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6 Attorneys for Plaintiff Louis
 7 Vuitton Malletier, S.A.

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

11	Louis Vuitton Malletier, S.A.,)	Case No. C 07 3952 JW
12)	
13	Plaintiff,)	PLAINTIFF'S MOTION IN LIMINE TO
14	v.)	EXCLUDE TESTIMONY OF RICHARD
15	Akanoc Solutions, Inc., et al.)	GRALNIK CONCERNING ISP
16)	PRACTICES AND THE
17	Defendants.)	REASONABLENESS OF
18)	DEFENDANTS' POLICIES

17 TO THE COURT AND TO THE DEFENDANTS:

18 PLEASE TAKE NOTICE that Plaintiff Louis Vuitton Malletier, S.A. will and hereby does
 19 move the Court to Exclude the Testimony of Richard Gralnik Concerning ISP Practices and the
 20 Reasonableness of Defendants' Policies.

21 This motion is based on this Notice of Motion, Motion to Exclude the Testimony of
 22 Richard Gralnik Concerning ISP Practices and the Reasonableness of Defendants' Policies,
 23 accompanying Memorandum of Points and Authorities, the Declarations and exhibits attached
 24 thereto, the exhibits and evidence to be presented at the hearing hereon, the pleadings, records and
 25

1 papers on file herein and such other matters and evidence as may be presented at or before the
2 hearing.

3 Dated: August 24, 2009

J. Andrew Coombs, A Professional Corp.

4 _____
5 /s/ J. Andrew Coombs

By: J. Andrew Coombs

Annie S. Wang

6 Attorneys for Plaintiff Louis Vuitton Malletier, S.A.
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INTRODUCTION

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2 Plaintiff Louis Vuitton Malletier, S.A. (“Louis Vuitton” or “Plaintiff”) brings this motion to
3 Exclude the Testimony of Richard Gralnik Concerning ISP Practices and the Reasonableness of
4 Defendants’ Policies due to Mr. Gralnik’s lack of reliable knowledge, skill, training, education and
5 expertise on these matters.

6 In particular, Defendants propose to have Mr. Gralnik testify to certain opinions relating to
7 the handling of abuse complaints by webhosts. The opinions concerning which Mr. Gralnik is not
8 qualified to offer an opinion are highlighted in the following summary of opinions outlined in his
9 two expert reports. In his initial Expert Report dated May 18, 2009, Mr. Gralnik expressed the
10 following five opinions:

- 11 ***1. It is my opinion that Akanoc/Managed Solutions Group’s procedures for responding***
12 ***to complaints they receive about the online activities of companies they host are***
13 ***reasonable and are consistent with the options available.***
- 14 ***2. It is my opinion that Akanoc/Managed Solutions Group utilizes the most severe***
15 ***recourse an ISP can reasonably apply in response to complaints about the alleged***
16 ***activities of their clients.***
- 17 3. It is my opinion that unmanaged Internet hosting is a standard business model.
- 18 4. It is my opinion that content filtering is not feasible as a mechanism for preventing an
19 ISP’s clients from conducting whatever business they choose.
- 20 5. It is my opinion that the information returned by a Whois query on the Internet can
21 contain information that is incorrect.

22 On June 25, 2009, Mr. Gralnik signed a Supplemental Expert Report in which he expressed
23 the following additional opinions:

- 24 1. It is my opinion that resellers are an integral part of the ISP hosting industry.
- 25 2. It is my opinion that hosting companies that have reseller programs offer substantial
26 similar business models for resellers.

1 3. *It is my opinion that hosting companies follow similar procedures for responding to*
2 *complaints about websites.*

3 4. *It is my opinion that hosting companies do not have a set period of time for*
4 *responding to a complaint.*

5 5. It is my opinion that if a website is not accessible on the Internet then its content is not
6 publicly available.

7 During his deposition, relevant portions of which are attached hereto as Exhibit B, Mr.
8 Gralnik could identify no training or experience which qualifies him to testify concerning webhost
9 practices or their handling of abuse complaints. (A copy of his resume is attached as Exhibit A.)
10 Worse still, Mr. Gralnik could testify to only the most cursory investigation of such practices with
11 but a couple of webhosts – chosen for no specific reason that Mr. Gralnik could identify – which
12 consisted of a couple of calls to unidentified webhost “help desks” and a couple of additional
13 telephone calls with Defendant Chen and/or personnel employed by Defendant Chen.

14 **ARGUMENT**

15 Rule 702 requires that a testifying expert be "qualified as an expert by knowledge, skill,
16 experience, training, or education." Fed. R. Evid. 702. The threshold for qualification is low, a
17 minimal foundation of knowledge, skill, and experience suffices. Hangarter v. Provident Life &
18 Accident Ins. Co., 373 F.3d 998, 1015-16 (9th Cir. 2004). However, the threshold still must be met.

19 The trial court must determine whether so-called “expert” testimony is both reliable and
20 relevant. Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 589, 113 S. Ct. 2786, 125 L. Ed. 2d
21 469 (1993) ("Daubert I"). The court has broad discretion in assessing both requirements. See
22 United States v. Alatorre, 222 F.3d 1098, 1100 (9th Cir. 2000). The reliability requirement ensures
23 "that an expert, whether basing testimony on professional studies or personal experience, employs
24 in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in
25 the relevant field." Kumho Tire Co. v. Carmichael, 526 U.S. 137, 152, 119 S. Ct. 1167, 143 L. Ed.
26 2d 238 (1999). Those falling below this level of “intellectual rigor” should not be put forth as
27

1 experts and should not be allowed to give opinions on topics of which they are newly associated at
2 best.

3
4 The offering party must show by a preponderance of the evidence (1) that the expert is
5 qualified to render the opinion, and (2) that the opinion offered has adequate support. Daubert I,
6 509 U.S. at 588-90. Expert testimony is not admissible if it is speculative. See GE v. Joiner, 522
7 U.S. 136, 146, 118 S.Ct. 512, 139 L. Ed. 2d 508 (1997). To satisfy the relevance requirement, the
8 proffered expert testimony must assist the trier of fact in understanding or determining a fact in
9 issue. Daubert I, 509 U.S. at 591. In assessing relevance, the court must look to the governing
10 substantive legal standard. See Daubert v. Merrell Dow Pharms., Inc., 43 F.3d 1311, 1320 (9th
11 Cir. 1995) ("Daubert II").

12 Mr. Gralnik fails to satisfy either standard to testify: he has neither the training, education
13 nor experience to qualify as an expert and his minimal, seemingly random investigation of webhost
14 practices fails to demonstrate adequate support for the highlighted opinions, above.

15 As evidenced by Mr. Gralnik's resume, attached as Exhibit A, Mr. Gralnik has worked with
16 computers for over twenty years. What Mr. Gralnik has not done is any work in the Internet
17 industry.

- 10
- 18 Q Have you at any time worked for an ISP?
19 A No.
20 Q Have you at any time provided expert testimony
21 on behalf of an ISP before this matter?
22 A No.
23 Q Have you at any time prepared an expert report
24 without having provided testimony concerning ISP
25 practices or the subject matter of this litigation?
26 A No.
27 Q Have you at any time worked for an ISP?
28 A No.
29 Q Is there anything on your resume that you would
30 draw to my attention as evidencing expertise and the
31 issue of internet service provider practices?
32 A To that specific topic, not that I can think of
33 at the moment.
34 Q Is there anything in your professional
35 experience that's not reflected on your C.V. that will
36 reflect expertise in that subject matter?

11

1 A I have expertise and experience in the internet
2 itself. As far as the practices of specific businesses

1 3 that use the internet, no.

2 Deposition of Richard Gralnik (“Gralnik Depo”), June 29, 2009, 10:7-11:3

3 Mr. Gralnik then continues to testify concerning work experience with the Internet which
4 confirms that none has any relationship to websites, website hosting or practices adopted by
5 businesses working in that arena. Declaration of J. Andrew Coombs (“Coombs Decl.”) at Ex. B
6 pp. 11:4-13:18. In particular, one job (from the 1980s) predated the Internet as we now know it,
7 specifically including the World Wide Web and the second, with Hewlett Packard did not concern
8 web hosting:

13

9 6 Q Did that internet connectivity involve any kind
10 7 of retail services along the lines provide by
11 8 web-hosting services?

12 9 A No.

13 10 Q Did it involve the response to abuse
14 11 complaints?

15 12 A No.

16 13 Q Does any of the work outlined in your resume or
17 14 not reflected in your resume reflect any experience in
18 15 dealing with abuse complaints?

19 16 A No.

20 17 Q Did you have any such experience?

21 18 A No.

22 *Id.* at p. 13:6-18.

23 Mr. Gralnik is clearly not an expert on web-hosting practices and responses to abuse
24 complaints.

25 But even were Mr. Gralnik considered an expert on webhost business practices and abuse
26 response, his preparation to testify in this matter is woefully deficient:

34

27 10 Q Have you looked at the SePRO database?

28 11 A I haven't seen it directly, no.

12 Q So you couldn't say from firsthand what kind of
13 data is maintained in the SePRO database or whether it
14 would enable the kind of tracking you just described?

15 A No. The information I have about SePRO is
16 based on exhibits that were provided to me from other
17 people.

18 Q Who?

19 A I believe it was Mr. Wilson's report. I have
20 that as an exhibit.

21 Q That's the only version of the SePRO report
22 you've seen?

23 A Yes.

24 Q Do you know who Juliana Luk is, L-u-k?

1 25 A I can't think of that as I sit here, no.

35

2 1 Q You've never talked to her in connection with
3 2 this matter?

3 3 A No, I have not.

4 *Id.* at pp. 34:10-35:3.

5 Mr. Gralnik then testifies to his review of Defendants' terms of service and the fact that he
6 did not discuss the remedies for violation of those terms of service with Defendants' employees
7 that were interviewed (Steve Chen and Andrew Cheng). From the discussion which follows at
8 37:15-39:5 it is clear that Mr. Gralnik did not interview anyone with the Defendants concerning
9 their actual practices as they related to abuse complaints. This is borne out elsewhere in the
10 deposition where he does describe his actual preparation.

41

11 23 Q You testified earlier that among other things,
12 24 you interviewed Steve Chen in preparation for this
13 25 expert report?

42

13 1 A Yes.

14 2 Q Did you interview him once or more than once?

15 3 A I think I talked to him twice.

16 4 Q And was it in person or telephonic?

17 5 A Telephone.

18 6 Q And how long were the communications?

19 7 A I think I talked to Steve about 45 minutes.

20 8 Q On both occasions or each or -- I'm sorry. In
21 9 total?

22 10 A I'm sorry. I don't recall the exact length of
23 11 the conversation. I think it was a total of 45 minutes.

24 12 Q And that was before you prepared your expert
25 13 report here?

26 14 A Yes.

27 15 Q Have you had any conversations with him since
28 16 then?

17 17 A I think I spoke to him once about getting in
18 touch with Andrew Chang.

19 19 Q And that's it.

20 20 A As I recall sitting here now.

21 21 Q And you spoke with Andrew Chang how many times?

22 22 A I think just the one time.

23 23 Q And how long was that conversation?

24 24 A I believe that was also about a half hour, 45
25 25 minutes.

26 *Id.* at pp. 41:23-42:25.

27 Mr. Gralnik's preparation with reference to the practices of the industry was, if anything,
28 even more cursory despite the fact that he had no experience or training with webhost practices.

43

6 Q You also interviewed Eric Willis and Eric
7 Bursley with Rackspace; is that correct?

8 A Yes.

9 Q And those were telephonic interviews as well?

10 A Yes.

11 Q And how long were each of those interviews?

12 A 20 minutes, half an hour I think.

5
6 *Id.* at p. 43:6-12.

7 Mr. Gralnik's choice of Rackspace appears to have been based on somewhat random
8 considerations.

44

9 What research did you do to identify Rackspace
10 as one of the largest ISPs in the country?

11 A Searches on Google, reading their web page,
12 looking at various materials that talked about different
13 companies available.

11
12 *Id.* at p. 44:9-13.

13 His review of limited written review from two other ISPs was similarly random. Coombs
14 Decl. at Ex. B. pp. 44:14-45:20. Apart from this nominal investigation, Mr. Gralnik spoke with the
15 help desk at a couple of additional ISPs. *Id.* at pp. 52:5-53:6. These companies *did not explain* to
16 Mr. Gralnik what their procedures were in responding to abuse complaints.

53

17 Q Did they describe what procedures were employed
18 internally to track the complaints once they were
19 received?

20 A No, they didn't.

21 Q Did they describe what personnel was dedicated
22 to dealing with abuse complaints?

23 A No.

24 Q Did they describe what training those employees
25 obtained?

26 A No.

27 Q Did they describe what procedures were employed
28 to deal with recidivist complaints, repetition, where
29 they had multiple problems concerning the same customer?

30 A I don't recall talking about recidivist
31 specifically, but we did talk about escalating a process
32 where if there wasn't an adequate response, that they
33 would go to a more severe form of action.

34 Q Did any of them discuss terminating customers?

35 A I believe they did, yes.

54

1 Q Do you remember which ones?

2 A I believe it was Go Daddy. I think Site5,
3 maybe HostGator. I'd have to check.

1 *Id.* at pp. 53:7-54:3

2 55

3 Q Okay. What criteria did they use in making the
4 decision to terminate customers in response to abuse
5 complaints?

6 A They wouldn't tell me.

7 Q I think you said that the ISP generally
8 wouldn't tell you what investigation they would do in
9 response to receipt of an abuse complaint; is that
10 correct?

11 A I'm thinking about Go Daddy right now, that
12 they have an abuse department and would not describe
13 what safeguards or steps their security or abuse
14 department would take in response to these. But let's
15 see. They didn't say they would actually shut down the
16 site. They said they have their own safeguards. They
17 wouldn't tell me what those safeguards were.

18 Q They didn't tell you what timeline they would
19 respond to abuse complaints?

20 56

21 A None of the companies I spoke to talked about
22 timelines or particular amounts of time they would allow
23 to lapse before they took action, and I don't recall
24 seeing anything in any of the acceptable use policies
25 that spelled out any kind of time periods in response
either.

8 Q Are you familiar with the Digital Millennium
9 Copyright Act?

10 A I know of it.

11 Q Are you familiar with the phrase "expeditious
12 removal"?

13 A No, I'm not.

14 *Id.* at 55:10-56:13.

15 Finally, conducted interviews and a chat session which were no more revealing. Mr.
16 Gralnik did not even secure the full name of the individuals with whom he communicated for a
17 total of about an hour.

18 Mr. Gralnik's paltry preparation is evident from his inability to confirm the opinions
19 concerning which stated he would testify.

20 77

21 Q So you're unable to form any conclusion
22 concerning the reasonableness or the procedures of
23 Akanoc as reflected by the fact that there are 16
24 websites hosted on Akanoc servers five months after
25 notification to Akanoc?

26 78

27 A I can't say anything about what actions were
28 taken or what may have happened in the intervening five
months.

1 Q You've had no discussion with anyone acting on
2 behalf of defendants, specifically including Mr. Chen or
3 Mr. Chang, concerning what was done in response to these
4 notifications?
5

6 A No, I haven't asked that.

7 Id. at pp. 77:22-78:9.

8 **CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests that the Court grant its Motion to
10 exclude Mr. Gralnik's testimony on ISP practices and his opinions on the reasonableness of
11 Defendants' policies.

12 Dated: August 24, 2009

13 J. Andrew Coombs, A Professional Corp.

14 /s/ J. Andrew Coombs

15 By: J. Andrew Coombs

16 Annie Wang

17 Attorneys for Plaintiff Louis Vuitton Malletier, S.A.

DECLARATION OF J. ANDREW COOMBS

I, J. Andrew Coombs, declare as follows:

1. I am an attorney at law duly admitted to practice before the Courts of the State of California and the United States District Court for the Northern District of California. I am counsel of record for Plaintiff Louis Vuitton Malletier, S.A. (“Plaintiff” or “Louis Vuitton”) in an action styled Louis Vuitton Malletier, S.A. v. Akanoc Solutions, Inc., et al., Case No. C 07 3952 JW. I submit this declaration in support of Plaintiff’s motion to Exclude the Testimony of Richard Gralnik Concerning ISP Practices and the Reasonableness of Defendants’ Policies. Except as otherwise stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows.

2. Attached Exhibit A is a copy of Exhibit 1530 and identified by Defendants as curriculum vitae for Mr. Gralnik.

3. Attached as Exhibit B are true and accurate copies of portions of the transcript from the deposition testimony of Richard Gralnik which took place on or about June 29, 2009.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 24th day of August, 2009, at San Jose, California.

/s/ J. Andrew Coombs
J. ANDREW COOMBS

Exhibit A

RICHARD GRALNIK

**ONLINESECURITY
5870 WEST JEFFERSON BLVD. SUITE A
LOS ANGELES, CALIFORNIA 90016
310-815-8855 x.218 • RICHARD@ONLINESECURITY.COM**

S U M M A R Y

Computer forensic investigator. Litigation Support Consultant. Expert Witness.

P R O F E S S I O N A L E X P E R I E N C E

ONLINESECURITY LOS ANGELES, CA.

2004-PRESENT

Computer forensic investigations and litigation support

- Apply forensic applications and procedures to analyze electronic evidence in support of civil litigation including
 - o Theft of Intellectual Property
 - o Fraud
 - o Sexual Harassment
 - o Wrongful dismissal
 - o Payroll Disputes (class action)
 - o Willful destruction of company assets
 - o Patent Infringement
 - o Divorce
- Consult with attorneys on writing preservation letters to protect evidence
- Create interrogatory questions for discovery submissions
- Write requests for production of various forms of electronic evidence
- Develop lines of questioning for deposition of designated PMK's, PMQ's and opposing experts.
- Attend depositions of designated PMK's, PMQ's and opposing experts, Advise attorneys on significance of answers to questions and suggest additional questions during proceedings
- Conduct forensic acquisitions of hard disk drives, removable memory devices, cell phones, PDAs and other electronic media
- Coordinate restoration of files and electronic data discovery from backup tapes
- File declarations in support of litigation claims, challenges to opposing motions and procedures
- Project manager and case coordinator between attorneys, clients and investigators
- Testify as an expert witness

I.T. SYSTEM SERVICES STUDIO CITY, CA.

2002-2004

Information Security and General Computer Consultant

- Designed, implemented and supported VPN-based telecommuting networks including installation of firewall appliances and client software
- Designed, created and taught 5-day network management application course. Updated material and taught new class on later version of the application.
- Conducted security audits addressing physical and cyber-security concerns. Presented report to management on findings and recommendations for remediation.
- Conducted penetration testing and vulnerability assessments utilizing standard tools and other methods. Presented report to management on findings and recommendations for remediation.

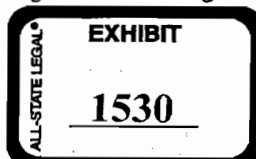


EXHIBIT 1530 DATE 6/29/09
WITNESS Gralnik
DAMARIS MARTINEZ, CSR

Richard Gralnik**Page 2**

- Installed, configured and supported secure end-user systems for SMB and SOHO users including personal firewalls, anti-virus software, anti-spyware and spam blocking software, and operating system patching. Trained users on security awareness and best practices.

HEWLETT-PACKARD COMPANY TORRANCE, CA. **1990 – 2002**
 (Acquired Trinagy, Inc. in 2001. Formerly known as DeskTalk Systems, Inc.)

Vendor of OpenView Performance Insight, a leading network management performance analysis application.

TECHNICAL MARKETING ENGINEER/LEAD TRAINER **1997 – 2002**

- Designed and built a mechanism for monitoring distributed processes and automatically activating fail-over to a secondary system. This became the standard architecture for other implementations in the field.
- Developed training curriculum, designed, created and taught five-day courses on administration and custom reporting solution development. Trained over 400 people including employees, resellers and customers in classes in 10 states and 8 countries. Received 2 excellence awards.
- Designed and built automated capability to identify which elements to monitor or ignore based on provisioning data in database. Dynamic element filtering reduced polling traffic up to 50%.
- Wrote and installed system for linking reports based on content and automating report generation. Solution adopted by engineering as prototype for standard report linking and automated report generation process used in TREND.
- Established pre-sales support group. Assessed customer networks, demonstrated and installed application for evaluation. Defined presentation strategies and materials and wrote standard text for RFP response library. Presented at tradeshow including "longest demo in the history of Interop" that led to first sale to banking industry.
- Wrote first user and administrator manuals for TREND. Reviewed later versions for content, accuracy and organization.

SENIOR ANALYST **1990 – 1997**

Prior to becoming a software vendor, DeskTalk was a network consulting firm for companies in the \$50,000,000 - \$200,000,000 range. Key projects included:

- Redesigned Unix system vendor's nation-wide network. Documented interviews, existing and proposed architectures, IP addressing scheme, DNS configuration, migration plan. Point of contact throughout implementation. New topology reduced traffic levels, improved response time, reduced operating costs, eliminated redundant connections.
- Completed protocol compliance testing of new TCP/IP implementation for network components vendor. Designed, implemented and executed test scenarios. Project included use of routers, bridges, hubs, and three different protocol decode and analysis tools. Documented setup, procedure, results of each test. Reported any bugs discovered. Successful completion led to release of premier third-party TCP/IP suite sold for personal computers.
- Designed router-based network for large law enforcement organization. Design incorporated high speed land lines, microwave communications, integration with legacy platforms, connections to national and international law enforcement networks and databases, and plans for migration from the existing switched network.
- Managed corporate network. Obtained IP network number and vendor enterprise number, registered domain name. Designed and implemented IP subnet addressing scheme. Setup and

Richard Gralnik**Page 3**

maintained DNS including offsite secondary server. Established and maintained Internet link. Technical contact for networking issues.

INDEPENDENT CONSULTANT. LOS ANGELES, CA. 1989-1990

PROGRAMMER

- Wrote SNA LU6.2 and BSC communications applications in FORTRAN linking credit reporting company to TRW, TransUnion and Equifax systems for real-time queries. Automated online queries reduced credit report preparation time from two days to five minutes.

PRIME COMPUTER, INC. NATICK, MA. 1983 - 1989

SENIOR MARKETING SUPPORT SPECIALIST

- Promoted from local general pre-sales analyst focused on databases and programming languages to senior analyst to data communications specialist for the Western United States.
- Technical lead for introduction of TCP/IP on Prime platforms. Directed interoperability testing with other implementations.
- Technical lead on RFP response to county-wide mobile digital network implementation
- Beta support and coordinator for implementation of Oracle RDBMS-based multi-platform remote transaction processing system.
- Reverse engineered a terminal emulation application and wrote user and administrator manuals for the software. Received an Excellence Award for this project

INQUIRY PROCESSING CENTER. TORRANCE, CA. 1982-1983

PROGRAMMER/OPERATIONS MANAGER

- Wrote and maintained software applications written in COBOL and PL/1.
- Ran production processes on IBM 370-158 mainframe under MVS operating system.
- Wrote and maintained JCL operation control programs.

DIGITAX MICRO SYSTEMS, INC. MANHATTAN BEACH, CA. 1981-1982

PROGRAMMER

- Designed and wrote interactive income tax package in BASIC on IBM PC.
- Developed parameter driven process for printing IRS-compliant tax forms on blank paper.

EXPERT WITNESS TESTIMONY

ARBITRATION: COUNTY OF LOS ANGELES

JURY TRIAL: CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES

EVIDENTIARY HEARING: CALIFORNIA SUPERIOR COURT, COUNTY OF ORANGE

DEPOSITION: CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES

DEPOSITION: UNITED STATES DISTRICT COURT, CALIFORNIA SOUTHERN DIVISION

DEPOSITION: UNITED STATES DISTRICT COURT, CALIFORNIA CENTRAL DIVISION

PRELIMINARY HEARING: ARKANSAS CIRCUIT COURT, PULASKI COUNTY SECOND DIVISION

Richard Gralnik

Page 4

P R O F E S S I O N A L T R A I N I N G

REGIONAL COMPUTER FORENSIC GROUP CONFERENCE GEORGE MASON UNIVERSITY, FAIRFAX, VA. 2005, 2007

APPLYING MICROSOFT SECURITY GUIDANCE QUICKSTART, LOS ANGELES, CA.

ENCASE COMPUTER & ENTERPRISE INVESTIGATIONS CONFERENCE GUIDANCE SOFTWARE, PASADENA, CA.

ENCASE INCIDENT RESPONSE, FORENSIC ANALYSIS AND DISCOVERY GUIDANCE SOFTWARE, PASADENA, CA.

CISCO SECURE VPN SABERTECH, GLENDALE, CA.

ADVANCED CISCO PIX FIREWALL SABERTECH, GLENDALE, CA.

CISSP PREPARATION, CERTTEST, GRAPEVINE, TX.

P R O F E S S I O N A L A S S O C I A T I O N S

HIGH TECHNOLOGY CRIME INVESTIGATION ASSOCIATION SOUTHERN CALIFORNIA CHAPTER

INFORMATION SYSTEMS SECURITY ASSOCIATION LOS ANGELES CHAPTER

INSTITUTE OF COMPUTER FORENSIC PROFESSIONALS AFFILIATE MEMBER

SECRET SERVICE ELECTRONIC CRIMES TASK FORCE LOS ANGELES CHAPTER

FBI INFRA GARD NATIONAL MEMBERS ALLIANCE LOS ANGELES CHAPTER, CHAIR OF INFORMATION AND TELECOMMUNICATIONS SECTOR 2003-2006

E D U C A T I O N

BA, Economics (High Honors) • 1981 • *University of California, Santa Barbara*

Degree completed at University of Leeds, England

Certificate of Competence in Data Processing (4.0 G.P.A.) • 1984 • *El Camino College, Torrance, CA.*

Exhibit B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LOUIS VUITTON MALLETTIER, S.A.,)	
)	
Plaintiff,)	
)	
vs.)	CASE No. C073952JW
)	
AKANOC SOLUTIONS, INC., MANAGED)	
SOLUTIONS GROUP, INC., STEVEN CHEN)	
and DOES 1 through 10, inclusive,)	
)	
Defendants.)	
_____)	

DEPOSITION OF RICHARD GRALNIK

Glendale, California

Monday, June 29, 2009

Reported by: Damaris Martinez
 CSR No. 12925
 NDS Job No.: 132459

1 material supplied today?

2 A Yes, they are.

3 Q I'm going to give you a document previously
4 marked as Defendants' Exhibit 1530.

5 Is that a copy of your C.V.?

6 A Yes, it is.

7 Q Have you at any time worked for an ISP?

8 A No.

9 Q Have you at any time provided expert testimony
10 on behalf of an ISP before this matter?

11 A No.

12 Q Have you at any time prepared an expert report
13 without having provided testimony concerning ISP
14 practices or the subject matter of this litigation?

15 A No.

16 Q Have you at any time worked for an ISP?

17 A No.

18 Q Is there anything on your resume that you would
19 draw to my attention as evidencing expertise and the
20 issue of internet service provider practices?

21 A To that specific topic, not that I can think of
22 at the moment.

23 Q Is there anything in your professional
24 experience that's not reflected on your C.V. that will
25 reflect expertise in that subject matter?

1 A I have expertise and experience in the internet
2 itself. As far as the practices of specific businesses
3 that use the internet, no.

4 Q Okay. What is the nature of your expertise and
5 experience dealing with the internet itself?

6 A I've worked as a networking consultant
7 specifically for a couple of companies in the past,
8 doing network design and implementation that often
9 included network connectivity to the internet or dealing
10 with information traveling to or from the internet.

11 Q And what were those two companies?

12 A Prime Computer.

13 Q And the other?

14 A The other is Desk Talk, D-e-s-k T-a-l-k,
15 Systems.

16 Q Were you employed by either of those companies?

17 A Yes, I was.

18 Q I see Prime Computers, 1983 through 1989?

19 A That's correct.

20 Q That's essentially before the worldwide web; is
21 that correct?

22 A Yes.

23 Q And when did you work for Desk Top -- Talk?

24 A From 1990 until -- they were bought by
25 Hewlett Packard in 2001. But I was with the company

1 through the buyout and worked for Hewlett Packard for
2 about a year or so after the buyout. So that contiguous
3 period.

4 Q So that would be largely included within the
5 description of services and expertise under the Hewlett
6 Packard entry on your C.V.; is that correct?

7 A Yes.

8 Q While at Hewlett Packard, did you have any
9 responsibility for operating their web presence?

10 A No.

11 Q You were engaged in working on their intranet
12 and its connection to the internet?

13 A I was involved with working on the network
14 management software.

15 Q Could you elaborate a little bit on how that
16 pertains to the subject matter of this litigation?

17 A The company I worked for before it was bought
18 by Hewlett Packard was a network consulting company.
19 And our business focused primarily around the design
20 implementation of computer networks, which paralleled in
21 structure the way the internet is implemented or
22 connected to the internet.

23 And the company evolved into a network
24 management software company which monitored the
25 performance of networks that, again, either paralleled

1 the construction of the internet in terms of
2 architecture, or use the internet as part of their
3 construction.

4 And in the course of that work, I was involved
5 quite a bit with internet-type activity.

6 Q Did that internet connectivity involve any kind
7 of retail services along the lines provide by
8 web-hosting services?

9 A No.

10 Q Did it involve the response to abuse
11 complaints?

12 A No.

13 Q Does any of the work outlined in your resume or
14 not reflected in your resume reflect any experience in
15 dealing with abuse complaints?

16 A No.

17 Q Did you have any such experience?

18 A No.

19 Q Under "Online Security," which I -- are you
20 employed by Online Security?

21 A Yes, I am.

22 Q In your declaration, I think you used the word
23 "associate." I was wondering if there was a difference
24 or a reason for using that term as opposed to
25 "employed"?

1 and Andrew Chang, you know, they receive a complaint and
2 they would go through this procedure of whatever website
3 the complaint was about, pinging it, getting the IP
4 address back, looking it up, see if it was in their
5 address space, and then looking it up further to see who
6 it was assigned to and if it was still active in their
7 space. And then taking the next steps, as far as the
8 notification or the disabling of the IP address or the
9 disconnecting of the machine.

10 Q Have you looked at the SePRO database?

11 A I haven't seen it directly, no.

12 Q So you couldn't say from firsthand what kind of
13 data is maintained in the SePRO database or whether it
14 would enable the kind of tracking you just described?

15 A No. The information I have about SePRO is
16 based on exhibits that were provided to me from other
17 people.

18 Q Who?

19 A I believe it was Mr. Wilson's report. I have
20 that as an exhibit.

21 Q That's the only version of the SePRO report
22 you've seen?

23 A Yes.

24 Q Do you know who Juliana Luk is, L-u-k?

25 A I can't think of that as I sit here, no.

1 Q You've never talked to her in connection with
2 this matter?

3 A No, I have not.

4 Q To your knowledge, it's either Steve Chen or
5 Andrew Chang who handle security complaints on behalf of
6 the defendants in this matter?

7 A If I recall, I think her name comes up in one
8 of the deposition transcripts I reviewed. I'd have to
9 go back and look at it to refresh my memory. But I
10 think I have seen that name before.

11 Q Yeah. Well, I guess what I'm asking is what is
12 your understanding of who handled the abuse complaints
13 addressed to the defendants in this matter?

14 A Steve Chen, Andrew Chang, I believe, had
15 participated in that. Again, I don't remember the
16 specific details of the testimony, but I think they did
17 mention somebody else.

18 Q Have you looked at the terms of service or
19 acceptable use policies for the defendants?

20 A Yes, I have.

21 Q Do they have any other procedures available to
22 them under those terms of service or acceptable use
23 policies to address abuse complaints other than what
24 you've described today?

25 A If I recall, there were a list of a few options

1 expressed in your report.

2 About two-thirds of the way down the table for
3 web pages, you identify a net policy hyphen com under
4 score world sports document. Do you see that?

5 A Yes.

6 Q It's my understanding that's an amicus brief
7 filed in some litigation about 10 years ago; is that
8 correct?

9 A I believe so, yes.

10 Q And on whose behalf was the amicus brief filed?

11 A I'd have to look at it. I don't remember.

12 Q And what was it about that amicus brief that
13 you thought made it germane to the opinions expressed in
14 this expert report?

15 A Can I look at it again, please?

16 If I remember correctly, it was basically
17 background information about the process of domain name
18 registration and the nature of domain names.

19 Q And having looked at the amicus brief, does it
20 refresh your recollection on whose behalf it was filed?

21 A No, it doesn't.

22 Q That's fine.

23 You testified earlier that among other things,
24 you interviewed Steve Chen in preparation for this
25 expert report?

1 A Yes.

2 Q Did you interview him once or more than once?

3 A I think I talked to him twice.

4 Q And was it in person or telephonic?

5 A Telephone.

6 Q And how long were the communications?

7 A I think I talked to Steve about 45 minutes.

8 Q On both occasions or each or -- I'm sorry. In
9 total?

10 A I'm sorry. I don't recall the exact length of
11 the conversation. I think it was a total of 45 minutes.

12 Q And that was before you prepared your expert
13 report here?

14 A Yes.

15 Q Have you had any conversations with him since
16 then?

17 A I think I spoke to him once about getting in
18 touch with Andrew Chang.

19 Q And that's it.

20 A As I recall sitting here now.

21 Q And you spoke with Andrew Chang how many times?

22 A I think just the one time.

23 Q And how long was that conversation?

24 A I believe that was also about a half hour, 45
25 minutes.

1 Q And that was telephonic as well?

2 A Yes, it was.

3 Q Did you know either of them before you were
4 engaged as an expert in this matter?

5 A No.

6 Q You also interviewed Eric Willis and Eric
7 Bursley with Rackspace; is that correct?

8 A Yes.

9 Q And those were telephonic interviews as well?

10 A Yes.

11 Q And how long were each of those interviews?

12 A 20 minutes, half an hour I think.

13 Q And there are notes reflecting your
14 conversations with Mr. Willis and Bursley included in
15 the materials you produced today?

16 A Yes.

17 Q And did you know Mr. Willis or Mr. Bursley
18 before you were retained as an expert in this matter?

19 A No.

20 Q How did you come to contact them concerning
21 this?

22 A I called Rackspace with questions about the
23 nature of their business, and those were the two people
24 I spoke to in the process of getting my questions
25 answered.

1 Q And why Rackspace as opposed to another entity?

2 A Rackspace, to my knowledge, is one of the
3 largest ISPs in the country. Based on that, I decided
4 they were a good company to talk to as representative of
5 typical practices in the industry.

6 Q Did -- was Rackspace suggested to you by
7 anyone?

8 A No.

9 Q What research did you do to identify Rackspace
10 as one of the largest ISPs in the country?

11 A Searches on Google, reading their web page,
12 looking at various materials that talked about different
13 companies available.

14 Q In your written materials you refer to an
15 acceptable use policy published by ServerBeach.

16 Do you recall that?

17 A Yes.

18 Q Do you have any understanding as to any
19 relationship between ServerBeach and Rackspace?

20 A It's my understanding I don't know of any
21 relationship between them.

22 Q You also at some point provided some material
23 concerning PEER 1; is that correct?

24 A Yes.

25 Q And you relied upon that material in support of

1 your expert opinions in this matter?

2 A Yes.

3 Q And do you have any understanding of a
4 relationship between PEER 1 and Rackspace?

5 A My understanding is that they're competitors.

6 Q And how is it that you came to look at
7 ServerBeach's acceptable use policy rather than
8 Rackspace's?

9 A Just from the website.

10 Q And it was happenstance, or was there a
11 particular reason you selected ServerBeach?

12 A Again, ServerBeach is a well-known hosting
13 company on the internet that I felt was representative
14 of a typical company.

15 Q And PEER 1, how did you come to select them as
16 a company to approach concerning a sales proposal?

17 A I believe PEER 1 is actually the company that
18 ServerBeach -- is related to ServerBeach.

19 Q You got to PEER 1 through ServerBeach?

20 A Yes.

21 Q Did you have an agenda in anticipation of any
22 of the interviews that you described on page 9 of your
23 report?

24 A Yes.

25 Q And did you -- was that in writing?

1 or by the customer, whereas scalable implies the
2 capacity and size of the system. A small system can be
3 managed and large system can be unmanaged, or vice
4 versa.

5 Q When you spoke with other ISPs, not Akanoc or
6 Managed Solutions, did you discuss with them their
7 procedures for logging complaints received, abuse
8 complaints?

9 A I believe I did.

10 Q Okay. Tell me what they told you.

11 A May I look at my notes, please?

12 Q I'm sorry. It's easier for you to find out --

13 A What was the question, again, please?

14 Q I was asking what the other ISPs you spoke
15 with -- how they described their procedures in response
16 to a -- an abuse complaint?

17 A Okay. The notes I'm looking at right now are
18 handwritten notes from talking to people at Rackspace,
19 Go Daddy, and a company called VeriSign.

20 I also have as part of my supplemental report,
21 online conversations and a phone call that I had with
22 people from a company called The Planet, Site5,
23 HostGator, and Go Daddy. And they were pretty much
24 consistent in terms of their responses to abuse
25 complaints in terms of notifying the customer about a

1 problem with the site, about what if -- you know, they
2 actually wouldn't say if there was any investigation
3 that they did of it. The ones that said they did an
4 investigation would not give me any details of what that
5 meant; that their ultimate sanction was to basically to
6 shut the site down.

7 Q Did they describe what procedures were employed
8 internally to track the complaints once they were
9 received?

10 A No, they didn't.

11 Q Did they describe what personnel was dedicated
12 to dealing with abuse complaints?

13 A No.

14 Q Did they describe what training those employees
15 obtained?

16 A No.

17 Q Did they describe what procedures were employed
18 to deal with recidivist complaints, repetition, where
19 they had multiple problems concerning the same customer?

20 A I don't recall talking about recidivist
21 specifically, but we did talk about escalating a process
22 where if there wasn't an adequate response, that they
23 would go to a more severe form of action.

24 Q Did any of them discuss terminating customers?

25 A I believe they did, yes.

1 Q Do you remember which ones?

2 A I believe it was Go Daddy. I think Site5,
3 maybe HostGator. I'd have to check.

4 Q Where would you check?

5 A In the notes from those conversations.

6 Q And are those not what are in front of you now?

7 A No. Those were just part of my supplemental
8 report.

9 Q Okay. Are there additional notes that are
10 included here that would reflect those conversations?

11 A Yes.

12 For example, I've got here -- well, the
13 conversation was their acceptable use policies. I'm
14 looking right now in my supplemental report, at the
15 acceptable use policy of a hosting facility called
16 The Planet, and they list six steps that they would take
17 in response to a violation, which if I check my notes, I
18 believe pretty much match the Akanoc six steps as well;
19 issue a written or verbal warning; suspend posting
20 privileges; suspend the account; terminate the account;
21 bill the user for administrative costs or re-activation
22 charges; bring legal action to enjoin violations,
23 collect damages and so on.

24 Q I think the question was, you indicated your
25 notes of your conversation with Go Daddy would reflect

1 what -- their procedure in terms of terminating
2 customers. And I don't recall those being attached to
3 your report.

4 Would they be otherwise in this production?

5 A There was -- actually, Go Daddy it wasn't an
6 online chat. They didn't have that facility on their
7 website. But I spoke with someone directly and wrote
8 down notes when I spoke to them, which should be in
9 here. Here it is.

10 Q Okay. What criteria did they use in making the
11 decision to terminate customers in response to abuse
12 complaints?

13 A They wouldn't tell me.

14 Q I think you said that the ISP generally
15 wouldn't tell you what investigation they would do in
16 response to receipt of an abuse complaint; is that
17 correct?

18 A I'm thinking about Go Daddy right now, that
19 they have an abuse department and would not describe
20 what safeguards or steps their security or abuse
21 department would take in response to these. But let's
22 see. They didn't say they would actually shut down the
23 site. They said they have their own safeguards. They
24 wouldn't tell me what those safeguards were.

25 Q They didn't tell you what timeline they would

1 respond to abuse complaints?

2 A None of the companies I spoke to talked about
3 timelines or particular amounts of time they would allow
4 to lapse before they took action, and I don't recall
5 seeing anything in any of the acceptable use policies
6 that spelled out any kind of time periods in response
7 either.

8 Q Are you familiar with the Digital Millennium
9 Copyright Act?

10 A I know of it.

11 Q Are you familiar with the phrase "expeditious
12 removal"?

13 A No, I'm not.

14 Q Are you aware of the requirement that ISPs
15 record an agent for service with the United States
16 Copyright Act under that legislation?

17 A No, I'm not.

18 Q Do you know whether or not the defendants in
19 this action have registered under -- recorded under that
20 act?

21 A I don't know.

22 Q Did both Akanoc and Managed Solutions have
23 published terms of use?

24 A I believe so, yes.

25 Q I think you were looking at one of them earlier

1 that correct?

2 A I guess that would be the right number of
3 months, yes.

4 Q And does it seem to you reasonable and
5 consistent with the procedures that you've found from
6 other ISPs that after five months, those domains should
7 continue to be hosted on Akanoc servers?

8 A I don't know the history of those domains or
9 whether they were notified and came back, whether they
10 were not notified at all. I have no information about
11 what was done with those particular domain names.

12 Q What circumstances would make it reasonable and
13 consistent for those domain names to be hosted on Akanoc
14 servers more than five months after notification by
15 Louis Vuitton?

16 A All I can say about the list is that that name
17 came up with an IP address in Akanoc's space on the
18 specific date when the list was prepared, which if I can
19 remember correctly was May 28th.

20 What happened between January and May, I have
21 no information.

22 Q So you're unable to form any conclusion
23 concerning the reasonableness or the procedures of
24 Akanoc as reflected by the fact that there are 16
25 websites hosted on Akanoc servers five months after

1 notification to Akanoc?

2 A I can't say anything about what actions were
3 taken or what may have happened in the intervening five
4 months.

5 Q You've had no discussion with anyone acting on
6 behalf of defendants, specifically including Mr. Chen or
7 Mr. Chang, concerning what was done in response to these
8 notifications?

9 A No, I haven't asked that.

10 MR. COOMBS: Mark as Exhibit 605 a one-page
11 e-mail dated May 18, 2009 from Eric Willis to Richard at
12 Online Security dot com.

13 (Plaintiff's Exhibit 605 was marked for
14 identification by the reporter and is
15 attached hereto.)

16 BY MR. COOMBS:

17 Q Is that an e-mail that you received on or about
18 May 18, 2009?

19 A Yes.

20 Q And it reflects a transmission of a quote from
21 Rackspace for hosting package?

22 A Yes.

23 Q Last sentence says "As you requested, I did not
24 add a firewall."

25 Why did you not request a firewall? Is that