

## THE INTERNET OPENS ITS DOORS FOR .BIZ-NESS

*Starting on October 1, 2001, .BIZ will become active as the Internet's newest top-level domain; its space reserved solely for businesses engaging in "bona fide" commercial activities. This space has the potential to reinvigorate, at least partly, the immense economic potential of the Internet by stimulating a multitude of e-commerce transactions so common only a few years ago. This iBrief explores the history of how and why this new top-level domain came into being. Following this history lies a discussion of the current .BIZ registration process as well as an analysis of the corresponding Intellectual Property Claims system.*

Fresh into the 21<sup>st</sup> century, e-commerce finds itself a mere week away from embarking upon an unprecedented expansion into a newly created and intentionally exclusive piece of Internet real estate. Starting on October 1, 2001, .BIZ will become active as the Internet's newest top-level domain; its space reserved solely for businesses engaging in "bona fide" commercial activities.<sup>1</sup> Leading this campaign is a private corporation, NeuLevel, Inc. (NeuLevel),<sup>2</sup> selected last year by the Internet Corporation for Assigned Names and Numbers (ICANN)<sup>3</sup> to become the Registry Operator for .BIZ.<sup>4</sup> This development places NeuLevel in charge of handling the .BIZ registration process, assigning .BIZ domain names to qualified applicants, and ferreting out potential difficulties inherent in protecting trademark owners from cybersquatters lurking on the .BIZ frontier. NeuLevel, in an attempt to meet these challenges, created unique procedures as well as staggered timelines directed specifically at the implementation of .BIZ. All

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<sup>1</sup> A top-level domain is the part of an Internet web site address that partially specifies the nature of the relevant web site- such as .EDU, .COM, or .GOV.

<sup>2</sup> NeuLevel, Inc. Homepage, Pushing the Boundaries of Commerce and Communication, available at <<http://www.neulevel.com/aboutnl/index.html>> (visited September 20, 2001). NeuLevel, Inc., founded in 1996, was originally an independent business unit within Lockheed Martin. Included in NeuLevel is Melbourne IT, Ltd., the Registry service provider for Australia's commercial Internet domain Registry (.com.au).

<sup>3</sup> This is an international non-profit corporation formed to "oversee a select range of Internet management functions. ICANN's responsibilities include coordination of the domain name system, Internet Protocol address space allocation...and root server system management." NeuLevel Homepage, Glossary of Terms, available at <<http://www.neulevel.com/aboutnl/glossary.html>> (visited September 21, 2001).

<sup>4</sup> See NeuLevel, Inc. Homepage, Pushing the Boundaries of Commerce and Communication, supra note 2.

of this preparation is aimed directly at accomplishing its stated goal of making .BIZ “the Web address of choice for businesses by assuming the role of a trusted – and neutral – third party.”<sup>5</sup>

In addition to the approval of .BIZ, ICANN also approved six other new top-level domains. They are as follows: .AERO – applicable to the aerospace industry; .COOP – applicable to co-op housing communities; .INFO – available for unrestricted use; .MUSEUM – applicable solely to museums; .NAME – reserved for individuals; and .PRO – reserved for professionals. Other suggested top-level domains, such as .SUCKS (proposed to be used for criticism or parody web sites) were not approved by ICANN. However, all of the approved additions (although not currently developing into a reality as quickly as .BIZ) are intended to “alleviate Internet traffic on the overburdened .COM, .NET and .ORG domains.”<sup>6</sup>

With these sweeping changes to the top-level domain system currently in play, the focus on .BIZ and on its potential to impact the global Internet community is justified and necessary. The pending introduction of an exclusive domain for businesses is extremely important to e-commerce for numerous reasons. .BIZ allows companies who missed the boat in the .COM world to attempt to rectify their situation by registering their companies with a .BIZ domain name.<sup>7</sup> This space also has the potential to reinvigorate, at least partly, the immense economic potential of the Internet by stimulating a multitude of e-commerce transactions so common only a few years ago. Another important impact .BIZ will have on the Internet community relates to its ability to indirectly influence the creation of even more new top level domains in the future. It can be argued that the future capacity and character of the Internet domain system will either expand into many more .SOMETHINGS or contract back to the cramped .COM environment depending on the success of .BIZ and the other newly-created domains. .BIZ is the first newly created top-level domain to step onto the field of play and, therefore, will likely take the majority of the credit or the brunt of the blame depending upon the results.

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<sup>5</sup> See NeuLevel, Inc. Homepage, [Pushing the Boundaries of Commerce and Communication](#), supra note 2.

<sup>6</sup> NeuLevel, Inc. Homepage, [Glossary of Terms](#), supra note 3.

<sup>7</sup> Because the “dot-com craze, often likened to the 19th century land rushes in the Old West, gobbled up familiar trademarks and generic terms used for site name addresses on the Web, dot-biz offers a clean slate for e-commerce entrepreneurs.” Matt Branaugh, [Dot-Biz Process Begins: E-Commerce Firms to get Second Chance at Prime Names](#), The Daily Camera, May 24, 2001 at A-1.

## **WHAT IS A BONA FIDE BUSINESS USE?**

BIZ is unique in the sense that it will be reserved for businesses only, making it the only top-level domain reserved exclusively for web sites created by the global business community. In fact, “the .BIZ domain can only be used for a ‘bona fide business or commercial use.’”<sup>8</sup> A “bona fide use” is defined as one of the following:

1. Exchanging goods, services, or property of any kind;
2. In the order course of trade or business; or
3. Facilitating (i) the exchange of goods, services, information, or property of any kind; or (ii) the ordinary course of trade or business.<sup>9</sup>

Registering a domain name “solely for the purpose of (1) selling, trading, or leasing the domain name for compensation, or (2) the unsolicited offer to sell, trade, or lease the domain name for compensation does not constitute a ‘bona fide business or commercial use’ of that domain name.”<sup>10</sup> Therefore, it is clear that applying for a .BIZ address exclusively for personal reasons “or using or intending to use the domain name exclusively for the expression of noncommercial ideas”<sup>11</sup> will not be allowed under the current system.

With the basics of the concept of .BIZ as well as its potential importance to the Internet world in mind, it is important to understand the history of how and why this new top-level domain came into being. Following this brief history lies a discussion of the current .BIZ registration process as well as an analysis of the corresponding Intellectual Property Claims system.

## **HOW & WHY .BIZ BECAME A REALITY**

In 2000, ICANN passed a resolution calling for the creation of new generic top-level domains to be attached to the end of a web site’s domain name. A domain name is a set of characters designating where certain information is located on the Internet. Domain names, “when entered into a user’s web

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<sup>8</sup> NeuLevel, Inc. Homepage, [General FAQs](#), supra note 3.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id. Additional information on .BIZ domain name restrictions can be found on the NeuLevel, Inc. Homepage at <<http://www.neulevel.biz/countdown/registrationRestrictions.html>> (visited September 21, 2001).

browser...automatically look up the corresponding (Internet Protocol) IP address.”<sup>12</sup> However, a uniform resource locator (URL) must also be employed in this process. A URL “refers to a set of characters that specify the location of a particular item of information and includes the domain name as well as additional information regarding the particulars of the information within the domain...[and acting as] the ‘global address of documents and other resources of the World Wide Web.’”<sup>13</sup> A top-level domain, then, is a field of information located within a web site’s general domain name, like the .EDU in Duke University School of Law homepage (<http://www.law.duke.edu/>). Before the introduction of the seven new general top-level domains, there were a relatively small number of general top-level domains in existence on the Internet. The most prominent of these are, .EDU – for educational institutions, .GOV – for United States government agencies and institutions, .COM – for commercial use, .ORG – for not-for profit organizations, .MIL – for the United States military, and .NET – for network organizations.”<sup>14</sup> Located in the same web address as these top-level domains are second-level domain names. These domains often describe “the actual name of the entity hosting the web site or gives some indication as to the nature of the site.”<sup>15</sup> For example, in Duke University School of Law’s domain name (<http://www.law.duke.edu/>) the second-level domain name is the “WWW.LAW.DUKE” section of the address and the top-level domain is the .EDU portion. With this technical understanding, it is now important to discuss the process used to activate a domain name on the Internet. This discussion will shine a light on the problems this process creates and serve as a clear indication as to why .BIZ came into existence.

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<sup>12</sup> Colby B. Springer, Comment: Master of the Domain (Name): A History of Domain Name Litigation and the Emergence of the Anticybersquatting Consumer Protection Act and Uniform Dispute Resolution Policy, 17 *Computer & High Tech L.J.* 315 at 319 (2001). “Consequently, every web page has a corresponding domain name.” *Id.*

<sup>13</sup> *Id.* at 320 (citing Webopedia, Online Computer Dictionary for Internet Terms and Technical Support, available at <http://webopedia.internet.com/TERM/U/URL.html>) (last modified June 24, 1988). For example, “in the URL <http://www.scu.edu>, the “‘http’ section tells the computer which protocol to use while the ‘www.scu.edu’ directs the computer to the proper domain / IP address in order to locate the desired information. *Id.*

<sup>14</sup> *Id.* at 320. There are also specific country-designated top-level domain names (called country coded top-level domain names and abbreviated as ccTLDs) such as <.ca> for Canada and <.uk> for the United Kingdom. See Webopedia, *supra* note 13.

<sup>15</sup> *Id.* at 321.

## REGISTRATION OF DOMAIN NAMES

The problems the current domain name registration process is facing are the primary causes of the introduction of .BIZ as a new top-level domain. For the top-level domains in existence before .BIZ approval, the registration process is as follows. “When a user seeks to place a web page and the information it contains on the Internet, the user must register the domain and the domain name with a domain name registrar. . . . Registrars maintain a database of registrations and a system for translating user-friendly domain names into a corresponding computer friendly IP address.”<sup>16</sup> These Registrars award domain names on a “first come, first served” basis and they do not “make exhaustive...determinations into the registrant’s legal right to use a particular (second-level domain / top-level domain) combination with regard to the potential infringement or otherwise properly registered trademarks.”<sup>17</sup>

In fact, ICANN, the non-profit corporation described above, was created by the Department of Commerce and placed in charge of managing this domain name system. ICANN has a difficult job in today’s global Internet marketplace due to the problems this “first come, first served” policy creates. These problems can be summed up as follows: Over 100 million people in the United States alone use the Internet as a means of communication and there have already been over \$919 billion worth of e-commerce transactions occurring via the Internet in 2001.<sup>18</sup> These figures make domain names “prime real estate on the information superhighway.”<sup>19</sup> This situation, caused by scarcity of domain names that relate to popular subjects (such as Earth.com) or popular organizations, as well as the chance to exploit financial gains from acquiring this scare resource, quickly created the phenomenon of Cybersquatting. “The traditional cybersquatter registers domain names based on trademarks and tries to sell the domain names to the mark owners for a hefty profit.”<sup>20</sup> Cybersquatting is “widely condemned” because of its

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<sup>16</sup> Id at 319.

<sup>17</sup> Id at 321.

<sup>18</sup> Jay P. Kesan and Rajiv C. Shah, Article: Fool us Once Shame on you – Fool us Twice Shame on us: What we can Learn from the Privatizations of the Internet Backbone Network and the Domain Name System, 79 Wash. U. L. Q. 89 at 91 (2001) (citing Computer Industry Almanac, Inc., U.S. Tops 100 Million Internet Users According to Computer Industry Almanac, available at <http://www.c-i-a.com/199911iu.htm> and Bob Tedeschi, Revised Forecasts Area reminder how Quickly Assumptions can Crumble, N.Y. Times, Mar. 26, 2001, at C-4.). See also John G. White, Intellectual Property: ICANN’s Uniform Domain Name Dispute Resolution Policy in Action, 16 Berkeley Tech. L. J. 229 (2001).

<sup>19</sup> Id.

<sup>20</sup> White, supra note 18 at 230 (citing Thomas R. Lee, In Rem Jurisdiction in Cyberspace, 75 Wash. L. Rev. 97, 104 (2000)). There are also related subdivisions of cybersquatting such as “cyberpiracy” that

negative effects on e-commerce and there have been recent judicial and legislative developments “around the world aimed at cracking down on cybersquatting.”<sup>21</sup> ICANN stepped in to aid in this crackdown against cybersquatting by creating a dispute resolution system for the current top-level domains. However, the existence of cybersquatting placed a tremendous amount of pressure on ICANN to create a new process and means for people to register domain names. Thus, .BIZ was born.

## **THE .BIZ REGISTRATION PROCESS**

BIZ was created not only to allow for an exclusive place for business on the Internet, it was also created to drastically reduce the problem of cybersquatting in this solely commercial space. The .BIZ registration process is as follows. Any business was allowed submit .BIZ domain name applications for any names they desired beginning on June 27, 2001 and ending on September 17, 2001. In fact, businesses were allowed to submit applications for a .BIZ domain name to their Registrar<sup>22</sup> of choice. The Registrars then submitted these applications to NeuLevel:<sup>23</sup> the exclusive Registry for .BIZ.<sup>24</sup> Up to

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occurs when someone registers a “domain name incorporating a variation of a trademarked term and used it for a website that lures traffic intended for the mark owner’s site.” See id (citing Lee). There is also “typo-squatting” which occurs when a domain name is registered that incorporates “variations of well known marks such as misspellings or missing characters (e.g., yafoo.com) to take advantage of unsuspecting web surfers. See id (citing Robert D. Gilbert, Squatters Beware: There are New Ways to Get You, New York L. J., Jan. 24, 2000, at T-5. Finally, there are “pseudo-cybersquatters.” These are people who register domain names “that resemble trademarks but never use them...They do not construct active website, make no offers to sell the domain names, and are often very difficult to contact.” See id (citing Gilbert).

<sup>21</sup> White, *supra* note 18 at 230 (citing Luke A. Walker, Note, ICANN’s Uniform Domain Name Dispute Resolution Policy, 15 Berkeley Tech. L.J. 289 at 305-06 (2000) and Diane Cabell, Foreign Domain Name Disputes 2000, The Computer & Internet Lawyer, Oct. 2000, at 5).

<sup>22</sup> A Registrar “provides direct services to domain name Registrants. Registrars process name registrations for Internet end users...for entry into the centralized Registry database and ultimate distribution over the Internet.” Eligible registrars must be ICANN-accredited .BIZ registrars and “there are multiple Registrars providing registration services through the NeuLevel Registry.” NeuLevel, Inc. Homepage, General FAQs, *supra* note 3.

<sup>23</sup> Upon successful registration of the domain name, “registrants will be required to pay a registration fee to secure the name. The Registrar will determine the registration fee. The amount of the fee will depend in the length of the registration term; 2 years minimum is required.” NeuLevel, Inc. Homepage, Step 2: Apply Now for .BIZ Domain Names, available at <<http://www.neulevel.com/countdown/step2.html>> (visited September 21, 2001).

<sup>24</sup> A Registry is an “entity that receives domain name system (DNS) information from domain name Registrars, inserts that information into a centralized database and publishes the information in Internet

this point, this registration process is similar to that for old top-level domains. However, in the .BIZ world, these applications do not necessarily guarantee that these businesses will receive the rights to their .BIZ domain names – there is not a true “first come, first served” policy for .BIZ domains. “After the application deadline, domain names will be awarded to selected Registrants. In cases where there are multiple applications for the same name, all applications will be randomized prior to the selection of one application to receive the name.”<sup>25</sup> The Registrars will then notify both the successful or unsuccessful domain name applicants of the outcome of the Domain Name Selection process.<sup>26</sup> On October 1, 2001, .BIZ will go live on the Internet as web surfers across the globe will be able enter this new top level domain and theoretically be whisked away into e-commerce bliss.

In the case of a business with a valid trademark wishing to protect this mark by either purchasing a .BIZ domain name or by not allowing anyone to create a similar .BIZ domain name, NeuLevel created an Intellectual Property Claims process. This process, a new phenomenon in the world of domain name registration, will likely discourage and possibly eliminate cybersquatting in the .BIZ arena.

## **PROTECTING TRADEMARKS: NEULEVEL’S INTELLECTUAL PROPERTY CLAIMS SYSTEM**

The goal of NeuLevel’s Intellectual Property (IP) Claims Service is “to protect businesses’ registered or common law trademarks<sup>27</sup> located in the .BIZ space.”<sup>28</sup> Therefore, NeuLevel created an IP

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zone files on the Internet do that domain names can be found by users around the world via applications such as the World Wide Web and e-mail. In short, the Registry creates and maintains that database of domain names for a given top-level domain.” NeuLevel, Inc. Homepage, General FAQs, supra note 3. NeuLevel’s customers are the ICANN-accredited Registrars, described in note 13, who have executed a Registry-Registrar Agreement. In fact, the NeuLevel Registry does not provide direct services to Internet end users.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> A common law trademark is an accepted trademark that has not been registered with the US Patent and Trademark Office. NeuLevel, Inc. Homepage, Glossary of Terms, supra note 3.

<sup>28</sup> NeuLevel Homepage, Act Now, Thank Yourself Later, available at <http://www.neulevel.com/countdown/index.html> (visited September 21, 2001).

Claims system whereby a trademark holder, known as the Claimant<sup>29</sup>, could submit an IP Claim and, therefore, become eligible to gain protection against potential cybersquatters or others desiring to register a .BIZ domain name corresponding to their trademark. NeuLevel set the deadline for filing these complaints on August 6, 2001 and set the fee per claim at \$90.00.

Claimants were allowed to file an IP claim for any of their trademarks in the following situations: where their marks were nationally registered, in situations when their trademark application was pending, as well as in situations where businesses held common law trademarks. All applications will be compared to the list of these claims located in NeuLevel's IP Claims database. "Whenever the comparison results in an exact match between the domain name application and an IP Claim, the applicant (as well as the trademark holder) will be notified by e-mail. The e-mail will contain the name of the Registrar that submitted the application, information (about the IP Claimant), as well as information regarding the IP Claim."<sup>30</sup> NeuLevel will also place a link to a web site where applicants must go to confirm their "desire either to proceed with or cancel the application."<sup>31</sup> The deadline for applicants to indicate their intent to "proceed with their domain name application for a domain name string that is an exact match to a...Claim" is September 25, 2001.<sup>32</sup> If the applicant decides to proceed with the application, "the Registry will place an automatic 30-day hold on all domain names for which there is a match within the IP Claims database."<sup>33</sup> "This 'cooling-off period' (which runs from October 1, 2001 through October 30, 2001) is intended to provide the Claimant and the successful Registrant the opportunity to contact one another and resolve conflicts regarding intellectual property rights."<sup>34</sup> An IP Claimant has only twenty days from the day of this e-mail notice to institute a dispute proceeding regarding the protection of their mark. These proceedings are called Start-up Trademark Opposition

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<sup>29</sup> These Claimants can also obtain Claimant Representatives. These Representatives are third parties, "such as intellectual property law firms or trademark service providers, submitting IP Claims on behalf of the Claimant." NeuLevel Homepage, General FAQs, supra note 3.

<sup>30</sup> NeuLevel, Inc. Homepage, Step 2, supra note 23.

<sup>31</sup> Id.

<sup>32</sup> Id. After this date, all applicants that have not responded will have their applications automatically cancelled.

<sup>33</sup> "During this 'cooling-off period,' the domain name will not resolve, the Whois data will be locked, and the successful registrant is not allowed to use the domain name...This period is intended to give Claimants time to take...appropriate action to protect their rights, before the domain name goes live." NeuLevel, Inc. Homepage, Glossary of Terms, supra note 3.

<sup>34</sup> NeuLevel, Inc. Homepage, Step 3: Your .BIZ Name Goes Live, available at <http://www.neulevel.com/countdown/step3.html> (visited September 21, 2001).

Policy (STOP) proceedings and can only be entered into by trademark owners who have filed IP Claims. The process in a STOP proceeding is similar to the Uniform Dispute Resolution Policy (UDRP) process applicable to other top-level domain challenges except for the following differences:

1. There is no requirement that the Claimant prove that the domain name is confusingly similar to the identical mark; and
2. The Claimant has the option of proving either than the domain name was registered in bad faith or that it is being used in bad faith.

A single panelist will serve as the arbiter and will decide the STOP dispute, “with the sole remedy for the IP Claimant being transfer of the disputed domain name registration.”<sup>35</sup> Either party then has ten days to challenge this resolution by filing a lawsuit in a court of competent jurisdiction.

It is also important to remember that the IP Claimant does not acquire the right to a .BIZ domain name solely by filing an IP Claim. These mark holders still have to go through the normal process of applying for their desired domain name through an eligible Registrar.

## **CONCLUDING THOUGHTS –**

It is unclear whether .BIZ will actually “push the boundaries of commerce and communication” as NeuLevel claims it will.<sup>36</sup> However, it is clear that .BIZ will begin operations as scheduled on October 1, 2001 and that it will wall off a reserved space on the Internet for e-commerce to take place. It will certainly be interesting to observe the effects of the IP Claims system on cybersquatting as well as the future fallout from the lawsuits challenging NeuLevel’s registration process as constituting an illegal lottery. The gambles ICANN and NeuLevel are taking relate to the goal of .BIZ: giving companies “another chance to assert their trademark name on the Web and generate more traffic.”<sup>37</sup> The gamble may pay off if the global business community jumps headfirst into the .BIZ world. However, the gamble will certainly fail if companies en masse choose not to register on the .BIZ system or find that their new domain names are not drawing the customers they anticipated. All risks and speculations aside, the introduction of .BIZ will allow the entire global Internet community, for the first time in its history, to witness the birth of a new top level domain catering to a specific use. A little over one year from the

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<sup>35</sup> Id.

<sup>36</sup> NeuLevel Homepage, NeuLevel, available at <<http://www.neulevel.com/aboutnl/index.html>> (visited September 21, 2001).

<sup>37</sup> Branaugh, supra note 7.

approval of these seven new top-level domains, .BIZ has emerged as the leader in this evolution and its importance to Internet history will soon unfold before our eyes.

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