

11-08-2000

FORM PTO-1394
(Rev 5-93)



COVER SHEET
Y

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable

101510325

and the attached original documents or copy thereof.

1. Name of conveying party(ies):
THE DOT COM GROUP, INC.

Individual(s) citizenship:
Association:
General Partnership:
Limited Partnership:
Corporation - State: DELAWARE
Other:

2. Name and address of receiving party(ies):

Name: IMPERIAL BANK
Address: 226 AIRPORT PARKWAY
City: SAN JOSE State: CA Zip: 95110

Individual(s) citizenship:
Association:
General Partnership:
Limited Partnership:
Corporation - State:
Other: a California chartered bank

Additional name(s) of conveying party(ies) attached? [] Yes [X] No

If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [] No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? [] Yes [x] No

3. Nature of Conveyance:

[] Assignment [] Merger
[X] Security Agreement [] Change of Name
[] Other

Execution Date: October 19, 2000

4. Application number(s) or trademark number(s):
A. Trademark Application No.(s)
76/044,211 76/044,207 76/042,755
76/042,754 76/027,501 76/027,500

B. Trademark Registration No.(s)

Additional numbers attached? [] Yes [X] No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Erin O'Brien
Internal Address: GRAY CARY WARE & FREIDENRICH
400 Hamilton Avenue
Palo Alto, California 94301

6 Total number of applications and registrations involved: 6

7. Total fee (37 CFR 3.41) \$165.00
[x] Enclosed
[] Authorized to be charged to deposit account

8. Deposit account number: _____
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Erin O'Brien _____ Signature _____ Date October 24, 2000
Name of Person Signing

Total number of pages comprising cover sheet: [10]

Mail Documents to be recorded with required cover sheet information to:
U.S. Patent and Trademark Office, Office of Public Records
1213 Jefferson Davis Highway, 3rd Floor
Arlington, VA 22202

11/07/2000 DBYRNE 00000127 76044211
01 FC:481 40.00 DP
02 FC:482 125.00 DP

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TRADEMARK
REEL: 002169 FRAME: 0743

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (the "Agreement") is made as of October 19, 2000, by and between THE DOT COM GROUP, INC., a Delaware corporation ("Grantor"), and IMPERIAL BANK, a California chartered bank ("Secured Party").

RECITALS

A. Secured Party has agreed to make certain advances of money and to extend certain financial accommodations to Grantor (the "Loans") in the amounts and manner set forth in that certain Credit Terms and Conditions dated as of October 19, 2000, that certain Promissory Note dated as of October 19, 2000, and that certain Commercial Security Agreement dated as of October 19, 2000 (collectively, the "Credit Agreement;" all capitalized terms used herein without definition shall have the meanings ascribed to them in the Credit Agreement).

B. Secured Party is willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall grant to Secured Party a security interest in all of Grantor's right title, and interest in, to and under all of the Collateral whether presently existing or hereafter acquired

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Secured Party, Grantor hereby grants a security interest and mortgage to Secured Party, as security, in and to Grantor's entire right, title and interest in, to and under all of its intellectual property, including without limitation the following (all of which shall collectively be called the "Collateral"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those copyright applications and registrations set forth on Exhibit A attached hereto (collectively, the "Copyrights");

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Grantor now or hereafter existing, created, acquired or held;

(d) All patents and patent applications including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");

(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(h) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(i) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing;

(j) Notwithstanding the foregoing, the term "Collateral" shall not include any general intangibles or contracts of Grantor (whether owned or held as licensor, licensee or lessee, or otherwise) to the extent that (i) such general intangibles or contracts are not assignable or capable of being encumbered as a matter of law or under the terms of the license, lease or other agreement applicable thereto (but solely to the extent that such restriction shall be enforceable under applicable law) without the consent of the licensor or lessor thereof or other applicable party thereto and (ii) such consent has not been obtained: provided, however, that the term "Collateral" shall include, (A) any general intangible or contract which is an account or a proceed of, or otherwise related to the enforcement or collection of, any account or goods which are the subject of any account, and (B) any and all proceeds of any general intangibles or contracts which are otherwise excluded to the extent that the assignment or encumbrance of such proceeds is not so restricted, and (C) upon obtaining the consent of any such licensor, lessor or other applicable party with respect to any such otherwise excluded general intangibles or contracts, such general intangibles or contracts as well as any and all proceeds thereof that might theretofore have been excluded from the term "Collateral".

2. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is now the sole owner of the Collateral in the United States, except for licenses granted by Grantor in the ordinary course of business and licenses granted by or received by Grantor;

(b) Except as set forth in the Schedule, Grantor's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross revenue in any given month, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service;

(c) Performance of this Agreement does not conflict with or result in a breach of any agreement to which Grantor is party or by which Grantor is bound;

(d) During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Collateral, except for licenses granted by Grantor in the ordinary course of business or as set forth in this Agreement;

(e) To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party;

(f) Grantor shall deliver to Secured Party within thirty (30) days of the last day of each fiscal quarter, a report signed by Grantor, in form reasonably acceptable to Secured Party, listing any applications or registrations that Grantor has made or filed in respect of any patents, copyrights or trademarks and the status of any outstanding applications or registrations and advising Secured Party of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Grantor in or to any Trademark, Patent or Copyright not specified in this Agreement;

(g) Grantor shall (i) exercise commercially reasonable efforts to protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights (ii) use commercially reasonable efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party in writing of

material infringements detected and (iii) not allow any material Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Secured Party, which shall not be unreasonably withheld, delayed or conditioned;

(h) Grantor shall apply for registration (to the extent not already registered) with the United States Copyright Office and the United States Patent and Trademark Office, as applicable: (i) those intellectual property rights listed on Exhibits A, B and C hereto within thirty (30) days of the date of this Agreement; (ii) all copyrightable intellectual property rights which constitute or give rise to more than five percent (5%) of Grantor's gross income in any given month which Grantor has developed as of the date of this Agreement but heretofore failed to register, within thirty (30) days of the date of this Agreement; and (iii) those additional copyrightable intellectual property rights which constitute or give rise to more than five percent (5%) of Grantor's gross income in any given month developed or acquired by Grantor from time to time in connection with any product, prior to the sale or licensing of such product to any third party and prior to Grantor's use of such product (including without limitation revisions or additions to the intellectual property rights listed on Exhibit A hereto). Grantor will promptly notify Secured Party upon Grantor's filing of any application or registration of any Intellectual Property rights with the United States Copyright Office or the United States Patent and Trademark Office (including without limitation revisions or additions to the intellectual property rights listed on Exhibits A, B & C hereto) and Grantor will execute and deliver any and all instruments and documents as Secured Party may reasonably request from time to time to perfect or continue the perfection of Secured Party's security interest in such application or registration. Grantor will file for patent and trademark protection to the extent that failure to do so would have a material adverse effect on Grantor or its business;

(i) This Agreement creates, and in the case of after acquired Collateral, this Agreement will create at the time Grantor first has rights in such after acquired Collateral, in favor of Secured Party a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Credit Agreement subject to Secured Party making all filings required under applicable law for such perfection and paying any associated fees;

(j) All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Grantor with respect to the Collateral is accurate and complete in all material respects;

(k) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Secured Party's prior written consent, which consent shall not be unreasonably withheld delayed or conditioned;

(l) Prior to entering into or becoming bound by any license or agreement which gives rise to more than the greater of (i) 5% of Grantor's revenue in any given month or (ii) \$10,000 in revenue in any given month which license or agreement might be interpreted to be nonassignable by Grantor or otherwise restrict Grantor from granting a security interest in the same to Secured Party, Grantor shall: (i) provide written notice to Secured Party of the material terms of such license or agreement with a description of its likely impact on Grantor's business or financial condition; and (ii) negotiate in good faith to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for Grantor's interest in such licenses or contract rights to be deemed Collateral and for Secured Party to have a security interest in it that might otherwise be restricted by the terms of the applicable license or agreement, whether now existing or entered into in the future; and

(m) Upon any executive officer of Grantor obtaining actual knowledge thereof, Grantor will promptly notify Secured Party in writing of any event that materially adversely affects the value of any Collateral, the ability of Grantor to dispose of any Collateral or the rights and remedies of Secured Party in relation thereto, including the levy of any legal process against any of the Collateral.

3. Secured Party's Rights. Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Agreement to take but which Grantor fails to take, after fifteen (15) business days' notice to Grantor. Grantor shall reimburse and indemnify Secured Party for all

reasonable out-of-pocket costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 4.

4. Inspection Rights. To the extent it has the power to do so, Grantor hereby grants to Secured Party and its employees, representatives and agents the right to visit, during reasonable hours on a mutually agreed to date upon prior reasonable written notice to Grantor, any of Grantor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Grantor and as often as may be reasonably requested.

5. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Grantor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary, or as reasonably requested by Secured Party, to perfect Secured Party's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Collateral.

(b) Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem reasonably necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C, thereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Grantor no longer has or claims any right, title or interest, (ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law and (iii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Secured Party or a third party to the extent permitted under the California Uniform Commercial Code and subject to any legal conditions and processes applicable thereto, including any required filings.

6. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement:

(a) An Event of Default occurs under the Credit Agreement or Related Documents; or

(b) Grantor breaches any warranty or agreement made by Grantor in this Agreement and, as to any breach that is capable of cure, Grantor fails to cure such breach within fifteen (15) days of the occurrence of such breach.

7. Remedies. Upon the occurrence and continuance of an Event of Default, Secured Party shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require Grantor to assemble the Collateral and any tangible property in which Secured Party has a security interest and to make it available to Secured Party at a place designated by Secured Party. Secured Party shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Secured Party to exercise its rights and remedies upon the occurrence of an Event of Default. Grantor will pay any expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with the exercise of any of Secured Party's rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Secured Party's rights and remedies with respect to the Collateral shall be cumulative.

8. Indemnity. Grantor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to transactions between Secured Party and Grantor, whether under this Agreement or otherwise (including without limitation reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Secured Party's gross negligence or willful misconduct.

9. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

10. Attorneys' Fees. If any action relating to this Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

11. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

13. California Law and Jurisdiction; Jury Waiver. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Grantor and Secured Party consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. GRANTOR AND SECURED PARTY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE CREDIT AGREEMENT OR RELATED DOCUMENTS, THIS AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

GRANTOR:

Address of Grantor:

11130 Sunrise Valley Drive, Suite 100
Reston, VA 20191

THE DOT COM GROUP, INC.

By: [Signature]

Its: VP FINANCE

Attn: Chief Financial Officer

SECURED PARTY

Address of Secured Party:

226 Airport Parkway
San Jose, CA 95110-1024

IMPERIAL BANK
By: [Signature]

Its: VP

Attn: Corporate Banking Center

EXHIBIT A

Copyrights

Description

Registration Number

Registration Date

EXHIBIT B

Patents

<u>Description</u>	<u>Registration/Serial Number</u>	<u>Registration/Application Date</u>
METHOD AND APPARATUS FOR MONITORING PERFORMANCE OF INTERNET SITES AND PROVIDING DYNAMIC ADJUSTMENT	60/203,797	5/12/00

EXHIBIT C

Trademarks

<u>Description</u>	Registration/Application <u>Number</u>	Registration/Application <u>Date</u>
INTERNET ANTHROPOLOGY	76/044,211	5/8/00
DUET HARMONIZER	76/044,207	5/8/00
DUET CONDUCTOR	76/042,755	5/8/00
DUET METRONOME	76/042,754	5/8/00
DESIGN ONLY	76/027,501	4/14/00
THE.COM GROUP	76/027,500	4/14/00

Schedule of Inbound Licenses

Gray Cary\PA\10072034.5
1090371-900000

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RECORDED: 10/26/2000

**TRADEMARK
REEL: 002169 FRAME: 0752**