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Protecting your Brand in the .xxx Domain

In the latest domain-name headache for brandowners, .xxx has been approved by ICANN as a new generic top-level domain, on the same plane as .com, .net, .org, .mobi, .info, and etc., but this one is for *adult content*.

The adult entertainment industry, trademark holders, and even some countries objected to the creation of the domain. Although no adult content is currently available in the domain, several countries have already announced their intention to block the .xxx domain.

As with other new top-level domains, there will be a "sunrise" period in which rights holders can reserve or block in advance of the general sale to the public. This sunrise is expected to open in September 2011.

The first sunrise track will be available for existing trademark holders within the adult entertainment industry. The second sunrise track will be available for grandfathering in operators of adult websites that were registered prior to February 2010 in other domains (e.g., .COM, .BIZ, .UK, etc.).

The third sunrise track is designed for trademark holders who are outside of the adult entertainment industry. Trademark holders may reserve names within the .xxx domain to prevent registration by others. The domain name block has been advertised as lasting indefinitely with no additional fees to pay in subsequent years. Visitors to a blocked domain name will receive a webpage that indicates that the name is reserved through the ICM Registry Rights Protection Program.

The fees are high, roughly \$200 to \$300 per blocked domain, so companies with multiple brands may chafe at having to pay to block their brand from xxx.

Alternatively, brandowners may wish to ignore the sunrise period and use the Uniform Dispute Resolution Procedure or other remedies if someone does register and use their brand in a .xxx in a way which causes harm, tarnishment or confusion to the brand.

On the heels of this issue comes ICANN's proposal to add unlimited top-level domains, which brandowners will also want to know about. This project has been delayed several times but we are keeping a close eye and will provide updates.