

ICANN Offices

Ombuds, Complaints &?

How to organize the various WS2 request for new mechanisms to increase ICANN accountability?

In the course of the work of various sub-groups, of Work Stream 2 (WS2) of the cross-community working group on ICANN accountability (ccwg-accountability), new mechanisms to increase ICANN accountability are suggested.

Very often the next questions are:

- “Where to put those mechanisms?”
- “Who will better suited to fulfill those new missions?”
- “Do we have the right structures to handle those requests?”

This paper is meant to explore the current situation, the news requests and possible solutions.

1. The current situation

ICANN Ombuds Office

“... the ICANN Ombudsman (...) reports directly to the ICANN Board, but is not a member of ICANN Staff. He is available to the ICANN Community for complaints about delay and unfairness within and between ICANN and the supporting organizations.”

“The Ombudsman is given some specific powers to look at problems. There are some things that the Ombudsman cannot investigate, but sometimes the Ombudsman can facilitate some resolution, by discussion or mediation.

The ICANN Ombudsman is independent, impartial and neutral. The Ombudsman's function is to act as an informal dispute resolution office for the ICANN community, who may wish to lodge a complaint about ICANN staff, board or problems in supporting organizations. The purpose of the office is to ensure that the members of the ICANN community have been treated fairly. The Ombudsman is impartial and will attempt to resolve complaints about unfair treatment, using techniques like mediation, shuttle diplomacy and if needed, formal investigation. The Ombudsman is not an advocate for you, but will investigate without taking sides in a dispute. The process is informal, and flexible.

Complaints to the ombudsman are completely confidential.”

<https://www.icann.org/ombudsman>

ICANN Complaints Office

In an ICANN Blog posted on 04 October 2016, Göran Marby, ICANN President and CEO, announced the creation of an ICANN Complaints Office.

“Finally, John Jeffrey will continue in his current role as ICANN’s General Counsel and Secretary, and in that role will continue to be responsible for supporting the ICANN Board’s work. I am also expanding John’s remit as we are creating a new role of an ICANN Complaints Officer. The ICANN Complaints Officer will receive, investigate and respond to complaints about the ICANN organization’s effectiveness, and will be responsible for all complaints systems and mechanisms across the ICANN organization. We will be appointing someone to this role, reporting directly to John. This person will work closely with Ombudsman Herb Wayne.

The Complaints Officer is an important role that will provide a focus point for the community if they have complaints about the ICANN organization. It is an additional way to keep the organization and me accountable to you, the global ICANN community. The purpose of the office is to ensure that complaints and particularly those of community members, about systemic issues or concerns about the organization are heard, reviewed, analyzed and resolved as openly as appropriate. I want to be clear though that this in no way replaces or supersedes the important role of all ICANN’s formal accountability mechanisms.”

Job description

https://chj.tbe.taleo.net/chj06/ats/careers/v2/viewRequisition?org=ICANN&cw_s=37&rid=1082

2. The new requests

1. Diversity

<https://community.icann.org/x/jhWOAw>

The Diversity-DT is currently working and discussing on the following:
Creating an office of diversity and inclusion within ICANN

“In order to move forward, we propose to create, within ICANN, an office for diversity and inclusion (or “observatoire de la diversité”) in charge of

1. gathering and analyzing data regarding diversity within ICANN and
2. making concrete proposals to enhance effective diversity within ICANN.

This Office would be tasked with the following missions:

- Establishing a diversity audit;
- Defining diversity criteria;
- Collecting the data for each criterion for all leadership positions in ICANN;
Drafting a long-term diversity strategy;
- Publishing an annual report on diversity within ICANN;

- Making concrete proposals to improve diversity within ICANN, to be shared with the community.”

3. Guidelines for Good Faith Conduct

<https://community.icann.org/x/nhWOAw>

4. Human Rights

<https://community.icann.org/x/kBWOAw>

5. Jurisdiction

<https://community.icann.org/x/khWOAw>

6. Ombudsman

<https://community.icann.org/x/lhWOAw>

7. Reviewing CEP

<https://community.icann.org/x/nBWOAw>

8. SO/AC Accountability

<https://community.icann.org/x/lBWOAw>

Report of the SO/AC Accountability Project for Work Stream 2
Draft 1.3, as of 28-Feb-2016

3. Mechanisms for challenging or appealing elections. Does your AC/SO have mechanisms by which your members can challenge or appeal decisions and elections? Please include link where they can be consulted. (P4)

Recommendations regarding Accountability (written and unwritten):

Our review leads us to recommend that each SO/AC/Subgroup consider adopting the following “best practices”, where applicable to their structure and purpose:

1. SO/AC/Subgroups should document their procedures for members to challenge the process used for an election or formal decision.
2. SO/AC/Subgroups should document their procedures for non-members to challenge r decisions regarding their eligibility to become a member.
3. SO/AC/Subgroups should document unwritten procedures and customs that have been developed in the course of practice, and make them part of their procedural operation documents, charters, and/or bylaws.

Should the subgroup add to the recommendations that the ICANN Ombuds Office is available to handle challenges? Or any other Offices?

For challenging or appealing elections, for transparency and/or for participation?

3. The IRP should not be made to apply to SO & AC activities, because it is complex and expensive, and there are easier alternative ways to challenge an AC or SO action or inaction, such as an **Ombudsman** complaint. IRPs do not render monetary judgment. But when the panel awards costs, it can escalate and SO/AC might not have a budget to cover such costs.

9. Staff Accountability

<https://community.icann.org/x/mhWOAw>

Draft documents (still under review by the subgroup)

[Document A version 1.3](#)

Recommendation #5

...

“Base staff accountability and evaluation on how staff has managed to strengthen and serve ICANN through strengthening and serving the ICANN stakeholder community. Staff accountability is not only a question of sets of rules and standards of behaviors. KPIs, codes of conduct and the role of the **Ombudsman** need to reflect this. It goes beyond ticking boxes but needs to look first at how staff behavior impacts policymaking at the root of the process which is the stakeholder groups.” (P14)

...

“Strengthen and redefine the Ombudsman office. Human resources related issues have to become again within the remit of the Ombudsman office.” (P15)

[First Draft Document B](#)

*“The CCWG-Accountability work with ICANN to consider a Code of Conduct, transparency criteria, training, and key performance indicators to be followed by staff in relation to their interactions with all stakeholders, establish regular independent (internal and community) surveys and audits to track progress and identify areas that need improvement, and establish appropriate processes to escalate issues that enable both community and staff members to raise issues. This work should be linked closely with the **Ombudsman** enhancement item of Work Stream 2.” (P1)*

...

“Escalation processes (incl **Ombudsman**, **Complaints Officer**)
Currently the **Ombudsman** can be brought into any issue where a stakeholder has concerns a situation where they have been treated unfairly. The Ombudsman can recommend action, but at this time has no enforcement powers. A separate group in WS2 is currently working on new definition of **Ombudsman** scope. The current scope does not permit issues to be brought to the **Ombudsman** office by
At this point there are still more questions about the role and powers of the new **Complaint Officer** position than explanations, though the job posting⁷ offers

some indications.”

...

10. Transparency

<https://community.icann.org/x/mBWOAw>

ICANN CCWG-Accountability Work Stream 2 Draft Recommendations to improve ICANN’s Transparency (February 2017)

<https://community.icann.org/download/attachments/59643288/CCWG-Accountability-WS2-Transparency-PublicConsultationon-February2017-Documents-Final.docx?version=1&modificationDate=1487104652000&api=v2>

Improving ICANN’s Documentary Information Disclosure Policy (DIDP)

“Probably the most important aspect of a robust transparency policy is providing people with a mechanism by which they can request access to information. Early-on in consultations, it became apparent that there was strong support for major improvements to ICANN’s Documentary Information Disclosure Policy (DIDP).” (P5/23)

...

“The exception for information requests which are “not reasonable, excessive or overly burdensome, not feasible, abusive or vexatious or made by a vexatious or querulous individual” also requires careful consideration. While exceptions for vexatious requesters are generally legitimate, experience suggests that they are also prone to abuse if their exercise is not closely watched. As a result, and because it is difficult to objectively define when a request should be considered abusive or vexatious, it is recommended that either the **Ombudsman** or the **Complaints Officer** should be required to review any decision to invoke this exception.” (P8/23)

...

“A further recommendation is that the **Ombudsman’s** mandate regarding transparency should be boosted to grant the office a stronger promotional role, including specific steps to raise public awareness about the DIDP and how it works and by integrating understanding of transparency and the DIDP into ICANN’s broader outreach efforts. Another way to facilitate re-quests is to make it clear to external stakeholders what sort of information ICANN holds, to better facilitate filing targeted and clear DIDP requests. This can be done, for example, by publishing a list of the categories of information it holds and whether they are disclosed on a proactive basis, may be available via a request or are confidential.” (P10/23)

...

“Monitoring and evaluation are also essential to a successful right to information policy, and either the **Ombudsman** or the **Complaints Officer** should be tasked with carrying out reasonable measures to track and report basic statistics on the DIDP’s use, such as the number of re-quests received, the proportion which were denied, in whole or in part, the average time taken to respond, and so on.”

(P11/23)

Improving ICANN's Anonymous Hotline (Whistleblower Protection)

“Hotline Policy Scope

It is noted that the scope of the Hotline policy is limited to ICANN employees. It is agreed as per the NAVEX report that it is appropriate to limit the scope of the Hotline policy to employees and rely on the **Ombudsman** to handle complaints from external stakeholders. However, NAVEX recommends that ICANN follow common practice and make the Hotline Policy and Procedures information accessible to Business Partners and other “appropriate third parties as defined by ICANN” to report ethics or compliance matters.” (P17/23)

3. Possible solutions

As we can see various sub-groups (WS2 ccwg-accountability) have suggested new mechanisms to increase ICANN accountability.

Where to put those mechanisms?”

Who will better suited to fulfill those new missions?”

Do we have the right structures to handle those requests?”

For each of them it will be useful to determine:

- The level of independency from the ICANN staff (“organization”), from the ICANN Board or from the Empower Community;
- The type of interaction needed with those groups;
- The possible inclusion “one way or another” into the mission of existing ICANN Offices or no.

Some of those new missions seem to create more problems than solutions with the current Offices (Ombuds and/or Complaints).

Proposal

Creation of a third Office – **Community Office (?)**

This ICANN Community Office will be a new Office and an addition to the ICANN Ombuds Office and the ICANN Complains Office.

It will be in charge of all the new missions that request different skills from the Ombuds Office and the Complains Office:

- Gathering data (Diversity, SO/AC accountability and transparency...);
- Promoting the processes and tools available to the community (DIDP...);

- Review (some) processes of interest for the whole ICANN (like diversity, equality, equity, elections...);
- ...

It will be independent from Staff and Board and from the other offices.

It will have specific staff and budget (like the Ombuds Office).

It will be selected by the Empowered Community by a process to be defined.

We may need to define:

1. Scope and functions
2. Their administrative and financial autonomy
3. Mechanisms and procedures and
4. Resolutions and their implementation.

Coordination

The 3 Offices will form an Independent Coordination Team that can coordinate and act jointly if needed and without jeopardizing confidentiality issues.

4. ICANN Offices Framework

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| | Ombuds¹ April 2009 | Complaints | Community |
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¹ <http://www.icann.org/general/bylaws.htm#V>

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| <p>Jurisdiction</p> | <p>The ICANN Ombudsman will receive and have jurisdiction over complaints of unfairness concerning:</p> <ul style="list-style-type: none"> • Decisions, actions, or inactions by one or more members of ICANN staff; • Decisions, actions, or inactions by the Board of Directors that may be inconsistent with the Articles of Incorporation or the Bylaws. • Decisions, actions, or inactions by constituent bodies. <p>The Ombudsman does not have jurisdiction over complaints concerning:</p> <ul style="list-style-type: none"> • Internal administrative matters; • Personnel issues; • Issues relating to membership on the Board; or • Issues relating to vendor/supplier relationships. <p>The Ombudsman may decline jurisdiction over a complaint in the following circumstances:</p> <ul style="list-style-type: none"> • The person making the complaint knew, or ought to have known of the decision, recommendation, act, or omission to which the complaint refers more than 60 days before the complaint was received by the Ombudsman; • The subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it; • The complaint is repetitive, trivial, vexatious, frivolous, non-substantive, otherwise abusive, or not made in good faith; • Having due regard for all the circumstances, further action by the Ombudsman is not necessary to resolve the complaint; • The complaint is abandoned; or is withdrawn in writing by the complainant; • The complainant revokes the ADR process by engaging in either a formal review process under Article IV of the Bylaws; or engages in an outside legal process. <p>http://www.icann.org/general/bylaws.htm#IV</p> | <p>The ICANN Complaints Office will receive and have jurisdiction over complaints of unfairness concerning: TBC</p> | <p>The ICANN Community Office will receive and have jurisdiction over complaints of unfairness concerning: TBC</p> |
| <p>Power</p> | <p>The Ombudsman shall use various ADR techniques to facilitate the fair, independent, impartial, and timely resolution of complaints.</p> <p>The Ombudsman does not have the power to make, change or set aside a policy, administrative or Board decision, act, or</p> | | |

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| | <p>omission. To the extent a complaint is made relating to a policy, administrative or Board decision, act, or omission, the Ombudsman does have the power to investigate these events, and to use ADR techniques to attempt to resolve the complaint.</p> <p>Where, in the conduct of an investigation of a complaint, the Ombudsman forms an opinion that there has been a serious breach of administrative fairness or mal administration, the Ombudsman may notify the Board of Directors of the circumstances.</p> <p>Where there exists no further opportunity for ADR techniques to be applied, or there is no likelihood of a successful Ombudsman resolution, the Ombudsman shall advise the complainant of the formal review procedures.</p> <p>If the Ombudsman declines jurisdiction, he shall inform the complainant in writing of the decision.</p> <p>The Ombudsman may make recommendations to the Board of Directors with respect to matters arising from complaints reviewed and investigated by the Ombudsman. Where the Ombudsman makes a recommendation to the Board of Directors and to the extent the Board deems it appropriate and feasible, the Board should endeavor to respond to the Ombudsman's recommendation within 60 days after the Board meeting following receipt of such a recommendation.</p> | | |
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| <p>Independence</p> | <p>The Ombudsman is independent... The Ombudsman reports only to ICANN's Board of Directors. The Ombudsman cannot be removed from office, except by a 75% vote of the Board.</p> <p>Should the Ombudsman believe starting an investigation on his/her "own motion" would be appropriate, the Ombudsman will request authority to do so from a Board committee to be determined by the Board of Directors. That committee shall then determine, based on the information provided by the Ombudsman and any information it obtains on its own, whether such an "own motion" investigation is sanctioned by the committee and thus whether or not the Ombudsman is authorized to proceed with that investigation.</p> | | <p>The Community Office is independent... It reports only to ICANN's EC and cannot be removed from office, except by a 75% vote of the EC.</p> |
| <p>Neutrality Impartiality Fairness</p> | <p>The Ombudsman is ... impartial, and neutral. Upon the completion, but before transmittal, of a draft report to the Board of Directors, the Ombudsman will first provide the relevant ICANN department, committee, organization or individual(s) an opportunity to review, respond and provide feedback to the draft report. The Ombudsman will consider feedback generated by this Internal Fairness Procedure in the preparation of a final report for the Board. The relevant department, committee, organization or individual(s) should endeavor to respond to the Ombudsman, or request an extension to respond, within 30 calendar days from receipt of the draft report.</p> <p>Complaints to the Office of Ombudsman shall be dealt with in an informal, timely, and confidential manner.</p> | | |
| <p>Confidentiality</p> | <p>All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman.</p> <p>The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information,</p> | | |

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| | <p>except as necessary to further the resolution of complaint.</p> <p>The Ombudsman has the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible.</p> <p>Private and internal communications not distributed via public websites may be designated as confidential by the party providing such information and records. Nothing shall stop the Ombudsman from treating information confidential if the Ombudsman deems it appropriate to do so.</p> <p>In general terms, due to the very nature of the work of the Office of the Ombudsman, the Ombudsman will resist testifying in any process which would reveal informal, confidential information given to the Ombudsman during the course of an investigation.</p> <p>Communication with complainants will normally be by email or telephone to expedite the exchange of information.</p> <p>When the Office of Ombudsman closes a complaint, it will be in one of the following categories, and the complainant, where possible, will be notified by email.</p> | | |
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| <p>Informality and other standards</p> | <p>The Ombudsman’s function is to act as an Alternative Dispute Resolution (ADR) office for members of the ICANN community who may wish to lodge a complaint that the staff, board or a constituent body has treated them unfairly. The purpose of the Ombudsman is to ensure that the members of the ICANN community have been treated fairly.</p> <p>The Ombudsman will act as an impartial officer and will attempt to resolve complaints about unfair treatment by ICANN using ADR techniques.</p> <p>The Ombudsman will adhere to the standards of practice adopted by The Ombudsman Association, as they may be applicable.</p> <p>The Ombudsman will act as a leader by modeling and promoting fairness, equality, clarity, innovation, and by providing assistance to ICANN and the community in developing an awareness of the Ombudsman role.</p> <p>The Office of the Ombudsman will strive for certification and peer recognition with relevant Ombudsman bodies.</p> <p>All complaints to the Office of Ombudsman must be made in writing.</p> <p>The Office of Ombudsman shall provide an interactive form on the ICANN website to facilitate the filing of complaints.</p> <p>Written complaints to the Office of Ombudsman shall contain the following information:</p> <p>Information about the complainant:</p> <p style="padding-left: 40px;">Name, address, postal address, phone number, email contact, domain name;</p> <p>The date of ICANN act, omission, or decision, and a description of that act, omission, or decision;</p> <p>A description as to how the complainant has sufficient personal interest in the matter;</p> <p>The nature and basis of the complaint about the act, omission, or decision;</p> <p>A synopsis of contact between the complainant and the ICANN staff or Board on the issue, if applicable;</p> <p>Any other information the complainant wishes to provide.</p> | | |
| <p>Communication</p> | <p>The Ombudsman may post complaints and resolutions to a dedicated portion of the ICANN website:</p> <ul style="list-style-type: none"> • in order to promote an understanding of the issues in the ICANN community; • to raise awareness of administrative fairness; and • to allow the community to see the | | |

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| | <p>results of similar previous cases.</p> <p>These postings will be done in a generic manner to protect the confidentiality and privilege of communicating with the Office of Ombudsman.</p> <p>The Ombudsman will provide an Annual Report to the Board of Directors, and this will be posted on the website.</p> <p>The Ombudsman will conduct appropriate outreach and consumer awareness with the ICANN community to raise the level of understanding of the Ombudsman process, and to encourage the use of ADR processes.</p> | | |
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| <p>Output</p> | <p>Resolved: When the matter that the complainant brought to the Ombudsman has been resolved between the parties to the satisfaction of the Ombudsman.</p> <p>System Improvement: When during the course of conducting an investigation the Ombudsman makes a recommendation to ICANN (either informally or via report to the Board), which the Ombudsman believes may lead to the increased fairness of a process.</p> <p>Referral: When a complaint does not lie within the jurisdiction of the Ombudsman, and the complainant is either passed directly to the responsible staff person within ICANN, or given a point of reference outside of ICANN such as the Office of Fair Trading.</p> <p>Self Help: When the contact requires only the transmittal of information enabling the complainant to be self empowered to deal with the matter of the contact on their own (i.e. information found on various ICANN webpages).</p> <p>No further Action Required: The Ombudsman may begin initial steps in handling a matter and then find that there is no further action required due to the circumstances (i.e. the complaint may be related to a time sensitive issue, or on evaluation the complaint may not warrant investigation (trivial)).</p> <p>Decline Jurisdiction: The Ombudsman may decline jurisdiction, as described in the Ombudsman Framework, for matters such as the timeliness of a complaint, lack of personal interest, trivial, vexatious, etc., or in a circumstance where the complainant escalates the complaint to a formal process pursuant to Article IV of ICANN's Bylaws.</p> <p>Unfounded: When the Ombudsman investigates a complaint and determines that the matter presented to the Ombudsman was unfounded.</p> <p>Withdrawn: When a complainant notifies the Ombudsman that the complaint need not be pursued further.</p> <p>Abandoned: When a complainant ceases to be involved in the Ombudsman process without notice to the Ombudsman.</p> <p>Unresolved and escalated by complainant per Article IV of Bylaws.</p> <p>Resolved with Notification to the Board.</p> <p>Resolved with Recommendation to the Board.</p> | | |
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Thanks for the inputs of Carlos Vera, Alberto Soto and Bruce Tonkin.

Sébastien Bachollet - 13 Feb / 2 Mar 2017, Varzy France

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