

Commenter	comm	Regarding which Recommendation	Comment	Discussion points - Response
ALAC	1.01	Overall Comment	The ALAC commends the subgroup and entire CCWG on ICANN Accountability for their work in producing this draft. The ALAC supports the draft as currently presented.	

GNSO NCSG	1.02	Overall Comment	The Ombuds Office procedures should be set through consultation with the community.	
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GNSO-NCSG	1.03	Overall Comment	<p>The NCSG is not satisfied that the independence of the Ombuds Office has been sufficiently addressed. The NCSG does not believe that the problem of independence of the Ombuds persons can be solved with 5-year fixed-term contracts. If the meaning of this recommendation is that the Ombuds office, as an external entity, should be given a fixed-term contract, the NCSG supports this suggestion. However, if this refers to individual Ombudspersons, the issue of independence will remain. Since the Ombudsperson directly receives her/his revenue from ICANN, the fixed-term contract does not eliminate economic incentives that can potentially hamper the ombuds' independence. It also does not preclude the Ombudsperson from taking up employment after their fixed-term contract ends with a stakeholder in the domain name industry.</p>	<p>[SBT] Both recommendations 8 & 9 strengthen the Independence of the ICANN Ombuds Office. The idea and this is underline in recommendation 7 is that the IOO is not just a single person. Not sure that we need to preclude the possibility to people working in the IOO to join after the contract (but sure not during) to join DNIs as the IOO didn't develop policy.</p>
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GNSO- NCSG	1.04	Overall Comment	We think that the accountability and independence of the Ombuds could only be maintained if it is an office and not a person. At present, the Ombuds is an ombudsperson. We suggest that to ensure and maintain the independence of the office, the best way would be to use an external organization that provides ombuds services and does not have ICANN as its sole source of revenue.	[SBT] See previous comments
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GNSO- NCSG	1.05	Overall Comment	<p>The NCSG believes that the report is missing one very important point about independence and accountability of Ombuds office. We think that under no circumstances should the Ombudspersons socialise and befriend community members. This is a very obvious independence element which, unfortunately, has not made it into the report. We suggest the subgroup to consider the situation when the decision maker of someone's case at a social event is talking and smiling at the party, which has a complaint filed against them. Independence is seriously affected by social encounters and interactions. We believe that the final report should include a recommendation for the Ombudsman's office to consult the community to establish appropriate rules around socialization and interactions so/as not to compromise their official role as an oversight mechanism.</p>	<p>[SBT] This was discuss and was not included in the report as it was not supported by the other participants and not made through the comments.</p>
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<p>ICANN Board</p>	<p>1.06</p>	<p>Overall Comment</p>	<p>We note that the recommendations in this report are largely based on the external evaluator's recommendations provided to ICANN organization and the Ombuds Subgroup in July 2017. Clarity is needed as to whether the CCWG- Accountability intends for its recommendations to overtake the work of the external evaluator, or if other aspects of the external evaluator's report still stand. For example, the CCWG-Accountability's recommendations state that no changes are needed to the Bylaws relating to the Ombudsman. The external examiner, however, recommends that a more strategic focus start through clarifying the language in the Bylaws.</p>	<p>[SBT] This report is to be consider as the one to be taken into account by ICANN (as a whole). One of the big difference was to avoid bylaw changes (as pointed by the Board) to allow a quicker implementation. When time permit change to the bylaws and to the ombuds framework wil be welcome.</p>
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<p>ICANN Board</p>	<p>1.07</p>	<p>Overall Comment</p>	<p>To the extent that the CCWG-Accountability is focused on the speed of implementation and hopes to avoid any Bylaws modifications or changes to the Ombudsman Framework, the ultimate focus should be on the proper implementation of recommendations in order to hold ICANN accountable to meeting their intent.</p> <p>While a majority of the recommendations appear to be reasonable and productive enhancements to strengthen the office of the Ombuds, a few recommendations would benefit from additional clarification noted below. Specifically, recommendations on the notion of diversity of staff available to the Ombuds office (Recommendation 7), the proposal for an Advisory Panel (Recommendation 8), and the term of the Ombuds contract (Recommendation 9) raise important concerns for consideration.</p> <p>Based on inputs from the Ombuds, we understand that the current Office of the Ombuds already has activities in place that might address some part of the recommendations as issued. In addition, the Ombuds has already started considering how some of the recommendations could be reached. For example, one way to deepen the understanding of the role and work of the Ombuds could be achieved through more regular communications, such as blog postings and other informative communications. Similarly, there are already reporting mechanisms in place, though those might be able to be better publicized or refined.</p>	<p>[SBT] Agree</p> <p>We will answer them.</p> <p>Yes live continus when we are working in WS2 ;)</p>
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<p>ICANN Board</p>	<p>1.08</p>	<p>Overall Comment</p>	<p>The implications on resources is an important overarching consideration that should be considered for these and all recommendations. As a general observation, ICANN operates within a specific budget based on limited funding. Recommendations that add costs to ICANN's operations result in the organization making trade-offs with other items, such as implementation of new policies, or innovation of existing programs or services. Such policies, without considering the impact on resources, may lead to a situation where the organization is unable to effectively meet community expectations with either the new recommendations or existing obligations.</p> <p>The CCWG-Accountability should consider these factors and provide guidance in its final report regarding the priority, importance, and extent these recommendations (and all the CCWG's recommendations) should be implemented, and in what timeframe.</p>	<p>[SBT] Is it a question to be discuss by our group or by the whole ccwg-accountability as an overarching issue to be taken into account with the full report?</p>
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INTA	1.09	Overall Comment	While we generally support the recommendations, we do have specific comments regarding the efficiency and transparency of the IOO. Our concerns focus on the response times proposed in recommendation 4 and to a general question of enforcement mechanisms available to the IOO.	[SBT] There is no enforcement mechanisms as the ombuds function is to investigate complaints and attempt to resolve them, usually through not binding recommendations or mediation.
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GNSO-BC	2.01	Recommendation 1 - The Ombuds Office should have a more strategic focus.	Agree	thank you
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GNSO- IPC	2.02	Recommendation 1 - The Ombuds Office should have a more strategic focus.	The IPC agrees that Ombuds Office "should have a more strategic focus" (Recommendation 1), but urges WS2 to provide more detail in its finalized recommendations. A more strategic focus for the Ombuds Office should mean that, in its enhanced role, it has comprehensive understanding of ICANN's unique structure and its role in supporting ICANN's goals and viability.	[SBT] The report of the subgroup and the external review include some details. Not sure that having a "comprehensive understanding of ICANN's unique structure and its role in supporting ICANN's goals and viability." will help with strategic focus. But the need to be explained to anyone willing to join an IOO.
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<p>ICANN Board</p>	<p>2.03</p>	<p>Recommendation 1 - The Ombuds Office should have a more strategic focus.</p>	<p>While the concept of having a more strategic focus is sound, there is not a lot of detail in the report as to what that means. The report seems to reject the external evaluator's recommendation on developing a more strategic focus through Bylaws language. Clarification on what is intended here will be helpful. Regarding Recommendation 4: Required timelines for response The recommendations seem to propose very detailed deadlines by which the Board and other members of the community must respond to requests and reports. It is unclear what issue is being solved here. There may be for example, certain reports which require more information to fully understand the nature of the dispute and status and resolution. How would these deadlines work in practice with the rest of the community? What is the outcome if a deadline is not met? The current Ombuds has also informed the Board that the 30-day response timeframe currently in place for the ICANN organization's inputs into reports has worked well.</p>	<p>[SBT] The report of the subgroup and the external review include some details. In the implementation process more detail (if needed) could be provided. If 30 days work well maybe 90 and 120 days will work too?</p>
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GNSO- BC	3.01	Recommendation 2 - The Ombudsman office should include procedures for handling different types of complaints, clarifying scope of role, and deepening understanding of Ombuds approach.	Agreed	
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GNSO- IPC	3.02	<p>Recommendation 2 - The Ombudsman office should include procedures for handling different types of complaints, clarifying scope of role, and deepening understanding of Ombuds approach.</p>	<p>The IPC supports Recommendation 2 and agrees that the Ombuds Office should have procedures in place to categorize complaints and how each category should be handled; should set out which matters the Ombuds Office will not intervene in; and should provide illustrative examples that cover the most common controversies the Ombuds Office deals with.</p>	<p>SB ask the Ombuds office to produce examples for the users CLO continuation of current HW - Herb Waye Ombuds 2: this is not an issue with my office</p> <p>Herb Waye Ombuds 2: I have a CMS that deals with this</p>
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GNSO- BC	4.01	Recommendation 3 - soft re-launch of the function to all relevant parts of ICANN.	Fully agreed.	
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GNSO- IPC	4.02	Recommendation 3 - soft re-launch of the function to all relevant parts of ICANN.	The IPC supports the “soft launch” of the enhanced Ombuds Office across ICANN's structure (Recommendation 3). The IPC commits to assist in educating its members when appropriate.	
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GNSO-BC	5.01	Recommendation 4 - Requirements for timely response to Ombuds requests.	Agreed	
GNSO-IPC	5.02	Recommendation 4 - Requirements for timely response to Ombuds requests.	Supports	

GNSO- NCSG	5.03	Recommendation 4 - Requirements for timely response to Ombuds requests.	<p>In regards to recommendation 4, which requires the community to respond to the Ombuds office in due time with reasoning, we believe such a responsibility should be mutual. The timeliness of the Ombuds Office actions should be preserved (as is indicated in recommendation 5) and the office must provide reasons for its decision. Also, if the responding party requests for additional extension in case of exceptional circumstances as mentioned in the Recommendation 4, the additional extension granted by the Ombuds Office should not be more than 30 days.</p>	[SBT] No divergence with the report?
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GNSO- NCSG	5.04	Recommendation 4 - Requirements for timely response to Ombuds requests.	<p>The nature of the Ombuds office decisions are non-binding, but such nature has to be clarified. In recommendation 4 suggests, the community has to respond to Ombuds Office inquiries. We agree that the community, and ICANN the organization, must respond to reasonable Ombuds Office inquiries, but not to be obliged to comply with the decisions of the Ombuds Office (as stated in the report). Moreover, the procedure for if a decision of the Ombudsman's office is not complied with should be clarified in the Ombuds Office procedures.</p>	<p>SB - we are simply talking about the time to reply and we do not change anything wrt implementation. Herb Waye Ombuds 2: this is addressed in Framework partially</p> <p>Herb Waye Ombuds 2: 30 days is just fine I think</p>
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GNSO- RYSG	5.05	<p>Recommendation 4 - Requirements for timely response to Ombuds requests.</p>	<p>With respect to Recommendation #4 (requiring groups to respond to a formal request or report from the Ombudsman within 90 days, with the ability seek a 30-day extension from the Ombudsman), the RySG does not support the Ombudsman's ability to issue such 'orders' as drafted. The RySG is aware of the requirement under ICANN bylaws that the Ombudsman have access to necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of complaints and to assist in dispute resolution where feasible. But while committed to ensuring the Ombudsman has timely information, the RySG retains discretion to allocate its resources (including demands on volunteer time) as it deems best in balancing important calls on its input. Ombudsman-issued deadlines are inconsistent with that principle and would be unworkable.</p> <p>With respect to Recommendation #4's requiring a substantive response to the Ombudsman, the RySG notes, for purposes of clarity, that it retains the discretion to decide which information and records, if any, are 'necessary' to respond to Ombudsman requests. As such, the RySG recommends striking Recommendation #4 as the current Bylaws sufficiently require constituent bodies to cooperate without granting the Ombudsman the unfettered ability to make unreasonable requests in what could be unreasonable time frames.</p>	<p>Cheryl Langdon-Orr (CLO): can not compel or enforce SB- this cannot be binding</p>
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INTA	5.06	<p>Recommendation 4 - Requirements for timely response to Ombuds requests.</p>	<p>While a mandatory response time is welcome and the process described above is positive, in INTA's view the response time should be significantly shortened. A lengthy process may deter members of the community from seeking assistance from the IOO. For the IOO to have a meaningful role, it must have the power to act and address issues more quickly and efficiently. INTA recommends that the response time be shortened to 60 days with a possible 30-day extension due to exceptional circumstances. A full, fair and expeditious review of the matter at issue will go a long way strengthening the ombuds functions.</p> <p>Additionally, it is unclear from the Recommendations what, if any, enforcement mechanisms are available to the IOO. In fact, there is no discussion as to whether the IOO should have any enforcement powers or mechanisms. INTA recommends that the working group examine reasonable and appropriate mechanisms of enforcement that may be delegated to the IOO. INTA recognizes that, today, the ombuds functions are not independent from ICANN org.</p> <p>Therefore, enforcement may be limited to what ICANN org may implement. If enforcement mechanisms are deemed to be beyond the scope of the IOO then, at a minimum, it may be useful to map how matters resolved by the IOO may be referred to appropriate bodies for enforcement as appropriate.</p>	<p>SB - this suggestion of enforcement would completely change the way the IOO works. Implementing this would jeopardize the work of the IOO,</p>
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GNSO-BC	6.01	Recommendation 5 - The ICANN Office of the Ombuds should establish timelines for its own handling of complaints and report against these on a quarterly and annual basis.	Agreed	
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GNSO- IPC	6.02	Recommendation 5 - The ICANN Office of the Ombuds should establish timelines for its own handling of complaints and report against these on a quarterly and annual basis.	Supports	
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GNSO-BC	7.01	Recommendation 6 - The Office of the Ombuds should be configured so that it has formal mediation training and experience within its capabilities.	Comment: It is expected that anyone that would be engaged to handle this responsibility should have proven mediation skills and training. So, recommendation is agreed.	
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GNSO- IPC	7.02	Recommendation 6 - The Office of the Ombuds should be configured so that it has formal mediation training and experience within its capabilities.	Supports	
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ALAC	8.01	Recommendation 7 - Support for gender diversity in the office	Recommendation 7: While we acknowledge and support gender diversity, we also suggest that language diversity be considered in Staff resource configuration, to the extent practical.	SB - Our recommendation is open to other diversities - what is important is to pass these comments to the IOO
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GNSO-BC	8.02	Recommendation 7 - Support for gender diversity in the office	Comment: This recommendation is not clear. It is expected that an Ombudsman is a person and not persons and as such the question of choice of whom a complaint can be addressed does not arise. However, it should be part of the job requirements for the Ombudsman that he or she is not in any way biased, and this should be ascertained by review of past engagement of the potential Ombudsman. From time to time, a part time consultant could be retained by the office of the Ombuds. Qualifications, expertise, and experience should be the prevailing standard -- not the gender of those employed in the Office. Therefore, this recommendation may not be relevant.	SB - given the new harrassment policy we felt this was important and that gender balancee would be useful
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GNSO- NCSG	8.03	Recommendation 7 - Support for gender diversity in the office	<p>We would also like to raise our concern about recommendation 7, which currently reads as: "Recommendation 7. The Office of the Ombuds should be ideally configured (subject to practicality) so that it has gender diversity within its staff resources". The CCWG plenary discussed this issue and agreed that recommendation 7 removes the term "subject to practicality". The sub-group rapporteur was suggested to change the language to: "... The office of the ombuds should be ideally configured so that it has gender, and if possible other forms of diversity within its staff resources" (Transcript of the meeting, page 19). This suggestion was supported by the group. We do not see this change reflected in the final report which was put up for public comment.</p>	BT - This is indeed an error - this was in "strike through" in the executive summary of the document but not in the main body of the document where the recommendations can be found.
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<p>ICANN Board</p>	<p>8.04</p>	<p>Recommendation 7 - Support for gender diversity in the office</p>	<p>Per the report, the primary objective of this recommendation is to ensure that the community has choices as to whom in the Ombuds Office the community can bring their complaints and feel more comfortable doing so. The ICANN Board agrees that consideration needs to be given on the availability of alternative resources for the Ombuds Office. While ICANN is not able to make employment decisions based on considerations such as gender, nationality, or many other protected characteristics, there are likely ways to coordinate adjunct resources to making available to the community additional, more diverse points of entry into the Ombuds Office, that can be implemented. As a preliminary note, ICANN has already provided additional inroads into the Ombudsman office. For example, female members of the senior leadership of ICANN have served as a first point of contact to raise complaints regarding harassment, where the complainant didn't feel comfortable going directly to the Ombuds. There are other inroads as well, such as the Complaints Officer, or members of ICANN's executive team that can be an initial point of contact for comfortably expressing complaints that can then be brought to the Ombuds. There might also be a need for consideration of how cultural differences impact the Ombuds Office's consideration of any individual matter, and whether supplemental resources are necessary to better serve the ICANN community.</p> <p>The current Ombuds has informed the Board that he is developing a community liaison network of trusted volunteers from the constituencies to act as complaint intake for anybody who is uncomfortable approaching the Ombuds directly. We hope this also serves as a way to address this community concern. Additional information is needed to consider the full scope of the recommendation and any potential budgetary impact. If this recommendation seeks to have ICANN have a bigger staff in the Ombuds Office, as opposed to identifying other ways to have supplemental resources available, the resource implication and feasibility assessments could be far different. This recommendation, even if limited to a need for supplementary resources on an as-needed basis, coupled with a clearer process for intake based on the comfort level of the complainant, still imposes a potential budgetary impact.</p>	
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GNSO-BC	9.01	Recommendation 8 - ICANN should establish an Ombuds Advisory Panel.	Agreed	
GNSO-IPC	9.02	Recommendation 9 - ICANN should establish an Ombuds Advisory Panel.	Supports	

ICANN Board	9.03	Recommendation 8 - ICANN should establish an Ombuds Advisory Panel.	<p>The recommendation to include an advisory panel is a significant change, and does not seem appropriate for implementation at this time. The Board suggests that focusing on how the Ombuds Office can be strengthened should come first, and then consideration can come later as to whether additional advisory mechanisms are needed. When reading this recommendation, the Board identified many of questions that support this conclusion. These include:</p> <ul style="list-style-type: none"> - What is the role of the broadly powered Advisory Panel in relation to the proper role of ICANN org and the Board with respect to the Office of the Ombuds? - What is the scope of advice that the Advisory Panel is to give the Ombuds, outside of involvement on non-complaint work? Or, does the Advisory Panel only have power to contribute to the hiring, firing and evaluation of the Ombuds Office? - How does the notion of an Advisory Panel with powers relating to selection and termination of candidates work in practice with the Section 5.2 of the ICANN bylaws, which requires the Office of the Ombuds to be independent. Is it foreseen that there is a bylaw change here? - Would the Advisory Panel be purely advisory or more of 'wise counsel'? - How would the proposal work with Section 5.1(c) of the Bylaws, which require 3/4s vote of the entire Board to dismiss the Ombudsman? What weight would the Board put in such Advisory Panel's recommendations on termination? - How is the expertise of the Advisory Panel assessed in relation to the tasks it to undertake in relation to the Ombudsman? - How can the Ombuds retain the confidentiality obligations per the ICANN Bylaws, with the role of the Advisory Panel? - Is the 5-year evaluation cycle intended to replace the role of the Accountability and Transparency Review Team in assessing the Ombudsman as part of ICANN's accountability work? - How are conflict of interest considerations to be assessed with regards to the Advisory Panel? 	
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GNSO-BC	10.01	Recommendation 9 - Revise Ombuds employment contracts to a five year fixed term; termination for cause only.	Comment: Agreed, but extension should be subject to a community-based feedback mechanism to the "Advisory Panel" covering Ombuds performance over the previous 5years.	
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GNSO- IPC	10.02	Recommendation 9 - Revise Ombuds employment contracts to a five year fixed term; termination for cause only.	Supports, We encourage a community feedback mechanism that feeds into the IOO as part of this process.	
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<p>ICANN Board</p>	<p>10.03</p>	<p>Recommendation 9 - Revise Ombuds employment contracts to a five year fixed term; termination for cause only.</p>	<p>The Board understands the reasoning behind the recommended changes to the Ombuds employment contract, but is concerned that the creation of a 5-year fixed term contract with strict termination limitations may not provide motivation for high performance from the Ombuds. It should be a collective goal across ICANN that the Ombuds strive for exemplary performance in service to the ICANN community, and not be rewarded through keeping a contract because the minimum performance levels have been met. Similarly, if the Ombuds is doing a good job and is gaining trust and expertise, why would there be a recommendation to only extend his/her term for up to 3 years? Further, the current Ombuds has reported to ICANN that he does not view this recommendation as a means to promote or protect the independence of the office.</p> <p>The CCWG-Accountability might consider alternative ways of addressing issues it is seeking to solve, so as to not discourage high quality Ombuds and experience. It may be preferable to retain Ombuds compensation based on some objective criteria, such as delivery on the reporting goals detailed in recommendation 10 of this report.</p>	
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GNSO-BC	11.01	Recommendation 10 - Communications plan, including the formal annual report.	Agreed	
GNSO-IPC	11.02	Recommendation 10 - Communications plan, including the formal annual report.	Supports	

ALAC	12.01	Recommendation 11 - With input from across the community, ICANN should develop a policy for any Ombuds involvement in non-complaints work.	Recommendation 11: We recognize that the items proposed will address important, high-level policies expected to be observed by the Office of the Ombudsman; therefore, we do not believe restricting the Ombudsman from certain activities (i.e. socializing) as suggested by certain members of the Community is a necessary detail to codify in such policy. We expect the Ombudsman would understand their role, hence would observe his/her duties accordingly; Community policing of the Ombudsman should not be a solution to fix a performance issue.	
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GNSO-BC	12.02	Recommendation 11 - With input from across the community, ICANN should develop a policy for any Ombuds involvement in non-complaints work.	Fully agreed.	
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GNSO- IPC	12.03	Recommendation 11 - With input from across the community, ICANN should develop a policy for any Ombuds involvement in non-complaints work.	Supports. However, we request further detail as to what "non-complaint work" the Ombuds Office would be involved with in ICANN.	
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GNSO- RYSG	12.04	Recommendation 11 - With input from across the community, ICANN should develop a policy for any Ombuds involvement in non-complaints work.	With respect to Recommendation #11 (regarding the Ombudsman's efforts in "non-complaints work" – including involvement in policy design), the RySG has a concern about clarity. The role of the Ombudsman is to act as a neutral dispute resolution practitioner. While the Ombudsman may accept "questions" in addition to complaints, it should be made clear that the Ombudsman does not have free rein to formally engage in policy development unless, and to the extent that, the Ombudsman is formally asked to do so by a policy development process. The RySG believes that any level of Ombudsman activity in a policy design process, if and as so requested, should be given 'as-is' without any implication of stamp-of-approval.	
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ICANN Board	12.05	Recommendation 11 - With input from across the community, ICANN should develop a policy for any Ombuds involvement in non-complaints work.	The guidance detailed in the report is a strong enhancement and clarification for the Ombuds function, and the Board supports this recommendation. We note that an interdependency exists between this work and the work of the Transparency Subgroup. The Transparency Subgroup recommends some specific involvement of the Ombuds in the DIDP process. To the extent the Transparency recommendation is an expansion of the role of the Ombuds, it would be valuable to apply this criteria to the Transparency report recommendation to consider requests to expand the Ombuds role.	
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GNSO-BC	13.01	The additional recommendation by the Transparency sub-group with respect to involving the Ombuds in the DIDP process should be considered using the criteria in recommendation 11. This specific point will be noted in the public comment process for this document to gauge if the community supports these additional recommendations when considering the criteria in recommendation 11.	Agreed.	
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