
SEBASTIEN BACHOLLET:

Thank you. Good morning, good evening, good afternoon, wherever you are in this world. It's Sebastien Bachollet speaking. I am the rapporteur of this group and we are starting our Meeting #4. Thank you for joining. And let's go to some introduction, and I try to keep track of the member of this group and it's a little bit growing but we need to try to as I am participating that the [program] we have this morning – or morning for me, sorry – I hope that some of them will join.

Quickly, I keep track also of our meeting and next meeting, and as you can see, the participation was quite good on the last call and I'm sure that it's because it was Herb and Chris who gave the talk. The proposed agenda is the following: it's to welcome – it's what I am trying to do – and to discuss a document I just redid two days ago. And sorry for the short delay, but I tried to put all the information I have and some exchange we had to add the link I used the documents built by staff before we start our work. You received the document in the three different format – one is in Word document, a pdf split in three subdocuments, and one in Google Doc. You can use whichever you want. We have already some comments on the Google Docs and we will go through those comments during the discussion.

Okay. Any comments on the agenda? I guess the last point it's Any Other Business and we don't see it on the PowerPoint, so sorry for that. It's my mistake. Any comments or addition to the agenda, you want to take this opportunity now.

Okay, if not, let's go to the substance. As you see the document is split in different parts. We have one part about the background for Ombuds

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Office in Work Stream 2 to recall where we were with Work Stream 1 and what we are supposed to do this time, the dependency between the subgroups, Stress Test, current role of the ICANN Ombuds Office, the evaluation – and I guess we will spend more time on that discussion – the various type of Ombudsman role, the challenges of the Ombuds Office, some recommendations that we can made, the possible additional role of the Ombuds Office, the interaction with other processes within ICANN, the communication and relationship, the trust, any advice from our group, and the conclusion.

Any comments on the shape of all the comment will be welcome, but let's go to the first one. I guess we will switch now onto the Word document if it's possible and that we will follow the full length of the document. I split it in the PowerPoint but it's not really needed.

I don't know how you want to proceed. Do we do one chapter by one chapter and if you have comments we take them? Or do you have general comments?

It will be a short call if you have no comments.

Okay then. This is a recap of what is the situation today, what is on the Bylaw Articles and what is written about the Transition, then it's what we are supposed to do. So dependency, we already have a discussion on that and we have people assigned to help us with all the dependency.

To answer your question, Asha, I guess if you take the four arrow on the top right of the screen you will be able to have it bigger in your screen.

Stress Test, I guess we will have Cheryl coming back to us but we need to wait a little about that. And I tried to reach her but with no success yet and I will try again.

Yes, Asha. You're in the race. Please take the floor.

ASHA HEMRAJANI:

Yes. Thank you, Sebastien. Okay, apologies for my voice. The first question I had was about the dependencies between the subgroups. So now we have a liaison for every subgroup. Should we work on a schedule or a plan that... what sort of inputs we need from each of these subgroups and by when these liaisons could report back to us – I mean the Ombudsman Subgroup. That's my first question.

SEBASTIEN BACHOLLET:

Thank you, Asha. The idea was a little bit the reverse. It's if something happen in those group where they were talking about Ombudsman, they will come back to us when it will happen. But maybe we can ask the liaison to see if there are specific points that we need to discuss, we really need to think about that. But I take your point and we will see with the liaison how we can get some big change.

About scheduling, it's more difficult because it will depend also of where they are, for example, there are groups who didn't yet start who just get one meeting and no more meeting yet. But that could be something we take into account.

Avri, the floor is yours.

AVRI DORIA:

Hi. As one of those liaisons, the way I was looking at it was if this group had any questions for staff accountability, for example, that then I would take them back to that group. Likewise, when that group runs into issues, if they haven't already been discussed in this group then I could bring them there. So I don't see it necessarily as being schedule bound.

Now when all of us have worked out our schedules, we may find that we have certain topics and that maybe we could shift things around so that they happen at a similar time. But I really see it more as [interrupt] driven in terms of when some liaison activity is required, these liaison types will do it. Thanks.

SEBASTIEN BACHOLLET:

Thank you, Avri. Asha you have still your hands up, maybe for a second question or for comments? Please, go ahead.

ASHA HEMRAJANI:

Yes, thanks. Actually I really already mentioned what I was going to say which is that it works two ways. So if our group has anything that we need to input into or ask questions from the other subgroups, that's something we just need to be aware of. In terms of scheduling, I guess I don't mean a specific schedule, a specific date, but some kind of a check point. We might say right the week before Hyderabad or maybe two weeks before Hyderabad or whenever, just as an example, we could do a check, a counter check, or a dipstick check – a check with each of the

liaisons to see whether there is any topic of mutual interest to both our subgroup and the other subgroups.

Or even like, as this idea, that we have – I'll read it out – could even include a liaison slot in each meeting just to check if there is anything exactly. Because I think if we don't do that, then if we don't have a sort of time check or some kind of check, then this might just slip underneath the carpet and then we'll forget. Thanks.

SEBASTIEN BACHOLLET:

Thank you, Asha and Avri. I don't know if it's a formal point to ask input from the liaison, but the fact that I keep the dependency between the subgroup here and in the PowerPoint it's of course one moment to have any liaison who are willing to give us any kind of input or report we will be able to do it. But I get your point and checking at each meeting where we are with that. Thank you very much.

Any other input on that dependency between the subgroups?

Okay then, let's move us to Stress Test. As I told, I need to check with Cheryl and I hope that we will be able to reach and to discuss together, before the next meeting, hopefully. But I don't think it's a big deal and even if it's a little bit later that we get it, it will be okay.

Any comments on the three paragraph?

Okay. Thank you.

Current role of the ICANN Ombuds Office. That's as you may see, I add in the document you have in front of you the question after the second

sentence, it's, "Can someone point to an actual document," and in the Google Doc we get feedback from Farzaneh and she says that if I am not mistaken, this should be in the final proposal of a document at page 111 of the proposal of the – I guess it's a document signed by the ICG – and the Ombudsman gets involved at phase two.

The question was more, even if it was sent by the ICG is it also in the Bylaw, for example, as a new function or a proposed Bylaw? Eventually, is it in the PTI Bylaws or if someone have a clue of that it will be great to have this input.

Anyone? Okay, Herb please. Go ahead.

HERB WAYE:

Thank you, Sebastien. I read through the PTI Bylaws. They were posted, I believe, just a few days ago and there's no mention of the role of the Ombudsman in the Bylaws – that I could find anyway. But if it's a matter of [inaudible] or any of the issues that the Ombuds Office normally deals with, then it would just naturally fall into place that issues would be jurisdictional. So like any of the other groups that are involved with the organization, I'm pretty sure that it will fall under the Ombuds umbrella as the others do. So there probably won't need to be a specific document for that. It would just be natural justice come to us. Thank you.

SEBASTIEN BACHOLLET:

Thank you, Herb. If I can push a little bit this discussion or challenge it. But it's a subsidiary and is it natural that what is done within one

organization fall also into the subsidiary of this organization. And I hope that I take the right word in saying “subsidiary.” If it’s not, please correct me. I am wondering is the fact that PTI it’s a little daughter of ICANN if it will works like you say or if it will not be better to have some inclusion in the PTI Bylaws about the fact that the Ombudsman of ICANN will be the one acting for any PTI action or inaction. If somebody have some thought about that it will be welcome.

Okay, it’s really a genuine question and maybe not so useful one but I would like to check. But okay, we will take into account your inputs and I will add that in the document as a comment. Thank you.

Ready to go to the next part of the document?

This one it’s the longest one – evaluation. What I suggest for today it’s not so much to discuss each and every point but to give you an overview of what I have done, and maybe to have one specific call about this topic and to go to the other points in the document to have for this first discussion of the document a full layout of what is in the document.

I put three or four columns, and one is with the ICANN Ombuds Framework and I cut and paste. The second one it’s the International Ombuds Association, and I also cut and paste. And during the call and other exchange I have some comments from Herb and I add them. If you have other additional comments, I will add them in this column or you can do it in the Google Doc.

I got two comments in the Google Doc. The first one was my bad spelling of “jurisdiction.” The S is missing and that’s the difference

between French and English and I am sorry not to have translate “jurisdiction” to “jurisdictions.”

And the second it’s that do we need to include the PTI complaints? And it’s related to the previous discussion. It’s a full question in itself how we deal with PTI.

The document was split in different parts, take into account the Ombuds Framework and then the International Ombuds Association. I tried to map as much as possible and it’s why there are a lot of icons in this document.

And the first one is jurisdiction. The second one it’s about the power of the Ombuds Office. And here I didn’t find anything in the International Ombuds Association specific, and I was wondering if jurisdiction and power can be split in the other part of the document. But I didn’t find after we have independence, and this one is interesting because we have in the ICANN document in the International Ombuds Association and in some comments, after we have “neutrality,” “impartiality” – and I add “fairness” in this part of the document – “confidentiality,” “informality and other standards,” “communication” – and it’s interesting because we have a lot of things about communication in our ICANN document but not in the other – and “what are the outputs.” Once again, maybe we need to remap all that, but it was my first take on this document.

Okay. Maybe some general comments. But I see that Avri, you write a few things in the chat. Maybe you can take the floor and tell us because it would be better to have your voice than mine, please.

AVRI DORIA:

No, I was just looking for the mute button. The first point, does it really matter. I wasn't sure whether we were dealing with the word "subsidiary" or "affiliate." But anyway, the question I had – and it may be a side question that one asks in the middle of the night when they've nothing better to do – but I understand that the recommendations made by the Ombudsman are just that, they're recommendations, they're not enforceable, they're not decisions, etc. which is laid out quite clearly. But often an Ombudsman's report contains a description of facts, a laying out of what is the case, and such as that. And I'm wondering whether that has any kind of status other than, "Oh, that's just the Ombudsman's opinion."

I was just sort of curious about that. And if there is any difference in the way the facts of the case as presented by the Ombudsman are to be treated than the recommendations. It might be worth saying something about that. If they are just the same in terms of being take them or leave them, they don't count for anything other than advice, then that's fine. Just curious. Thanks.

SEBASTIEN BACHOLLET:

Thank you, Avri. May I ask Chris or Herb if you want to... Chris, you write something. Maybe you can say a few words? If not, I'll... Go ahead, Herb.

HERB WAYE:

We can only, of course, make recommendations regardless of a situation. There is a disclosure of facts, but only with the consent of the parties involved. So the confidentiality comes to play here a little bit, Avri, in that if it's going to be a public report to the Board then the investigation and the details of the case that lead up to the recommendations, of course, would be on [inaudible].

So I kind of hesitate calling them facts. What I'd like to call them maybe is the results of an investigation, because the facts that we would be alluding to are very likely just the versions of one side or the other of the complaint. So I would probably hesitate about using terminology like that because facts are only facts if they're indisputable, and if they can be disputed by one side or the other then it turns out to be just an opinion. I wouldn't give the information that comes out in an investigation any more weight than the recommendations, simply because they would be a version of one of the parties in a dispute. Does that answer your question?

SEBASTIEN BACHOLLET:

Thank you very much, and as Avri say that, Thanks, Herb. The answer is what she was looking for.

I would like to ask that the part five of the document, this comparison, will need I guess a single call. And when you have some time to read it carefully and if you have comments or by mail or on the Google Doc, please feel free to add them. It will be very useful for our discussion specifically on this part of the document, which [is] supposed to be the evaluation between the Ombuds charter and the operation against

industry best practices. And again, if you have other type of practices outside of the International Ombuds Association, please feel free to give us by mail. It will be also useful.

And as I say before, I would like to go through the whole document for this meeting. Like that, we have a full view of what it is today. Then in the next part of the document, as we start the discussion at the last meeting, it was various type of Ombuds roles. And I just start to write few lines on that. All your comments and addition are welcome. I took some example like the one given by Mike at the last meeting taking South Africa, and I took the French name of the Ombuds at the country level. If you have others, link, ideas, please feel free to give that.

Next is a challenge – and sorry it was supposed to start again the numbering or the lettering here. It was a different topics we discussed during our last call than I put them here. Comments, addition, we will need to put more meetings this document, but it's a first try.

Okay, I go to the next paragraph, it's a recommendation and we already discuss about that, and two items came with the term of the Ombudsman and true independence in the role and what about this independence if it's subject to Board renewal then it will be, I guess, interesting topics we need to discuss in more depth also. And of course, there will be other topics for discussion hopefully you will give your inputs on.

Any comments?

Okay, next it was I frame it as additional role for the Ombuds Office. It was what was request for the Work Stream 2, but in fact the discussion

it's a little bit larger. Is it just the Ombuds Office? Do we think that we need another type of office? Do we need the Ombuds Office and another type or both mixed? There are pros and cons in each of them. We need to have this discussion.

I guess one of the important points to take into account is the fact that the Ombuds even if we discuss that differently before is an independent bodies and it may be different from other type of office like the Inspector General or other type of Auditor General. One of the point will be the independence and how much we can add to the Ombuds Office in keeping this office independent will be one of the challenge of the discussion I guess.

Any comments, inputs?

Okay. Yes, please.

HERB WAYE:

Yes. Thank you, Sebastien. In my years in the Ombuds domain, I very seldom see the roles expand beyond being just an Ombudsman. But there are a few [situations] where I have seen the Ombuds has shared the role of an Ethics Officer with an organization. This wouldn't be in any way, shape, or form, a disciplinarian position, but more as a champion. So there could be a possibility of having the Ombuds take on the role of a champion inside the organization, whether it would be for a champion for human rights or a champion for diversity or language, or ethical behavior. So the term "champion" could potentially fall into place if the organization started looking at having champions for various components of the organization, whether it would be a diversity

champion or you could have members of the Board that were champions for various parts of whether it be human rights or whatever.

So that's just an idea. But the only time I've ever seen the role actually shared by one individual was a component of the work was Ombudsman, and they also had a role in the organization as the Ethics Officer or the Ethics Champion.

SEBASTIEN BACHOLLET: Okay. Thank you very much, Herb. Asha, please.

ASHA HEMRAJANI: Yes. Thank you, Sebastien. So I have two comments to make. One is on the addition or – my second comment will be to respond to Herb's suggestion earlier – but my first comment is on your question on additional roles on the Ombuds Office and I'd very much like to hear from Chris and Herb and anyone else on the call about this, is that in terms of the role of a mediator of disputes, how do you see an Ombudsman being the official mediator of disputes within the organization?

Of course I understand that there are so many different types of disputes and an Ombudsman cannot be mediating all the disputes. For instance, cannot be mediating in disputes between two employees of ICANN, for example. So I wanted to understand everyone's perspective on that.

And coming back to Herb's suggestion earlier about champion. I need to think about that more to see what would be the pros and cons, but the

first thought that came to mind is how would we [entrain] that? I can understand this being a informal role where it's not [entrained] in any Bylaws or written anywhere and I would be open to that, but in terms of it being a formal role I don't see how that would be possible – having a formal role as a champion. So maybe that's not what you meant so I'd like to hear your feedback on that. Thank you.

SEBASTIEN BACHOLLET: Thank you, Asha. Chris, please take the floor.

CHRIS LAHATTE: Thank you, Sebastien. One of the things about the Ombuds role is that it's not specifically defined. And that is actually a strength in what we do. So it's all very well suggesting that we do particular things, but when you look at our role as defined, it isn't. Dealing with issues of unfairness, that's such a broad brush that it gives the Ombudsman quite a lot of power to deal with all sorts of issues. The issue as I see it is not so much the definition of what we can do but just more importantly ensuring that people know that the Ombuds Office is there as a resource for dealing with those issues.

And that includes what Asha was talking about. The role as a mediator has always been a central part of the Ombudsman Office that we stand by ready to mediate any sort of dispute. And that is always a role of any Ombuds Office of any organization because it is an informal part of dispute resolution that protects confidentiality and enables people to engage rather more quickly and with less bureaucracy than any other form of dispute resolution.

So if I can just wrap all of that up by saying we've already got pretty wide jurisdiction in the sense that we can listen to any problem. And because we can only make recommendations, it kind of doesn't really matter if we get too caught up in precise details of jurisdiction. It's already pretty wide. To me, one of the big issues going forward is to just continue to make sure people know that the Ombuds Office is there and available. And probably it was my fault but when I was the Ombuds, I felt there were quite a lot of disputes which would have comfortably come into our office where I think I would have been able to help people. But there we are. Thank you.

SEBASTIEN BACHOLLET: Thank you very much, Chris. Herb please.

HERB WAYE: Thank you, Sebastien. And yes, just a brief note on what Asha brought up is that yes, when I was speaking of a formal role, that was specifically speaking of the role of the Ombuds and Ethics Officer in some organizations. As for the champions, that would be totally – I mean, the organization could decide to appoint champions linked to very specific, whether it would be Board positions or organizational positions, but if the Ombudsman was to decide to be a champion of human rights or diversity or anti-harassment or something like that, that would be an informal role. But nonetheless, we'd be just calling advocacy by a different name. Thank you.

SEBASTIEN BACHOLLET: Thank you, Herb. Asha, please.

ASHA HEMRAJANI: Yes. Thanks, Sebastien and thanks, Herb and Chris. Thanks for clarifying what you meant. That's clear. Coming back to the point I had raised about mediation. I'm sorry, I wasn't clear. So I agree that this is definitely part of what the Ombuds has been doing to some degree, and actually the Ombuds meaning the ICANN Ombuds as well as Ombudsman in Asia, the rules of which I have been looking at. I was actually referring to a formal mediator role, so I am actually in Singapore I am a court-appointed mediator. So in my role – this is of course nothing to do with ICANN, but just to give a little bit of an example – so in my role as a court-appointed mediator, whenever I help parties, the disputants, come to a settlement, that settlement is binding. It is confidential and it's not shared unless the disputants agree, but the settlement is binding. And if one party fails to uphold their part of what they've agree to in the settlement then the other party can bring the dispute back.

So that's what I was asking. And this point really is in line with the previous question that Avri brought up on how are Ombud's recommendations treated. And the answer was they're only treated as recommendations. That's [fine], but now I'm asking about when an Ombudsman is acting as a mediator and there is a settlement, what do we do there? Because for a mediator to be effective the settlement has to be something that is upheld. So I'd like to hear from everyone on that. Thank you.

SEBASTIEN BACHOLLET: Thank you, Asha. Chris, you have still your hand up. Is it a new one? Do you want to take the floor?

CHRIS LAHATTE: It was an old hand, but I think Asha's raised an important point and I've just made a note about it in the chat. If we are asked by people to mediate, then we would assist the parties to reach an agreement. And that's a binding agreement because it's the agreement of the parties, not an agreement of the mediator.

So there are two different results you can have. You can have the Ombudsman recommend something be changed – and that's a recommendation to the Board or the appropriate body – or if the Ombudsman is a mediator, then the parties themselves reach an agreement and because they reach an agreement, that becomes a contract and is binding. But not because the Ombudsman has done anything except help them reach that agreement, it's binding because it's an agreement between the parties. And that's the distinction with a recommendation by the Ombudsman.

SEBASTIEN BACHOLLET: Okay. Thanks, Chris. We have 10 minutes left. I think this part will be an interesting discussion and we will come back on it at a later stage. I will try to put those inputs with the notes taken by staff and with the recording if needed. I would like very much to go to the end of the document in those 10 last minutes. And it's not too short a discussion

we will come back on it and we will come back in each part of the document.

Then on the paragraph 10, it's the interaction that we will have to work on the interaction between ICANN Ombuds Office action and other mechanism to avoid duplication and optimize effectiveness. It will be interesting to list what are the other mechanism and to see how it's fit or it's worked together with or not worked together but work not doing the same things with the Ombuds role. I will go to the end of the document but if you want to speak, just raise your hand and I will give you the floor. I will not be able to read the chat at the same time as I am speaking and sorry for that.

The next point it's communication and relationship. Here we have to discuss what is in-reach, outreach, how to give training to a lot of leaders in this organization, about the Ombuds role, and here we are for example coming back about the discussion with champion that Herb was talking about, ethical behavior and here it's advocate – champion advocate, I guess it's almost the same type of idea.

The next topic is trust, and nothing written because I think I didn't find anything is written yet, but it's quite clear what we would like to have and how we can have it and will be interesting to write the little part here.

Any advice for the future ICANN Ombuds Office? And that's part of what we have to do with the new Bylaw change as a formal – we have to say formal – how to involve with the community and all those topic we are again here about advocate for ethical code of conduct [as] harassment,

we will start talking about diversity and so on. It's really where we will have all the advice we would like to have for the future Ombudsman and that's mean that it could be something embedded in the Bylaws, but also as we say, during the discussion that it could be things done by the Ombudsman Office without really this written into the Bylaw one way or another.

And then we will have some conclusion of our work. And the last page I just cut and paste the resources made by staff prior to our work. If we have other resources, other documents, to link with we will do it. That's the end of this document. I hope that you will find it first easy to navigate and then useful for our work.

I would like to take this five last minutes... one minute... Do you have any comments on the whole document, not one specific part? If you have, please it's the right time to say a few words on that.

Okay. If not, thank you for your input on the document today. Can we have the PowerPoint back and we will talk about the next meeting and any other meeting. Okay.

Next meeting is scheduled for September 6. Be careful. It's a Tuesday because the Monday is a day off in the U.S. and it's why we switched to Tuesday. It will be 1:00 p.m. UTC. My suggestion is that we get back to the document with the addition. I don't know if we will be ready for a discussion in depths of the part of this what we call evaluation between the Ombuds charter and operation against industry best practice, but one way or another we will discuss the document in more depth at the next meeting.

If there is last final words or any other business you want to raise, please it's the right time to do it.

Okay, I will just make a comment here is that I will give a report on our work up to now to the full CCWG group. Hopefully I will be able to join as just to let you know I am in real holidays now on and will be going sailing and I am not sure that I will have Internet connection, but even phone connection but I will try and I will try to give a summary of where we are talking about this first discussion about the document. And that will be my report to the full group.

Any Other Business?

Okay. Then I want to thank the one who take the time to join us this morning. Thank you for this good exchange, even if we were just unfull of people, it was very good discussion and exchange, and thank you very much. Have a good week and talk to you next week. Have a good time and bye-bye.

The meeting is adjourned.

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