DHL Operations, B.V.
DHL International, GmbH
**Complainants**

**WIPO Case No. D2010-0016**
**Disputed Domain Name:**

v.

mydhl.com

Eric J. White
**Respondent**

### RESPONDENT'S OBJECTION TO COMPLAINANT'S SUPPLEMENTAL FILING / MOTION FOR LEAVE TO FILE A RESPONDENT'S SUPPLEMENTAL FILING

The Complainant in this action has provided a supplemental filing for the Panel's consideration. This action and the manner it was conducted, without leave from the Panel or notice to the Respondent, is improper under the UDRP. Respondent seeks for the Complainant's filing to be disallowed or, in the alternative, for the Panel to grant leave for the Respondent to provide his own supplemental filing.

I.    **The Complainant's Supplemental Filing is Improper**

UDRP Rule 12 states:

*12. Further Statements*

*In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties.*

This rule "unambiguously provides that only the Panel may request further submissions." *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270.  The rules do not allow for additional submissions without leave of the Panel, and Panels should not routinely grant such leave absent exceptional circumstances. See *Rollerblade, Inc. v. CBNO and Ray Redican Jr.*, WIPO Case No. D2000-00427 ("The Policy and Rules demonstrate a strong preference for single submissions by the parties absent extraordinary circumstances."); Gordon Sumner, p/k/a Sting v Michael Urvan, WIPO Case No. D2000-0596("Supplementary submissions can only be filed in response to a request for such from the Panel."); Rapido TV Limited v. Jan Duffy-King,

WIPO Case No. D2000-0449.

Consistent with the Policy's objective of providing a simple and speedy process for the resolution of cases where the domain name has been registered and used without legitimate reason and in abuse of the trade mark rights of another, the Rules specifically provide only for the submission of a Complaint and a Response. Whilst the Rules provide some flexibility to the Panel to call for or permit further submissions, this should occur only in exceptional circumstances such as those exemplified in the decision of the Panel in the *Document Technologies Case*. Id.

Although litigants and parties in arbitrations may have a right of reply under the rules of other forums, ICANN chose a procedure for these arbitrations that calls for only a Complaint and a Response. This more truncated procedure allows for more rapid and cost effective resolution of domain name challenges. See CRS Technology Corp. v. CondeNet, Inc., File No. FA#0002000093547 (NAF Mar. 28, 2000).

As the panel stated in *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270:

If a Party wishes to submit a further statement, the better practice under the Rules would be to first seek consent from the Panel, with an explanation of why a further statement is warranted. Appropriate reasons may include the existence of new, pertinent facts that did not arise until after the submission of the complaint, or the desire to bring new, relevant legal authority to the attention of the Panel. E.g., Pet Warehouse v. Pets.Com, Inc., Case No. D2000-0105 (WIPO Apr. 13, 2000). The Panel would then be in a position quickly to rule on the request and, if it determines that a further statement is warranted, set a schedule that is fair to both parties and provides each party with an opportunity to supplement the record. This procedure also would save the Parties the expense of preparing further statements that the Panel decides not to accept. See generally Plaza Operating Partners, Ltd. v. Pop Data Technologies and Joseph Pillus, Case No. D2000-0166 (WIPO June 1, 2000).

In this case, the Panel should conclude that there is no basis for supplementing the record. First, the Panel can decide this case on the record submitted, and that it does not require any further submissions from the Parties. Second, none of the factual allegations submitted in Complainant's Proposed Supplemental Submission constitute new facts

that either were not available at the time of the Complaint or were not included because Complainant had no basis for believing they would be relevant to the proceeding. Third, Complainant's newly-presented legal arguments are based on old precedents rather than new decisions. To the extent Complainant seeks to provide this addition to the record for the purpose of replying to the Response, that is an insufficient basis for permitting supplemental submissions in light of the abbreviated procedures set forth in the Rules.

II. **Should the Panel Accept Complainant's Supplemental Filing, Respondent Seeks Leave to File its Own Supplemental Filing.**

Nevertheless, in the event that the Panel wishes to admit the Complainant's Supplemental Filing, the Respondent respectfully requests the right to respond to the Supplemental filing. See *The Thread, LLC v. Jeffrey S. Poploff*, WIPO Case No. D2000-1470 ("the better practice is to seek consent from the Panel, with an explanation of why a supplemental submission is warranted"). As discussed supra, it is the normal form for Panels to allow the Respondent an additional filing, should the Complainant receive the extraordinary right to have its supplemental filing heard. *Zero International Holding GmbH & Co. Kommanditgesellschaft v. Beyonet Services and Stephen Urich*, WIPO Case No. D2000-0161 ("Had the Answer raised significant new matters which were likely to be of material relevance to the Complaint the Panel would, in its discretion, have admitted the Answer but allowed the Respondent a corresponding supplemental pleading");

In the event that the Panel grants the Respondent's request, the Respondent has submitted, along with this Objection / Motion, the Respondent's proposed reply.

III. **Conclusion**

Under Rule 12, the Complainant's supplemental filing is improper and should not be considered by the Panel. Under existing precedent, that filing should be disregarded in the adjudication of this case. If the Panel decides to accept the Complainant's filling, however, the Respondent seeks leave to file a supplemental filing as well. Because allowing supplemental filings is such an exceptional measure in the first place, precedent and fundamental principles of fairness should compel the Panel to extend the same privilege to the Respondent.

## WORLD INTELLECTUAL PROPERTY ORGANIZATION
## ARBITRATION AND MEDIATION CENTER

DHL Operations, B.V.
DHL International, GmbH
**Complainants**

**WIPO Case No. D2010-0016**
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v.

mydhl.com

Eric J. White
**Respondent**


### RESPONDENT'S PROPOSED SURREPLY

In light of the Complainant's supplemental filing in this case, Respondent has moved for leave to file this supplement with the Panel as part of its proceedings. In particular, Respondent disputes the Complainant's contention that the content of www.mydhl.com has been changed in the wake of receiving notice of this proceeding. Additionally, the Respondent replied as soon as possible to the Complainant's complaint, making the Respondent's receipt of the Complainant's demand irrelevant in this case.

### I. The Complainant's claim that the web page's content has been changed has no factual support.

The Complainants claim that they "have just recently found out" that the web page at www.mydhl.com contained "sponsored listings". See Complainant's Supplemental Filing ("CSF") at 2-3. However, the Respondent is at a loss as to where the Complainant could have "found out" this information after receiving the Response, as the Complainant is unable to duplicate these findings.

It is telling that the Complainant did not provide a single screen shot of the Respondent's site with the original Complaint. The reason for this is that the Complainant knows full well that the Respondent's current website is entirely consistent with the domain's historical use. In fact, the current web site is virtually identical to how it has appeared for years. If the Complainant had included evidence of this in its initial complaint, as it should have, this action would have been dead on arrival.

Indeed, the Complainant acknowledges reviewing the "'WayBackMachine' under 'archive.org'." See CSF at 3. However, the

1

Complainant, most troublingly, does not provide all of the evidence available at "archive.org." The Respondent, will however, provide it in this Surreply so that the Panel may have a full overview of the facts. **Annex G** is a printout of the Archive.org page for mydhl.com. Many of the links at that page are not functioning, and the Panel is invited to explore them on its own. However, the links that are functioning are provided as additional Annexes to this Reply. **Annex H** shows the web page as the Archive recorded it on Sept. 20, 2004, **Annex i** corresponds to Sept. 21, 2004, **Annex J** is Nov. 27, 2004, **Annex K** is Feb. 12, 2005, **Annex L** is Nov. 5, 2006, and **Annex M** is June 6, 2008.

Reviewing the Archive, it is true that Annex M **does** show sponsored links. These links are all, curiously, tied to the NHL, (the National Hockey League). While this may raise some curiosity, it is not evidence of bad faith, has no relevance to the Complainant, nor is it factually inexplicable. As explained in his declaration, Annex B, at Para. 13-14:

13. As the Panel can see, the way the site is used today is the same way that the website has been used since its inception.
14. The only interruptions in this use have been brief outages when my web hosting provider was down, or in the process of being changed.

It is a well-known fact that some domain registrars set parking pages on their customer's domains if the domains are inactive. Even when pages are active, if the CNAME settings are not properly toggled, GoDaddy is known to create parked landing pages on its customer's domains. Sometimes, these are only viewable if Internet users neglect to type in the "www" in a domain name. **See Annex N**, an article by the undersigned explaining this phenomenon. See also, **Annex O**, another article explaining this phenomenon. If the Panel examines **Annex M**, and the Complainant's Annexes 14 and 15, the Panel will see that at the bottom of each page, the telltale signs of this are clear, as the annexes both show the following: "**This page is provided courtesy of GoDaddy.com. Copyright ® 1999-2008 GoDaddy.com, Inc. All rights reserved**." This would tend to suggest that these pages were generated by GoDaddy, consistent with their long-established (and criticized) policy. However, it would not tend to suggest bad faith use by the Respondent (and even if it did, **Annexes H-L** clearly show that there could not have been bad faith registration).

The Respondent never directed, nor requested that parking pages be displayed on the relevant web page. See **Annex P**, Supplemental

Declaration of Respondent, at ¶ 5.  Any benefit derived from these pages went to third parties, not to the Respondent.  Id. at ¶ 6.  Any parking pages that may have briefly appeared at mydhl.com were not consistent with the Respondent's wishes.  Id. at ¶ 4-8.  Any parking pages that may have briefly appeared at mydhl.com are explainable by both the evidence shown in the copyright notices on these pages, and by the Respondent's explanation of the technical issues he has had with his web page.  Id. at ¶7-9.

Given these facts, the authority cited by the Complainants does not seem to support their case.  The Complainants cite to *Ceyx Technologies v. CeysCom*, WIPO Case No. D2001-0681 and *Aktiebolaget Electrolux v. 2220 Internet Coordinator*, WIPO Case No. D2005-1184.  However, both of these cases state that parked pages are evidence of bad faith if they were established **with the knowledge that there is an infringement taking place**, and **if the Respondent was taking advantage of the Complainant's trademark**.  In this case, the Respondent did not take advantage of the Complainant's trademark.  Instead, the Complainant is trying to take advantage of a brief technical outage, which briefly (and temporarily) changed the long-standing and well-documented use of the domain.  The Complainants' attempt is grossly unfounded, especially given the fact that they could not have possibly retrieved the screen shot of the June 6, 2008 web page without seeing all of the other examples and evidence available at archive.org.

The Complainant's position that "The website was parked during the last years, showing DHL sponsored listings." (See CSF at 6, ¶ 4) clearly is false.  The Complainant expects the Panel to believe that since one historical shot shows sponsored links, that this somehow indicates that this is how the page has been used for "the last years." Id.  However, the Complainants simply miss the point that the website is now hosted elsewhere, and truly appears at http://www.inetconnect.com/mydhl.htm.  See **Annex Q**.  However, the Respondent makes use of a URL forwarding function, to forward www.mydhl.com to http://www.inetconnect.com/mydhl.htm.

The only time that the Archive would have taken a snapshot of the web page at www.mydhl.com, since this configuration was implemented, would be during periods when the web page no longer forwarded to http://www.inetconnect.com/mydhl.htm, and when it briefly found itself at the mercy of GoDaddy's "dead page" policy.  This is hardly conclusive, or even persuasive, evidence of bad faith on the part of the Respondent.

Complainant further argues that Respondent has changed the

3

www.mydhl.com page since receiving notice of this dispute on December 23, 2009.  As of January 3, 2010, though, Respondent's web site has been in the same condition it is now, seen by the Google Cache record of the site in **Annex R**.  The Google Cache serves a function similar to the Internet Wayback Machine, and cannot be forced to update its records of a web site simply because a change is made.  See **Annex S,** discussing the mechanics of Google's cache.  In particular, the Google Cache is not regularly updated to reflect changes on unpopular or less-visited sites, as observed by Kelly Gillease in "Recover a Website with the Help of Google," at **Annex T**.  Updates to the Google Cache are made when Google visits and indexes the site, which occurs according to a web site's popularity and other factors -- not when changes are made to it.  See **Annex U**, Danny Sullivan, "Finding Search Engine Freshness & Crawl Dates."

Therefore, even if Respondent had changed his web site after December 23, 2009, it virtually is impossible that such changes would have been reflected in the Google Cache by January 3, 2010. The Complainant's contrary argument utterly ignores the nature of the Google Cache and seeks to adopt a fantastic view of its function, as a tool capturing changes to the internet in near real-time. Instead, the cached image of www.mydhl.com in **Annex R** is almost certain to reflect how the site looked for weeks preceding the update, as a change to its content would not be sufficient to trigger an update to the Google Cache.

In fact, this Surreply is being written on January 26, 2010.  The current Google Cache's version in **Annex R** shows that the cache snapshot was last taken by Google on January 3, 20101.  See Annex R.  Accordingly, [www.mydhl.com](www.mydhl.com) most certainly has an update cycle of at least 23 days (and it is likely that Google updates this page's cache more infrequently than that).  Accordingly, let us presume that the Respondent received the demand letter on December 23, 2009.  Let us then presume that he immediately changed the web page.  Even if he did, the evidence reflects that any "change" would only have reverted the site to its proper, and long-standing historical form.  See **Annexes H-L**.

Nevertheless, let us humor the Complainant's accusations – that Mr. White spent his Christmas devising a fiendish plan to change his website into a Republican political website.  Even if he had changed it at the crack of dawn on December 23, 2009, Google's cache crawler would not have updated the new version for at least 23 days (and likely longer). Accordingly, it is far more likely than not that the January 3 cache, taken before the UDRP complaint was filed, must reflect what the website

looked like on, or before December 23, 2009. Respondent could not have compelled Google to update his web site within its cache if he wanted to, nor could he rely upon Google to have its cache reflect changes the Complainant alleges were made just days before the new record in **Annex R** was made. Considering the realities of this technology, the Complainant's argument must fail.

## II. Complainant's Argument about Respondent's Receipt of Its Demand is Irrelevant.

With respect to the Complainant's belabored "receipt of the demand" issue, it seems to be irrelevant to the case. Nevertheless, since the Complainant seems to think it is relevant, and the Complainant seems to feel compelled to make it an issue, the Respondent will oblige the Complainant. As the Panel can see from Complainant's Annex 18, the Respondent did reply, immediately, upon receiving notice of the Complaint. If the Panel examines the historical screen shots of mydhl.com (**Annexes H-L**) and then looks at the current screen shot of mydhl.com, the Panel will see that the web pages are identical (of course, the Archive.org website does not store images, but the layout and the absent images' locations are shown). The Panel will then see that on January 6, 2010, upon his first receipt of a dispute, the Respondent replied with content that is consistent with the Respondent's position in this case. See Complainant's Annex 18. The Complainant still, even after being mocked for the foolishness of its contention, continues to rely upon a "failure to reply to a demand letter" as "evidence" of bad faith. DHL is not so all-powerful and all-mighty that its whims must be entertained by free citizens, lest a failure to bow down before its might be interpreted as a lack of respect for its authority.

## III. Conclusion

The Complainant cannot support its claim that the Respondent has altered its webpage in light of this dispute. Moreover, the historical record, Respondent's own conduct and extant technology go to show that the web page remained in its current state throughout its existence, save brief, temporary outages beyond the Respondent's control. Finally, the Respondent's immediate reply to the Complainant's complaint renders the issue of his response upon receiving the Complainant's demand irrelevant. At every stage of this dispute since receiving the complaint, the Respondent has diligently complied with its duties. As a consequence, the Complainant's argument on this issue does not merit the Panel's consideration.

# ANNEX G

Most Visited ⌄  Getting Started  Latest Headlines ⌝

Internet Archive Wayback Machine

# INTERNET ARCHIVE
## WayBackMachine

**Enter Web Address:** http://  | All ⌄ | Take Me Back | Adv. Search  Compare Archive Pages

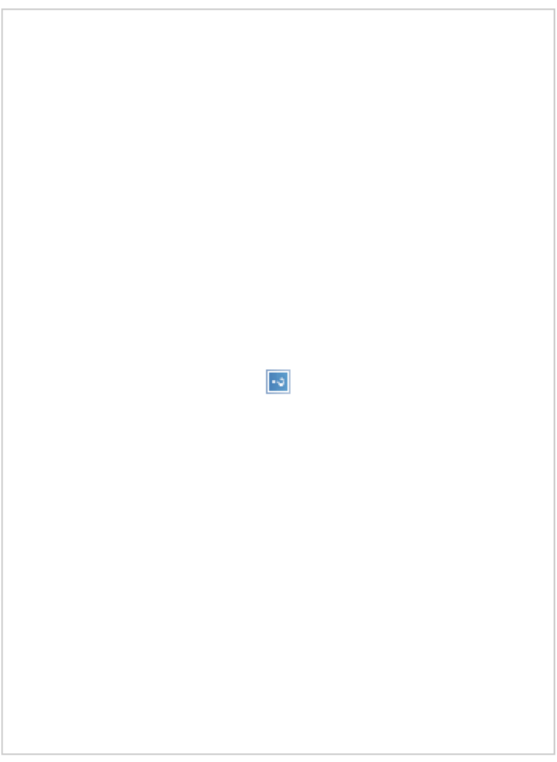Searched for http://www.mydhl.com                                           **12** Results

\* denotes when site was updated.
Material typically becomes available here 6 months after collection. See FAQ.

### Search Results for Jan 01, 1996 - Jul 31, 2009

| 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| 0 pages | 0 pages | 0 pages | 0 pages | 0 pages | 0 pages | 0 pages | 2 pages | 6 pages | 2 pages | 1 pages | 0 pages | 1 pages | 0 pages |
| | | | | | | | May 09, 2003 \* | Jul 29, 2004 \* | Feb 06, 2005 | Nov 05, 2006 \* | | Jun 08, 2008 \* | |
| | | | | | | | Sep 19, 2003 \* | Sep 02, 2004 | Feb 12, 2005 | | | | |
| | | | | | | | | Sep 20, 2004 | | | | | |
| | | | | | | | | Sep 24, 2004 | | | | | |
| | | | | | | | | Nov 27, 2004 | | | | | |
| | | | | | | | | Dec 05, 2004 | | | | | |

Home | Help

Internet Archive | Terms of Use | Privacy Policy

Done

# ANNEX H

Safari   File   Edit   View   History   Bookmarks   Window   Help

Internet Archive Waybac.... | My Democracy Has Losers | My Democracy Has Losers | My Democracy Has Lo... | My Democracy Has Lo... | Welcome to MYDHLC...

http://web.archive.org/web/20040920111641/http://mydhl.com/

My Democracy Has Losers

Tue 6:40

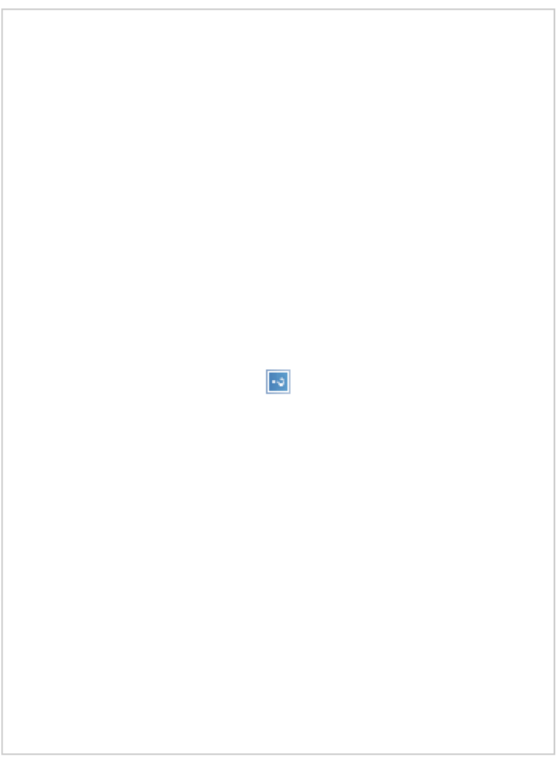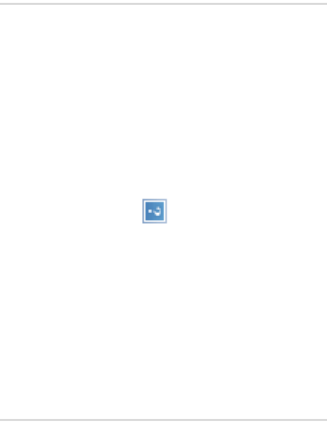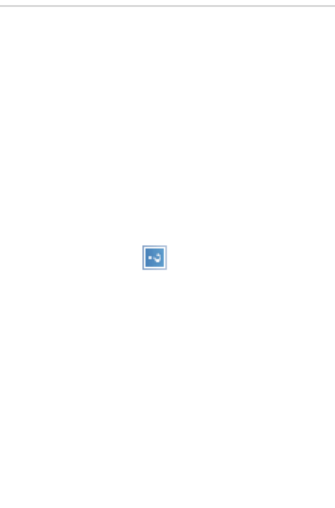John Kerry and John Edwards discuss their vision for America

# ANNEX I

Internet Archive Waybac... | My Democracy Has Losers | My Democracy Has Losers | My Democracy Has Losers | My Democracy Has Losers | My Democracy Has Losers | Welcome to MYDHL.COM

My Democracy Has Losers

John Kerry and John Edwards discuss their vision for America

Tue 6:43
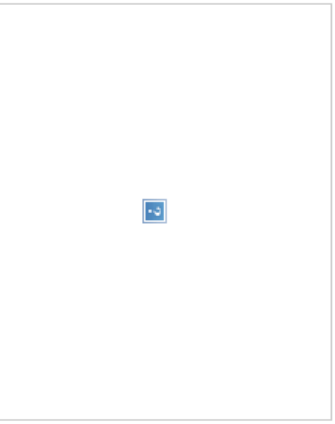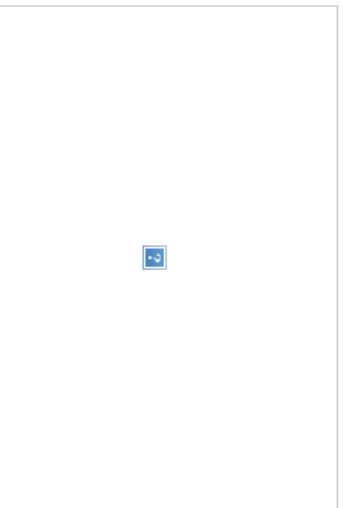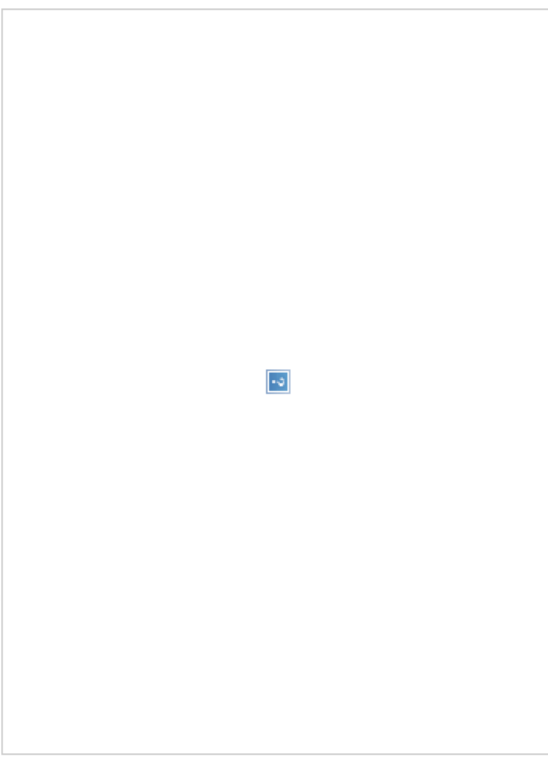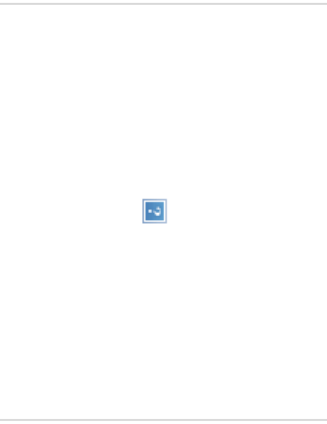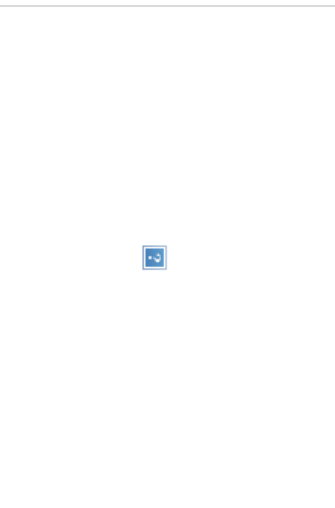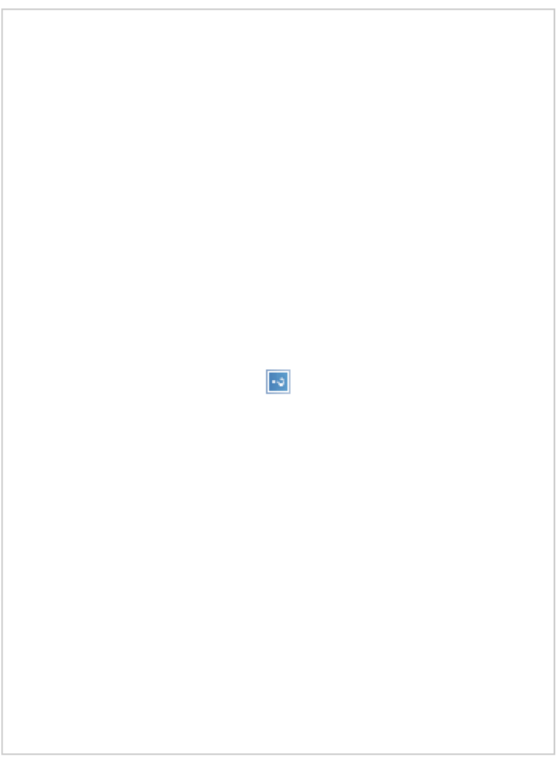
# ANNEX J

John Kerry and John Edwards discuss their vision for America
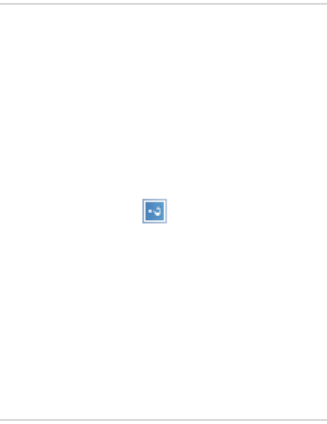
# ANNEX K
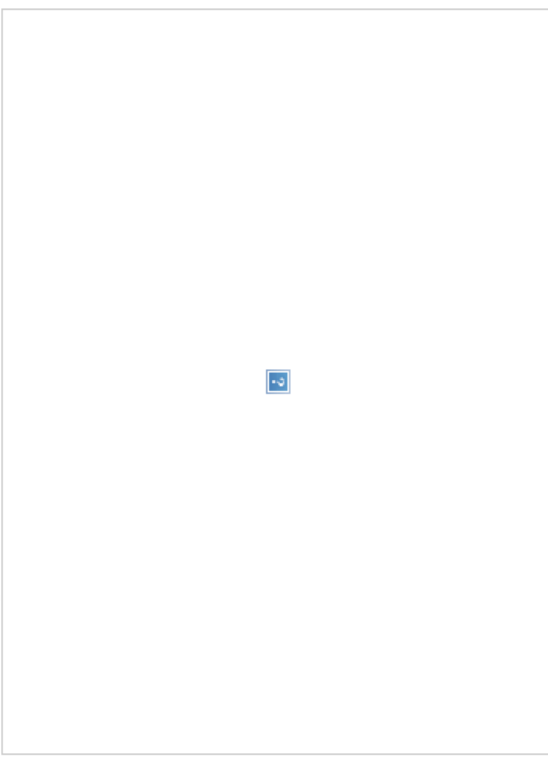
John Kerry and John Edwards discuss their vision for America
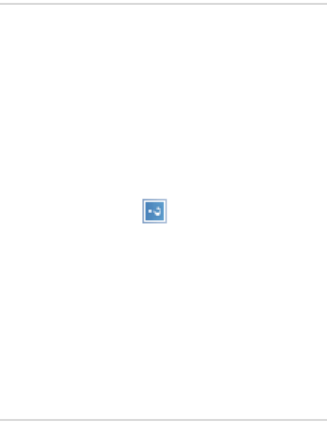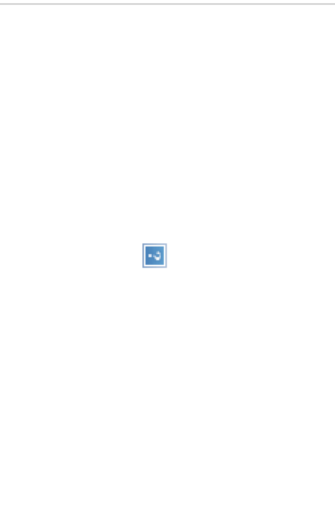
# ANNEX L

Internet Archive Waybac....    My Democracy Has Losers    My Democracy Has Losers    My Democracy Has Losers    My Democracy Has Losers    My Democracy Has Losers    Welcome to MYDHL.COM

My Democracy Has Losers

John Kerry and John Edwards discuss their vision for America

# ANNEX M

http://web.archive.org/web/20080608052529/http://www.mydhl.com/    Welcome to MYDHL.COM

# Welcome to: MYDHL.COM

Sponsored Listings

**NHL Playoff Tickets**
Great deals on All Stars Tickets. Tickets Selling fast - Buy today!
www.TicketCity.com

**New York Islanders Forum**
New York Islanders Fan Forum New York Islanders Message Boards
www.hockeybreak.com

**2k3 Nhl - Cheap Prices**
Find the Latest PS3, Xbox 360 and Wii Games. 2k3 Nhl on Sale!
www.NexTag.com/Video-Games

**NHL Stanley Cup Champs**
NHL Stanley Cup NHL Champions NHL Merchandise and NHL Champ Gear.
www.FaceoffFanatics.com

**Nhl 2005 ps2**
Browse a huge selection now. Find exactly what you want today.
www.eBay.com

**Stanley Cup Finals**
Get the latest NHL news, scores and updates at MSG. Check it out!
msg.com/nhl

**NHL_08**
Life, Truth & The Love Of The Games News, Reviews & More. Get Crispy.
www.crispygamer.com

**Quantum Goalie Mask G1/G2**
Pro Quality Composite Goalie masks. Custom Fit Pro or CSA. Custom paint
www.quantumhockey.com

**Nhl Ringtones**
Send Nhl Ringtones directly to your cellphone now!
ringtones.33rpm.com/NHL-ringtones

**NHL: Gretzky v Lemieux**
1 Minute Poll Who was a better hockey player?
YourVotes.com/NHLHockey

**Not what you're looking for?**

[ Search ]

**Related Searches**

▼ NHL 2005 PS2
▼ Xbox 360
▼ NHL Online
▼ NHL Scoring
▼ NHL Salaries
▼ NHL Update
▼ NHL Patch
▼ NHL Madden
▼ NHL Goal
▼ NHL Manager

# ANNEX N

# The Legal Satyricon

Occasionally irreverent thoughts on law, liberty, tech, and politics

- [Home](#)
- [Contact](#)
- [The Satyriconistas](#)
- [The Editor](#)
- [Media](#)

## Is Godaddy a Mass Cybersquatter?

We have all bumped into pay-per-click sites while looking for actually useful information. You know these sites. You type in a domain name, fully expecting to find a useful website, and all you find is a sponsored link generic page.

### The Periplaneta Americana of the Internet



**What you find at motoguzzi.us**

Up until I was about 26, my primary form of transportation was always a motorcycle. However, I never owned a bike that cost more than $600. In high school and college, I drooled over the Moto Guzzis that I would see from time to time that were hopelessly out of my financial reach. As soon as my bonus came in this year, I resolved to spend it on a Moto Guzzi.

I figured that Moto Guzzi would be at **http://www.motoguzzi.com**. No such luck. Let's try **http://www.motoguzzi.us**. As you can see by clicking the image above, you don't *exactly* wind up at Moto Guzzi's website. *(www.motoguzzi.com used to resolve to a pay-per-click site too, but it has since gone down)*



**Canadians looking for Moto Guzzi Canada will be similarly disappointed**

These pay-per-click pages and their operators are the parasites of the internet. I love when they put some goddamned phrase at the top like "find something interesting" or "helping you find what you need."

Far from "helping you find what you need," these sites do nothing except divert traffic from its intended destination. Trying to wipe them out is like playing whack-a-mole. Go find your favorite website. Lets presume that it is "The Drudge Report." Now type in [http://wwwdrudgereport.com/](http://wwwdrudgereport.com/) (note that I forgot the period). Click it and see where you wind up – certainly no where near the Drudge Report. You can do this all day long — and you'll find these crappy and annoying pages everywhere. I suspect that they outnumber "legitimate" websites at this point.

These pay-per-click sites are truly the *Periplaneta americana* of the internet.

And not only that, when these pay-per-click sites operate by using another person's trademark, like Moto Guzzi, they are breaking the law. Under the ACPA (15 U.S.C. § 1125(d)), this kind of parasitic behavior can subject the pay-per-click domain owner to up to $100,000 in damages as well as forfeiture of the domain name, and possibly an attorneys' fees award.

## Dude, Where's Your Blog?

Now that you know how I feel about pay-per-click sites, and you know that establishing one on the back of someone else's trademark rights is illegal, lets take a look at a little GoDaddy issue, which served as the inspiration for this post.

GoDaddy runs its own pay-per-click program that isn't really *all that* parasitic. If you buy a domain from GoDaddy (or any other registrar for that matter), you can "park" the page, and the registrar will turn it into a pay-per-click site for you. This is not, generally speaking, the kind of practice that I rail against, nor is it a violation of the ACPA. It is kind of like putting a billboard on a building that is under construction.

Imagine my annoyance a few days ago when I was trying to visit one of my favorite IP blawgs and entered the address into my browser.

I left off the "**www**" as I often do, since it is usually superfluous. See, if you type in **legalsatyricon.com**, or **http://www.legalsatyricon.com**, or **www.legalsatyricon.com**, you wind up at the same place — the Legal Satyricon — your intended destination (I hope).

So here is what I typed in: http://vegastrademarkattorney.com.

Imagine my surprise when the page that came up said "*this domain is parked*," and I was provided with a generic GoDaddy pay-per-click domain parking page! Had a cybersquatter stolen Mr. Gile's domain and turned it into yet another plague-of-the-web pay-per-click site? Did Gile just give up the whole blawg concept in favor of collecting a few bucks a month in click-thru fees?



**Is this cybersquatting?**

Just for giggles, I looked at the address in my browser and I entered the "www" — http://www.vegastrademarkattorney.com. When the familiar logo and layout popped up, I breathed a sigh of relief and thought little of it.

A few days later, I tried to visit one of my other favorite blogs, **Nobody's Business**:

I entered in the following: http://bakelblog.com. Yikes! It appeared that one of my favorite libertarian blogs was gone! *(note, by the time you read this, the issue may be corrected)*



I thought, "oh no, did Queen Beatrix send her secret police to drag Rogier van Bakel from his island hideout to answer for the crime of insulting Dutch royalty?" As I loaded my Glock and started wondering who to call to assist me in my rescue mission, I considered trying one less drastic solution… I typed in the "www." http://www.bakelblog.com

Relief… Rogier is still safe from being cast into an Amsterdam dungeon, and I don't have to take on any Dutch prison guards.

**Lese majeste**

**Lese majeste
scofflaw
and proud of it!**

Now that we have established that neither censors nor domain thieves have conspired to deprive me of some of my favorite reading material, I still must ask the question — WTF? It looks like GoDaddy is playing the cybersquatting game by slightly different rules.

## Is GoDaddy Violating the ACPA?

When GoDaddy provides these pay-per-click pages instead of its customers websites, is the world's largest registrar violating the Anti Cybersquatting Act? Maybe. Lets look at some pertinent portions of 15 U.S.C. § 1125(d).

*(d) Cyberpiracy prevention*

>*(1) (A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person –*

>*(i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and*

>*(ii) registers, traffics in, or uses a domain name that –*

>*(I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;*

Well, first of all we will need to decide whether Gile's "Vegas Trademark Attorney" or van Bakel's "Nobody's Business" are trademarks. They are not **registered** marks, but registration is not required — trademark rights arise from **use**, not **registration**. I would say that "Nobody's Business" certainly is a common law mark, and perhaps so is even "bakelblog".

"Vegas Trademark Attorney" is super descriptive, and almost generic. However, that would only be the case if the services were "legal services." For a blog, I'd say that the name qualifies for some degree of trademark protection. Add to that his secondary meaning, and I'm willing to say that both blogs' names and domains are distinctive.

*I realize that I am skipping a few details here, but this is a blog, not an appellate brief.*

Next, lets see if Godaddy's behavior fits within the ACPA's prohibitions. There is no case law to guide us on this, since this particular kind of behavior hasn't been dealt with in any reported case (at least none that I could find).

It sure looks to me like it fits.

Godaddy is "using" domain names that are supremely confusingly similar. In fact, Godaddy is actually using van Bakel and Gile's domain names, absent the "www." The "use" is for profit — the pages that Godaddy provided to me, instead of the pages I searched for, were chock full of sponsored links. GoDaddy makes advertising revenue off of them.

## But is it Bad Faith?

15 U.S.C. §1125(d)(1)(B)(i)(I) thru (IX) provides nine nonexclusive factors to help us determine whether the **use** is in **bad faith**. None of them seem to fit neatly within this factual scenario. GoDaddy certainly is

using these domains with an **intent to profit** — but in order to call this an ACPA violation, we need to say that it is a **bad faith** intent to profit.

At first blush, it sure seems like it is. Naturally, I alerted these two bloggers to the issue. Rogier van Bakel put on his journalist hat and went digging for the truth. His results suggest that GoDaddy gets a legal (but perhaps not moral) pass on this one.

GoDaddy gives its customers the **option** of having their site load without the visitor typing in the "www." They do this by adjusting their "CNAME" settings. As I understand it, the CNAME is a kind of alias that, behind the scenes, automatically modifies a URL to go to a specified site. These websites' CNAME's were set adequately but not perfectly. Any GoDaddy user who fails to select the proper option will find some of their traffic re-directed to a sponsored link page, where coincidentally GoDaddy makes a few bucks on click-through fees.

However, ultimately, it does come down to the webmaster operating his account properly.

It seems that GoDaddy makes this needlessly complicated (or at least non-transparent), and that it should be a cinch for the company to autoforward, say, **vegastrademarkattorney.com** to the exact same place it takes you when you type **http://www.vegastrademarkattorney.com**. I fail to understand why any customer would prefer that a visitor who omits the "www" should be re-directed to a pay-per-click site — especially when such site gives the impression that the website the user sought has gone out of business (or worse).

But back to the legal question: Does GoDaddy's conduct rise to the level of "bad faith?" At first, I was certain that it does. After Rogier's research is taken into account, it appears that at least some (if not most) of the responsibility must fall on the shoulders of the user — who can control the issue at any time.

Does that make GoDaddy right? No. The default should be that internet users wind up where they intended to go. It is still parasitic and sleazy to draw traffic intended for someone else to your own money-making scheme. It is even sleazier when you do it to your own paying customers.

*Rogier van Bakel contributed mightily to this post.*



**And yes, I did eventually get my Guzzi!**

This entry was posted on Sunday, March 16th, 2008 at 5:27 am and is filed under cybersquatting, domain names, internet law, trademark. You can follow any responses to this entry through the RSS 2.0 feed. You can leave a response, or trackback from your own site. Edit this entry.

## 20 Responses to "Is Godaddy a Mass Cybersquatter?"

1. *LIKELIHOOD OF CONFUSION® » Blog Archive » Who's yer daddy?* Says:
   March 16, 2008 at 9:44 pm | Reply   edit

# ANNEX O

Click here to take 2010 Domain Name Wire Survey

## GoDaddy Makes It Harder for Woman's Husband to Find a Job

# Saturday, March 14th, 2009

**5 tweets**

retweet

**With missing www., site shows page full of ads.**

[Updated: It looks like the web site may not be hosted at GoDaddy. It's on the company's nameservers, but the IP address on the site shows Apple. GoDaddy says it's not hosted with them. That would mean the only thing GoDaddy is guilty of is hosting ads on the www version of the domain while it's being cnamed (or otherwise forwarded) to another web hosting service. That's not GD's web hosting groups' fault; it just means the company is profiting from a customers' domain they *think* is not in use. Most domain registrars do that. Whether it's right or wrong, in this case it makes the company look bad.] This morning I visited CNN.com, where the featured story was about a woman who is using the web to help her husband find a job. Frustrated as her husband struggles to find a job, Robin Stearns registered a domain name at GoDaddy and created a web site to get publicity for her husband. It has no doubt worked.

The domain name in the article is MyHusbandNeedsAJob.com. I typed that into my browser and was surprised to see this:

Huh. I must have mistyped it. So I copied and pasted the URL from the CNN article and got the same result. Surely they didn't have a typo in the article, as the picture in the article also features the same domain name.

Then I typed www. before the web address and presto! It worked.

Is it really that difficult for web hosting companies to default both www. and the domain without the www to the same page? Not really. Perhaps this is a tricky way to capture traffic. [See update above]

With a front page CNN.com article, I suspect Robin's husband will get a job in no time. In the mean time, she may want to fix the www issue so it no longer shows GoDaddy ads and then beef up her ~~GoDaddy~~ web hosting package so the site doesn't go offline.

Related posts:

1. GoDaddy Makes Reporting Invalid Whois Easy
2. Woman Sues GoDaddy for Alleged Discrimination
3. GoDaddy Squashes RateMyCop.com

Tags: GoDaddy

24 Comments » - Posted in Domain Registrars by **Andrew Allemann**

# Comments

1. Lda
   March 14th, 2009 | 9:20 am

   Even the cheapest, dodgy, oversold-bandwidth hostings on eBay will invariably resolve both with and without the www.

   Any hosting that doesn't screams AMATEUR setup.

2. anonymous
   March 14th, 2009 | 9:27 am

   I noticed the same thing. At first, I thought I typed it in wrong. Then I thought I got a virus. Finally, I did a search and came across this article. Thank you for posting!

   What a waste of my time! Based on my interest with the idea, I would have probably did a little more research (including find out which hosting provider she used). POP UP BLOCKER COMES UP AND A SECURITY WARNING!! For novice computer users this would be terrifying.

# ANNEX P

**WORLD INTELLECTUAL PROPERTY ORGANIZATION**
**ARBITRATION AND MEDIATION CENTER**

DHL Operations, B.V.
DHL International, GmbH
**Complainants**

v.                                                    **Disputed Domain Name:**
                                                                mydhl.com
Eric J. White
**Respondent**

## SUPPLEMENTAL DECLARATION OF RESPONDENT

1.      The undersigned, being warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, declares that he is qualified to make all statements herein from his own personal knowledge.

2.      My legal name is Eric J. White.  I am an adult over the age of 18 years, and I am otherwise competent to make all of the statements in this Declaration.

3.      I have reviewed the GoDaddy "parked" pages that are found in the Complainant's Annexes, as well as my own Annex M.

4.      These Parked pages were placed there by my domain name registrar during periods when my web page was either not functioning, or when I had the CNAME settings toggled improperly.

5.      I never directed, nor requested, that parking pages be displayed at the domain mydhl.com.

6.      I never derived any benefit from these parking pages, and if any advertising revenue was generated from them, GoDaddy reaped the benefit, not me.

7.      The gap in the internet archive for this domain makes sense.  About the time that the archive seems to have stopped archiving the domain, in

2006, I changed hosting providers and started simply forwarding [www.mydhl.com](www.mydhl.com) to [http://www.inetconnect.com/mydhl.htm](http://www.inetconnect.com/mydhl.htm).  If the Panel looks at that page, it will find that it is identical to the page at [www.mydhl.com](www.mydhl.com).

8.      The June 8, 2008 "parked page" found at Annex M must have been generated by GoDaddy when I had a technical glitch.  It is conceivable that I have had a few times when the settings on the domain were not precisely right, and GoDaddy would, consistent with their policies, then seemingly direct the domain to display links to other websites – links that they selected, that they benefitted from, and links that I did not want on my domain.

9.      Signed this 26th Day of January, 2010

_____

        Eric J. White

# ANNEX Q

# My
# Democracy Has Losers



Before their political "marriage."



A bit too comfortable



adoring babble



Ms. (Mr.?) Clinton

Political Speech, brought to you by a free country, and a constitution, unequalled in all of recorded history.

# ANNEX R

# My
# Democracy Has Losers



Before their political "marriage."



A bit too comfortable



adoring babble



Ms. (Mr.?) Clinton

Political Speech, brought to you by a free country, and a constitution, unequalled in all of recorded history.

# ANNEX S

# Google™ Answers **View Question**

## Q: Update cache information ( [Answered](#),   0 Comments )

## Question

Subject: **Update cache information**                   Posted: 17 Nov 2003 10:30 PST
Category: [Miscellaneous](#)                            Expires: 17 Dec 2003 10:30 PST
Asked by: **shermacman-ga**                             Question ID: 276758
List Price: $20.00

When I google our web site I get links to pages that are not active on
our server. Yet when I click them they open from some cached
information I assume is stored on your servers. How can I update that
information?

## Answer

Subject: **Re: Update cache information**
Answered By: [slawek-ga](#) on 17 Nov 2003 20:28 PST

Good Day shermacman-ga,


If you are actually clicking on the main link to the site on the
search result page, the site is probably loading from the cache in
your web browser. Google does have it's own cache, but a website will
not load from Google's cache unless you specifically request it by
clicking the "Cache" link (bottom of a website description on the
search result page).

If you choose not to have your site show up in Google's cache, you can
always ask Google not to cache the site. This can be accomplished
using the "noarchive" meta tag (to be placed in the head tags of every
page not to be cached):

<meta name="googlebot" content="noarchive">

As with any changes aimed at a search engine, the above might take a
while to take effect. There is no way to automatically request Google
to update it's cache information, and neither is there anyone who will
do that manually (there would simply be too many requests for such
services).

Please see the following link for additional information on Google,

it's robot operations, and how you can influence them.


Website: Remove a Site From Google
URL: ://www.google.com/bot.html


I think it important to mention the revisit-after meta tag, as you
might become aware of it if you do some searching on the subject:


<meta name="revisit-after" content="7 days">


You will find references to this tag in many places on the Internet.
Most web sites that mention this tag will also inform you that this
tag is never observed by search engines, as it leaves too much room
for abuse (consider what the search results would look like if
everyone posted a website, waited until the search engine spidered the
page, and replaced the content soon after... all this with a
"revisit-after" setting of 1000 days). There really is no way of
controlling the frequency of the cache updates on Google itself (and
any other search engine that I am aware of). All you can do is ask not
to be cached at all.


Now, if none-existing pages are loading when you click on the website
title and not the "Cache" link, this information is most likely loaded
from your web browsers cache memory. If you are using Internet
Explorer, you can delete this information by clicking on the "Tools"
option in the main menu of Internet Explorer, and clicking the "Delete
Files..." button in the "Temporary Internet Files" section. Please let
me know if you are using a different browser, and need step by step
instructions on clearing out the browsers cache memory.


Search Strategy: Past experience
                 Google search for "revisit"+"google" and
                 Google search for "cache"+"update"+"google"


I hope that you will find this information valuable. Should you
require additional details, please use the "Ask for a Clarification"
feature. Please include your website address if you require
information very specific to your site.



Regards,
slawek-ga

## Comments

There are no comments at this time.

---

Search Google Answers for

Search Answers

Google Home - Answers FAQ - Terms of Service - Privacy Policy

# ANNEX T

# inhousesem.com

An in-house perspective on search engine marketing

- [Home](#)
- [About the Author: Kelly Gillease](#)
- 

[                    ] Switcher

## Archive

Posts Tagged 'google cache'

# Recover a Website with the Help of Google

February 19th, 2009
[No comments](#)

Long ago, in a galaxy far, far away (ok it was Las Vegas, but that seems very foreign to me) some servers were stolen. Vegas is a shady place and sadly we were on the receiving end of some shadiness. At any rate, all we were left with were files and reports people had saved to their personal computers. And yet, within two weeks, and a lot of long days, we had sites up and running again with most of their data intact.

Partially the data people had saved on their machines was really helpful. Lots of database info like prices, product codes, names, and the like were in Excel files. We plopped it into a new database for the site. The rest, like what was on the home page, we retrieved from our soon to be new best friend, the Google cache. Fresher and more comprehensive than archive.org, Google's cache had pretty much every missing page we needed to rebuild. The process went something like this:

1. Make list of missing pages (basically home page + product pages)

2. Find missing pages in Google by searching for the URL, the code, anything to get the page to show up.

3. Click on the cache link and save the page to a html file.



See the cache link by the red arrow? That shows the web page Google spidered and indexed, as opposed to

the live web page you would see by clicking on the result link. Usually there's not a big difference between what is cached versus live, but there's a lag between Google's last visit and a website's most recent changes. Sometimes that lag is minutes (if the website is CNN) or months if a site is less popular.

4. Give the html files to engineers who parse out all the important data field content and put it back into the database.

5. QA everything, then set it live again.

6. Pesky evildoers find themselves thwarted by technology!

Normally the cache is useful for trying to figure Google's lag time in updating or seeing a site that might at the moment be unavailable, but should you find some web content has gone missing, its there to help you as well.

Tip of My Hat google cache, missing web pages, website recovery

RSS feed

[Search]

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- [March 2009](#)
- [February 2009](#)
- [January 2009](#)

- [December 2008](#)
- [November 2008](#)
- [October 2008](#)
- [September 2008](#)
- [August 2008](#)
- [July 2008](#)
- [June 2008](#)
- [May 2008](#)
- [April 2008](#)
- [March 2008](#)
- [February 2008](#)
- [January 2008](#)
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- [August 2007](#)
- [July 2007](#)

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# ANNEX U

# search engine land.

SEARCH NEWS, COLUMNS, FEATURES        Go

[First Time Visit? Start Here!](#)

- [Home](#)
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- [Features](#)
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# Finding Search Engine Freshness & Crawl Dates

[MEMBER LOGIN >](#)|[BECOME A MEMBER >](#)

Feb 27, 2007 at 3:47pm ET by [Danny Sullivan](#)

A reader emailed me today noticing that Google was showing a date next to his listing, which made me think this was a good time to revisit how, when and where search engines show crawl dates for pages. These dates are a useful way for site owners to understand how often they are being revisited or for anyone to "squeeze the loaf" of a search engine to see how fresh it is. Here's a search engine-by-search engine rundown on date display. I'll also cover how we've sadly lost crawl dates being embedded next to listings, over the years. But that's not all! Read now and you'll even get a free at-a-glance table explaining how dates are displayed. Read now — web server operators are standing by!

0
tweets
tweet

**Google**

When you do a search, some pages may show a date below the description of a listing, as illustrated below:

I thought Google had long done this for certain pages that it revisits on a
super-frequent basis. And when I did a search for
cars today, I saw a date
like this coming up for the cars.com listing as shown above. An hour later, the date was
gone. I then tried that search again using a particular Google data center,
rather than whatever data center was assigned to my browser randomly. Doing the
same
search at that data center gave me dates again.

I'm checking with Google on how long dates have been showing and why they may
come and go as I saw today. I'll postscript what I'm told at the end of this
story.

The example above shows that only some pages have dates. In contrast, the
Google Cache can
give you dates for nearly any web page.

The Google Cache allows you to view a copy of a page that is stored on
Google's servers, rather from the website directly. (Don't like Google caching this
for your site? Learn how to prevent it

here and

here. Don't see a cached link option? Then the site owner is blocking
caching).

Going back to our search for
cars and the screenshot
above, you'll see that the disney.go.com listing doesn't have a date next to it.
To find the date the page was visited, you have to click on the link that says "Cached" under the description

of that
listing. That makes the cached page load like

this. At the top of that page, you'll see this:

This is Google's

cache of
http://disney.go.com/disneypictures/cars/ as retrieved on
**22 Feb
2007 14:34:08 GMT**.

See the date and time, which I've put in bold? That's when the page was last visited by Google.

FYI, before
September 2006, that date reflected the last time Google found the page to have
changed, not when it was last visited. In other words, if Google visited the
page in January 2005, then revisited it throughout the year but the page never
changed, the cached date would keep saying January 2005.

Since September 2006,
that's been different. The date was altered to reflect the last time Google
visited the page — a good change to make. Google explains more about this on
the Google Webmaster Central blog

here, and Google's Matt Cutts also did a video about it

here.

The options above allow anyone to see the freshness of any pages within
Google, one page at a time (as long as they are cached). What if you want to get industrial strength
and view the freshness of all your own pages at once?
Unfortunately, the Google Webmaster
Central tools don't let you see the last time all your pages were spidered.
But that's something they're considering for the future. The tools will,
however, show you any problems Google had in reaching any of your pages and the
last time a crawl error happened for those pages. Using the "Crawl rate" option
found under the Diagnostics tab, you can also see a general graph of crawling
activity to your site.

There is one other type of date that you might see associated with
listings that has nothing to do when the page was crawled. Look here:

See the "3 visits – Feb 14" part? That's coming from
Google
Personalized Search and shows that I've clicked on that listing 3 times,
with the last visit being on Feb. 14. My
Google Ramps Up
Personalized Search article from earlier this month explains more about how
Google Personalized Search works and can be disabled, if you don't like it on,
as now happens much more often.

**Microsoft Live Search**

Microsoft Live Search operates like
Google. Some pages show dates next to them, as I've highlighted below:



As with Google, this seems to happen with pages that are being spidered
frequently, but I'll check on this. Does a page lack a date? Then click on the
"cached page" link. When the cached page loads, you'll see something like this
at the top of it:

> This is a version of
>
> http://www.pixar.com/theater/trailers/cars/index.html as it looked when
> our crawler examined the site on **2/16/2007**. The page you see below is the
> version in our index that was used to rank this page in the results to your
> recent query.

The date (which I've but in bold above) tells you when the page was last spidered.

Don't see a cached page
option? The site owner is probably blocking caching. Are you a site owner that wants to

block caching? Visit the
help area at
Live and
search for "cache" to find more info. I'd point you to the right place, but it
remains impossible to link to particular pages in Microsoft's absurd help
system.

*[**Postscript**: Microsoft sent this information: "We only show the last-crawl date when it is within a few days.
This is a decision to draw attention to the freshest content without highlighting older content. Crawl dates
for other documents can be found by looking at the cached page."]*

**Ask.com**

At Ask.com, you can only get dates by looking at the cached pages,
similar to how that works at Google and Microsoft. Click on the "Cached" link that you'll see
next to the URL of a listing, as highlighted below:



At the top of the page, you'll see something like this with the date and time
(shown in bold below) that the page was last visited:

> Below is a cache or saved snapshot of

> http://www.cars.com/  as we found it on **February 19, 2007 1:24:56 AM**.

**Yahoo**

At Yahoo, you can only get dates one way, through using
Yahoo Site Explorer. You'll
have to create an account for your web site, then authenticate your account,
then you'll be shown last crawl dates as I've highlighted in the first listing
below:

More than any other search engine, Yahoo makes it easy for a site owner to see the freshness of many pages all at once. However, the huge disadvantage from a searcher perspective is that you can't spot check the freshness of any page you randomly select.

**The Date & Freshness Table**

I love nothing more than doing tables, so let's put everything above into a nice one:

| Feature | Ask | Google | Microsoft | Yahoo |
|---------|-----|--------|-----------|-------|
| Dates Next To Listings? | No | Some | Some | No |
| Dates On Cached Pages? | Yes | Yes | Yes | No |
| Dates In Webmaster Tools? | No Tools | For Errors & Home Page | No Tools | Yes |

Ideally, I'd like to see that top row — "Dates Next To Listings?" — be completely "Yes." Some site owners block caching, which makes it hard to measure freshness. Putting the dates right next to the listings makes it easy for anyone who cares to see at a glance if a search engine is stale or fresh.

In fact, I have to laugh. I've been asking for this for years. On the old features chart I used to maintain about dates, I

wrote in 2001:

> Along with the page description, some search engines show the date when a web page was created or modified. As noted above, these dates may not always be reliable. However, they do provide a useful clue as to how fresh or stale a search engine's listings are. Thus, search engines that show a date deserve praise for doing so.

That was from 2001! Nearly six years later, it's still the case that dates aren't being shown. In fact, it's a reversal. Back in 2001, the major search engines of AltaVista, HotBot (Inktomi) and Northern Light all showed dates for all listings right within search results. Fast forward to today, and none of the major search engines do.

The reason is simple enough. Over time, the search engines either couldn't maintain freshness or didn't want to show they were sometimes stale. So dates either went away or never got added. C'mon gang — time to bring them back right into the search results. If they aren't there by default, make it an option people can enable.

**Verifying Freshness**

In the meantime, there's a favorite tactic for those search watchers who want to track freshness. Google's Matt Cutts
once wrote
about this back in 2005, describing exactly a technique I and others have long used. You simply find a page that you know carries a date that's constantly updated. Look at the cached page and see what the time and date says on it.

But Yahoo doesn't show a date on cached pages! No, it doesn't, but you're not looking for the date that the search engine inserts. You want the date on the page itself. For example,

here's the cached page over at Yahoo for CNN:

See the part I highlighted in red, that says:

> **UPDATED:** 3:53 a.m. EST, February 26, 2007

That's the date that CNN had on its own page when the Yahoo spider last visited. When I looked, the date and time was 3:10 pm EST on February 27 — so the page is only 12 hours old. Not bad in this case, but I wouldn't expect a major news site to be much out of date.

## Return Of The Freshness Guarantee?

Finally, I'll leave you with this trip down memory lane. Back in June 1999, AltaVista once offered a freshness guarantee that was quickly broken. As I wrote at the time:

> "*AltaVista search is able to make its Freshness Guarantee: no search site will have fresher results than AltaVista.*"
>
> AltaVista unveiled its first "Freshness Guarantee" back when it relaunched in June, promising that its entire index would be refreshed at least once per month. That guarantee was almost immediately broken, as even AltaVista President Rod Schrock admitted when we talked recently. "We turned our attention to this new system," Schrock said.
>
> OK, fair enough — they wanted to build something even better. But this new guarantee has already been broken, as described above. If claims like these are going to be made, then they should actually be met. And not to meet them in the midst of a huge media blitz is an incredible blunder.

Freshness is one important component to what makes a good search engine. It's not the only thing. Having fresh results means nothing if the results aren't relevant. And some pages don't need to be spidered that often. But putting dates next to listings is an easy form of search "food" labeling that can give reassurance about a major search engines. Surely it's time for dates to make a comeback.

---

[Danny Sullivan](#) is editor-in-chief of Search Engine Land. He's a widely cited authority on search engines and search marketing issues who has covered the space since 1996. Danny also oversees Search Engine

Land's [SMX: Search Marketing Expo conference series](), maintains a personal blog called [Daggle]() and microblogs on Twitter as [@dannysullivan]().

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3 COMMENTS ON Finding Search Engine Freshness & Crawl Dates

Matt Cutts, [February 27th, 2007 at 11:01 pm ET]():

I'm less concerned about showing the crawl dates on the search results. I would love if Yahoo would start showing the crawl date on their cached pages, because that would allow apples-to-apples comparisons.

Joel Bresler, [March 13th, 2007 at 5:08 pm ET]():

Hi, thanks for the interesting article.