

Brand Owners Brace for Potential Launch of a .XXX Domain Registry

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The January 2011 issue of *Mass Media Headlines* addressed the likely release in late 2011 or 2012 of customized generic top-level domains (gTLDs) such as .eco, .movie, .wine, .film, .radio, .brand and many more. Recent public comments by the Chair of the Internet Corporation for Assigned Names and Numbers (ICANN) suggest that the new gTLD application process may be delayed slightly, but most observers believe that ICANN is determined to open the application process prior to the end of 2011.

In light of ICANN's potential delay in commencement of the new gTLD application process, it would be understandable for brand owners to pause in their preparations for new gTLDs to focus on non-domain name matters. However, it is important to also keep in mind that ICANN has signaled its intention to move forward with a .xxx domain name registry. The .xxx domain registry application has been under consideration by ICANN since 2004, but ICANN representatives indicated in late 2010 that the organization is resolved to move forward with a .xxx domain registry agreement. The proposed owner of the registry is moving forward with pre-launch plans, and once the .xxx registry "goes live," domain names such as brandname.xxx, genericname.xxx and onlinescam.xxx will be available for purchase by anyone.

It is anticipated that the .xxx domain registry will begin accepting "sunrise" domain name applications within 60 to 90 days of ICANN's approval of the registry, which will include defensive applications from brand/trademark owners. The proposed .xxx domain registry owner has indicated that trademark owners will be permitted, for a fee, to register during the sunrise period to have .xxx domain names that correspond to registered trademarks blocked from registration.

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Names secured through this mechanism will not result in the registration of functioning .xxx domain names. Rather, these names will be reserved and blocked from live use. The proposed .xxx domain registry owner has indicated that blocked names will resolve to a webpage indicating only that the name is blocked from use through the .xxx registry's intellectual property rights protection program.

The proposed .xxx domain registry owner has also indicated that .xxx domain name registrants will be subject to mandatory dispute resolution procedures, similar to registrants of .com and other domain names, when a .xxx domain name is alleged to infringe trademark rights. However, use of the referenced "sunrise" blocking mechanism for trademark owners may provide a means for preventing inappropriate incorporation of trademarks within .xxx domain name registrations before such registrations are issued. We are continuing to monitor the status and potential approval of the .xxx domain registry by ICANN and will keep you apprised of all developments.