

NEW .BIZ AND .INFO DOMAIN NAMES

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Companies and individuals interested in securing their names and trademarks as domain names ending in the new .biz and .info generic top-level domains (gTLDs) must act quickly. The application period for the .biz name, which is widely expected to replace .com in popularity, lasts from June 25 - September 25, 2001, while applications for .info names are due between June 25 and July 24, 2001.

In November 2000, the Internet Corporation for Assigned Names and Numbers (ICANN), the non-profit corporation that administers Internet domain names, approved seven new gTLDs: .aero (for the air-transport industry), .biz (for businesses), .coop (for cooperatives), .info (for unrestricted use), .museum (for museums), .name (for individuals) and .pro (for accountants, lawyers and physicians).

Four of the new gTLDs (.biz, .info, .name and .pro) are general purpose and unsponsored, and registries serving them will operate under agreements negotiated with ICANN. The other three gTLDs (.aero, .coop and .museum) will be governed by a sponsoring organization to serve a narrow constituency, pursuant to future administrative agreements with ICANN. More information about the new gTLDs is available at the ICANN web site at www.icann.org.

Recently, the .biz registry NeuLevel (www.neulevel.com) and the .info registry Afilias (www.afilias.com) announced their specific policies. As registries, NeuLevel and Afilias do not contract with the general public; rather, they serve as the central information database for, and contract with, the 50-plus registrars through which the public actually reserves domain names ending in .biz or .info (e.g., Network Solutions, Inc. or Register.com).

Of note, the Federal Trade Commission has warned the public to beware of scams relating to the .biz and .info domains. As stated above, domain names ending in .biz and .info will be processed only by NeuLevel and Afilias in connection with ICANN-accredited registrars. Further, as explained below, these domain names will be awarded on a random basis. Therefore, consumers and corporations should avoid any service that (i) "guarantees" it can obtain a .biz or .info domain name for a fee; and/or (ii) bills itself as an "official" Internet registry service, but is not a familiar registrar and/or is not on the list of accredited ICANN registrars at www.icann.org/registrars/accredited-list.html.

THE ".BIZ" DOMAIN

More than 50 registrars worldwide, including NSI and Register.com, are currently authorized to register .biz domain names, and all ICANN-accredited registrars are eligible to do so. Given that several companies may legitimately seek to use the same domain name for different services (*e.g.*, United Airlines and United Van Lines may seek united.biz), to avoid giving any company an unfair advantage, the .biz domain names will be awarded by lottery among persons who apply at the accredited registrars from June 25 until September 25, 2001. The individual registrars will forward the applications to Neulevel, which will conduct the lottery. The new domain names will become active on October 1, 2001.

Any person who applies for a domain name *at any time* between June 25 and September 25 will have an equal chance in the .biz lottery. While each application is worth one "lottery ticket," applicants may increase their chances by submitting unlimited requests for the same domain name, and by applying for an unlimited number of domain names, provided that each request is accompanied by a non-refundable fee.

For example, a company such as United Airlines could pay 1,000 fees and enter 1,000 bids for united.biz, to increase its chances of winning the domain name over United Van Lines. Further, United Airlines could apply for flyunited.biz, unitedflies.biz, unitedairlines.biz and unitedair.biz to increase its odds of winning at least one desirable .biz name. While multiple entries help a company's chances vis-à-vis legitimate competitors, they should not be necessary to prevent "cybersquatting," because a trademark owner can always sue or bring an ICANN arbitration to reclaim a "squatted" domain name. The registration fee for a .biz domain name is not yet final among all accredited registrars, but should approximate the fees applicable to .com and other current gTLDs.

To facilitate a smoother application process, registrars are also accepting Trademark Claim Forms (TCFs) from trademark owners until July 9, 2001. A list of these registrars, which includes NSI and Register.com, is available at the NeuLevel web site at www.neulevel.com/aboutnl/registrars.html. Please note that submitting a Trademark Claim Form is separate from the application for a new .biz domain name.

The Trademark Claim Form confers several benefits. If the owner of a trademark (not necessarily a registered one) files a Trademark Claim for it, anyone who tries to reserve that mark as a domain name will be made aware of the trademark owner's claim, so as to prevent accidental "cybersquatting." Moreover, the trademark owner will be notified if and when the third party obtains such domain name. Such mutual notification should allow parties to resolve any disputes before the new domain names go "live" on October 1, 2001. If any .biz domain name still has a Trademark Claim lodged against it on October 1, the new name will be placed on a 30-day hold, to allow for dispute resolution at such time.

To allow for fast resolution of .biz domain name disputes, trademark owners who file Trademark Claims before October 1 can participate in the new Start-up Trademark Opposition Policy (STOP), which is similar to the current ICANN domain name arbitration process (*see* www.icann.org/udrp/udrp.htm), but is expected to be faster and more favorable to trademark owners. For example, the STOP rules provide that a trademark owner must prove that a .biz registrant has registered *or* used the domain name in bad faith to reclaim it; the ICANN rules require a showing of bad-faith registration *and* use to transfer a domain name. The distinction makes sense, because many registrants of .biz domain names may not have “used” the new .biz name in a trademark sense in the short time before October 1.

For more information about the .biz domain name registration process, please consult the NeuLevel web site at www.neulevel.com or the web site of a participating registrar listed on www.neulevel.com/aboutnl/registrars.html.

THE “.INFO” DOMAIN

Afilias proclaims .info to be “the most inclusive new domain,” because unlike the other gTLDs that are specific to certain fields, .info is available to anyone — businesses, individuals, public groups, brands, facilities and government agencies.

The rollout of .info is similar to that of .biz. While the exact timing is not yet final, as of now, applications for .info names will be awarded randomly in multiple rounds during a 30-day Sunrise Period from June 25 until July 24, 2001, open only to applicants who have national or European Union trademark or service mark registrations effective prior to October 2, 2000 and wish to register such exact registered mark (*e.g.*, not a similar mark or the word-only part of a words-and-design mark) as a domain name. Given that Afilias has not announced the specific dates of these multiple lotteries, it is advisable at this time to apply for a .info name as early as possible. Domain names registered in the Sunrise Period must be registered for at least five years and for no more than 10 years. If a party disputes whether a .info domain name registrant had a valid right to pre-register during the Sunrise Period (*e.g.*, the mark was not registered or the registered mark was a words-and-design mark), it may bring a special Sunrise Challenge process administered by the World Intellectual Property Organization for 120 additional days after the Sunrise Period ends.

As of now, within a maximum of 15 days after the Sunrise Period ends, the Start-Up period shall begin and last for approximately three weeks, during which time all remaining .info domain names will continue to be awarded randomly in rounds and the standard ICANN dispute resolution procedures will apply. After the Start-Up period, all remaining .info names will thereafter be awarded on a first-come, first-served basis for each requested name. The fee to register a .info domain name is not yet final among all the accredited registrars, but should approximate the fees applicable to .com and other current gTLDs.

For more information about the .info domain name registration process, including any changes in the timing, please consult the Afilias web site at www.afilias.com, the Afilias information available to registrars at www.afilias.com/registrars/new-registrars/regletter.html or the web site of a participating registrar. As of this printing, the Afilias web site had not posted such a list, but all currently accredited ICANN registrars (www.icann.org/registrars/accredited-list.html) are eligible to register new .info names.

If you have further questions about the new .biz or .info gTLDs or other trademark or domain name issues, please contact Robert Bourque (212.455.3595; R_Bourque@stblaw.com) or Lori Lesser (212.455.3393; L_Lesser@stblaw.com) of the Firm's New York office or Shannon Gallagher (650.251.5104; S_Gallagher@stblaw.com) of the Firm's Palo Alto office.

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