

FILED
LODGED
JUN 21 2007
ENTERED
RECEIVED
CLERK AT SEATTLE
U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT

WESTERN

DISTRICT OF

WASHINGTON

In the Matter of the Search of

(Name, address or brief description of person, property or premises to be

APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT

Case Number: MJ07-305

Six Dedicated Server Hard Drives,
Owned by the Internet Hosting Provider Company
GoDaddy.com Inc., rented by Robert A. Soloway,
on or about March 30, 2007 through
May 30, 2007

I, KENNETH A. SCHMUTZ being duly sworn depose and say:

I am Special Agent, Federal Bureau of Investigation and have reason to believe
Official Title

that on the person of or on the property or premises known as (name, description and/or location)

the Internet Hosting Provider Company GoDaddy.com Inc.

in the Western District of Washington

there is now concealed a certain person or property, namely (describe the person or property to be seized)

Six Dedicated Server Hard Drives rented by Robert Al Soloway on or about March 30, 2007 through May 30, 2007

which is (state one or more bases for search and seizure set forth under Rule 41(c) of the Federal Rules of Criminal Procedure)

Evidence of Fraud in Electronic Mail, Mail Fraud, Wire Fraud, Aggravated ID Theft, and Money Laundering

concerning a violation of Title 18 United States Code, Sections 1037(a)(2) and (a)(3); 1341; 1343; 1028(A); 1956(a)(1)

The facts to support a finding of probable cause are as follows:

See attached Affidavit of Special Agent KENNETH A. SCHMUTZ, attached hereto and incorporated herein.

Continued on the attached sheet(s) and made a part hereof: Yes No

Kenneth A. Schmutz
KENNETH A. SCHMUTZ
Signature of Affiant

Sworn to before me and subscribed in my presence,

June 21, 2007 2:30 pm
Date

at Seattle, Washington
City and State

JAMES P. DONOHUE, U.S. Magistrate Judge
Name and Title of Judge

James P. Donohue
Signature of Judge

AFFIDAVIT

STATE OF WASHINGTON)
COUNTY OF KING) SS

KENNETH A. SCHMUTZ, being first duly sworn on oath, deposes and says:

I. INTRODUCTION and BACKGROUND

Warrant Requested

1. I make this affidavit in support of an application for a search warrant for six dedicated server hard drives, which are owned by the Internet Hosting Provider company, GoDaddy.com, Inc. ("GoDaddy,") and which were rented by Robert A. Soloway beginning on or about March 30, 2007, continuing through the date of Soloway's arrest on May 30, 2007.

Agent Background

2. I am a Special Agent of the Federal Bureau of Investigation (FBI), and have been so employed since January 2004. I am currently assigned to the Seattle Office's Cyber Crime Squad, which investigates various computer-related crimes, including computer intrusions and Internet-related frauds.

3. I have both a Bachelors of Science, and a Masters of Science degree in Business Information Systems from Utah State University. Those degree programs involved, among other things, human computer interface, programming in three languages (C++, COBOL, Pascal), and designing and creating Internet web pages. Prior to my work as a Special Agent, I worked for thirteen years in a variety of capacities in the computer technology field; holding positions, for example, in which I designed, implemented, and supported computer systems for credit unions, performed

1 quality assurance testing for a leading network operating system company, and
2 managed a group of software engineers in a high-paced technology company. I have
3 also taught computer classes at the community college level, including courses on
4 Windows NT Server, Networking Essentials, and Introduction to Programming. I
5 recently obtained industry certification in CompTia's Net+ program.

6 4. As an FBI agent, I have received specialized training, and gained
7 experience in interviewing and interrogation techniques, arrest procedures, search
8 warrant applications, the execution of searches and seizures, federal computer crimes,
9 computer evidence identification, computer evidence seizure and processing, and
10 various other federal criminal laws and procedures. I have investigated dozens of cases
11 involving the use of computers and the Internet to commit federal crimes, and have
12 personally participated in the execution of multiple search warrants involving the search
13 and seizure of computers and related equipment.

14 **Background and Investigation**

15 5. On October 16, 2006, an investigator with the Federal Trade Commission
16 (FTC) contacted the FBI in Seattle regarding a local resident who had been the subject
17 of approximately 100 complaints of spamming, dating back to as early as 1999. I
18 subsequently discussed the complaints with a representative of the FTC, reviewed many
19 of the complaints, and also reviewed some of the summary data that had been gathered
20 by the FTC with regard to the same.

21 6. The Seattle Office of the FBI consequently opened a criminal investigation
22 of Robert Alan Soloway and his bulk e-mail business, variously known as Newport
23 Internet Marketing, NIM, Newport Corp, NPR, and Broadcast Email Services. The
24 investigation has been open and continuing thereafter.

25 7. Much of the evidence that was uncovered during the investigation was
26 recounted or summarized in an Affidavit that I swore before Magistrate Judge Mary

1 Alice Theiler on May 23, 2007 ("May 23 Affidavit") in support of an Application for
2 Search Warrant to search Soloway's apartment at 1200 Western Ave., in Seattle,
3 Washington. That Affidavit is appended hereto as Attachment A, and incorporated by
4 reference herein.

5 8. Also on May 23, 2007, the Grand Jury for the Western District of
6 Washington returned an Indictment, charging Soloway and his bulk e-mail business
7 with ten counts of Mail Fraud, five counts of Wire Fraud, two counts of Fraud in E-
8 Mail, five counts of Aggravated Identity Theft, and 13 counts of Money Laundering.

9 9. As explained in both the May 23 Affidavit (at paragraphs 39 - 44), and in
10 the Indictment, (at paragraph 29 of Count 1), Soloway's wire and mail fraud scheme,
11 and his criminal spamming operations have involved the use of a succession of rented
12 servers. More specifically, evidence (including that referenced in paragraphs 39 - 44
13 of the May 23 Affidavit), obtained during the investigation has shown that Soloway
14 rented groups of servers from various Internet Hosting Providers. He would then
15 install a software program named "Dark Mailer" on the rented servers. The "Dark
16 Mailer" program is recognized within the Internet community as a spamming software
17 program that taps into a network of zombie proxy computers (a "botnet"), and is able
18 to send 50,000 pieces of e-mail per hour. It affords near-total anonymity because of
19 the zombie proxy network feature.

20 10. During the course of the investigation, I received information that
21 criminal spam from Soloway was being transmitted from servers that were owned by
22 GoDaddy. Records were obtained from GoDaddy that confirmed that "Robert
23 Solowa", with an address of 1200 Western Avenue, Seattle, WA, had rented servers
24 from GoDaddy beginning on March 30, 2007. The rental was paid with Visa Card No.
25 4388573000151217. Other bank records obtained during the investigation show that
26 this Visa Card No. belonged to Robert Soloway.

1 11. Robert Soloway was arrested on May 30, 2007, and had his initial
2 appearance in Court on that same date.

3 12. During the week of June 4, 2007, I spoke by telephone with Ben Butler,
4 Network Abuse Administrator for GoDaddy.com. He advised me that Robert Soloway
5 had rented a total of six dedicated servers from GoDaddy. Mr. Butler indicated that
6 GoDaddy was interested in determining whether the servers that had been rented by
7 Soloway had been used to transmit or distribute spam. Mr. Butler indicated further
8 that if GoDaddy determined that the servers that had been rented by Soloway had been
9 used in spamming activity, GoDaddy would turn those servers over to the FBI.

10 13. Mr. Butler subsequently telephoned me and advised me that GoDaddy had
11 determined that there was reason to believe that the six dedicated servers that had been
12 rented by Soloway had been used for spamming activity, as indicated by the presence
13 of the Dark Mailer program on them. Mr. Butler further reported that his company,
14 GoDaddy.com, was now requesting that a search warrant be provided to them, and that
15 the company would provide the six servers to the FBI upon receipt of such a warrant.


16 **Conclusion**

17 14. Based on the facts and evidence presented in this affidavit, and in the May
18 23, 2007 Affidavit incorporated herein, I believe there is probable cause to believe that
19 fruits, instrumentalities and evidence of violations of Title 18 U.S.C. Sections
20 1037(a)(2) and(a)(3) (Fraud in Electronic Mail), Title 18 U.S.C. Section 1341 (Mail
21 Fraud), Title 18 U.S.C. Section 1343 (Wire Fraud), Title 18 U.S.C. Section 1028(A)
22 (Aggravated ID Theft), and Title 18 U.S.C. Section 1956(a)(1) (Money Laundering)
23 exist on the six dedicated server hard drives, which are owned by the Internet Hosting
24 Provider company, GoDaddy.com, Inc. ("GoDaddy,") and which were rented by

25 // // // // //

26 // // // // //

1 Robert A. Soloway beginning on or about March 30, 2007, continuing through the date
2 of Soloway's arrest on May 30, 2007.

3
4
5 
6 KENNETH A. SCHMUTZ, Special Agent
7 Federal Bureau of Investigation

8 Subscribed to and Sworn to before me this 21st day of June, 2007.
9

10
11
12 
13 JAMES P. DONOHUE
14 United States Magistrate Judge