

## #16

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
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**Q1** Proponent's Full Name\* If this proposal is jointly developed by more than one Working Group member, please write the full names of all proponents involved.

Brian Winterfeldt; Christopher Thomas; Colin O'Brien; Griffin Barnett; Jeff Neuman; John McElwaine; Lori Schulman; Pascal Boehner; Paul McGrady; Susan Payne

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**Q2** What type of URS recommendation are you proposing? **Policy**

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**Q3** What URS recommendation are you proposing?\* Please be succinct as well as substantially specific and not general in nature.\* One proposal for one recommendation only.

The URS should allow for additional remedies such as a "right of first refusal" to register the domain name in question once the suspension period ends or the ability of the complainant to obtain additional extensions of the suspension period.

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**Q4** What is your rationale for the proposal? (250 words max)

One reason the URS has not met with wide adoption by brand owners is the limited remedies available. It would likely increase URS utility if prevailing complainants had the opportunity to securely take possession of the disputed domain name(s) without the delay and risk of waiting for a suspended domain to expire and then placing a back order or otherwise attempting to acquire it in the marketplace once the suspension period ended. Such enhanced remedies could include a right of first refusal upon expiration of a suspended domain name but they could also provide for the ability of a losing respondent to voluntarily transfer a suspended domain to the complainant upon a negotiated settlement prior to the domain's expiration. Also, a successful complainant could be given the option of maintaining and extending the suspension for additional periods of time, potentially subject to payment of a reasonable extension fee in each instance.

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**Q5** What evidence do you have in support of your proposal? Please detail the source of your evidence. (250 words max)

The vast majority of URS complaints have been successful – specifically, there were only 59 of 827 cases where the claim was denied (7.1%) accounting for only 63 out of 1,861 total domain names (3.4%). In 30% of cases (17% of domain names) the complainant uses brand protection from a provider, a protected marks list, or reserved the name with the Registry. However, where complainants prevailed, 365 out of the 1,745 subject domain names are no longer registered (20.9%). Of these, 1 domain name was subject to a DPML subscription, while the other 364 are simply available for any party to re-register in the general pool of publically-available domain names. See Staff compilation report - updated URS data\_v1.1 - 9 July 2018.docx. Although this is not an overwhelming number of the total domains/cases, it represents a substantial number of the total cases/domain names that seems to represent a need for additional post-suspension options to protect the domain names from further cybersquatting/bad faith registration and use. These options could include a post-suspension transfer or right of first refusal to the prevailing complainant to register the domain name after the suspension period. Having these choices could alleviate the need for brand protection services or other options that may be more costly than simple defensive registration.

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**Q6** Where and how has this issue been addressed (or not) by the Working Group or the Sub Teams to date? (250 words max)

The issue of remedies has been discussed within the Documents, Providers, and Practitioners Sub-Teams. Six sources of Data for Section F (Remedies) were identified and considered. From Providers - qualitative experiences relating to the scope and duration of current remedies, and qualitative experiences on implementation of current remedies. The Documents Sub Team reviewed IRT & STI Reports, to document origin and development of remedies, domain lifecycle after a suspension for those cases where the complainant prevailed (shown through the Tushnet research the Staff compilation report), the INTA Survey for any relevant information related to remedies, and relevant sections of the CCT-RT report. Practitioners & Providers Sub Teams discussed remedies as part of review of the survey results, resulting in a number of additional observations and recommendations for full WG consideration. The consolidated URS Document captures the following existing recommendation, but it does not opine on the possibility of enhanced or additional/alternative URS remedies: “Suspension remedy seems to be working as intended, based on data collected and reviewed (including post-dispute domain disposition). Full WG to deliberate broader question of whether any policy change needs to be made to Remedies issue, taking into account reports from the other two Sub Teams. Without modifying the remedy (subject to further WG deliberations), consider a recommendation that post-suspension domains not be listed by drop-catch services. Consider including data and observations about post-dispute domain disposition (per staff report) in Initial Report, to inform Phase 2 deliberations about possible relationship between URS and UDRP.”

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**Q7** Does the data collected and reviewed by the Sub Teams show a need to address this issue and develop recommendations accordingly? (250 words max)

Yes – see proposal and rationale, and summary of Sub Team work on this issue.

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**Q8** If not already addressed above, on the basis of what information, gathered from what source or Sub Team, is this proposal based, if any? Please provide details. (250 words max)

This is already addressed above.

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**QUESTION:** What “additional remedies” for winning Complainants, in addition to the “right of first refusal”, do you contemplate? Please provide details.

**RESPONSE:** In addition to the “right of first refusal,” the proposal also contemplates an ability for prevailing complainants to obtain additional extensions of the URS suspension period. As specifically stated in the proposal: “The URS should allow for additional remedies such as a ‘right of first refusal’ to register the domain name in question once the suspension period ends *or the ability of the complainant to obtain additional extensions of the suspension period.*” Currently, the URS permits a suspension period of the remaining life of the registration, plus an additional year at the option of the complainant. The proposed additional remedy contemplates an ability for such complainants to further extend the extension period, potentially on an annual basis, for some period longer than the life+1 year currently available. Although we do not propose a maximum extension renewal period, if asked to make a specific suggestion we might propose the possibility of extensions up to a maximum of five years (after the initial registration period lapses). We would also be open to considering the possibility of a reasonable fee for such extensions, potentially to cover the cost of the normal registration/renewal fee that would apply to the domain name.