

# EXHIBIT 3

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

PETROLIAM NASIONAL BERHAD  
(PETRONAS),

Plaintiff,

vs.

CASE NO. 09-CV-5939 PJH

GODADDY.COM, INC.,

Defendant.

\_\_\_\_\_ /

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

DEPOSITION OF KEVIN FITZSIMMONS

Tuesday, November 8, 2011

Pages 1 - 82

Reported by: Shelley M. Sailor, CSR #10254

1 Q. I'm going to stop you again. Can you  
2 explain to me what URL forwarding is?

3 A. URL forwarding in this case is forwarding a  
4 domain name to another domain name. So if somebody  
5 were to type in, as an example, shoretel.eu, we  
6 could redirect that to shoretel.com.

7 Q. Why would you want to redirect it from one  
8 domain name to another?

9 A. There may be a number of reasons you would  
10 want to redirect a domain name from one to another.  
11 But oftentimes your content is actually hosted on  
12 Shoretel.com, and you just want users to go to that  
13 particular -- be directed to that particular site  
14 even though they typed in another domain that maybe  
15 perhaps is, you know, a Europe-based domain.

16 Q. Is there -- you mentioned shoretel.eu as an  
17 example of a domain name subject to this URL  
18 forwarding service. Are there other domain names  
19 that your company has that is subject to URL  
20 forwarding?

21 A. That was an example. I do believe we do do  
22 forwarding on that .eu to a specific URL on our .com  
23 website, but I can't tell you off the top of my head  
24 exactly what forwarding we currently have in place.  
25 We do have forwarding for a number of our

1 education department. And they offer classes in  
2 their operating systems and administering their  
3 operating systems.

4 Q. Have you ever taken any legal studies  
5 classes?

6 A. I have not.

7 Q. Have you ever done any work for ICANN?

8 A. I have not.

9 Q. Have you ever attended an ICANN meeting?

10 A. I have not.

11 Q. Are you a member of any ICANN constituency  
12 or group?

13 A. No, I am not.

14 Q. Have you ever done any work for a domain  
15 name registrar?

16 A. No.

17 Q. Have you ever done any work for a domain  
18 name registry?

19 A. No.

20 Q. Have you ever done any work in any  
21 connection with trademark law?

22 A. No.

23 Q. Do you have any prior experience with  
24 cybersquatting?

25 A. I have knowledge of cybersquatting. I

1 don't have any direct experience with it.

2 Q. How do you have knowledge of it?

3 A. In the field that I'm in, I'm aware of what  
4 cybersquatting is.

5 Q. What is your understanding of what  
6 cybersquatting is?

7 A. My understanding of cybersquatting is  
8 somebody registering a domain name that is  
9 trademarked by another entity, and that's it.

10 Q. Have you ever published any articles  
11 concerning DNS?

12 A. I have not.

13 Q. Have you ever published any articles  
14 concerning registration or maintenance of DNS?

15 A. No.

16 Q. Have you ever published any articles  
17 concerning URL forwarding?

18 A. No.

19 Q. Have you ever published any articles  
20 concerning routing?

21 A. No.

22 Q. Have you ever published any articles  
23 concerning trademark law?

24 A. No.

25 Q. Have you ever published any articles

1 concerning cybersquatting?

2 A. No.

3 Q. Have you ever conducted any research  
4 projects concerning domain name registration?

5 A. No.

6 Q. Have you ever conducted any research  
7 projects concerning URL forwarding?

8 A. No.

9 Q. Have you ever conducted any research  
10 projects concerning trademark law?

11 A. No.

12 Q. Have you ever conducted any research  
13 projects concerning cybersquatting?

14 A. No.

15 Q. Have you ever given any public  
16 presentations concerning the DNS?

17 A. No.

18 Q. Have you ever given any public  
19 presentations concerning registration or maintenance  
20 of DNS?

21 A. No.

22 Q. Have you ever given any public  
23 presentations concerning URL or domain name  
24 forwarding?

25 A. No.

1 Q. Have you ever given any public  
2 presentations concerning trademark law?

3 A. No.

4 Q. Have you ever given any public  
5 presentations concerning cybersquatting?

6 A. No.

7 Q. You answered some questions earlier about  
8 your prior experience or lack thereof with respect  
9 to court litigation. When I refer to testimony  
10 here, I'm going to use it in a broad sense, which  
11 might encompass testimony before a legislative body  
12 or an agency.

13 Have you ever testified concerning the DNS?

14 A. No.

15 Q. Have you ever testified concerning the  
16 registration or maintenance of domain names?

17 A. No.

18 Q. Have you ever testified concerning URL  
19 forwarding?

20 A. No.

21 Q. Have you ever testified concerning  
22 trademark law?

23 A. No.

24 Q. Have you ever testified concerning  
25 cybersquatting?

1 really doesn't have a role in this particular  
2 depiction.

3 Q. Let's move to page 2 of your report.

4 A. Okay.

5 Q. Can you walk me through the graphic that's  
6 on page 2?

7 A. Sure. So in this case you've got an end  
8 user that wants to register a new, a domain, and  
9 they can go to any number of registrars which are  
10 represented at the bottom of the diagram. Three  
11 registrars: GoDaddy, Network Solution,  
12 Register.com.

13 And in this case the user enters their  
14 information into the registrar. So their contact  
15 information, their credit card. And then that  
16 information is then propagated out to the registry,  
17 which is VeriSign in this case.

18 Q. At the top of the page you say: "By  
19 registering a domain name, a person (called the  
20 registrant) is able to designate the Authoritative  
21 Name Server [sic] that is associated with that  
22 domain name." Is that correct?

23 A. That's correct.

24 MR. CLARK: Actually it says "Domain Name  
25 Server."



1 BY MR. SLAFSKY:

2 Q. Oh, I'm sorry. Is there one authoritative  
3 domain name server or two or three? Does it matter?

4 A. There needs to be two, two authoritative  
5 domain name servers that the end user can specify.

6 Q. Why do there need to be two?

7 A. Redundancy is one reason.

8 Q. Why is redundancy important?

9 A. Because if the primary authoritative domain  
10 name server cannot be reached, then your domain  
11 can't be resolved.

12 Q. What is an authoritative domain name  
13 server?

14 A. It's a domain name server that contains the  
15 authoritative records for a domain, so the actual  
16 record that is authoritative for that domain.

17 Q. How does one designate an authoritative  
18 domain name server?

19 A. It's done through a registrar.

20 Q. Is there any other way of doing it?

21 A. No.

22 Q. What would happen if there was no  
23 authoritative domain name server in the process?

24 A. If there is no authoritative domain name  
25 server, you wouldn't be able to resolve.

1 Q. Okay. Do you have any understanding of the  
2 services that GoDaddy in particular rendered in  
3 connection with the two domain names that you cite  
4 here in this lawsuit following the initial  
5 registration?

6 A. Yes. I understand they provided  
7 registration services, URL forwarding services, DNS  
8 services for these two domain names.

9 Q. Do you consider those services to be  
10 unusual in any way?

11 A. I think they are part of their normal  
12 service offerings that you would find for a  
13 provider.

14 Q. A provider being a registrar?

15 A. Or a hosting provider.

16 Q. You testified earlier about the  
17 identification of the authoritative domain name  
18 server.

19 A. Right.

20 Q. Where does that fit into this process here?

21 A. So that occurs with the registrar. There's  
22 an identification of where the authoritative DNS  
23 records are being held.

24 Q. That's an identification by whom?

25 A. By the customer. The customer's saying I

1 want my authoritative DNS records at this DNS server

2 or -- it could be any DNS server that they choose.

3 Q. And over the course of the domain name

4 registration, if a customer wants to change that

5 information, is he or she able to do that?

6 A. Yes, they are, through the registrar.

7 Q. Is there any other way to update that

8 information?

9 A. Not that I'm aware of, no.

10 Q. Can we turn to page 4 of your report.

11 A. Yes.

12 Q. If I'm not mistaken, the statements on this  
13 page in particular, the bullet points are based on  
14 your review of particular GoDaddy documents; is that  
15 correct?

16 A. Correct.

17 Q. So I believe it's the fourth bullet point  
18 down, it refers to April 26, 2008 and May 3rd, 2008.

19 It says: "GoDaddy set the domain names

20 'petronastower.net' and 'petronastowers.net' to

21 'auto renew'."

22 What does "auto renew" mean?

23 A. Auto renew as it pertains to this comment

24 here is a function where the domain would renew

25 itself upon expiration automatically and charge the

1 of domain name resolution."

2 Is that an accurate statement of your  
3 opinion?

4 A. Correct. Yes.

5 Q. Can you explain to me why you believe that  
6 domain name registrars do not play a direct or  
7 active role in the process of domain name  
8 resolution?

9 A. In my opinion, the domain name resolution  
10 process is a separate function from registration in  
11 that the DNS servers themselves are not part of  
12 registration. So those DNS servers can be run by  
13 any entity.

14 Q. Okay. But the identification of those  
15 domain name servers is done by the registrar; is  
16 that correct?

17 A. Correct.

18 Q. If the domain name registrars do not  
19 identify those domain name servers, can there be  
20 resolution?

21 A. No. But that's a one-time process.

22 Q. And because that's only a one-time process,  
23 in your opinion you do not believe that is a direct  
24 or active role. Is that accurate?

25 A. Correct.

1 BY MR. SLAFSKY:

2 Q. I can read the whole sentence, but that's  
3 correct, the last clause of the first sentence.  
4 "GoDaddy caused to be programmed to link those  
5 domain names to the IP address of another server  
6 controlled and operated by GoDaddy."

7 A. Correct.

8 Q. So what do you mean by "GoDaddy caused to  
9 be programmed" in this context?

10 A. So the customer initiates the request, and  
11 GoDaddy actually programmatically does the change.

12 Q. Programmatically, you mean through  
13 technological means?

14 A. Right.

15 MR. SLAFSKY: I think we are about to run  
16 out of videotape, so I am just going to take a quick  
17 break here so the videographer can do his magic.

18 THE VIDEOGRAPHER: We are going off the  
19 record. The time is 11:21 a.m. Here marks the end  
20 of videotape number one in the deposition of Kevin  
21 Fitzsimmons.

22 (A recess was taken.)

23 THE VIDEOGRAPHER: We are back on the  
24 record. The time is 11:29 a.m. Here marks the  
25 beginning of videotape number two in the deposition

1 Q. Professional.

2 A. Professional? I think the references made  
3 in the report include references to RFCs, as I  
4 mentioned earlier. And to the ICANN agreements. I  
5 believe those support my opinions.

6 MR. SLAFSKY: I'm going to mark as Exhibit  
7 No. 6 the First Amended Complaint in this matter.

8 (Exhibit No. 6 was marked for  
9 identification.)

10 BY MR. SLAFSKY:

11 Q. Mr. Fitzsimmons, I just ask you to take a  
12 moment to look at this document. I am not expecting  
13 you to read all of it.

14 Is this document familiar to you?

15 A. Yes. I believe I have seen this document.

16 Q. Have you reviewed the document?

17 A. Yes. I believe I have reviewed this  
18 document.

19 MR. SLAFSKY: I am going to mark as  
20 Exhibit 7 a copy of the amended answer and  
21 counterclaim in this matter.

22 (Exhibit No. 7 was marked for  
23 identification.)

24 BY MR. SLAFSKY:

25 Q. I'm going to ask you again,

1 Mr. Fitzsimmons, to take a quick look at this  
2 document as well.

3 Once again, I'm not asking you to review  
4 everything, but I am going to ask you if you are at  
5 all familiar with this document.

6 A. Yeah, I don't believe I have seen this  
7 document before. I am not sure whether or not I  
8 have seen this document previously.

9 Q. And other than Exhibit 6, which is the  
10 First Amended Complaint, have you reviewed any court  
11 filings or pleadings in connection with this  
12 lawsuit?

13 A. There may have been others. I didn't spend  
14 a lot of time looking at the pleadings. I was  
15 looking more so at the amendments in my report here.

16 Q. And to the extent you did review other  
17 court filings or pleadings in this matter, would it  
18 have been in the context of your discussions with  
19 Mr. Clark?

20 A. Correct.

21 Q. You didn't independently do any review or  
22 analysis of court documents that may be publicly  
23 available?

24 A. No.

25 MR. SLAFSKY: I am going to mark as Exhibit

1 R E P O R T E R ' S C E R T I F I C A T E

2 I, SHELLEY M. SAILOR, duly authorized to  
3 administer oaths pursuant to Section 2093(b) of the  
4 California Code of Civil Procedure, do hereby  
5 certify that the witness in the foregoing deposition  
6 was by me duly sworn to testify the truth in the  
7 within-entitled cause; that said deposition was  
8 taken at the time and place therein cited; that  
9 testimony of said witness was reported by me and  
10 thereafter transcribed under my direction into  
11 typewriting; that the foregoing is a complete and  
12 accurate record of said testimony; and that the  
13 witness was given an opportunity to read and correct  
14 said deposition and to subscribe the same. Should  
15 the signature of the witness not be affixed to the  
16 deposition, the witness shall not have availed  
17 himself of the opportunity to sign or the signature  
18 has been waived. I further certify that I am not of  
19 counsel nor attorney for any of the parties in the  
20 foregoing deposition and caption named nor in any  
21 way interested in the outcome of the cause named in  
22 said caption.

23 DATED: November 10, 2011

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SHELLEY M. SAILOR, CSR NO. 10254