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COMPLETE

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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 be amended to include express provisions (beyond the mention of a "pattern of conduct" in URS par. 1.2.6.3(b)) which provide additional penalties for "repeat offenders" and "high-volume cybersquatting." The definition of a "repeat offender" should be any domain name registrant who loses two or more separate URS proceedings. The definition of "high-volume cybersquatting" should be any URS proceeding where the complainant prevails against a single respondent in a complaint involving 10 or more domain names. Once either of these standards are established, the penalties should include (i) a requirement that the registrant deposit funds into an escrow account, or provide an equivalent authorization on a credit card, with each new domain registration (such funds could be dispersed to prevailing complainants in future domain name disputes against that registrant as part of a "loser pays" system), and (ii) a universal blocking of all domain registrations for a set period for the registrant (i.e. "blacklisting" the registrant on a temporary basis). There may be other possible enhanced penalties that would also be appropriate. Such requirements could be included in updated URS Rules, made enforceable against registrars via parallel updates to the RAA and domain name registration agreements of individual registrars. These obligations would be enforceable by ICANN Compliance.

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

Habitual cybersquatting is a significant problem and registrants who have lost multiple cases or have been found to target numerous domain names are clearly not changing their activities based on such losses. Enhanced penalties are needed to serve as a further deterrent against serial cybersquatting and patterns of bad faith and abusive domain name registration and use.

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. This shows that a large proportion of the domain names subject to a URS are covered in a small number of the total cases – meaning that many cases involve multiple domain names and a pattern of bad faith conduct by the particular 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. These facts demonstrate the need for stronger deterrents against serial cybersquatting and repeat offenders, including enhanced penalties for repeat offenders.

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.
