

EXHIBIT 4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETROLIAM NASIONAL BERHAD,)
)
 Plaintiff,)
)
 vs.)
)
 GODADDY.COM, INC.,)
)
 Defendant.)
)
 _____)
 GODADDY.COM, INC.,)
)
 Counterclaimant,)
)
 vs.)
)
 PETROLIAM NASIONAL BERHAD,)
)
 Counterclaim Defendant.)
)
 _____)

CASE NO.: 09-CV-5939 PJH

REBUTTAL EXPERT REPORT OF MICHAEL PALAGE

1. I have been retained by GoDaddy.com, Inc. (“Go Daddy”) to provide expert testimony in this matter, including rebuttal of Plaintiff’s expert witnesses Tina Dam and Kevin Fitzpatrick. My qualifications in connection with this subject matter have been set forth in my Expert Report dated 3-October-2011.

I. BASIS FOR TESTIMONY

2. I have carefully read each of the expert statements of both Tina Dam and Kevin Fitzpatrick and have reviewed the other 1400 pages in attachments accompanying each statement. In formulating the opinions contained in this rebuttal report, I have also reviewed the following documents which each have been included as an exhibit to this report:

- DailyChanges.com website
- Hover.com website
- Domainsatcost.ca website
- Rebel.com website
- Ascio website
- Speednames.com website

II. SUMMARY OF REPORT AND CONCLUSIONS

3. Plaintiff's experts have provided a narrow interpretation of basic registrar services in the current domain name marketplace. Their interpretation is not supported by any factual data and is inconsistent with my understanding of basic registrar services.
4. All of the factual data available, including the specific history of the domain registrar marketplace, legislative history of the Anti-Cybersquatting Consumer Protection Act (ACPA), ACPA case law, technical documentation, and other legal documents make clear that registrars provide a much broader scope of basic services in connection with domain name registrations.
5. There is nothing in Plaintiff's expert reports that suggests Go Daddy has ever acted in bad faith in connection with its provision of domain name registration services for the domain names underlying this lawsuit, PETRONASTOWER.NET and PERTRONASTOWERS.NET.

III. COMMON THEME OF PLAINTIFF'S EXPERT REPORTS

6. The common theme of the over 2800 pages of documents comprising the Plaintiff's expert reports can be distilled down to the following three points:
 - Registrars play no role in domain name resolution services;
 - Registrars' only role in providing domain name registration services is to submit and maintain a limited set of data to a registry on behalf of a registrar; and
 - Domain name forwarding is separate and distinct from domain name registration.

REBUTTAL TO TINA DAM'S OPINIONS

7. Plaintiff's expert Tina Dam has stated that it is her expert opinion that:
- “the domain name registrars (in their domain name registration services) do not play a direct or active role in the process of domain name resolution.”;
 - “Their only function related to domain name registration is to submit, update, and otherwise maintain requests to the domain name registry for registration including the name servers that are authoritative for the registered domain name.”;
 - “The forwarding or redirection services is an added service typically provided by registrars to its customers. In [her] opinion, such service is separate to that of domain name registration.”

Based on my experience in the domain name field and my review of considerable empirical data, I disagree with these opinions.

A. REGISTRARS PLAY A ROLE IN DOMAIN NAME RESOLUTION

8. The first opinion of Ms. Dam is that registrars do not play a direct or active role in domain name resolution. However, she provides no factual foundation for her opinion.
9. Listed below is data obtained from the website DailyChanges.com, a recognized source within the domain name industry for statistics regarding daily changes to the most popular authoritative name servers in the .com, .net, .org, .info, .biz, generic top-level domains (gTLDs) registries, which account for over 95% of the entire gTLD global market share. See Exhibit #1.

Rank	Name Server	Domain Names Associated with these Names Servers	Associated with ICANN - Accredited Registrar	ICANN-Accredited Registrar
1	DOMAINCONTROL.COM	31,474,914	Yes	Go Daddy
2	NAME-SERVICES.COM	3,486,023	Yes	eNom
3	WORLDNIC.COM	3,062,681	Yes	Network

				Solutions
4	1AND1.COM	2,883,019	Yes	1 & 1
5	SEDOPARKING.COM	1,931,642	Yes	Sedo
6	HOSTGATOR.COM	1,842,795	Unknown	N/A
7	YAHOO.COM	1,805,652	No	N/A
8	DSREDIRECTION.COM	1,513,735	Yes	NameKing
9	BLUEHOST.COM	1,494,000	Yes	FastDomain
10	REGISTER.COM	1,415,147	Yes	Register.com

Source DailyChanges (<http://www.dailychanges.com/>) Date: 4-October-2011

10. These domain name servers are the authoritative name servers which both of Plaintiff's experts acknowledge are essential for domain name resolution. These authoritative name servers contain the information that help Internet users resolve webpages as well as send and receive email in connection with specific domain names.
11. The table above illustrates that 80% of the top-ten name servers providing resolution for gTLD registries are directly associated with an ICANN-accredited registrar, while the other 20% provide are run by companies providing domain name registrations services through an ICANN-accredited registrar. These numbers on their face contradict the statement of Plaintiff's expert Ms. Dam that registrars have no director active role in domain name resolution.
12. In the table above the second level domain name DOMAINCONTROL.COM is operated by Go Daddy. Go Daddy uses this name server to provide resolution services in connection with over 30 million domain names. In fact the primary and secondary domain name servers for the domain names PETRONASTOWER.NET and PETRONASTOWERS.NET, the two domain names underlying this lawsuit, are NS39.DOMAINCONTROL.COM and NS40.DOMAINCONTROL.COM.

Domain Name: PETRONASTOWER.NET
Registrar: GODADDY.COM, INC.
Whois Server: whois.godaddy.com
Referral URL: http://registrar.godaddy.com
Name Server: NS39.DOMAINCONTROL.COM
Name Server: NS40.DOMAINCONTROL.COM
Status: clientDeleteProhibited
Status: clientRenewProhibited
Status: clientTransferProhibited
Status: clientUpdateProhibited
Updated Date: 18-apr-2011
Creation Date: 08-may-2003
Expiration Date: 08-may-2013

>>> Last update of whois database: Thu, 27 Oct 2011

Domain Name: PETRONASTOWERS.NET
Registrar: GODADDY.COM, INC.
Whois Server: whois.godaddy.com
Referral URL: http://registrar.godaddy.com
Name Server: NS39.DOMAINCONTROL.COM
Name Server: NS40.DOMAINCONTROL.COM
Status: clientDeleteProhibited
Status: clientRenewProhibited
Status: clientTransferProhibited
Status: clientUpdateProhibited
Updated Date: 18-apr-2011
Creation Date: 08-may-2003
Expiration Date: 08-may-2013

>>> Last update of whois database: Thu, 27 Oct 2011

Source: http://www.verisigninc.com/en_US/products-and-services/domain-name-services/whois/index.xhtml

13. It is no coincidence that the top-ten registrars, such as Go Daddy (#1), eNom (#2), Network Solutions (#4), 1&1(#5), and Register.com (#10), as originally identified in my 3-October-2011 Export Report, also appear in this top-ten list of most popular name servers in the table above, e.g. Go Daddy (#1), eNom (#2), Network Solutions (#3), 1&1 (#4) and Register.com (#10).¹
14. Also included in this table of most active domain name servers are ICANN-accredited registrars Sedo (#5), NameKing(#8), and FastDomain (#9),
15. It is therefore difficult to reconcile the opinion of Ms. Dam that registrars “do not play a direct or active role in the process of domain name resolution,” on the one hand, with these objective facts, on the other. These facts demonstrate clearly and unequivocally that registrars play a direct and active role in providing domain name resolution services.

B. REGISTRARS PROVIDE A WIDE RANGE OF REGISTRATION SERVICES

16. The second opinion of Ms. Dam is that a registrar’s “only function related to domain name registration is to submit, update, and otherwise maintain requests to the domain

¹ In my 3-October-2011 Expert Report, Schlund + Partners was identified by Webhosting.info as the fourth largest gTLD registrar according to marketshare. There was a merger between Schlund + Partners and 1&1, and 1 & 1 is now identified by ICANN as the legal entity holding the accreditation, see <http://www.icann.org/en/registrars/accredited-list.html>

name registry for registration including the name servers that are authoritative for the registered domain name.”

17. While Ms. Dam’s opinion of registrar services would have been an accurate description of registrar services in 1997, prior to the creation of ICANN and the current competitive domain name marketplace, her description of services is inconsistent with the breadth and scope of services that registrars have provided since that time.
18. As established in my 3-October-2011 Expert Report, each of the top-ten gTLD registrars today provides an expansive range of basic domain name services, including but not limited to resolution and domain name forwarding (see below for more detailed discussion).
19. Further evidence of the increased scope of domain name registrar services since 1997 is contained in the very ICANN Registrar Accreditation Agreement cited as an exhibit to Ms. Dam’s report. Specifically, the Appendix to the .NAME gTLD registry agreement, which must be executed by any ICANN-accredited registrar wishing to provide services for .NAME registration, includes the following text:

Data Submission. Pursuant to Subsection 3.2.1, as part of its registration for **SLD E-mail forwarding**, the NameWatch Service, and Defensive Registrations, Registrar shall submit to, or shall place in the Registry Database operated by, the Registry Operator for the TLD that Registry Operator, consistent with Appendix C to its Registry Agreement with ICANN, data elements Registry Operator requires be submitted to it.
(Dam Expert Report, Page 686)

This agreement on its face contradicts the narrow interpretation of services that Ms. Dam claims a registrar provides to registrants. The agreement cites services such as NameWatch services and E-mail forwarding, which are well beyond the scope of Plaintiff’s narrow interpretation.

20. While this is just one example of a diverse range of basic services which ICANN-accredited registrars can provide through a gTLD registry, the domain name marketplace is evolving and many such other services are now routinely offered. I expect the scope of basic services offered by registrars will continue to expand. Ms. Dam in her capacity as Chief Operation Officer (COO) of .MUSIC and Co-Founder of MyTLD should more fully appreciate the potential future innovation that ICANN’s current new gTLD process will bring to the current registrar marketplace.

21. The continued innovation which ICANN has heralded as part of its new gTLD program will further distance the current registrar market place from the one that existed in 1997.
22. Evidence of this evolution within the domain name marketplace and the innovative services that registrars and registries provide were foreshadowed by the very engineers that developed the protocols and standards upon which the domain name system (DNS) was created.
23. For example, Ms. Dam's expert report includes a stack of Request for Comments (RFCs) which provide the foundation to the technical standards which make the Internet the stable and interoperable network that it is today.² Numerous excerpts from these various technical documents contain clear and direct evidence of a much broader scope of basic services that could be provided or bundled into the DNS.
24. In RFC 5750 regarding the Extensible Provisioning Protocol (EPP), which is the protocol by which ICANN-accredited registrars and registries exchange data, it states in relevant part that:

The original motivation for this protocol was to provide a standard Internet domain name registration protocol for use between domain name registrars and domain name registries. This protocol provides a means of interaction between a registrar's applications and registry applications. **It is expected that this protocol will have additional uses beyond domain name registration.** (Emphasis added) (Dam Expert Report Page 740)

As set forth above, the engineer that created EPP, the protocol which registrars and registries use to exchange domain name registration data, recognized that it has additional uses beyond just domain name registrations. For example, it is through EPP that ICANN-accredited registrars can provide the bundled .NAME services listed above, e.g. E-mail forwarding.

25. RFC 5731 regarding EPP Domain Name Mapping states the following:

While the **DNS allows many resource record types to be associated with a domain**, this mapping only explicitly specifies elements that describe resource records used for domain delegation and resolution. **Facilities to provision other**

² RFCs are published by the Internet Engineering Task Force (IETF) and describing methods, protocols, research, or innovations applicable to the secure stable operation of the Internet and Internet-connected systems. A list of all RFCs are maintained by the IETF at <http://www.ietf.org/rfc.html>

domain-related resource record types can be developed by extending this mapping. (Emphasis added)
(Dam Expert Report Page 807)

26. This RFC also acknowledges the future addition of other resource records into authoritative name servers. Other resource records could be used in potential new and innovative ways, such as the Name Authority Pointer (NAPTR) records used by TelNic in connection with the .TEL registry. The NAPTR records contain contact information such as a URL and an Enumservice that indicate the type of URL information, such as email or phone service.³
27. In RFC 3375 regarding Generic Registry-Registrar Protocol Requirements (the predecessor to EPP) this document states:

7.5 Extensibility

[1] Extensibility is a measure of the extent to which a **protocol can be adapted for future uses that were not readily evident when the protocol was originally designed.** The protocol SHOULD provide features that at a minimum allow for the management of new object types without requiring revisions to the protocol itself.

[2] **The requirements described in this document are not intended to limit the set of objects that might be managed by the protocol. The protocol MUST include features that allow extension to object types that are not described in this document.**

[3] **The protocol MUST provide an optional field within all commands whose format and use will be controlled by individual registry policy.**

(Emphasis added)

(Dam Expert Report Page 935)

This RFC in clear and unequivocal language acknowledges the future evolution of the technology when it states that the protocol can be used for “future uses that were not readily evident when the protocol was original designed.”

28. In RFC 1034 entitled Domain Names – Concepts and Facilities, written by Paul Mockapetris, the Father of the DNS, it states in relevant part:

[T]he domain system is intentionally extensible. Researchers are continuously proposing, implementing and experimenting with new data types, query types,

³ See http://dev.telnic.org/pages/record_types.html

classes, functions, etc.
(Dam Expert Report Page 991)

29. RFC 1035 entitled Domain Names – Implementation and Specification states in relevant part:

The domain system is a mixture of functions and data types which are an official protocol and functions and data types which are still experimental. Since the domain system is intentionally extensible, **new data types and experimental behavior should always be expected in parts of the system beyond the official protocol.**

(Dam Expert Report Page 1043)

30. These technical documents overlay, if not predict, the evolution of the domain name ecosystem that has occurred over the last fourteen years. In contrast, Plaintiff's experts cling to an overly narrow definition of registrars services which has not been seen since 1997, and which will be further relegated to the history books with ICANN's planned expansion of the name space to create an unlimited number of new gTLDs.

C. DOMAIN NAME FORWARDING IS A UBIQUITOUS REGISTRAR SERVICE

31. The third opinion of Ms. Dam is that forwarding or redirection services are an added service separate from that of domain name registration. As previous stated, it is difficult to reconcile this statement with the factual evidenced produced in my Export Report dated 3-October-2011. That factual evidence, including documentation of domain name forwarding in each of the top-ten ICANN-accredited registrars, made clear, that this is a ubiquitous service provided by the top-ten ICANN- accredited registrars. See Exhibits 2 thru 9. Additional research encompassing even a broader cross section of ICANN-accredited registrars reaffirms that this service is routinely offered within the registrar marketplace generally.
32. To illustrate this point further, I have also reviewed the websites of registrars that Ms. Dam previously worked for either directly or indirectly prior to her employment with ICANN.

33. Hover is a service of TUCOWS, the third largest registrar in the world, and an ICANN-accredited registrar for whom Ms. Dam previously consulted prior to her employment with ICANN. Hover as part of its basic domain name registration service bundles domain name forwarding for free. See Exhibit 9.
34. Ms. Dam also previously worked for Momentous, Inc., which owns a family of ICANN-accredited registrars including Domainsatcost.ca and Rebel.com. These registrars bundle domain name forwarding for free with their basic domain name registration services. See Exhibits 10 and 11.
35. Ms. Dam also worked for Ascio Technologies. Today Ascio Technologies, an ICANN-accredited registrar, provides as a service to its clients “a powerful management tool, which gives full control over DNS configuration and related services through a web interface” including the ability to “redirect web traffic from one domain to another.” See Exhibit 12.
36. Ms. Dam also worked for Speednames, another ICANN-accredited registrar. Speednames also bundles domain name forwarding, for free, with its basic domain name registration services. See Exhibit 13.
37. It is hard to reconcile Ms. Dam’s statement that domain name forwarding is a separate service, when the facts point to it being a ubiquitous service that many registrars bundle for free as part of a basic domain name registration.

IV. REBUTTAL TO KEVIN FITZPATRICK’S OPINIONS

38. Given the substantial overlap of substantive material contained in the expert reports of Ms. Dam and Mr. Fitzpatrick, most, if not all, of my statements above regarding Ms. Dam’s opinions are equally applicable to Mr. Fitzpatrick’s opinion as well.
39. Kevin Fitzpatrick has stated that it is his expert opinion that:
 - “the process for domain name forwarding is completely separate from the process of domain name registration and does not any action by a domain name registrar”;
 - “domain name forwarding and routing cannot be considered part of domain name registration services generally or the domain name registration services offered by Go Daddy”;

- “the process of domain name registration, in all relevant respects, involves nothing more than the creation of a record linking a domain name to an Authoritative Domain Name Server.”; and
- “domain name forwarding service cannot be considered part of its function as a registrar providing domain name registration (or maintenance).”

Based on my experience in the domain name field and my review of considerable empirical data, I disagree with these opinions.

A. DOMAIN FORWARDING IS NOT A SEPARATE SERVICE PROVIDED BY REGISTRARS

40. Plaintiff’s expert Mr. Fitzpatrick is of the opinion that domain name forwarding is a separate service provided by registrars, but offers no proof to support this claim.

41. As established in my original 3-October-2011 expert report and supplemented by the statements in Paragraphs 31 thru 37 above, domain name forwarding is a ubiquitous service not only offered by the top-ten ICANN-accredited gTLD registrars, but by most retail registrars I have researched, including the five registrars to which Plaintiff’s other expert Ms. Dam has provided professional services.

B. DOMAIN FORWARDING AND ROUTING IS A BUNDLED SERVICE PROVIDED BY REGISTRARS

42. Plaintiff’s expert Mr. Fitzpatrick is also of the opinion that domain name forwarding and routing cannot be considered part of a domain name registration, but again offers no data or proof from the domain name marketplace to support this claim.

43. As to this issue, the facts provided in my original 3-October-2011 expert report and supplemented by the statements in Paragraphs 8 thru 30 in this report remain unchallenged.

C. DOMAIN NAME REGISTRATION INVOLVES MORE THAN LINKING A DOMAIN NAME TO AN AUTHORITATIVE NAME SERVER

44. Plaintiff's expert Mr. Fitzpatrick is of the opinion that the process of domain name registration, in all relevant respects, involves nothing more than the creation of a record linking a domain name to an Authoritative Domain Name Server.
45. As established in my original 3-October-2011 expert report and supplemented by the statements in Paragraphs 8 thru 13 above, this opinion appears based on the narrow interpretation of registrar services based on a 1997 marketplace, while ignoring the objective facts from today's registrar marketplace of services.

D. DOMAIN NAME FORWARDING IS A UBITIOUS REGISTRAR SERVICE

46. Mr. Fitzpatrick states his opinion, without any supporting documentation, that domain name forwarding is not part of domain name registration or maintenance. As I stated in Paragraphs 31 thru 37 above there is clear and unequivocal evidence to the contrary.

V. CONCLUSION

47. Plaintiff's experts have provided a narrow interpretation of basic registrar services in the current domain name marketplace, which is not supported by any factual data, and which is inconsistent on my understanding of basic registrar services.
48. All of the factual data available, including the specific history of the domain registrar marketplace, legislative history of the ACPA, ACPA case law, technical documentation, and other legal documents make clear that registrars provide a much broader scope of services in connection with domain name registrations.

49. Adopting the overly narrow definition of registrar services proposed by Plaintiff's experts could potentially undermine over a decade of well-established case law.
50. Finally, Plaintiff's expert reports remain void of any facts demonstrating Go Daddy has ever acted in bad faith in connection with its provision of domain name registration services for the domain names underlying this lawsuit, PETRONASTOWER.NET and PERTRONASTOWERS.NET.

By: Michael D. Palage

Name: Michael D. Palage

Date: 2 November 2011