



May 6, 2011

Kurt Pritz
Senior Vice President, Stakeholder Relations
ICANN
4676 Admiralty Way, Suite 330
Marina del Ray, CA 90292-6601

Re: ICANN Determination of No Market Power Pursuant to RAA Section 3.3.7

Dear Kurt,

I am writing on behalf of eNom, Inc. to request that ICANN make the official determination pursuant to Section 3.3.7 of the Registrar Accreditation Agreement (<http://icann.org/en/registrars/ra-agreement-21may09-en.htm>) "that no individual or entity is able to exercise market power with respect to registrations or with respect to registration data used for development of value-added products and services by third parties" and therefore Section 3.3.6 is no longer effective. It is important to note, that ICANN has the right to determine that Section 3.3.6 of the RAA is no longer valid if ICANN determines that there is no market power EITHER: (i) with respect to registrations (i.e., among registrars); OR, (ii) with respect to Whois data used in value-added third party products and services.

It is our opinion that the requirement for accredited registrars to provide third-party bulk access to Whois data ("bulk Whois") pursuant to Section 3.3.6 of the RAA is obsolete and no longer necessary in the highly competitive marketplace for domain name registrations. In addition, notwithstanding the provisions in Sections 3.3.6.3 – 3.3.6.5 of the RAA regarding certain prohibitions on the use of this data by a third party, we have very serious concerns about a third party's ability to ensure the security of such a vast amount of personally identifiable data and do not wish to expose our customers to the very real risk that their personally identifiable information could potentially be more vulnerable to phishing, spam and other abuses. We also believe a careful review of data privacy law, at least in the U.S. and European Union countries is warranted given recent developments in this area of the law and the potential for violation of such laws and regulations by complying with this obligation.

We believe the empirical data discussed in this letter shows that in the current market no individual or entity is able to exercise market power with respect to registrations. We believe that with this data ICANN should make a determination that Section 3.3.6 is no longer necessary and relieve accredited registrars of the outdated requirement of Section 3.3.6 to provide bulk Whois concerning all active Registered Names sponsored by Registrars for each accredited TLD.

In the economic report "Registry-Registrar Separation: Vertical Integration Options" (<http://www.icann.org/en/topics/new-gtlds/registry-registrar-separation-vertical-integration->



[options-salop-wright-28jan10-en.pdf](#)) commissioned by ICANN (the “Study”), the authors, Steven C. Salop and Joshua D. Wright, state the following:

“Finally, to calculate a market share requires the identification of a universe on which the market shares are based. We recommend the following:

...For gauging market power with respect to registrars, we believe that the percentage of newly created gTLD registrations is a more appropriate measure, because this measure is a more accurate proxy for the potential buy-side market power issues that exist at the registrar level.”

As for an appropriate market share threshold, the authors of the Study recommend a market share threshold in the 40-60% range, which is in line with current international standards as per an analysis by Concurrences Review of Competition Laws (http://www.concurrences.com/nr_one_question.php3?id_rubrique=578). As the authors of the Study are noted competition experts and familiar with the domain registration landscape, we have analyzed the domain registration market using their criteria to determine if market power exists.

As of the date of this letter, the predominant registrar in the marketplace is GoDaddy with approximately 41 million domains under management. GoDaddy is also the fastest growing registrar, according to webhosting.info and, therefore, the registrar we analyzed to determine if market power exists. For this analysis, we reviewed all newly created gTLD registrations for the previous two plus years and compared that against the same data for the GoDaddy registrar (see [Appendix A](#)). As evidenced by the data, the market share on new gTLD registrations by GoDaddy does not exceed the 40% threshold where competition authorities would have a concern, and is not even close to the 50% threshold where competition authorities maintain there is market dominance. While GoDaddy may be a large player as evidenced by these statistics, they are not able to exercise market power.

We also did further statistical analysis of the competitive nature of the registrar market by calculating the Herfindahl index (http://www.ehow.com/how_5136910_calculate-herfindahl-index.html). The Herfindahl index is a commonly accepted measure of market concentration and is used by authorities such as the US Department of Justice to determine whether a monopoly exists and whether antitrust action is needed (<http://www.justice.gov/atr/public/testimony/hhi.htm>). The Herfindahl index can range from 0 to 1.0 with a 1.0 indicating there is a monopoly and complete market power. To determine the Herfindahl index we calculated the sum of the squares of the market shares of the top 50 registrars ([Appendix B](#)). The data indicates that the Herfindahl index for the registrar market is 13.2%, well below the DOJ threshold of 18%, where they believe a market is concentrated and competition and efficiency decrease.

While the two quantitative studies above clearly demonstrate that there is no market or monopoly power in the registrar market, we also felt it was reasonable to look at anecdotal evidence in the marketplace. The Organisation for Economic Co-operation and Development (OECD) defines market power as “the ability of a firm to raise and maintain price above the level that would prevail under competition” (<http://stats.oecd.org/glossary/detail.asp?ID=3256>). Looking at the registrar market,



which now consists of over 950 ICANN accredited registrars, there is not one registrar that is able to maintain an artificially high price, due to intense competition and differentiated services. If market power did exist, competition on price and service would not exist.

Based on the information presented to ICANN above and in the attached Appendices, we respectfully request that ICANN officially make the determination specifically pursuant to Section 3.3.7 of the RAA that no registrar has market power with respect to registrations, and/or that no entity has market power with respect to registration data used for development of value-added products and services and that, therefore, Section 3.3.6 of the RAA is no longer valid. In the event ICANN is unwilling to provide such a determination, we request that ICANN specifically identify the entities ICANN feels have market power, either as registrars or as third party providers of value-added products or services. If ICANN is unable to identify those entities, then again, by implication there is no market power and ICANN should officially make that determination with respect to Section 3.3.6 of the RAA.

Please feel free to contact me with any questions. eNom looks forward to working with ICANN on this issue and the removal of the obsolete bulk Whois obligation of Section 3.3.6 of the RAA.

Sincerely,



Jeffrey Eckhaus
SVP, Platform

cc:

Rick Danis, VP, Business & Legal Affairs
John Jeffrey, ICANN General Counsel
Tim Cole, ICANN Chief Registrar Liaison



Appendix A - Market Share new gTLD registrations

	All New Adds	GoDaddy Adds	Percent
1/1/09	1,326,360.00	459,974	34.68%
2/1/09	1,460,137.00	538,205	36.86%
3/1/09	1,877,679.00	694,070	36.96%
4/1/09	1,761,582.00	667,305	37.88%
5/1/09	1,746,457.00	643,899	36.87%
6/1/09	1,713,387.00	633,205	36.96%
7/1/09	1,729,411.00	639,656	36.99%
8/1/09	1,716,902.00	657,592	38.30%
9/1/09	1,761,516.00	658,112	37.36%
10/1/09	1,925,013.00	684,439	35.56%
11/1/09	1,790,064.00	631,274	35.27%
12/1/09	1,696,781.00	606,923	35.77%
1/1/10	1,928,911.00	736,187	38.17%
2/1/10	2,234,033.00	871,353	39.00%
3/1/10	3,399,501.00	1,250,445	36.78%
4/1/10	3,340,924.00	1,175,208	35.18%
5/1/10	3,387,532.00	1,279,708	37.78%
6/1/10	3,164,134.00	1,134,596	35.86%
7/1/10	3,047,981.00	1,102,803	36.18%
8/1/10	3,167,723.00	1,166,593	36.83%
9/1/10	3,144,177.00	1,158,072	36.83%
10/1/10	3,253,884.00	1,165,295	35.81%
11/1/10	3,278,349.00	1,164,740	35.53%
12/1/10	3,195,306.00	1,230,085	38.50%
1/1/11	3,400,412.00	1,317,827	38.75%
2/1/11	3,301,262.00	1,283,543	38.88%
3/1/11	3,592,983.00	1,358,074	37.80%



Appendix B

Total Domains **115,838,759.00** **Herfindahl Index** **15.249%**

<u>Rank</u>	<u>RegistrarID</u>	<u>RegistrarName</u>	<u>domaincount</u>	<u>market share</u>	<u>Squares</u>
1	873	Go Daddy Software	41,350,839	35.6969%	0.1274268
2	833	eNom	10,861,248	9.3762%	0.0087913
3	1101	Tucows	8,461,143	7.3042%	0.0053352
4	980	Network Solutions	6,289,446	5.4295%	0.0029479
5	1586	1&1 Internet AG	5,420,456	4.6793%	0.0021896
6	1363	Melbourne IT	4,209,378	3.6338%	0.0013205
7	1133	Wild West Domains	3,516,226	3.0354%	0.0009214
8	730	PublicDomainRegistry.com	2,902,117	2.5053%	0.0006277
9	943	Moniker Online Services	2,815,506	2.4305%	0.0005908
10	1027	Register.com	2,287,319	1.9746%	0.0003899
11	920	Key-Systems GmbH	1,889,215	1.6309%	0.0002660
12	1137	Xin Net Corp	1,622,012	1.4002%	0.0001961
13	1480	FAST DOMAIN INC.	1,424,999	1.2302%	0.0001513
14	872	GMO Internet, Inc.	1,421,663	1.2273%	0.0001506
15	886	HiChina Web Solutions Ltd.	1,357,946	1.1723%	0.0001374
16	847	Fabulous.com Pty Ltd	1,286,560	1.1106%	0.0001234
17	998	OVH	1,172,812	1.0125%	0.0001025
18	811	Dotster	982,805	0.8484%	0.0000720
19	1016	PSI-USA, Inc.	952,746	0.8225%	0.0000676
20	718	Cronon AG		0.8079%	



			935,835		0.0000653
21	1222	OnlineNIC, Inc.	916,237	0.7910%	0.0000626
22	951	Name.com LLC	897,991	0.7752%	0.0000601
23	1210	Intercosmos Media	789,743	0.6818%	0.0000465
24	657	Ascio Technologies, Inc. - Denmark	759,044	0.6553%	0.0000429
25	956	NameKing.com	756,785	0.6533%	0.0000427
26	865	Gandi SARL	710,834	0.6136%	0.0000377
27	1088	DomainDiscover	694,984	0.6000%	0.0000360
28	981	DreamHost.com	606,754	0.5238%	0.0000274
29	935	MarkMonitor Inc.	570,460	0.4925%	0.0000243
30	1028	REGISTER.IT SPA	570,065	0.4921%	0.0000242
31	720	joker.com	513,984	0.4437%	0.0000197
32	1603	MyDomain, Inc	510,849	0.4410%	0.0000194
33	715	Corporate Domains, Inc.	444,322	0.3836%	0.0000147
34	783	DomainPeople, Inc.	442,319	0.3818%	0.0000146
35	679	Bizcn.com, Inc.	438,322	0.3784%	0.0000143
36	821	Dynadot, LLC	427,906	0.3694%	0.0000136
37	654	NICLINE.COM	404,373	0.3491%	0.0000122
38	1681	ABOVE, INC.	396,358	0.3422%	0.0000117
39	673	dns.com.cn	393,613	0.3398%	0.0000115
40	1807	IREGISTRY CORP	374,938	0.3237%	0.0000105
41	1379	Dotregistrar.com	368,286	0.3179%	0.0000101
42	1091	SRSPlus	366,239	0.3162%	0.0000100
43	1674	35 TECHNOLOGY CO,LTD	357,816	0.3089%	0.0000095
44	1122	WebNic.com		0.2858%	



			331,122		0.000082
45	623	Names4ever CORE Internet Council of	321,997	0.2780%	0.000077
46	714	Registrars	284,829	0.2459%	0.000060
47	669	Basic Fusion, Inc.	269,888	0.2330%	0.000054
48	1746	UK2 GROUP LTD.	267,610	0.2310%	0.000053
49	629	Active 24 ASA INTERNETWIRE	257,180	0.2220%	0.000049
50	1550	COMMUNICATIONS GMBH	233,640	0.2017%	0.000041