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EDUCATION LAW NEWS

PROTECTING YOUR NAME ON THE .XXX DOMAIN

by Brian P. Gregg

On September 7, 2011 the Internet Corporation for Assigned Names and Numbers (ICANN) began offering .xxx domain name registrations to the members of the Adult Sponsored Community. The .xxx domain also represents the creation of new internet real estate and, because any string ending with .xxx can be purchased, the launch of .xxx represents an opportunity for domain squatters and trademark infringers. In other words, your trademark or your institution's name could become associated with a .xxx domain and an adult entertainment website. During its "Sunrise B" period which was September 7, 2011 to October 28, 2011, trademark owners had the option to permanently block .xxx domains that were identical to federally registered trademarks. If you missed that opportunity, or if you want to block .xxx registrations for domains that do not correspond to a registered trademark, your only option is to register defensive .xxx domains.

.XXX Domains are Available to the General Public

As of December 6, 2011, ICM opened the .xxx domain registry to the general public which can purchase defensive domain registrations. Only members of the Adult Sponsored Community will be able to host a website with content at .xxx domains. However, non-members of the Adult Sponsored Community may purchase .xxx domain names but those .xxx domains will simply not resolve to a website. By purchasing the .xxx domain name, non-members may prevent members of the Adult Sponsored Community from hosting adult content at the domain. Those who wish to avoid the possibility of adult content being hosted at particular .xxx domains, and who were not able to block those domains during the Sunrise B period, should consider a defensive domain registration.

Why Register a .XXX Domain

This is the time for organizations to block domain-squatters and members of the Adult Sponsored Community from possessing domains they consider important and which could be used by a third party to host adult content. Domains which correspond to trademarks, trade names, corporate, or institutional names may be most susceptible to misuse by third parties. Absent a domain registration block secured during the Sunrise B period, securing a defensive .xxx domain registration is the only pre-emptive protection available. Post-registration remedies for domain-squatting, such as ICANN's Uniform Dispute Resolution Procedure, can be significantly more costly than owning a pre-emptive domain registration.

Costs

Costs for .xxx domain registrations vary slightly among registrars but average about $110 per year per domain. As the .xxx domain registrations are awarded on a first come first served basis, anyone wishing to secure a .xxx domain should act promptly.

For more information, or for assistance with filing a .xxx domain application please contact Brian Gregg (bgregg@mwn.com, 717-237-5456), Rebecca Finkenbinder (rfinkenbinder@mwn.com, 717-237-5328), or Mike Doctrow (mdoctrow@mwn.com, 717-237-5311). ■

SERVICE ANIMALS AND ASSISTANCE ANIMALS – THE LEGAL LANDSCAPE

by Kimberly M. Colonna

The concepts of "service animals" and "assistance animals" are easy to confuse, but in the law, these concepts give rise to distinct obligations.

The Americans with Disabilities Act (ADA) addresses the use of "service animals" in places of public accommodation. Although a broader definition may apply in the employment context, the ADA definition of "service animal" that is applicable to schools, colleges, and universities includes any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or mental disability. This definition does not include animals other than dogs and does not include emotional support, comfort, or companionship animals.

The ADA requires that institutions modify their policies, practices, or procedures to permit the use of service animals in places of public accommodation, which includes places such as lecture halls, classrooms, cafeterias, and libraries. A request to remove a service animal is appropriate only when the animal is out of control and the animal's handler does not take effective action to control it, or the animal is not housebroken.

Section 504 of the Rehabilitation Act requires any institution that receives federal financial assistance to provide reasonable accommodations to individuals with disabilities. Refusing to accommodate a student's use of a service animal will give rise to a Section 504 violation. Because Section 504 does not contain its own "service animal" definition, the ADA definitions are used for Section 504 enforcement.

The Fair Housing Act (FHA) addresses the concept of "assistance animals" in residential dwellings. Under the FHA, the definition of "assistance animals" is not limited to dogs. The definition includes animals that provide emotional support to an individual with a disability, and the animal need not have the training that is required for service dogs under the ADA. The FHA requires that an individual with a disability be permitted to keep an assistance animal in a dwelling that otherwise would prohibit the animal, if the assistance animal is necessary to afford the individual an equal opportunity to use and enjoy the dwelling and if there is an identifiable nexus between the disability and the assistance that the animal provides.

The question of whether campus housing qualifies as a "dwelling" that is subject to the FHA is unsettled. The Department of Housing and Urban Development (HUD), which enforces the FHA, however, has made clear that it believes that campus housing is subject to the FHA. HUD recently took enforcement action against a private university in Illinois that had refused to allow an assistance animal to reside with a student in the residence hall.

Colleges and universities should bear in mind the separate legal requirements that apply to service animals under the ADA and to assistance animals under the FHA. Adopting a policy for service animals and assistance animals that addresses the distinct legal standards is a good way to ensure legal compliance. ■

Kimberly M. Colonna is Chair of the Education Law group and practices in Litigation and Injunction groups.
717.237.5278 / kcolonna@mwn.com

McNees Education Law Group

Kimberly M. Colonna, Chair 717.237.5278/kcolonna@mwn.com	**Erik M. Hume** 717.237.5340/ehume@mwn.com	**Elizabeth A. Maguschak** 570.455.8300/emaguschak@mwn.com
Jeffrey F. Champagne 717.237.5305/jchampagne@mwn.com	**Brian F. Jackson** 717.237.5467/bjackson@mwn.com	**Alexis I. Snyder** 717.237.5284/asnyder@mwn.com
Devin J. Chwastyk 717.237.5482/dchwastyk@mwn.com	**Stephen R. Kern** 717.237.5350/skern@mwn.com	**Mark Van Blargan** 717.237.5347/mvanblargan@mwn.com
Rick L. Etter 717.237.5367/retter@mwn.com	**Adam R. Long** 717.237.5209/along@mwn.com	**David M. Watts, Jr.** 717.237.5344/dwatts@mwn.com

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