of defence team members' access to the EDS, as well as the content for which they are searching.⁴
4. This assertion is incorrect. The Prosecution has no access to usage information. Its access to the EDS is limited to only allow the Prosecution to review what disclosure material is currently on the EDS. The technical operation of the EDS is exclusively in the hands of the Registry and therefore any removal or addition of material is performed by the Registry, upon direction from the Prosecution.⁵ This separation of functions is designed to ensure confidence in the system and strengthen its usefulness as a disclosure tool.
5. Although the EDS automatically logs certain usage information, these logs are kept on the server and available only to the Registry System Administrator. All searches performed by the defence are confidential. The Practice Direction Establishing

¹ IT-95-5/18-PT, Motion for Disclosure of Rule 68 material, filed on 6 February 2009.

² IT-95-5/18-PT, Prosecution Response to Karadžić's Motion for Disclosure of Rule 68 Material, filed on 17 February 2009.

³ EDS is a secure electronic system making selected materials from the Prosecutor's evidence collection accessible to the defence via the Internet and has been developed in connection with the discharge of disclosure obligations under the Rules.

⁴ The Motion, paragraph 7.

⁵ Acknowledged in paragraphs 3 and 7 of the Response.

Restrictions on Dissemination of Material Disclosed to the Defence by the Prosecutor on the "Electronic Disclosure System"⁶ provides in relevant part:

The system makes the material available to the defence in a format that can be directly and *confidentially* searched, reviewed, downloaded and printed.

[emphasis added]

Therefore, the Registry does not disclose usage information.⁷

6. In the Response, the Prosecution notes that the Accused appears to take issue with the degree of access to the EDS accorded to members of his team. The Prosecution directs him to make an application to the Office for Legal Aid and Detention Matters, should he wish to seek access to the EDS for additional members of his team.⁸
7. The Registry notes that in cases of accused represented by counsel, EDS accounts are created for Lead and Co-Counsel only. Defence support staff do not have individual EDS accounts. This is consistent with the agreement reached between the Registry, the Office of the Prosecutor, and the Association of Defence Counsel Practicing Before the ICTY prior to the launch of EDS. In the case of self-represented accused, an EDS account is created for the accused himself. A special EDS kiosk has been established in the United Nations Detention Unit ("UNDU") to enable self-represented accused to access EDS. Three of the accused who currently represent themselves before the Tribunal, including the Accused, have been issued with usernames and passwords to access EDS.
8. At the request of the Accused, the Registrar has also granted two of his legal associates, Messrs. Robinson and Petronijević, access to confidential material in his case.⁹ Therefore, the Accused and two of his legal associates currently have access to EDS.

⁶ Practice Direction Establishing Restrictions on Dissemination of Material Disclosed to the Defence by the Prosecutor on the "Electronic Disclosure System", IT/219/Rev. 1, issued on 6 November 2003.

⁷ Captured usage information includes the time at which a user conducts a search and the search terms which are used.

⁸ The Response, paragraph 6. At present, in addition to the Accused, access to the EDS has been granted to the following defence team members: Mr. Peter Robinson and Mr. Goran Petronijević, Legal Associates of the Accused.

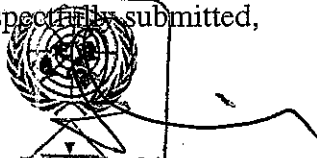
⁹ Messrs. Robinson and Petronijević have been granted access to both public and confidential documents on the Judicial Database, they are on the distribution list of court filings in this case and receive such filings from the Registry, and EDS accounts have been created for them.

9. The Registry's role in "granting" access to EDS may be somewhat overstated. The material contained in EDS originates from the Prosecution. The EDS is a tool used by the Prosecution to discharge its disclosure obligations under the Rules. If the Prosecution is prepared to provide access to this material to other persons assisting the Accused, the Registrar would facilitate such access. However, the Registrar respectfully suggests that this issue be resolved in accordance with the Trial Chamber's decision to be taken on the Registrar's Submission pursuant to Rule 33(B) on Access by the Accused's Defence Team to Confidential Information,¹⁰ currently pending before the Trial Chamber.

III Conclusion

10. The Registry informs the Trial Chamber that the Prosecution has no access to the EDS usage information logs nor is it authorised to receive such information from the Registry.
11. The Registry remains available to provide the Trial Chamber with any further information it may require.

Respectfully submitted,



John Hocking
Acting Registrar

Dated this fifth day of March 2009

At The Hague,

The Netherlands.

¹⁰ IT-95-5/18-PT, Registrar's Submission pursuant to Rule 33(B) on Access by the Accused's Defence Team to Confidential Information, filed on 23 February 2009.