

CCWG-Accountability Work Stream 2

ICANN Ombuds Office



Meeting #8

26 September 2016

Rapporteur: Sébastien Bachollet

CCWG-Accountability Work Stream 2

ICANN Ombuds Office



Agenda Meeting #8 Ombuds

- Roll Call / Apologies – Welcome – Opening Remarks
- Action Items from our last call #7
- Feed-Back from the WS2 plenary (Sept 20, 2016) and prep of the next WS2 plenary (Oct 4, 2016)
- Exchange with the Transparency DT (Michael Karanicolas)
- Discussion of the following items from the document
 - Stress Tests with Steve DelBianco and CLO
 - ATRT2 – review of the office
 - ATRT2 – ICANN employees
 - PTI
- Next meeting #9 – Oct 3, 2016
- AOB

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Work Stream 2



WS2 Drafting Team “Ombudsman”

Active Participants

1. Sébastien **B**achollet - Rapporteur
2. Adebunmi Akinbo
3. Alberto Soto
4. Avri Doria
5. Carlos Vera Quintana
6. Cheryl **L**angdon-Orr
7. Chris LaHatte (previous Ombudsman)
8. Edward Morris
9. Farzaneh Badii
10. Herb Waye
11. José Francisco Arce
12. Jimson Olufuye
13. Herb Waye (acting Ombudsman)
14. Karel Douglas
15. Klaus Stoll
16. Michael Karanicolas
17. Raoul Plommer
18. Robin **G**ross
19. Sivasubramanian Muthusamy
20. Susan Payne

Observers

1. Aarti Bhavana
2. Alan **G**reenberg
3. Akinremi Peter Taiwo
4. Amrita Choudhury
5. Angie Graves
6. David Maher
7. Elizabeth Bacon
8. Gangesh Varma
9. Iftikhar Shah
10. Johan Helsingius
11. Jon Nevelt
12. Mike Rodenbaugh
13. Pam Little
14. Pablo Andrés Mazurier
15. Philip Corwin
16. Renu Sirothiya
17. Rinalia Abdul Rahim
18. Vidushi Marda
19. Vinay Kesari

Board Liaisons • Asha Hemrajani • Mike Silber (backup)

Subgroup Time Slots

Day		WS2-Ombudsman
Monday	August 8, 2016	#01 Omb-WS2 05:00 UTC
Tuesday	August 16, 2016	#02 Omb-WS2 13:00 UTC
Monday	August 22, 2016	#03 Omb-WS2 19:00 UTC
Monday	August 29, 2016	#04 Omb-WS2 05:00 UTC
Tuesday	September 6, 2016	#05 Omb-WS2 13:00 UTC
Monday	September 12, 2016	#06 Omb-WS2 19:00 UTC
Monday	September 19, 2016	#07 Omb-WS2 05:00 UTC
Monday	September 26, 2016	#08 Omb-WS2 13:00 UTC
Monday	October 3, 2016	#09 Omb-WS2 19:00 UTC
Monday	October 10, 2016	#10 Omb-WS2 05:00 UTC
Monday	October 17, 2016	#11 Omb-WS2 13:00 UTC
Monday	October 24, 2016	#12 Omb-WS2 19:00 UTC
Wednesday	November 2, 2016	CCWG
Thursday	November 3, 2016	ICANN 57 03-09 November 2016 Hyderabad
Friday	November 4, 2016	
Saturday	November 5, 2016	
Sunday	November 6, 2016	
Monday	November 7, 2016	
Tuesday	November 8, 2016	
Wednesday	November 9, 2016	

12 participants + Staff

13 participants + Staff

15 participants + Staff

05 participants + Staff

13 participants + Staff

06 participants + Staff

07 participants + Staff

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ICANN Ombuds Office DT → WS2 Plenary

- IOO Design Team participants & meetings
- IOO DT Draft document V#5
- IOO DT dependencies with other WS2 DT
- Questions to the ccwg-accountability WS2 Plenary
 - Question #1
 - Dear rapporteurs can you help the liaisons to take the Ombuds issues back to the IOO DT?
 - Question #2
 - Is this report of the WS2 Ombuds DT can be consider as “the” review requested in ATRT2 and ccwg WS1?
Or do we need additional work (and budget)?
 - ccwg-accountability WS2 Plenary
 - Question #3
 - Role of the IOO regarding ICANN employees’ vs
 - Public policy
 - ICANN Anonymous Hotline users and other whistleblowers
 - » WS2 Staff Accountability DT
 - Question #4
 - What will the role of the Ombuds be in any PTI (naming functions) related disputes?

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Work Stream 2



Draft Doc IOO-WS2 chapters (V#5)

1. Background for ICANN Ombuds Office (IOO) in Work Stream 2
2. Dependencies between the WS2 Design Teams
3. Overlap ATRT2 / CCWG-Accountability
4. Stress Tests (WS1) vs Ombuds
5. Current role of the IOO
6. Evaluation (Framework vs best practices)
7. Various types of Ombuds roles
8. Challenges
9. Recommendation (about the IOO)
10. Additional role for the IOO?
11. Interaction (with other ICANN mechanisms)
12. Communication & Relationship
13. Trust
14. Advice to the ICANN Ombuds Office (IOO)
15. Conclusion



2. Dependencies between WS2 Design Teams

ICANN Ombuds

1. **Diversity** (Sébastien Bachollet)
2. **Human Rights** (Raoul Plommer)
3. **Jurisdiction** (Farzaneh Badii)
4. **SO/AC Accountability** (Cheryl Langdon-Orr)
5. **Staff Accountability** (Avri Doria)
6. **Transparency** (Michael Karanicolas)
7. **Reviewing CEP** (Edward Morris)
8. **Guidelines stand. conduct** (Karel Douglas)
9. **IRP "Phase 2"** (Robin Gross)
10. **ATRT2** (Avri Doria)

Transparency (Michael Karanicolas) vs IOO

- Evaluate Ombudsman's independence and competency to perform their task, particularly as regards to specific expertise on transparency and the right to information (note that, if the appointee does not come to the job with these skills, there should at least be a training programme in place to ensure he or she can build understanding of them).
- Note that the Ombudsman's independence, powers and expertise are of paramount importance if they are going to play a role in the whistleblowing system.
- Is the requirement that the Ombudsman request authority from the Board prior to starting an investigation appropriate to their role as an independent oversight body?
- Discuss expanding the Ombudsman's role to be more proactive, including collecting regular assessments of compliance with the DIDP and performance in responding to access requests, as well as record management, respecting a duty to document decisions, etc.
- Discuss whether the Ombudsman should play a more promotional role to educate the public about his office, and about ICANN's DIDP mechanism.
- In addition to considering the Ombudsman's role against other ombudsmen, it may be worth considering them in the context of Human Rights Commissioner, or Information Commissioners, whose role is also wrapped up in what the Ombudsman does.

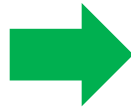
3. Overlap ATRT2 / CCWG-Accountability

Recommendation

Status

9.3

Review of the Office of the Ombudsman, the role within ICANN, and whether the duties/scope of the Ombudsman should be expanded or changed in line with suggestions from the ATRT2.



Removed from workplan to avoid duplication with the CCWG-Accountability's Work Stream 2 effort on the Ombudsman.

An expert was expected to be retained and to perform a review of the Office of the Ombudsman by June 2015, with work expected to be completed by October 2015. Because of the unique nature of the Ombudsman role within ICANN, there were challenges in identifying a proper independent expert to undertake this review.

As ICANN was conducting a search for this review, work continued in the Cross Community Working Group on Enhancing ICANN Accountability on modifying the role of the Ombudsman. In addition to the changes to the Ombudsman role that are already reflected in the new ICANN Bylaws (particularly within the Reconsideration Process, where the Ombudsman has a new role), the CCWG-Accountability also noted that it will do a broader review of the Ombudsman role in its Work Stream 2 efforts that are under development now and anticipated to conclude mid-year in 2017. The CCWG-Accountability's Work Stream 2 efforts on the Ombudsman can be followed at <https://community.icann.org/display/WEIA/Ombudsman>. ICANN committed to this work in the Bylaws as approved by the Board on 27 May 2016 (<https://www.icann.org/en/system/files/files/adopted-bylaws-27may16-en.pdf>).

4. Stress Tests (WS1) vs Ombuds

- **Stress Test #13:** One or several stakeholders excessively rely on accountability mechanism to “paralyze” ICANN.
 - EXISTING ACCOUNTABILITY MEASURES
 - Current redress mechanisms might enable one stakeholder to block implementation of policies. But these mechanisms (IRP, Reconsideration, Ombudsman) are expensive and limited in scope of what can be reviewed.
- **Stress Test #34:** (NTIA-3) Stakeholders who attempt to join an ICANN AC/SO encounter barriers that discourage them from participating.
 - EXISTING ACCOUNTABILITY MEASURES
 - ICANN’s Ombudsman might help new entrants to join ACs/SOs.
 - PROPOSED ACCOUNTABILITY MEASURES
 - ICANN’s Ombudsman might help new entrants to join ACs/Sos.
- We will review the ST with Steve DelBianco & Cheryl Langdon-Orr during our call #8 Monday September 26, 2016

5. Current role of the ICANN Ombuds Office

- The Ombudsman Role has 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 (Public Technical Identifiers) PTI's naming function service delivery.
 - ICG final proposal p.111 <https://www.icann.org/en/system/files/files/iana-stewardship-transition-proposal-10mar16-en.pdf>
The ombudsman gets involved at phase two
 - [***Do we need to propose Bylaws (ICANN and/or PTI)?***]
- 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.
- The Ombuds office is a mediator and not a decision maker. The Ombuds office can only suggest it can never tell anyone to do anything - which is why informality is so important.

Discussion of PTI and Ombuds activities

- The PTI Bylaws have been published and are going to be approved by the Board.
However, there is no mention of the Ombuds in the bylaws.
- IANA Staff POV
 - *Over the next 3 years the IANA functions will transition from ICANN to being independent with regard to ICANN HR. Given their ongoing strong link to ICANN they should remain covered by the ICANN Ombuds Office.*
- ICANN Legal POV
 - *There are particular mechanisms through which in the naming functions agreement the Ombudsman will have the responsibility to get involved with complaints within PTI. This is particularly around the issues of customer complaints.*
 - *PTI's work is solely directed by contracts with ICANN. With that nexus, we are comfortable that the PTI Bylaws do not have to be updated to specify the ombudsman role as it relates to PTI, as the responsibilities are tethered to ICANN's contracts.*
 - i.e. there would be no need to change the content of the PTI bylaws.
- POSSIBLE SOLUTIONS
 - provide content on the Ombudsman and PTI websites that explain that the Ombudsman is able to assist in a dispute between PTI and a party that is received a service from PTI
 - modify Ombudsman Framework/Charter
 - availability of ombuds is enforceable on ICANN through ICANN's bylaws

Next Meeting #8 IOO-WS2

- Monday October 3, 2016 19:00 UTC
- Follow-up on the discussion of the document
- Are we able to have a first doc to be finalized to received inputs from the ccwg-accountability WS2 plenary and the community in Hyderabad?

