
RECORDED VOICE: The meeting is now being recorded.

SEBASTIEN BACHOLLET: Yes, we need to start by the recording. Yes, now it's going on. Then welcome, everybody, to this 15 meeting of the ICANN Ombudsman Officer Work Stream 2, for ICANN accountability. We are the 27th January, 2017. And I have—I suggest the following agenda, but before, I would like to welcome you and also to ask—it seems there are new participants, and that's great.

Just to be sure, if you are not either an active participant or an observer of this drafting team, please ask the staff to be one of them. It's important that we can have you on the list of the participants, but also to have you to receive the mail and to be able to exchange with the rest of the team.

And that's an important point. Please, you can do that in going to the Ombud's page, and I will give you the link in one second, on the chat here it is. And you have all the information you need about this—our group. And the suggested agenda for today, it's to have a situation of where we are with the external review of the ICANN Ombud's office.

I will give the floor to Lars Hoffman when we get to that point. From the last call two weeks ago, we had three action items, and I would like us to review them, where we are, and to exchange on those three items. One, it's about a topic with ICANN.

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We need to empower with the review. Second, it's the transparency, and I understand the coordination of our two groups. And the last one, about diversity. And then we will go to the next meeting schedule and any other business. Any comments on that?

And just yes, Farzaneh, I saw your first information on the chat that you will just be on the chat and not speaking. I will try to keep that. And if we have other—sorry, if we have other connection with other groups, we will do that just after the action items, or within the action item maybe.

Any other comments about the schedule? If not, thank you. And let's go to the next slide, is a list of the participants of ours, and if you are not on that list, as I said before, please ask staff to help you to become either an active participant or observer.

At the schedule, we are the 15th meeting, but we are already scheduling the three next ones, and then we will be at the ICANN meeting in Copenhagen. Then we don't have so much time, that is before Copenhagen. And the first item is about the external review, and I guess Satish will be last, will give us some feedback on where we are on that. Please go ahead, Lars.

LARS HOFFMAN:

Thank you, Sébastien. This is Lars, for the record. And good morning, good afternoon, good evening to everyone. This is going to be short and dealing with somewhat sweet. We have so far, I've spoken to our procurement office. We so far have seven parties that have shown what we called initial interest.

I'm sure they have either requested access to the tool, the sourcing tool that was used in order to make a bit of an RFP. And of those, we have five that have logged in. That probably has to do with a couple of requests made late last week, and they might only log in later this week.

But nobody yet has completed their RFP, those people. But we still have, as you know, eight days to go. And so, we expect the first responses from health experience, which the first responses to come in at the end of this week or Monday and Tuesday next week.

And to kind of preempt if there's questions, if there aren't sufficient applicants that want to submit at date, and you might be surprised to hear there's actually a number attached to that. It is three that, I think, internal procurement rules prescribe as the minimum to make an RFP call successful, as being successful.

And so, if there aren't to be three viable applicants to come in, we will very likely extend the deadline to make sure we get at least that number in. And I will, of course, keep the group informed, top of my hat, here it is, the next meeting 6th of February.

So, I'll keep you informed on list with all the updates. You can expect that early next week, Monday or Tuesday, to let you know where we stand. Thank you very much. That's all I have at this moment. If you have any questions, please let me know.

SEBASTIEN BACHOLLET:

Thank you very much, Lars. Any questions on the participants? I have one, if nobody else. Do you have a—I don't know if you can answer, is

you got diverse geographical of those who are—the party who asked for request to access? They are spread in different part or they are all coming from Atlanta/US, or—I don't know why I take Atlanta, but anyhow, you understand my question, I guess.

LARS HOFFMAN:

I do, Sébastien. I'd like to probably be clear to you on what [INAUDIBLE]. But joking aside, I am not sure to you, to be honest. I'm not privy to the information. I think I personally will only be able to see that once they've submitted their RFP, [INAUDIBLE].

So, at this moment, I don't have the information. I can see what I can find out, but frankly, I think it might be most sufficient if I share that information on Tuesday, because then we see who's actually applied and where these people come from. Just because somebody has an interest doesn't necessarily mean they will apply. And so, it might be somewhat [INAUDIBLE] we'd have to find.

SEBASTIEN BACHOLLET:

Okay. It's something I—we need also to take care of that, if we will have values proposal from values side of the world, it would be interesting. Sorry, my phone is ringing, but I hope my wife will answer. Okay. Thank you for all that. We will wait for next week for your information about where we are.

I hope that we will get three viable answer and that we will have a choice, and not to have to postpone the start of the review because

timing is quite short. But thank you for your input, and looking forward for you next information next week. Thank you.

Let's go to the next. I have some slide about what will be the criteria for evaluation, and the timing, I guess we are still on the same timing for the moment, but we will see next week if something needs to be readjusted in the future.

And when we select someone to do the review, we will have obviously to discuss in depth the schedule for that. Then thank you. Let's go to the next item. It's action item. And we had three. Maybe I didn't put it in the same order. I took the two, and I guess not in the right order.

But let's go by this order and discuss about transparency. I will not read this email. I hope that you get all the exchange. And sorry again, it was late. I sent it when I discovered that it was not going through our list, but just on the transparency list.

I had a call with my co-rapporteur and the rapporteur of the transparency group, and we had some exchange about the different—the two topics were at stake, about the DIDP and the rule of the Ombudsman. As you have maybe seen the exchange, the Ombudsman, the ICANN Ombudsman makes comments, a lot of comments on that, and it was quite useful, I guess, and interesting.

I guess you have also seen the exchange and some other mail from Ed Morris about what is part of here, about the complaint officer. And ICANN fully understand that there is some disagreement on that. Just to be sure that it's clear, [INAUDIBLE], because we felt that, for the Ombudsman, it can create some trouble and it seems that complaint

officer can create also some trouble, and we have to decide where it's more trouble in one way or the other.

Or we can also say that it may be very useful to have another place in either the Ombud's office or the complaint officer. And before I give you the floor, Herb, I will try to explain my understanding of the situation and why we can, with this proposal, to be eyes of the Ombudsman or the complaint officer.

One of the reasons, and I will explain that in [INAUDIBLE] and it's a question of confidentiality, where and when it stands for. And my understanding, if it goes to the complaint officer, anyhow we will have other, the people who have question on this about the IDP will still ask the Ombudsman to act, but he will act not just as deciding if the way the request is frivolous, but also because the global request, not just for that.

And it's why I feel that the possibility to have, in between the complaints officer, it's not so big deal. But once again, I understand the point of view of the people who say it's not a good idea. We, our group, we need to decide if what is more important, and if the proposal is acceptable or not. That's my understanding of the situation, and I would like to ask Herb to take the floor. Thank you.

HERB WAYE:

Yes, Sébastien. Yeah, I think probably the point I was trying to get across was that in consideration of a vexatious or frivolous complaint, it's not a bad idea to have an independent individual come in to assist with the review, and it shouldn't but that it's very critical that that individual,

there be no [INAUDIBLE] in the future, or from the past that that individual could potentially be involved in another decision-making issue with the same complaint, which raises of course, not just the confidentiality issue but also the independence of the Ombuds who would be involved in the process.

Because it's very difficult if the Ombudsmen take a stand regarding a disclosure request and then be involved in some way with investigating, for instance, the process of the disclosure request at a future point. I threw up the idea of the complaints officer because I'm hoping that the complaints officer will be, to some extent, arm's length from many of the processes involved, regardless of the fact that the report's illegal.

But it could be technically anybody in the organization that is—can be seen with—can be respected and trusted to be involved independently in the decision-making process. So, regardless of who you decide it could be, whether it's somebody internal, somebody from the community could even be potentially involved in the review of the DIDP, as long as that individual is trusted by both the organization and the community to make a good decision.

But it is critical. Moving forward with any of the accountability subgroups, when they involve the potential—when they discuss potential involvement of the Ombudsman, that they take a look not just at independence but all of the other values of the office, the fact that the Ombuds must be unbiased.

And if the Ombudsman has already made a decision regarding DIDP that the Ombudsman at that point become biased in any future action taken

on that. So, those are just some of the points that I think are important to think about moving forward. So, I have no passion of this going to the complaints officer or not. We haven't even discussed it with the organization. So, ICANN may come back and say no. Thank you.

SEBASTIEN BACHOLLET:

Thank you, Herb. Any other comments? I would like to, with an idea to be discussed. My feeling is that it may be good if transparency drafting team write what is its wish to handle the situation. What is important? Is it important that there is somebody independent? Is it somebody trusted? It's somebody where the community may have a say to who is? Or you need to be with such diverse background?

And not to come with a solution, but to come with a request of finding the best way. Might try this, because I have the feeling that if we stay in the discussion between Ombudsman and complaint officer, we will split any group, for good reason in both cases, and we will not end up somewhere where we can find a good solution.

Why I am pushing for that, it's because maybe at the end of all the drafting teams of Work Stream 2, we will have different topics to be taken into account by an independent body, but who can't be included in the Ombuds office for any reason, confidentiality or the way the Ombuds office is working.

And maybe we need to create something else. Or we can decide that the end of the day, that we consider the issue raise by Herb as Ombudsman, is not enough importance to not give him this

responsibility. Or we can decide that the first step will be the complaint officer.

But if we are coming with a solution besides beginning a discussion, it may not be the right way to try to find a good solution for everybody. That's my suggestion for today, but I would like very much to have your inputs and your idea and feedback on that.

And welcome, Avri. Just to—we are discussing about the exchange between the transparency and our group, and the question around DIDP for the moment. And Alberto, welcome to the call. Welcome. Any comments on that? Herb, please go ahead.

HERB WAYE:

Yeah, Sébastien. As I said, and I think this is part of the message that can go out to any other group that is discussing this, they can't just say that "oh, we can hand this to the Ombudsman," or anybody else, without it being an informed decision.

And one of the critical components that informed decision is the established framework and role of an Ombudsman of any organization. And you're exactly right, that maybe a lot of these issues should be going to some sort of office, whether it be an ethics office or an office that has some form of independence from the—that does a review in general or some sort of term that was thrown around a few months ago, of having an independent overseer to the organization, which is a great idea.

But I mean you have to look at the size of the—when I say organization, I’m talking about ICANN as a corporation of a couple of hundred employees, and whether monetarily and functionally it’s worth having all of these external review components in an organization that small.

Now when you include the community, it gets a lot bigger. But funding of all of these ideas is going to be a major issue, too. So, as long as [SKIP IN AUDIO], that whoever’s talking about increasing or expanding the role of the Ombuds clearly understands what an Ombuds is, what an Ombuds can do without creating some sort of a conflict of interest with some of the other—the core values of the role. Thank you.

SEBASTIEN BACHOLLET:

Thank you. I will read the comments. You can see that online. The first one, where the beginning of the discussion, complaints officer being in charge of this is a really bad idea. And after all the discussion, she wrote, I think the transparency group should be a little more creative and not only focus on two solutions, Ombuds or complaint officer, for resolving denial of requests.

And the value it should focus on in coming up with solutions, as perhaps independent. Okay, thank you for your inputs. I think that we need to go back to the—I need to go back to the transparency group and have a discussion with them. I will try to figure out when is the next call and I will try to participate to this group. Would any other last ideas on this specific topic? Herb, it is a new hand or was your hand from before?

HERB WAYE: New hand.

SEBASTIEN BACHOLLET: Okay, then... I agree to participate to the staff accountability meeting. Okay, I will try to do myself, but thank you, Avri. But yes, go ahead Herb, please.

HERB WAYE: Yeah, the other point that I would like to raise that was brought up in Ed Morris' email was the fact that I should be asking, or that I should be recusing myself from this process. And I believe that I've been doing a fairly good job as an observer from the sidelines, and I was asked my opinion and to offer input into the idea of the Ombuds role in the transparency and how I thought it should be handled.

So, I'm doing my best to stay out of the decision-making process and only offering my opinion when asked. So, that was brought up in the email, and I would just like to say to anybody that's participating today, and you may wish to spread this around to some of the other groups, that if you ever feel that I am overstepping my boundary as an observer, rather than an active participant in the decision-making process, please let me know. Thank you.

SEBASTIEN BACHOLLET: Thank you, Herb, for your input. Sébastien Bachollet speaking. We had this discussion, and one of the reasons we asked legal to have an input on that. And it's something we need to—we discussed here, and we are very pleased to have you.

And we know who you are. We know where you are coming from. If we feel that your point of view doesn't match with ours, we will tell you. I don't think that we will ever think that you are overstepping. We—what's important is that we know you are the current Ombudsman and you may have some point of view that is with the future of this office, and we can disagree with you.

But that's okay. It's perfectly acceptable. I have no single, not even a little or small problem with you participating, and it's one of the reasons also to be sure that your point of view was clearly explained to the transparency group that I asked you to observe the email exchange.

And anyhow, what we will take as a position in this group, we'll go to the plenary and there will be plenty of opportunity for people if they disagree with what we are thinking. They will be able to say that, and they know. No problem from my point of view today. Okay. Now let's—Herb, it's a new hand, or it's a previous one? Okay, thank you.

HERB WAYE:

Oops, old hand.

SEBASTIEN BACHOLLET:

Okay. Then I—let's go to the—oh, sorry, I pushed too long on the button. Let's go back to the previous. Okay, I guess now—yes, I would like us to discuss about diversity. You remember during our last call, we were talking about where could end up at diversity office, office of diversity. It's in discussion with in the diversity subgroup.

And I suggest to write the two—the point two and the point three in this slide. I will [INAUDIBLE] that everybody can get it. The diversity drafting team is currently working and discussing on the proposal to create an office of diversity within ICANN to collect data and make proposal to improve diversity.

In the discussion of the ICANN Ombuds office drafting team, we have suggested to include this in the ICANN Ombuds office. To quote “Ombuds would promote diversity, ethical behavior, human rights and fairness. And of course, because ICANN Ombuds office is [INAUDIBLE], independent body within ICANN.” I would like very much to have your feedback on that improvement, and ideas would be welcome. Thank you.

CHERYL LANGDON-ORR: Sébastien, [INAUDIBLE]

SEBASTIEN BACHOLLET: Yeah, go ahead please.

CHERYL LANGDON-ORR: Thank you. Cheryl Langdon-Orr, for the record. I’m sorry, I stepped away from my computer. I did respond not that long ago to your overnight email directly to me. I just have a problem with this text. Some of this was discussed in full regard, the specifics and nuances of the text we send in the diversity subgroup. I think what’s important is that we send something, and we send it promptly so it gets on the diversity subgroup agenda. Thanks.

SEBASTIEN BACHOLLET: Thank you very much, Cheryl, and thank you for your message back just prior to this call. I was not on my computer either, and I didn't look to your email. Thank you for answering. Any other comments, ideas on that? Okay. I will do what Cheryl suggests.

I will send it to the diversity list just after my dinner tonight for me, but I would like if you have any comments on that, please send the comments on our list so it will be useful. Thank you. If there are no other comments, I would like to go to the third action item.

It was [INAUDIBLE] with a review, and I guess I have two slides. The first one, it's which subgroup we need to have some action and work. And it's clear, with the discussion, we're one with the diversity. We have one with transparency. And we have some exchange on the chat with Avri. Avri, do you want to say a few words on what is the topic and where you are? Or do you want me to read your—

AVRI DORIA: Sure, I can do that.

SEBASTIEN BACHOLLET: Okay, go ahead please, Avri. Thank you.

AVRI DORIA: This is Avri. I said pretty much what I had to say, but just to give a little bit of background, we are doing two documents. One of the documents,

document B, includes a discussion of what exists and our recommendations where to go further, where to change.

Now one of the questions on that is what is the role of the Ombudsman via staff? And that, in terms of commentary or—I don't want to use the word complaints, but commentary or petitions regarding staff, or in fact dealing with the proposition at the moment for staff to bring issues to the Ombudsman.

And so, those are two things that we have on our list. We have not discussed yet. We need to discuss. We're working on the document now. Most of our group is working primarily trying to work on the documents, and some of the members of this group, like Klaus, have been amazing contributors to that already.

So, I'd like to see more people contributing as he did, to basically, trying to do the work by writing on the Drive document, and then sort of discussing periodically, wrapping things up, dealing with issues where we're not in agreement, etcetera.

So, I really just wanted to tell people about that. I do want to arrange at some point, Sébastien, for you to come in. I think Herb has already been sitting in on the group, at least periodically, in his observer role. And so, I just—this is one issue where obviously, we're directly linked, as to say the Ombudsman should or the Ombudsman shouldn't do x, y or z is indeed an issue that is very much on your plate as it is on ours when it's concerning [INAUDIBLE] issue. So, thanks.

SEBASTIEN BACHOLLET: Thank you, Avri, for your inputs. Klaus, go ahead.

KLAUS STOLL: Yes, thank you. I just would like to follow-up on Avri. We also ask in the first document, basically a paragraph which talks about the Ombudsman office. And I think Avri, I would recommend is that we, when we basically have both documents more or less ready, that you present the relevant paragraphs and topics which we discuss in the staff accountability group to this group, and start an exchange on that one. Thank you.

SEBASTIEN BACHOLLET: Thank you, Klaus. Avri, please go ahead.

AVRI DORIA: Thanks for that. Yes, I definitely agree that we should solicit reviews from this group on the sections, and cutting those sections out may be helpful. I'm, at the moment, still obviously very concerned with getting the document written, with contributions from this group. But obviously, yes, those documents, when completed, the sections regarding the Ombuds should definitely be reviewed here as well as in plenary as well as everywhere else. Thanks.

SEBASTIEN BACHOLLET: Thank you very much, Avri. Yes, 22 minutes to go. Do you know if there are other subgroups who may need our inputs? We have not discussed about human rights, also accountability review of CP guidelines, or

other contact for all. And [INAUDIBLE] phase two. Do you have some inputs for that we need to take that into account in the future? Herb, please go ahead.

HERB WAYE: [INAUDIBLE]. I'm just thinking here, there's a group involved, standards and conduct. Is that the group that's looking at the SO/AC?

SEBASTIEN BACHOLLET: No, SO/AC accountability—go ahead, sorry.

HERB WAYE: No, I'm trying to remember the name.

SEBASTIEN BACHOLLET: It's about a board member, when you are—

HERB WAYE: Removal. Yeah, removal. That's not on this list, is it?

SEBASTIEN BACHOLLET: Yeah, it is. Guideline for the conduct. It's because I shortened the title.

HERB WAYE: Oh, okay. Yeah. They call it something else, though. But anyways, there's presently a—I discussed it with ICANN legal and I'm going to be

talking to them again next week, about whether or not the Ombudsman potentially has a role in that process, where the SO/ACs or the empowered community, or any of the other community who filed to have a board member removed, and whether or not I have jurisdiction. So, there may potentially be an overlap with that group. I should know within the next week or two.

SEBASTIEN BACHOLLET:

Okay, thank you. And I will change the title of this subgroup eight. Thank you for that. Any other inputs? Okay, it's already, I will say, a lot of work to deal with the other groups, and it's important that we add them to keep on track. Because obviously, we will have to wait for the review to be done, and then we are not totally under control of our own review. Okay.

The other slide about this question is that we think there are specific items, and I send you the documents where we were building last October. But are there any items we need to focus on, parlay to the review? If you have any specific items now, or if you want to have them taken into account, you can send by mail after this meeting.

Thank you, Herb, for the right title. I will change that for the next production of the slides. And you have your hand raised. Do you want to take the floor? Go ahead please.

HERB WAYE:

Sorry.

SEBASTIEN BACHOLLET:

Okay. Any other comments? If not, I would like to thank you for this input, and let's go to the next slide. It's about our next meeting. As you can see again, we have three meetings to go. The next one will be the 6th of February. One of the reasons it's two weeks is because in the middle there is a Chinese New Year, and as we take a rest from the New Year in some other parts of the world, I think it's fair to do the same for this important other part of the world.

And then the next meeting will be on my birthday, and the last one will be end of February, before we go to Copenhagen. The agenda will be almost the same. I will try to take all specific subgroup work. We will have to deal with specific lines.

But it's, I guess we will have to do a review of where we are, about the external review, and to take this discussion that we had just now. And I am sorry. I may have missed—Farzaneh, thank you very much for this. [INAUDIBLE]. Yes, it will be great.

But you didn't want to talk about the jurisdiction group somewhere? I guess you wrote something on the chat, and I forgot about that. Do you want to do it by chat now or do you want to send a mail, or to discuss that in two weeks? Okay. Farzaneh writes, "I just wanted to say we have just started talking about mediation. I will update you as soon as something related to Ombudsman comes up."

Okay, thank you very much, Farzaneh. That means that there is one other group we need to deal with it and that could give us some work. Okay. And the last slide, any other business? If not, I want really to thank you for this meeting, and for your inputs.

I hope that we will go ahead with all the discussion we had, and in the next two weeks we will have some exchange of mail, not just me writing to the group hopefully. And I would like to tell you goodbye. And for the ones who are living in China and are following the Chinese New Year, have a good feast. Thank you very much, and take care. Bye-bye. This call is adjourned.

CHERYL LANGDON-ORR: Thank you for that. Happy New Year to everybody. Bye.

SEBASTIEN BACHOLLET: Bye-bye. Thank you.

[END OF TRANSCRIPTION]