
dot-biz and dot-info Domains Scheduled for Launch; Trademark Holders Given Preferential Treatment

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Internet domain name registrars will soon begin accepting registrations for the new ".biz" and ".info" generic top-level domains (gTLDs). Trademark holders will have preferential treatment in the selection and registration of new domain names within each of these domains, and should act quickly to register the domain names they desire.

As initially reported in our [October 21, 2000 Internet Alert](#), the Internet Corporation for Assigned Names and Numbers (ICANN) has been in the process of approving new gTLDs, based in part on the belief that the domain names available in the existing ".com," ".org," and ".net" gTLDs are nearing depletion. One study estimates that over 98% of the words in the English language have been registered as part of existing gTLDs. At its November 16, 2000 meeting, the ICANN Board selected seven new gTLDs – ".aero," ".biz," ".coop," ".info," ".museum," ".name" and ".pro." On May 11, 2001, ICANN signed registry agreements with [NeuLevel](#) and [Afilias](#) to launch and administer the ".biz" and ".info" gTLDs, respectively.

While the two registries will proceed differently in the launch of the new gTLDs, both have agreed to provide preferential treatment to trademark holders in the selection and registration of new domain names within each gTLD. The launch and intellectual property procedures for each are summarized below.

New ".biz" gTLD

NeuLevel allows registration of ".biz" domain names through any accredited domain name registrar, provided that applicants use the registered domain names for "bona fide business or commercial use."

NeuLevel makes clear that cybersquatting registrations (see our [December 7, 1999 Internet Alert](#)) do not constitute "bona fide business or commercial use." NeuLevel prohibits any registration of a ".biz" domain name that would be used "exclusively for personal, noncommercial purposes." NeuLevel also prohibits registration of "sucks.biz" domain names,

which it defines as the "use of a domain name exclusively for the expression of noncommercial ideas (i.e., registering abcsucks.biz exclusively to criticize or otherwise express an opinion on the products or services of ABC Company, with no other intended business or commercial purpose)." For more on "sucks.com" registrations, see our [September 13, 2000 Internet Alert](#).

Most relevant to trademark holders, NeuLevel provides an IP claims process, and a corollary Start-Up Trademark Opposition Policy (STOP) conflict adjudication procedure. Under the IP claims procedure, a trademark holder can submit text strings identical to its trademarks to NeuLevel (an IP Claim). It is important to note that a "trademark holder" is any entity that has registered a mark, has a pending application for a mark or has used the mark on products or services provided by that entity. NeuLevel will in turn notify any domain name applicants whose requested domain name matches those text strings. NeuLevel will also give the applicant contact information for the trademark holder. . If the applicant decides to proceed with the registration and is awarded a registration in the random allocation process, then a 30-day cooling-off period is imposed on any domain name registration that contains a text string identical to that submitted as an IP claim. NeuLevel will notify the trademark holder which submitted that IP claim that the relevant domain name will become effective at the end of the 30-day cooling-off period, unless the trademark holder takes action. The IP claimholder may then initiate a STOP proceeding, which NeuLevel claims will be more streamlined than the current ICANN Uniform Dispute Resolution Policy (UDRP) (see our [February 15, 2000](#), [June 2, 2000](#) and [June 19, 2000](#) Internet Alerts) and which carries a lower burden of proof for the trademark holder.

It is crucial to note that the filing of an IP claim *does not* also constitute an application for a domain name – trademark holders should therefore submit both an IP claim and a regular registration application at the applicable times specified below if they want the relevant ".biz" domain name. Both of these can be done with various accredited registrars, although IP Claims may only be handled through a specific [list](#) of such registrars.

The timeline for the ".biz" launch is as follows:

1. May 21, 2001 – July 9, 2001: window to file IP claims; only IP claims filed during this time will be acknowledged and qualify the claimant to use the STOP procedure (of course, trademark holders who fail to timely file an IP claim may still avail themselves of the UDRP or litigation after the disputed domain name is registered);
2. June 25, 2001 – September 25, 2001: window to file initial domain name applications;
3. September 26, 2001 – September 30, 2001: ".biz" random domain name selection performed by NeuLevel;
4. October 1, 2001: ".biz" goes live, except that any domain name registration that is still subject to a cooling-off period will not become active until the cooling-off period

ends and/or a STOP or other resolution to the dispute is finalized.;

5. After October 1, 2001: domain name applications accepted on a first-come, first-served basis, similar to the existing ".com," ".org," and ".net" gTLDs.

New ".info" gTLD

Afilias will allow anyone to register a ".info" domain name for any purpose. During its initial registration period – the "Sunrise Period" – only those who have held a trademark registration issued by a national trademark office prior to October 2, 2000 may submit applications for domain names identical to the textual elements of those protected marks. Afilias estimates that the Sunrise Period will commence in late June and will last for a minimum of 30 days. Those interested in taking advantage of the Sunrise Period should check the [Afilias web site](#) to see when definite dates are announced. Domain names registered during the Sunrise Period may not be transferred for 180 days, except in the case of a successful challenge, a decision in a UDRP proceeding or an appropriate court order. Domain name applications during the Sunrise Period may be submitted through any accredited registrar.

For domain name applications submitted during the Sunrise Period, registrations will be granted based on a random allocation process. There will then be a "Start-Up Period," during which time non-trademark registration holders can submit domain name applications which will be registered, once again on a random allocation basis. The Start-Up Period will commence approximately 15 days after the conclusion of the Sunrise Period and continue for approximately 18 days. After the Start-Up Period, all applications will be registered on a first-come, first-serve basis.

Domain name applications submitted during the Sunrise Period will be subject to a special dispute resolution proceeding – the "Sunrise Challenge" – while subsequently-submitted applications will be subject only to the UDRP and litigation. If someone applies for a domain name during the Sunrise Period and a trademark holder has rights to a text string included in that domain name, then the trademark holder may bring a Sunrise Challenge against that registrant during the period of 120 days following the end of the Sunrise Period. The World Intellectual Property Organization ("WIPO") will be the exclusive provider of dispute resolution procedures for Sunrise Challenges. Acceptable bases for bringing a Sunrise Challenge are any of the following:

- the registrant does not own a current trademark or service mark registration;
- the valid and enforceable trademark or service mark registration was not issued by a national trademark office;
- the second level portion of the domain name is not identical to the trademark or service mark registration; or

- the trademark or service mark registration was not issued prior to October 2, 2000.

Pre-Registration

Many companies are offering "pre-registration" services for the new gTLD domain name. However, neither NeuLevel's ".biz" gTLD registration procedures nor Afiliat's ".info" gTLD registration procedures provide for "pre-registration." In fact, the initial registration period for each diminishes the value of first-to-file efforts because all applications within the prescribed initial periods are pooled together and then randomly selected for registration. Thus, third parties who charge fees to obtain "preferential treatment" for their clients' applications or, even worse, "guarantee" the success of any particular application are misleading at best and fraudulent at worst. ICANN further underscores this by stating: "No one has been authorized to "pre-register" domain names in the new [g]TLDs. Persons who attempt to "pre-register" such domain names do so at their own risk and with no assurance that they will receive the pre-registered names once the [g]TLDs become operational."

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