

Work Stream 2 Topic:

Ombudsman

Scope

As defined in the CCWG-Accountability Work Stream 1 report (Annex 12):

Through the enhanced Request for Reconsideration process (see Recommendation #8: Improving ICANN's Request for Reconsideration Process), the CCWG-Accountability has given increased responsibility to the Ombudsman.

The Ombudsman can perform a critical role in ensuring that ICANN is transparent and accountable, preventing and resolving disputes, supporting consensus-development, and protecting bottom-up, multistakeholder decision-making at ICANN. ICANN's Office of Ombudsman must have a clear charter that reflects, supports, and respects ICANN's Mission, Commitments and Core Values, and must have sufficient authority and independence to ensure that it can perform these important roles effectively. As part of Work Stream 2, the CCWG-Accountability will evaluate the current Ombudsman charter and operations against industry best practices and recommend any changes necessary to ensure that the ICANN Ombudsman has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders.

Background for Discussion

The Ombudsman Role has already been expanded through WS1, to include a responsibility to perform a first substantive review over Reconsideration Requests. In addition, the CWG-Stewardship identified a new role for the Ombudsman, as a place of escalation for complaints about PTI's naming function service delivery.

It would be useful for community to consider how the new role of the Ombudsman would interact with other mechanisms, to avoid duplication and optimize effectiveness.

This expansion is in addition to the Ombudsman's existing role (as set forth in the ICANN Bylaws) and further described in the Ombudsman Framework.

Excerpted from the existing [Ombudsman Framework](#) (April 2009):

Jurisdiction of the Ombudsman

The ICANN Ombudsman will receive and have jurisdiction over complaints of unfairness concerning:

- 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.

The Ombudsman does not have jurisdiction over complaints concerning:

- Internal administrative matters;
- Personnel issues;
- Issues relating to membership on the Board; or
- Issues relating to vendor/supplier relationships.

The Ombudsman may decline jurisdiction over a complaint in the following circumstances:

- 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.

<http://www.icann.org/general/bylaws.htm#IV>

Powers of the Ombudsman

The Ombudsman shall use various ADR techniques to facilitate the fair, independent, impartial, and timely resolution of complaints.

The Ombudsman does not have the power to make, change or set aside a policy, administrative or Board decision, act, or 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.

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 maladministration, the Ombudsman may notify the Board of Directors of the circumstances.

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.

If the Ombudsman declines jurisdiction, he shall inform the complainant in writing of the decision.

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.

Resources

ICANN Ombudsman blog: <https://omblog.icann.org/>.

Ombudsman Framework: <https://www.icann.org/resources/pages/framework-2012-02-25-en>

What the Ombudsman can do for you:

<https://www.icann.org/resources/pages/contact-2012-02-25-en>.

Online Dispute Resolution Standards of Practice:

<https://www.icann.org/resources/pages/odr-standards-of-practice-2012-02-25-en>

Ombudsman Annual Reports & Publications:

<https://www.icann.org/resources/pages/reports-96-2012-02-25-en>

Ombudsman's Program Management:

- [ATRT Part 24 Ombudsman Report](#)
- [Ombudsman Evaluation Seminar](#)
- [Value Statement](#)
- Results Based Management and Accountability Framework (RMAF)
 - [Results Based Management and Accountability Framework \(RMAF\)](#)
- Evaluation Papers
 - [Statistical Comparison](#)
 - [Independent Review of Statistical Comparison](#)
 - [Client Survey Results \(August 2006\)](#)
 - [Third Party Review of Client Survey Results](#)
 - [Literature Base Review July 2006](#)
 - [Independent Review of Literature Based Evaluation](#)
- [Analytical Tools](#)
- [50 Questions for Self-Evaluation](#)
- [A Practitioner's Guide to Evaluating Ombudsman Offices](#)

- [A Blueprint for the Evaluation of an Ombudsman's Office](#): A Case Study of the ICANN Office of the Ombudsman