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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.

Marie Pattullo (AIM - European Brands Association)

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

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.

"Loser pays": if the Complainant prevails, the costs of the URS should be carried by the Respondent.

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

No enforcement action is without cost to the right owner, while both the infringement and attempts at enforcement frequently cost very little to the infringer. While realising that an infringer may be difficult to locate in many instances, we should not perpetuate a system where any potential infringer knows that it will suffer little, if any, sanction or financial burden.

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

This goes beyond the URS into simple psychology: knowing that there is no sanction is going to act as an invitation to infringement, just as we saw more abuse in those new gTLDs that offered free registrations. This has been discussed in the WG: see Super Consolidated URS Topics Table I(1), Cost Allocation Model. While we note that providers think that there may be implementation difficulties, we repeat that it should not be free to infringe. As a point of principle, an infringer should know that its actions will attract sanctions.

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

Super Consolidated URS Topics Table, I (Cost).

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)

The discussion within the Providers Sub-Team seems to have been limited to difficulties foreseen by the providers: as rights owners we would place this under the Documents Sub-Team's draft policy recommendation that "the question of adequacy and scope of remedies be deliberated among the full WG".

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)

See above.

Question: Please specify what the loser would pay. (Is it other party's administrative filing fee? Legal (attorney) costs? Both? Other costs?)

Answer: The basis is that it should be high enough to act as a deterrent. While there is a common filing fee there are vast differences in legal costs, so we would suggest that it could be a fixed amount, not set on a case-by-case basis. Perhaps the administrative costs + 500 EUR?

Question: Please provide details on how payment would be assured of being collected.

Answer: It could never be "assured", nothing ever is: it's a point of principle. Enforcement costs fall on those who have no part in, and take no benefit from, the infringement – the brand holders – and implementation costs on the CPs/providers. Only the infringer avoids these costs, to the detriment of every "clean" player in the DNS and, ultimately, consumers. Financial details for the registration are taken by the Registrar. Registrars (should) know who their customer is - brand holders do not - while Registrants know that they face no sanctions should they choose to register/use a DN in bad faith. There could be a contractual provision in the registration agreement that the Registrar has the right to charge (e.g.) the credit card used for the registration for the amount noted in point 1 if the Registrant were to lose a URS, monies to be either transferred to the Complainant or to a common fund to reimburse all successful URS Complainants on a pro rata basis (per number of successful cases). The money would be held in a blocked account pending appeal deadlines being surpassed, and of course would be returned to a Registrant successful in such an appeal. While many infringing Registrants use aliases, which post GDPR/the effect on WHOIS are becoming even harder to detect, at least they should know there is a *possibility* that this will cost. We could take inspiration from successful programmes such as .de, where a domain is simply shut down if the WHOIS information is fake. This should also include wholesalers/resellers, which hijack/drop-catch names with randomly generated IDs based on real addresses or simple ID theft, although a cursory check of Registrant ID (where possible) shows that it's blatantly fake. Starting with those responsible for multiple infringement first makes the most sense. Will this actually result in any money being clawed back? Uncertain – but there should be at least clarity that in principle, an infringer will be held liable for costs.