

.XXX Is Here. Have You Prepared Yourself?

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Since the dawn of the Internet age it seems every few months some new online technology or cutting edge promotional activity has come along to vex brand owners in cyber space. Trademarks are still the frequent target of "squatting" by illegitimate registrants of domain names, or by those who would hold themselves out as brand owners in social networking contexts, or by those who create false Facebook® pages suggesting the page was sponsored by the actual brand owner.

Just when trademark owners thought they had finally found a way to manage enforcement budgets and strategies, the Internet Corporation for Assigned Names and Numbers (ICANN) announced in March of 2011 the imminent roll out of the new .xxx top level domain system, which is currently in its sunrise period (until October 28, 2011). Intended for use by the adult entertainment industry, registration of .xxx domains is set to begin on November 8, 2011. This means that beginning in November 2011, potential domain name registrants could register any *brand.xxx* as a domain name and associate it with pornography or other potentially offensive content.

The sunrise phase of the launch of the new .xxx domain, which opened on September 7, 2011, provides trademark owners with a means of protecting rights proactively. Specifically, trademark registration owners can request the exclusion of their marks from the .xxx registration database during the sunrise phase. Importantly, there will also be challenge mechanisms after October 28, 2011. But the cost to exercise those challenges will be substantially more than the "blocking fee" (currently running around \$200-300 depending on which service you use to block the registration). The "blocking fee" covers the

term of the reservation without the need for annual renewal fees. Domain names reserved by brand owners under the sunrise period will resolve to a standard information page indicating that the domain name is reserved from use.

In addition, while brand owners are busy considering protecting their brands from .xxx, ICANN also is moving forward with the launch of a veritable unlimited supply of new top level domains ("TLD") in early 2012. Under the new TLD policy, any interested party (theoretically) may apply for and obtain the top level domain space for any generic word or even a trademark. So, for instance, one could apply to own the top level domain name .bleach. Similarly, any person could attempt to purchase rights in a top level domain consisting of a trademark (such as, .coca-cola). While theoretically this move will help increase competition as it frees up domain space for newcomers, it also creates new and potentially endless causes for worry on the part of brand owners anxious to protect brands (and budgets) from the incursions and costs of squatters and infringers.

With these new threats looming, now is a good time for marketing executives to plan for the future and ensure they are doing what they can to police and protect their brands. Please feel free to contact us with any questions regarding .xxx or the upcoming roll out of new top level domains. We stand ready to assist with registering and protecting your brands on the Web.

This IP Update was co-authored by Renee Inomata and Sara Yevics Beccia.

For more information on .xxx, please contact one of the authors or your Burns & Levinson attorney.

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