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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

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.

The URS should incorporate a "loser pays" model.

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

The current cost allocation model is sufficient for most cases but it is not equitable for situations involving serial cybersquatters whose activities do not seem to be deterred by multiple adverse URS or UDRP decisions. In line with the above question regarding repeat offenders, a provision requiring registrants who have met a set threshold for habitual cybersquatting could be required to deposit funds into an escrow account with each new domain registration or the registrar should be authorized under its terms of service to charge the credit card on file in connection with the registration in order to satisfy the "loser pays" requirement. Such funds could be dispersed to prevailing complainants in future domain name disputes against that registrant. The loser pays model could be adopted in all cases regardless of whether the respondent meets the "repeat offender" or "high-volume cybersquatting" thresholds, or it could be limited only to those cases involving a "repeat offender" or "high-volume cybersquatting."

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

To date, there have been 827 URS cases, involving a total of 1,861 domain names. See Staff compilation report - updated URS data_v1.1 - 9 July 2018.docx. Of that number, 98 cases involved multiple domains, covering 1,134 domain names of the 1,861 total. See URS Case Review - Final.xlsx. Thus, a large proportion of the domain names subject to a URS are covered in a small number of the total cases – many cases involve multiple domain names and a pattern of bad faith conduct by the registrant (about 61% of domain names subject to URS come from about 12% of total cases). Some cases involved dozens or even hundreds of domain names, like Case No. 1703352 (Ashley Furniture Industries, Inc. v. Fahri Hadikusuma, 457 domain names), Case No. 1731038 (Eli Lilly and Company v. Shaternik, 202 domain names), Case No. 1713119 (Moncler S.P.A. v. Ndiyaye therese, 85 domain names), Case No. 1714210 (Moncler S.P.A. v. Trani Johanna, 34 domain names), and Case No. 1757790 (moncler S.P.A. v. Dominique Lacroix, 32 domain names). The data also shows a number of respondents named in more than one complaint – evidence of serial cybersquatting on multiple different brands owned by different trademark owners/complainants. For example, yoyo.email/yoyo.email Giovanni Laporta and Ron Van Belkom. See id. This demonstrates the need for stronger deterrents against high-volume cybersquatting and repeat offenders, including a loser pays system. A loser pays system should apply in all cases, but at a minimum should apply in cases involving a repeat offender.

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 cost allocation has been discussed within the Documents, Providers, and Practitioners Sub-Teams, and the issue of "repeat offenders" (specifically respondents) was discussed within the Documents Sub-Team. See Consolidated URS Discussion Document - updated 31 July 2018v1.docx. The Practitioners Sub-Team captured data on the qualitative experiences on the average cost to prosecute and/or defend a URS proceeding. The Providers Sub-Team captured feedback on what filing fees were received. The Documents Sub-Team considered the data from the INTA survey for any results relating to fees and costs. Ultimately, the full WG was called on to discuss a loser pays model and other aspects of cost allocation. There has been little substantive discussion to date about the notion of enhanced penalties for repeat offenders, although the Tushnet case research provides data about such repeat offenders from which conclusions as to policy changes can be drawn.

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.

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.

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

RESPONSE: The loser would pay the prevailing party's administrative filing fees as well as some level of "representation fees" associated with bringing the action (the specific details of such "representation fees" would need to be worked out as part of implementation).