

## HOLDERS OF TRADE-MARK RIGHTS SHOULD PAY ATTENTION TO THE NEW .BIZ TOP-LEVEL DOMAIN

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As you may already be aware, the Internet Corporation for Assigned Names and Numbers (ICANN) is in the process of increasing the number of top level domains (such as .com, .net and .org). Among these new TLD's, ".biz" was adopted to help companies register new domain names that are representative of their names, products and services. To ensure that the introduction of this new TLD takes place in a fair and orderly fashion, the selected registry for .biz, NeuLevel, has developed a three-phase process to occur prior to the launch. What follows is a short description of each phase:

### **Phase 1: IP Claim Service (May 21, 2001 to July 9, 2001)**

Before allowing any domain name applications, NeuLevel will offer an Intellectual Property (IP) Claim Service to existing holders of trade-mark rights. NeuLevel will assemble all trade-mark claims into an IP Claim Database, without verifying whether an IP Claim corresponds with actual trade-marks. There will be a fee that should not exceed \$90 USD for submitting an IP Claim form. Submission of an IP Claim Form does not create any special rights with respect to registering a particular domain name. In other words, any claimant wishing to register a .biz domain name must also submit a separate domain name application. This service will warn holders of trade-mark rights and corresponding domain name applicants of the existence of potential conflicts.

### **Phase 2: Domain Name Application (Through September 25, 2001)**

This phase provides companies with the opportunity to submit domain name applications to registrars prior to the actual launch of the Registry. There will

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be a nominal fee for submitting a Domain Name Application. NeuLevel will then compare these applications with the IP Claim Database.

If a .biz domain name application is in conflict with a claim, NeuLevel will notify the corresponding applicant that its application may be in conflict with existing, pending or common law trade-marks. Nevertheless, the domain name applicant will have the option to either proceed with the application (in that case, the domain name will be placed "on hold") or to cancel it.

If none of the applications submitted correspond exactly to any of the entries on the IP Claim Database, NeuLevel will notify the claimant party of that outcome. However, the IP Claim Service will not notify the claimant if the Registry receives an application for a domain name which is simply a variation of the IP Claim. Understandably, the Domain Name Application Service does not amount to pre-registration of a .biz domain name, since there can be several applications from different companies for the same domain name.

### **Phase 3: Name Selection**

During Phase 3, NeuLevel will process all domain name applications that either did not match any of the entries in the IP Claim Database, or if there was a match, the applicant indicated that it nonetheless wanted to proceed with Name Selection.

In order to resolve conflicts between different applicants for the same domain name, the Registry will select names at random, avoiding preference toward any Registrar and ignoring the order in which the applications were received during the pre-launch period. The applicant for the domain name will be notified that it has successfully registered the domain name. Obviously, there is a fee for registering domain names.

### **Launch of the Registry (October 1, 2001)**

Upon the launch of the Registry, claimants will be notified as to the status of their claims. The Registry will then place a 30-day hold on all domain names for which there is a match within the IP Claim Database. This should allow parties to contact one another and to resolve conflicts either through negotiation or arbitration.

After the Registry begins accepting live registrations, new registrations for domain names will not be checked against the IP Claim Database, and companies will be able to register .biz domain names just as they register domain names today, on a first come, first served basis.

More information can be obtained at Neulevel's web site <[www.neulevel.com](http://www.neulevel.com)> as well as on ICANN's web site <[www.icann.org](http://www.icann.org)>. A similar process has been put in place for the TLD .info; see <[www.afilias.com](http://www.afilias.com)>.

### **Beware of pre-registration offer**

Some registrars are already offering pre-registration of domain names using the .biz TLD, even if no one has yet been authorized to do so. 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 TLD becomes operational.

This does not mean that any kind of pre-registration will fail, but the American Federal Trade Commission <[www.ftc.gov](http://www.ftc.gov)> advises consumers to protect themselves by avoiding any domain name pre-registration service that guarantees particular top level domain names or preferential treatment in the assignment of new top level domain names and by avoiding to do business with people who send unsolicited faxes.

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