

CLIENT ALERT: REGISTRATION OF <.US> DOMAIN NAMES

Last year, the United States Department of Commerce selected NeuStar, Inc. (“NeuStar”), a third-party provider, to manage the <.us> country code top level domain. NeuStar recently announced a rollout schedule and guidelines for making second-level <.us> domain names, such as <johnsmith.us>, <publicservice.us> and <mycompany.us>, available to United States citizens and residents, and to businesses, organizations and government entities with a bona fide presence in the United States. NeuStar’s announcement represents an expansion of the <.us> structure from a locality-based hierarchy model in which domain names, such as <www.county.arlington.va.us>, were available only at the third-level and above.

In order to discourage “cybersquatting,” or the practice of registering addresses with the intention of reselling them, Neustar will implement a Sunrise Period. From March 4, 2002 to April 9, 2002, holders of United States trademarks and service marks consisting solely of words, and registered or applied for on or before July 27, 2001, may apply for corresponding <.us> domain names through NeuStar accredited registrars. From April 10, 2002 to April 23, 2002, Sunrise Period applications will be selected and registered.

Beginning April 24, 2002, applications for all <.us> domain names will be accepted on a first-come first-serve basis. The following are details concerning <.us> eligibility requirements and procedures for securing Sunrise Period registrations.

1. <.us> Eligibility Requirements

In order to register a second-level <.us> domain name, an individual, organization or government entity must fall into one of the following three categories, thereby meeting NeuStar’s “U.S. Nexus Requirement”:

1. A natural person: (i) who is a citizen or permanent resident of the United States of America or any of its possessions or territories; or (ii) whose primary place of domicile is in the United States of America or any of its possessions;
2. An entity or organization that is: (i) incorporated in one of the 50 U.S. states, the District of Columbia, or any United States possession or territory; or (ii) organized or otherwise constituted under the laws of a state of the United States of America, the District of Columbia, or any U.S. possession or territory; or

3. An entity or organization (including part of the federal, state or local government of the United States or a political subdivision thereof) that has a bona fide presence in the United States.¹

Applicants for <.us> domains will be required to certify that, to the best of their knowledge, they meet the U.S. Nexus Requirement. NeuStar will implement a Nexus Dispute Policy (“NDP”) under which third parties may challenge registrations based on noncompliance with the U.S. Nexus Requirement. NeuStar will also “spot check” registrations for compliance with the U.S. Nexus Requirement and may itself bring challenges under the NDP. More information on the NDP may be found at <<http://www.neustar.us/policies/index.html>>.

2. <.us> Sunrise Period

The <.us> Sunrise Period is scheduled to run from March 4, 2002 to April 9, 2002. During such time, holders of trademarks and service marks consisting solely of words, and registered or applied for as of July 27, 2001 with the U.S. Patent and Trademark Office (the “USPTO”), may apply for corresponding <.us> domain names through NeuStar accredited registrars.²

Sunrise Period domain name applications may not be based on marks registered or applied for in foreign countries or individual states, or registered on the Supplemental Register of the USPTO. Also, applications based on design or stylized marks will not be accepted. Special characters included in marks, such as spaces, punctuation, ampersands, dollar signs and parentheses, must be eliminated entirely or replaced with hyphens in the corresponding domain name. For example, the owner of SMITH & JONES may apply for either <smithjones.us> or <smith-jones.us>.

In addition to the registrant, administrative, technical and billing contact and name server information typically required for domain name applications, Sunrise Period applications must also include: (1) the mark on which the application is based; (2) the date the mark was applied for or registered; (3) the registration or serial number of the mark; and (4) one International Class (or category of goods or services) in which the mark was applied for or registered. The domain name registrant must be the owner of the mark and, as with all <.us> domain names, the applicant must certify compliance with the U.S. Nexus Requirement. NeuStar will check

¹ Section B.3.1 of the NeuStar proposal to the Department of Commerce, which can be found at <http://www.ntia.doc.gov/ntiahome/domainname/usca/cafiles/SectionB_3.pdf>, provides details concerning what constitutes a “bona fide presence.” In general, this requirement will be determined by NeuStar on a case-by-case basis and is intended to ensure that only individuals or organizations with a substantive connection to the United States are permitted to register <.us> domain names.

² One such registrar, NameEngine, has indicated it will cease accepting Sunrise Period applications as early as April 4, 2002 so that such applications may be processed and submitted to NeuStar by April 9, 2002. Accordingly, mark owners should plan to submit <.us> applications early.

trademark and service mark information provided against the USPTO database to ensure that fraudulent claims are not processed.

In certain instances, more than one owner may claim rights to the same mark in different International Classes. Accordingly, duplicate domain name applications may legitimately be filed by different mark owners. In such cases, NeuStar will select one application at random for registration. From April 10, 2002 to April 23, 2002, Sunrise Period applications will be selected and registered. Beginning April 24, 2002, applications for <.us> domain names will be accepted in real time on a first-come first-serve basis.

Additional information on <.us> registrations can be found at <<http://www.neustar.us>> or by contacting William M. Ried ((212) 728-8729 or wried@willkie.com) or Christine Lombardi ((212) 728-8767 or clombardi@willkie.com) in Willkie Farr & Gallagher's Intellectual Property Department in New York.

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