

Trademark Owners: Consider Pre-Reserving Your .XXX Domains Now!

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After a lengthy and contentious approval process, the [Internet Corporation for Assigned Names and Numbers](#) (ICANN) recently entered into an agreement with [ICM Registry](#) to delegate the new .xxx top-level domain (TLD). The .xxx domain, intended to serve as an Internet "red light district" (despite being strongly opposed by many in the adult entertainment community itself), will likely go live later this year. In the meantime, ICM Registry has opened a "pre-reservation period" for interested members of adult entertainment industry, and for trademark owners in other industries.

As with ICANN's planned introduction of numerous generic top-level domains (gTLDs) starting next year, the introduction of .xxx presents yet another opportunity for unscrupulous registrants to take advantage of known brands. Further, as registrants of .xxx domain names must provide online, sexually-oriented adult entertainment, there is a significant risk of valuable brands being associated with such "undesirable" content. The pre-reservation service, located at <http://domains.icmregistry.com>, allows trademark owners to "pre-reserve," free of charge, .xxx domains of interest. For instance, a provider of traditionally wholesome goods, such as Disney, could pre-reserve the domain name disney.xxx.

Looking beyond the pre-registration phase, domain names can be defensively registered as soon as the .xxx "[sunrise period](#)" begins, which is expected to launch in August 2011. A defensive registration will allow certain trademark owners to "block" a domain name indefinitely upon payment of a one-time fee, which has yet to be determined. In the meantime, trademark owners should note that the so-called "pre-reservation" is not actually a reservation at all -- it is only an "expression of interest," and as such does not confer ownership in the reserved names, or even a right of first refusal when the .xxx names open for registration. Instead, these expressions of interest "will ensure that you get notified in advance of the appropriate allocation period and about the availability of the names you have indicated." Note that it is not necessary to "pre-reserve" a domain name in order to register that domain during the sunrise period, but it certainly can't hurt and is free of charge.

While traditional rights protection mechanisms, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), will apply to .xxx domain names, and while ICM Registry has implemented a host of other protection mechanisms that will aid trademark owners seeking to combat infringing - or simply disparaging - use of valuable brands, trademark owners should consider "pre-reserving" and/or defensively registering key .xxx domain names containing valuable trademarks.

If you have questions about the .xxx rollout, or about domain names, cybersquatting, or Internet trademark infringement generally or their applicability to pending matters, please contact [Julia Huston](#), [Joshua S. Jarvis](#) or the Foley Hoag attorney with whom you usually work.