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Allen Matkins

Intellectual Property Alert



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Important Deadline: Protecting Your Trademarks In (Or From) the Adult Entertainment Industry

Trademark owners who do **not** want to be associated with the adult industry can block others from using their trademarks in .XXX domain names.

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The .XXX top level domain will be launched in the next few weeks to provide an exclusive space on the Internet for the adult entertainment industry.[1] Your first instinct may be to close this document as soon as possible before a co-worker walks by, but that is exactly why you should read on.

ICM Registry, the firm managing the launch of .XXX, has developed a unique procedure by which trademark owners who do *not* want to be associated with the adult industry can block others from using their trademarks in .XXX domain names.

Sunrise Period: September 7 – October 28

During the Sunrise Period, members of the sponsored community (i.e. those in the adult entertainment industry) can reserve their rights in .XXX domain names with respect to any of their (i) registered national or regional international trademarks or (ii) already existing domain names registered in another top level domain, such as .COM or .NET. The Sunrise Period as it applies to members of the sponsored community is called Sunrise A.

The Sunrise Period is also when those outside the adult entertainment industry can "opt-out" or effectively block anyone else's use of their trademarks in a .XXX domain name. The Sunrise Period as it applies to those outside the sponsored community is called Sunrise B. *To block the use of a .XXX domain name, you must own a registered national or regional international trademark*, and in general, the domain name that you attempt to block must be an exact match to the text of the registered trademark. Common law trademarks and state law trademarks are not sufficient for eligibility in Sunrise B.

The application fee for opting-out will be set by the individual domain name registrar through whom the opt-out application is filed; however, the fee is expected to be between \$200 and \$300. This is a one-time fee and the block on registrations is expected to last for ten years or the duration of the underlying trademark registration.

During the Sunrise Period, if one party tries to reserve a domain name that another party is trying to block, priority will be given to the party who wants to reserve the domain name. However, both parties will be notified of the conflict and the party reserving the domain name will not be able to claim lack of notice in any subsequent dispute.

Landrush Period: November 8 – November 25

After the Sunrise Period, members of the sponsored community (i.e. the adult entertainment industry) will have the right to reserve their preferred domain names, and there is no requirement that the applicant have an existing registered trademark or other domain name registration. If two or more parties wish to reserve the same domain name during this period, a closed auction will be held at the end of the period to determine who will purchase the domain name.

General Availability Period: Beginning December 6

Beginning December 6, .XXX domain names will be open to registration on a first-come, first-served basis.

Recommendations

If you have a registered trademark and you wish to prevent anyone in the adult entertainment industry from using that trademark in a .XXX domain name, then you should consider opting-out of .XXX during the Sunrise Period beginning on September 7. After the Sunrise Period, trademark owners would need to use more traditional legal proceedings to prevent the registration or use of a .XXX domain name incorporating their trademarks.

On the other hand, if you are in the adult entertainment industry and you have a registered trademark or second level domain registered in another top level domain, then you should strongly consider reserving your domain name in .XXX during the Sunrise Period prior to the Landrush and General Availability Periods.

Please contact Phil Schroeder if you have questions or would like additional information.

[1] Launch of the .XXX top level domain is separate from the recent approval by the International Corporation of Assigned Names and Numbers (ICANN) of the new generic top level domain program to be launched in January 2012. (See E-alert, [Managing Your Brand Online – Historic Expansion of the Internet Domain Name System](#), by Philip C. Schroeder)

