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Update: .XXXempt Your Valuable Brands Starting September 7

Posted on August 9, 2011 by [Joshua S. Jarvis](#)

In May, we [reported](#) that brand owners would have the opportunity to "block" domain names in the [.xxx top-level domain registry](#) that correspond to valuable brands. This opt-out opportunity will be available beginning September 7, 2011 during the "Sunrise B" phase of the .xxx rollout, and trademark owners concerned about their marks used in connection with .xxx domain names should consider participating.

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The .XXX Launch

The .xxx launch consists of several phases, as follows:

Sunrise. The .xxx sunrise phase actually involves two *concurrent* phases -- Sunrise A and Sunrise B. Sunrise A is for applicants within the adult [Sponsored Community](#) that own trademark registrations or already use their marks in connection with adult entertainment services via an existing domain name. **Sunrise B** is for owners of registered trademarks that wish to reserve .xxx domain names to keep them from being used in connection with adult websites. The sunrise periods will go from September 7, 2011 to October 28, 2011.

Landrush. During the [Landrush](#) phase, members of the adult Sponsored Community can apply for .xxx domain names at a premium to avoid the first come, first served nature of the General Availability phase. The number of applications for a single name will be determined via auction. Landrush goes from November 8, 2011 to November 25, 2011.

General Availability. Beginning on December 6, 2011, during the [General Availability](#) phase any member of the adult Sponsored Community can apply to register .xxx domains on a first come, first served basis. Trademark owners that did not have prior qualifying rights under Sunrise A or B can apply to register "non-reserved" domain names.

Sunrise B Reservations

During Sunrise B, trademark owners can reserve .xxx domain names that correspond to trademarks that are the subject of most U.S. or foreign registrations issued prior to September 1, 2011. The domain names reserved must correspond to the entire text of a registered mark -- e.g., disney.xxx, but not dizney.xxx or disneythemeparks.xxx. If approved, the domain name will resolve to a standard informational page with the status of the name as reserved. Sunrise B reservation will require a one-time fee set by individual trademark owners (expected to be between \$200 and \$400), and reservation will be *permanent*, without the need for renewal fees.

As Sunrise A and Sunrise B occur concurrently, there is the distinct possibility that a member of the adult Sponsored Community and a trademark owner will apply for the same .xxx domain -- the former



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connection with an adult website, and the latter to reserve as permanently non-resolving. In this connection, the Sunrise A applicant will go to the qualified Sunrise A applicant, and the Sunrise A applicant will also reserve the domain name. Thus, the Sunrise A applicant will also reserve the trademark owner's interest in the reserving the domain name. Thus, the Sunrise A applicant will also reserve the domain name, but cannot claim lack of notice in a subsequent dispute between the Sunrise A applicant and the Sunrise A applicant.

Post-Sunrise Trademark Protections

Once the General Availability phase begins, trademark owners who were not eligible for Sunrise B, can register standard non-identical domain names that did not qualify for Sunrise B, can register standard non-identical domain names at regular prices (probably about \$100 each). The domains, unlike Sunrise B reserved domain names, are not subject to annual renewals.

ICM Registry has also implemented several [dispute resolution procedures](#), including the Charter of the American Intellectual Property Owners (CAIPO) Dispute Resolution Procedure (CEDRP), used if the .xxx domain is operated by someone outside the Sunrise A Sponsored Community, the Rapid Evaluation Service (RES), used for clear cybersquatting of well-known trademarks and personal names, and the Uniform Domain Name Dispute Resolution Policy (UDRP), for remaining cybersquatting situations.

Of course, because use of a trademark as or as part of a .xxx domain is not *per se* cybersquatting, because identical trademarks can happily coexist where there is no likelihood of consumer confusion, trademark owners would be well advised to take advantage of the Sunrise B reservations and General Availability defensive registrations to protect key trademarks.

Additional Information

More information regarding the .xxx rollout is available at [ICM Registry's website](#). Note that the Sunrise A applicant will not take applications for reservation or registration directly; as with other domain names, interested parties must do so via ICANN Accredited Registrars. A list of current .xxx registrars is located [here](#). Specific information will be available via those registrars.

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