

NewsLetter

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.biz and .info – Registration Process has Started

The more the World Wide Web has come into the focus of the public and has become a major field of commercial interests, the more a shortage of available domain names has resulted. New generic top-level domain names will be introduced shortly.

Introduction

Domain names are the addresses used to identify a website. The number of domain names is limited because a domain name can only be used once. This resulted in numerous conflicts between individuals, entities and owners of service marks and trademarks claiming rights to the same domain name. Domain names are generally assigned according to the "first come first served" principle. In practice, and as a result of this principle, too often legitimate requests for the assignment of a domain name were barred because a domain name had

already been registered by another person. The number of domain name disputes has risen dramatically over the past few years and even courts often are not able to align the several possible and legitimate involved interests.



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In order to ease the shortness of domain names, the Internet Corporation for Assigned Names and Numbers ("ICANN") adopted a policy for the introduction of new generic top-level domains ("gTLD") one year ago. Seven new gTLD were created: .biz (bona fide business or commercial use), .info (no restriction), .name (individuals only), .pro (certified professionals only), .aero (air transport industry), .coop (cooperatives and cooperative service organizations) and .museum.

The authorized registration processes for .biz and .info domain names have started. Requests for .museum domain names can be submitted. Other new gTLD, as .name and .pro are supposed to be open for registration soon.

The following overview highlights features of the registration process for .biz and .info domain names, the two new gTLD open for all businesses. It is expected that there will be a large demand for the new gTLD. For this reason, more structured registration rules described below shall replace the mere "first come first served" process in a initial period.

Registration Process for .biz

The registration process for .biz domain names is structured in three steps:

- Trademark and service mark owners can submit their claims;
- all businesses can apply for the new domain names;
- the new domain names will be assigned and go live.

All owners of a trademark or a service mark can enter their marks in a database until 6 August 2001. If later on a third party applies for a domain name identical to the mark, both the applicant and the mark owner, also referred to as IP claimant, will be notified. As far as the identity is concerned, "identical" means a perfect alphanumeric match. For example, the claimant of the trademark "Mark™" will only be notified of an application for "mark.biz". The application for "mymark.biz" would not result in a notification.

If the domain name is not awarded to the IP claimant, it can invoke the Start-up Trademark Opposition Policy ("STOP"). STOP is a fast domain name dispute resolution in which the IP claimant carries a relatively low burden of proof. In case there are different IP claimants for the identical domain name, they will be brought into a randomised order which determines the sequence and legitimation to initiate proceedings. If the first claimant is successful, the STOP process is terminated. The same is true, if the first claimant loses because the registrant could prove the legitimacy of its rights. In these two cases the other claimants can not use the proceeding anymore, but are forced to take other action (e.g. the WIPO Domain Name Dispute

Resolution; see **NewsLetter** No 20 of April 2000). Only if the first claimant fails to prove its legitimate rights, the next claimant in line may continue the STOP proceeding as a new claimant.

Registration facing an IP claim cannot go live on 1 October 2001, but will be "on hold" for 30 days. This "cooling-off period" enables the IP claimant to take action before the new domain name is launched.

Until 17 September 2001, applications for .biz domain names can be filed with ICANN approved registrars. The launch of .biz is scheduled for 1 October 2001. If there are multiple applications for the same domain name, the holder will be randomly selected. Accordingly, it seems that the more applications for a single domain name are filed by the same person, the more the likelihood to obtain it increases. It is important to remember that the claiming of an IP right under step 1 of the registration process does not include an application for the domain name, i.e. step 1 and 2 have to be carried out separately.

Registration Process for .info domain names

The registration process for .info domain names is structured into different phases similar to the .biz registration. Schedule and milestones, however, are different, and the "Sunrise Challenge" instead of STOP serves to solve domain name disputes.

During the **Start-up Period** until 11 September 2001 anybody can submit a domain name request to an ICANN-accredited registrar. The submittal of a request gives no guaranty for the registration of a domain name. It is, however, the condition to participate in the Start-up Period during which all the requested domain names will be awarded in accordance with the name selection process.

During a first round (12 until 18 September 2001) all the requests for registration filed so far with the accredited registrars, as well as new requests, will be accepted and randomised. During the following three days the new domain name holders will be randomly awarded. This first round is supposed to be followed by up to four shorter rounds under similar rules.

Only owners of a trademark or a service mark can apply for the registration of a domain name during the so-called **Sunrise Period**. Their mark needs to have had national effect prior to 2 October 2000. The Sunrise Period lasts from 25 July 2001 to 27 August 2001.

In case an applicant is not awarded the domain name, it can initiate the Sunrise Challenge. Any claims under the Sunrise Challenge must be filed until 26 December 2001. The dispute resolution will be provided by the World Intellectual Property Organisation (WIPO). Only three grounds of challenge will be examined: whether the registrant is not holding the mark identical to the domain name, whether the mark was not of national effect prior to 2 October 2000, and whether the domain name does not exactly match the mark.

After the Start-up Period, the registration will be available to the general public on a "first come first served" basis.

Online information about the new gTLD:

General information: www.icann.org

.biz: www.neulevel.com

.info: www.afilias.com

.name: www.gnr.com

.pro: www.registrypro.com

.aero: www.sita.int

.coop: www.cooperative.org

.museum: www.musedoma.org

NewsLetter

The **NewsLetter** provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this **NewsLetter** should seek specific advice on the matters which concern them. All dates mentioned are subject to change.

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