

## #19

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, September 06, 2018 4:48:25 PM  
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Page 1

**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 Response Fee threshold should be lowered from 15 domain names to 3, because this is sufficient to demonstrate a clear pattern by the registrant based on relevant URS (and UDRP) precedent. In cases where the named respondent is ultimately determined not to be the actual registrant of all the domain names in the complaint, the fee would only apply if the registrant is confirmed for 3 or more of the listed domain names; otherwise, no such fee would apply.

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

Cases in which there are 3 or more domain names in dispute should be viewed in the same light as those involving habitual cybersquatters. In fact, it is a consensus position that as few as 3 cyberquatted domain names can create a "pattern of conduct" to show bad faith under both the UDRP and the URS. Reducing the Response Fee threshold would help deter such registrants from using the cost of filing complaints as leverage in trying to negotiate the sale of the disputed domain names to brand owners, and would serve as a general deterrent against serial/high-volume cybersquatting.

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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)

To date, 6 cases out of 827 (0.7%) have involved complaints listing 15 or more domain names (to which the Response Fee applies). There have been 25 cases (including those 6) out of the 827 total cases (3%) where the complaints listed 5 or more domain names. There have been 43 cases (including those 25) out of the 827 total cases (5.2%) where the complaints listed 3 or more domain names. See URS Case Review - Final.xlsx. URS precedent has indicated that as few as three domain names can indicate a pattern of bad faith. See, e.g., Moncler S.P.A. v. Trani Johanna, Case No. 1713264 (Forum Feb. 6, 2017) ("registration of three very similar domain names in issue in this case is indicative of a 'pattern' of bad faith registration by Respondent"). The threshold should be lowered from 15 domain names to 3 domain names as a reasonable modification, given the case support for only 3 domains being required to establish a pattern.

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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 the Response Fee has been discussed within the Documents Sub-Team, which reviewed cases where 15 or more domains were listed to determine any issue as it relates to the Response Fee. This issue was also discussed within the Providers Sub-Team. The consolidated URS Document contains the following recommendation regarding Response Fee: "Data shows no basis for any policy conclusion or recommendation. Flag the issue of Response Fee for 15+ domains for community input in Initial Report." We disagree that the data shows no basis for any conclusion or recommendation; rather, we believe it supports reducing the number of domain names in a single complaint to trigger the Response Fee from 15 to a reasonable minimum of 3, given evidence of numerous cases involving at least 3 domain names establishing a clear pattern of targeting and bad faith, but only a small number of cases involving 15 or more domains.

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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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