

LAUNCH OF .XXX TOP-LEVEL DOMAIN REQUIRES CONSIDERATION AND
PLANNING FOR BRAND OWNERS

.XXX Top-Level Domain Set to go Live in 2011

On March 31, 2011 ICANN, the international non-profit organization charged with creating policies for use of the internet, entered an agreement with ICM Registry, LLC (“ICM”) to launch the .XXX sponsored top-level domain (the “.XXX sTLD”). Scheduled to go live in December, 2011, the .XXX sTLD will host web sites dedicated to the adult entertainment industry (the “Sponsored Community”). Registration of resolving .XXX domain names will be limited to members of the Sponsored Community. Trademark owners who are not members of the Sponsored Community will have the opportunity to “block” their trademarks from being reflected at .XXX by registering a “non-resolving” domain name.

Given the proliferation of abusive domain name registrations in the existing global top-level domains (i.e., .com, .net, .org), ICM developed both proactive and reactive policies designed to protect brand owners, especially those outside of the Sponsored Community, from abuse by cybersquatters and other bad actors. This client alert provides an introduction and overview to ICM’s policies and explains how brand owners outside of the Sponsored Community may act to protect their brand names and trademarks from being reflected as domain names at .XXX.

Safeguarding Your Trademarks at .XXX

Registration

Beginning on September 7, 2011, ICM registry will launch a 50-day sunrise registration period during which qualified members of the Sponsored Community and qualified non-member brand owners may apply to register either resolving or non-resolving .XXX domain names. Sunrise registration will close on October 28, 2011.

Sunrise A—Applicants who are members of the Sponsored Community and who already (a) own trademarks used in commerce in the adult entertainment industry or (b) own domain names used for adult entertainment at other TLDs may apply to register their existing trademarks or domain names as resolving .XXX domain names.

Sunrise B—Applicants not members of the Sponsored Community and who own registered trademarks as of September 1, 2011 may register their existing trademark(s) as non-resolving .XXX domain names. At the close of the Sunrise Period, if no Sunrise A application conflicts with a Sunrise B application, the Sunrise B applicant’s trademark(s) will be

permanently reserved from registration, or “blocked,” at .XXX. Domains registered under Sunrise B will resolve to a web page indicating the domain name is not available at .XXX. ICM

estimates that a blocked domain name will cost registrants a one-time fee of between \$200 and \$300.

In the event that both a Sunrise A and Sunrise B candidate apply to register the same domain name during the Sunrise period, the Sunrise A applicant will be given preference. However, the Sunrise A applicant will be given notice of the Sunrise B applicant's interest in the domain name and cannot claim lack of notice in any subsequent dispute initiated by the Sunrise B applicant.

Following the Sunrise period, ICM will hold a *Landrush* phase where members of the Sponsored Community can register resolving domain names. Following that phase and beginning on December 6, 2011, ICM will open registration on a first come, first served basis, for both resolving and non-resolving domain names. Resolving domain names will be registered only to verified members of the Sponsored Community. Non-resolving domain names will be available to brand owners. However, non-resolving domains registered during the general availability phase will be subject to registrar-specific periodic renewal and maintenance fees.

Pre-reservation

Although the Sunrise launch phase is not set to open until September 7, 2011, some ICM approved registrars are currently accepting pre-reservations for non-resolving .XXX domain names. Pre-reservation policies differ among registrars. For more information on which registrars are ICM-approved and which are currently offering pre-reservation, visit <http://www.icmregistry.com/registrars.php>.

.XXX Policies against Abusive Registration

In addition to providing brand owners with the opportunity to register non-resolving .XXX domain names, ICM plans to implement the following policies against abusive domain name registration at the .XXX sTLD:

- **Rapid Evaluation Service (RES)**—ICM will implement a rapid takedown procedure whereby resolution will be halted immediately to domain names found by an independent panel to clearly violate a trademark owner's rights, without prejudice to that party's rights to pursue other dispute resolution mechanisms.
- **Charter Eligibility Dispute Resolution Policy (CEDRP)**—Any party may challenge the ownership of a resolving .XXX domain name on the basis that the owner is not a member of the Sponsored Community.
- **Uniform Domain Name Dispute Resolution Policy (UDRP)**—Rights holders may challenge the legitimacy of a resolving registration and request the transfer of resolving .XXX domain names under the UDRP.

- **Disqualification for Repeat Offenders**—Registrants found to have repeatedly engaged in abusive registration will be disqualified from maintaining or registering .XXX domain names at ICM's discretion.

Conclusion

Brand owners outside of the Sponsored Community may want to begin to develop a strategy for managing and enforcing their trademark rights at the .XXX sTLD.

Contact Information

Please contact any lawyer on the [Trademark Team](#) with any questions about the .XXX launch or the proactive or reactive brand protection measures addressed in this client alert.

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