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CCWG-Accountability-WS2-Ombudsman-DraftRecommendationsV2.3

1 message

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To: ws2-ombudsman@icann.org

Wed, Oct 4, 2017 at 10:53 AM

All,

In preparation for our call in a few hours Sebastien asked me to circulate the following materials:

- Version 2.3 of the draft recommendations. This includes the suggestions made at the plenary as well as Farzane's suggestions cut and pasted from her email regarding recommendation 9. Please note the changes to the draft recommendations are, for now, only in the executive summary for discussion by the sub-group and that all changes in the document are in red-line.
- Sebastien also reached out to our external evaluator for his comments regarding our discussions on recommendations 8 and 9 and you will find his points here below for your consideration. These comments were made considering a copy of Farzaneh's proposed amendments.

Look forward to discussing these items at our meeting scheduled for 0500 UTC 5 October.

Bernard Turcotte
ICANN Staff support to CCWG-Accountability-WS2

Responses from Phil Houry:

A few comments below – hope they are helpful.

1. The ICANN Ombuds function is quite unusual – it is neither an in-house Ombuds, nor a Government Ombuds, nor an Industry or sector Ombuds – so very difficult to provide solid comparisons with 'industry best practice'.
2. Reflecting this, the Panel proposed is something of a hybrid – a little like a governing body, a little like a stakeholder advisory group, a little like an expert advisory committee. It is intended to provide a breadth of perspectives to act as a sounding board and wise counsel to the Ombuds Office – and to advise the Board (as the decision-maker) on key matters it must decide about the Ombuds Office.
3. To our knowledge there is no directly comparable existing panel. The Energy and Water Ombudsman of Queensland (EWOQ) is a government (statutory) body which is nonetheless funded by industry fees and levies. The relevant Minister of the State Government is the governing authority – but with no say in operations or complaint decision-making. He or she takes advice from an Advisory Council – on approving an annual budget, on appointing an Ombudsman and on any proposals for change to the law. Not quite the same as the proposed ICANN Panel – but with some similarities.
4. It is important to recognise that Independence is only one aspect of an effective Ombuds function – and it must be considered in balance with other objectives such as credibility, accessibility, efficiency, accountability and so forth. To illustrate, a private legal mediator with experience in family law matters and mid-level commercial disputes could be contracted to consider ICANN complaints – they may get top marks for independence however they would likely get very poor marks for background knowledge, technical credibility and accessibility. (It takes more than independence to achieve recommendations or decisions that will be accepted).
5. We considered the idea of an external mediation/law firm and rejected it because of what we considered was its poor fit with the ICANN environment (norms vary widely across the community, rapidly evolving, only some aspects governed by black letter law, need for intimate understanding of cultures and interests of different segments of the community, etc). Our experience of external ombuds functions such as these is that they become very legalistic (to compensate for lack of knowledge) and almost invariably have much higher rejection

rates (rejecting the complaint). The view becomes not what was “fair in all the circumstances”, but “did the person or entity that is complained about breach any rule”.

6. Fixed term contracts and remuneration were only considered to be one small part of the independence framework – but an obvious one that needed fixing.
7. Socializing is, I agree with FB, a problematic issue. We would not support a blanket ban on the Ombuds Office staff circulating at Conferences and participating in what I would call ‘light touch’ social events. It is valuable for the Ombuds staff faces to be known and for them to create an impression of approachability. It is not however, appropriate for them to be seen as a regular ‘member’ of one or other community group or faction, nor aligned closely with staff or Board members, etc. That is a matter of applying the appropriate mature, professional behaviours – talking to all, circulating around the ‘room’, avoiding late night drinking sessions, absenting oneself from sensitive discussions, not discussing specific complaints - in other words, engaging but maintaining a professional ‘distance’.

I hope that is of some help.

Cheers

Phil

Phil Khoury

Managing Director



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