

CCWG-Accountability Work Stream 2 **ICANN Ombuds Office**

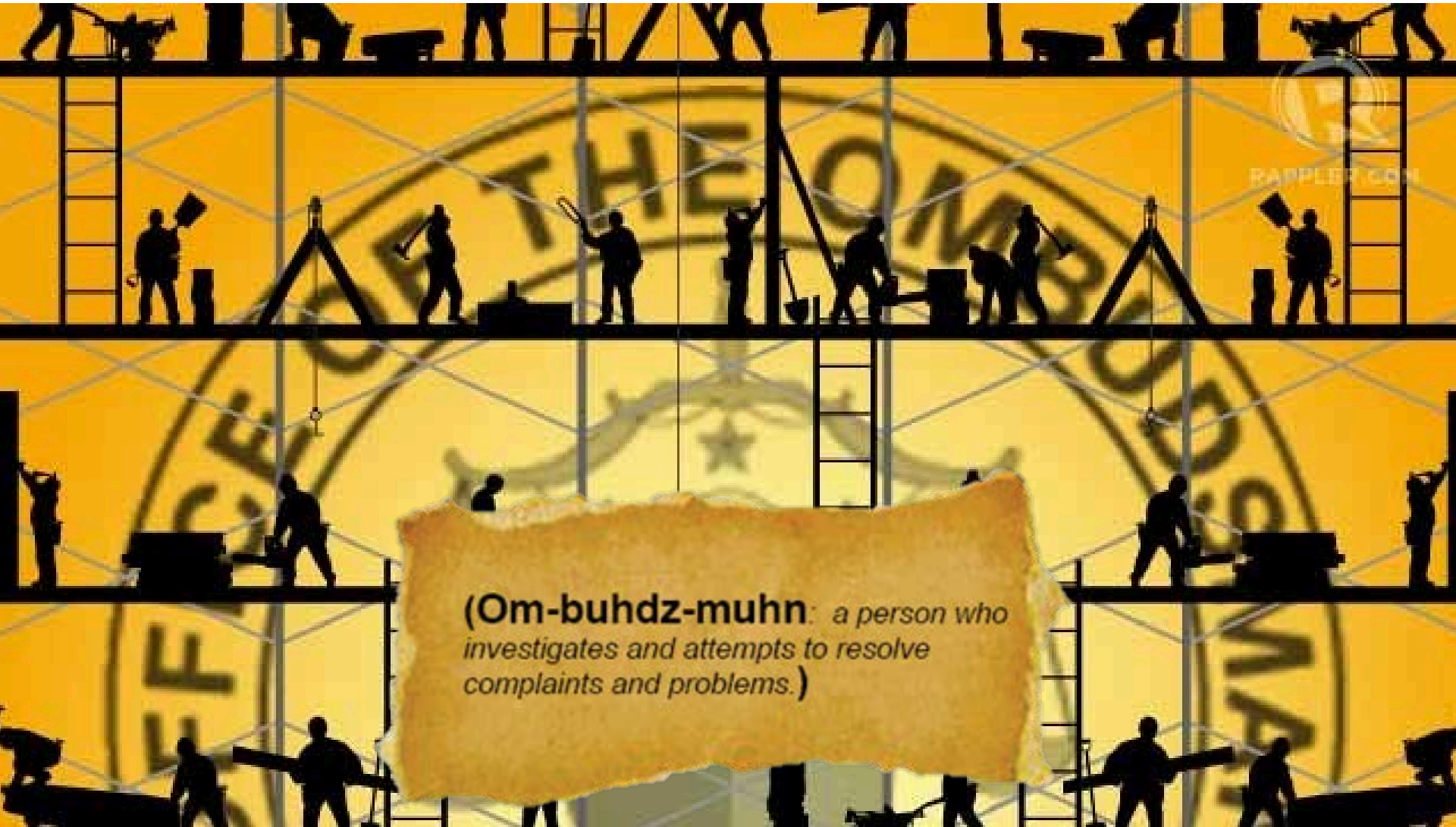


Ccwg-WS2 Plenary Meeting
25 June 2017

Rapporteur: Sébastien Bachollet

CCWG-Accountability Work Stream 2

ICANN Ombuds Office



Agenda Plenary WS2 Ombuds

- Participation & Dashboard
- Scope of the work
- New Responsibilities & Environment Evolution
- External review of the ICANN Ombuds Office
 - Presentation of the reviewers and the process
 - Main recommendations
- Next Steps

CCWG-Accountability

Work Stream 2



The background of the slide is a dark blue color. Overlaid on this is a stylized world map. The map is formed by a complex network of white lines connecting numerous small white circular nodes. The nodes are distributed across the continents, with a higher density in the North Atlantic and Europe. The overall effect is that of a global network or data flow.

Participation & Dashboard

WS2 Drafting Team “Ombudsman”

Active Participants

1. **Sébastien** Bachollet - Rapporteur (26)
2. Adebunmi Akinbo (2)
3. Alberto Soto (17)
4. Arshad Mohammed (-)
5. **Avri** Doria (18)
6. Carlos Vera Quintana (6)
7. **Cheryl** Langdon-Orr (19)
8. Chris LaHatte (previous Ombuds) (8)
9. Denise Michel (-)
10. Edward Morris (2)
11. Farzaneh Badii (8)
12. **Herb** Waye (Ombuds) (24)
13. José Francisco Arce (2)
14. Jimson Olufuye (1)
15. Karel Douglas (3)
16. **Klaus** Stoll (12)
17. Michael Karanicolas (1)
18. Raoul Plommer (2)
19. Robin **Gross** (2)
20. Samantha **Eisner** (1)
21. Sarah Kiden (1)
22. Sivasubramanian Muthusamy (4)
23. Susan Payne (2)

Observers

1. Aarti Bhavana
2. Adebunni Adeola Akinbo
3. Alan **Greenberg**
4. Akinremi Peter Taiwo
5. Amrita Choudhury
6. Angie Graves
7. Dan Shevet
8. David Maher
9. Elizabeth Bacon (1)
10. Gangesh Varma
11. Iftikhar Shah
12. Johan Helsingius
13. Jon Nevett
14. Mike Rodenbaugh
15. Pam Little (1)
16. Pablo Andrés Mazurier
17. Philip Corwin
18. Renu Sirothiya
19. Rinalia Abdul Rahim
20. Vidushi Marda
21. Vinay Kesari
22. Yoav Ostreicher

Board Liaisons

- **Asha** Hemrajani (19)
- Mike Silber (backup) (4)

Co-Chair

- ~~Mathieu Weill~~
- Jordan **Carter**

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Work Stream 2



Updates:

- External reviewer (Cameron Ralph LLC) produced its evaluation report.
- Subgroup reviewed report and provided feedback and inputs.

Upcoming Activities:

- Evaluation report will be presented to CCWG-Plenary at ICANN 59 face-to-face meeting.
- External Reviewer will finalize its report on basis of inputs received from CCWG.
- Subgroup will start working on draft recommendations once evaluation report is finalized.

Open Items:

- Coordination with other sub-groups:
 - Transparency
 - Staff Accountability
 - Human Rights
 - Diversity
 - Accountability SO/AC
- A new timeline needs to be setup (extending after ICANN 59).

Rapporteurs: Sebastien Bachollet

of signed-up Active Participants: 23

of signed-up Observers: 22

Useful links:

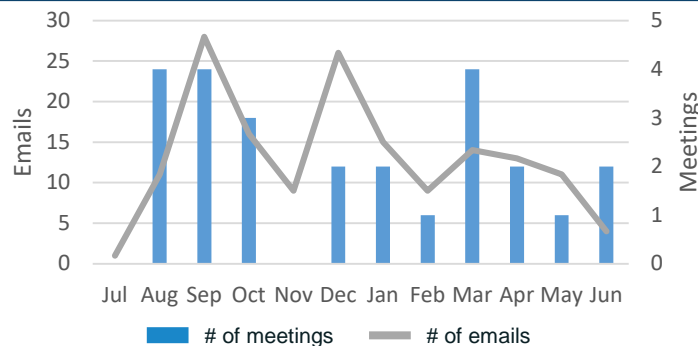
- [Wiki](#)
- [Mailing List archive](#)
- [Meetings schedule](#)

Description / Scope:

Evaluate the current Ombudsman charter and operations against industry best practices and recommend any changes necessary to ensure that the ICANN Ombuds Office (IOO) has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders.

Activity:

Total # of meetings:	25
Total # of emails:	157
Collective hours on calls:	344



Work Plan:

Start work	Aug	✓
Document questions to answer	Sep	✓
Document work to do	Oct	✓
Produce draft for subgroup	tbd	
Produce draft for CCWG	tbd	
Produce draft for PC	tbd	
Public Comment	tbd	
Revise draft	tbd	
CCWG approval	tbd	

A world map where the continents are defined by a network of white dots and connecting lines, set against a teal background. The dots vary in size, and the lines are thin and light-colored, creating a digital or network-like appearance of the globe.

Scope of Work of the IOO SubTeam

Considering enhancements to the Ombudsman's role and function

- *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*

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New Responsibilities & Environment Evolution

- **New Responsibilities**

- 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.**

- **Environment Evolution**

- **ICANN Complaints Office (ICANN CEO decision)**



External review of the ICANN Ombuds Office



Cameron Ralph LLC &

cameron.ralph.khoury

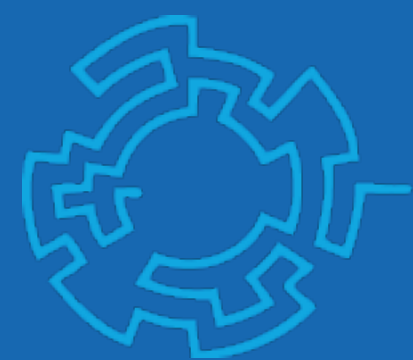


CCWG-Accountability

Work Stream 2



ICANN



- Consulting firm specializing in governance, performance assurance and policies.
- Expertise in independent reviews of Ombudsman schemes – both Government established and industry based schemes.
- Reviewed some 16 schemes located in Australia, New Zealand and Canada (financial services, telecommunications, water and energy, public transport, legal services).
- Have assisted Ombudsman schemes with strengthening their quality assurance and other processes.
- More information available - <http://crkhoury.com.au>

Cameron Ralph LLC: Consultants

Phil Khoury



- A governance and change management consultant specializing in regulatory and other non-profit organizations
- Worked extensively with industry bodies, complaints handling schemes and specialist disciplinary bodies.
- Former Executive General Manager of the Australian Securities and Investments Commission (ASIC).

Debra Russell



- Formerly a senior executive with Australian Securities and Investments Commission, a senior manager with PricewaterhouseCoopers, a sessional lecturer at University of Melbourne Law School and a solicitor with Allens Arthur Robinson
- Strong legal and regulatory compliance background.

Interviews

Interviews

- **People from**

- ccwg-accountability (co-chairs)
- Subteams WS2
 - Diversity
 - Guidelines for Good Faith Conduct
 - SO/AC accountability
 - Transparency Subteam
 - ATRT Expert
 - Ombuds

- Board
- RIR
- ALAC & Lacralo
- gtld applicant
- GAC
- Ombuds (current and Previous)
- Staff
- Other

Face to face interviews with community members and ICANN staff attending ICANN58 including: members of the Board, members of the Subgroup, members of constituent bodies, members of the community, senior members of staff

Survey

An on-line survey was undertaken (5 languages offered) seeking additional input from members of the community.

In a limited period, an excellent **84 community responses** were received, including 3 that we arranged to be translated.

Recommendations

Summary of recommendations

Recommendation 1

The statement in Article 5 of ICANN's Bylaws of the Ombuds Office's Charter should be changed to give the Office a more strategic focus

Recommendation 2

The Ombudsman Framework should be replaced by procedures that

- Distinguish between different categories of complaints and explains how each will be handled
- Set out the kinds of matters where the Ombuds will usually not intervene – and where these matters are likely to be referred to another channel (with the complainant's permission)
- provides illustrative examples to deepen understanding of the Ombuds approach

Summary of recommendations

Recommendation 3

Once ICANN has agreed to a revised configuration for the Office of the Ombuds, a plan should be developed for a soft re-launch of the function, which should incorporate action to emphasize the importance of the Ombuds function by all relevant parts of ICANN, including

- Board
- CEO
- Community groups
- Complaints Officer
- ...

Recommendation 4

The ICANN By-laws and any relevant rules of ICANN groups should be amended to oblige all relevant parts of ICANN (should include the Corporation, the Board and Committees and any body or group with democratic or delegated authority) to respond within 90 days (or 120 days with reason) to a formal request or report from the Office of the Ombuds. The response should indicate the substantive response along with reasons

Summary of recommendations

Recommendation 5

The ICANN Office of the Ombuds should establish timeliness KPIs for its own handling of complaints and report against these on a quarterly and annual basis

Recommendation 6

The Office of the Ombuds should be configured so that it has formal mediation training and experience within its capabilities

Summary of recommendations

Recommendation 7

The Office of the Ombuds should be ideally configured (subject to practicality) so that it has **gender**, and if possible other forms of **diversity** within its staff resources

Recommendation 8

ICANN should establish an **Ombuds Advisory Panel**

- made up of 5 or 6 members to act as advisers, supporters, wise counsel and an accountability mechanism for the Ombuds
- The Panel should be made up of a minimum of 2 members with ombudsman experience and 3-4 members with extensive ICANN experience
- The Panel should be responsible for commissioning an independent review of the Ombuds function every 3-5 years

Summary of recommendations

Recommendation 9

The By-laws and the Ombuds employment contracts should be revised to strengthen independence by allowing for a

- **5 year fixed term** (including a 12 month probationary period) and permitting
- only **one extension** of up to 3 years

The Ombuds should only be able to be terminated with cause

Recommendation 10

The Ombuds should have as part of their annual business plan, a **communications plan**, including the formal annual report, publishing reports on activity, collecting and publishing statistics and complaint trend information, collecting user satisfaction information and publicising systemic improvements arising from the Ombuds' work

Summary of recommendations

Recommendation 11

- With input from across the community, ICANN should develop a policy for any Ombuds involvement in non-complaints work that addresses
 - a) Whether there is unique value that the Ombuds can add through the proposed role or function?
 - b) Whether the proposed reporting/accountability arrangements may compromise perceived independence?
 - c) Whether the proposed role/function would limit the Ombuds ability to subsequently review a matter?
 - d) Whether the workload of the proposed role/function would limit the Ombuds ability to prioritise their complaints-related work?
 - e) Whether any Ombuds involvement with the design of new or revised policy or process, creates the impression of a 'seal of approval'?
 - f) Whether the proposed Ombuds input may be seen as a 'short-cut' or substituting for full stakeholder consultation?

Other functions

- If the Ombuds is not to be made responsible
- A staff function
 - If the function will require a great deal of interaction and collaboration with the Corporation, we would recommend a staff function – with obligations to consult with the community
- A community function
 - If the task is quite independent and not reliant on heavy staff input, then it could easily be the responsibility of a community body or person – with an obligation to consult with staff

DIDP (Documentary Information Disclosure Policy)

We think it would be appropriate for the Ombuds to have input to the design of the proposed new DIDP and to provide information or refer people to it, but not to be expected to replace management's responsibility to implement, promote and routinely report on it. The Office could conduct an 'own-motion' review of the operation of the function after a time, but this should be at its own discretion taking into account its other priorities.

Diversity

We would have concerns about the Ombuds function taking on the role of Office of Diversity (as floated with us). As above, the Ombuds could assist, but we think this is better as a staff or community responsibility.

First, it will be quite a workload in the first few years. Second, this is a likely issue for complaints and the Ombuds would be unable to credibly review such a complaint, particularly if it was against guidelines or the implementation of guidelines the Ombuds had been responsible for.

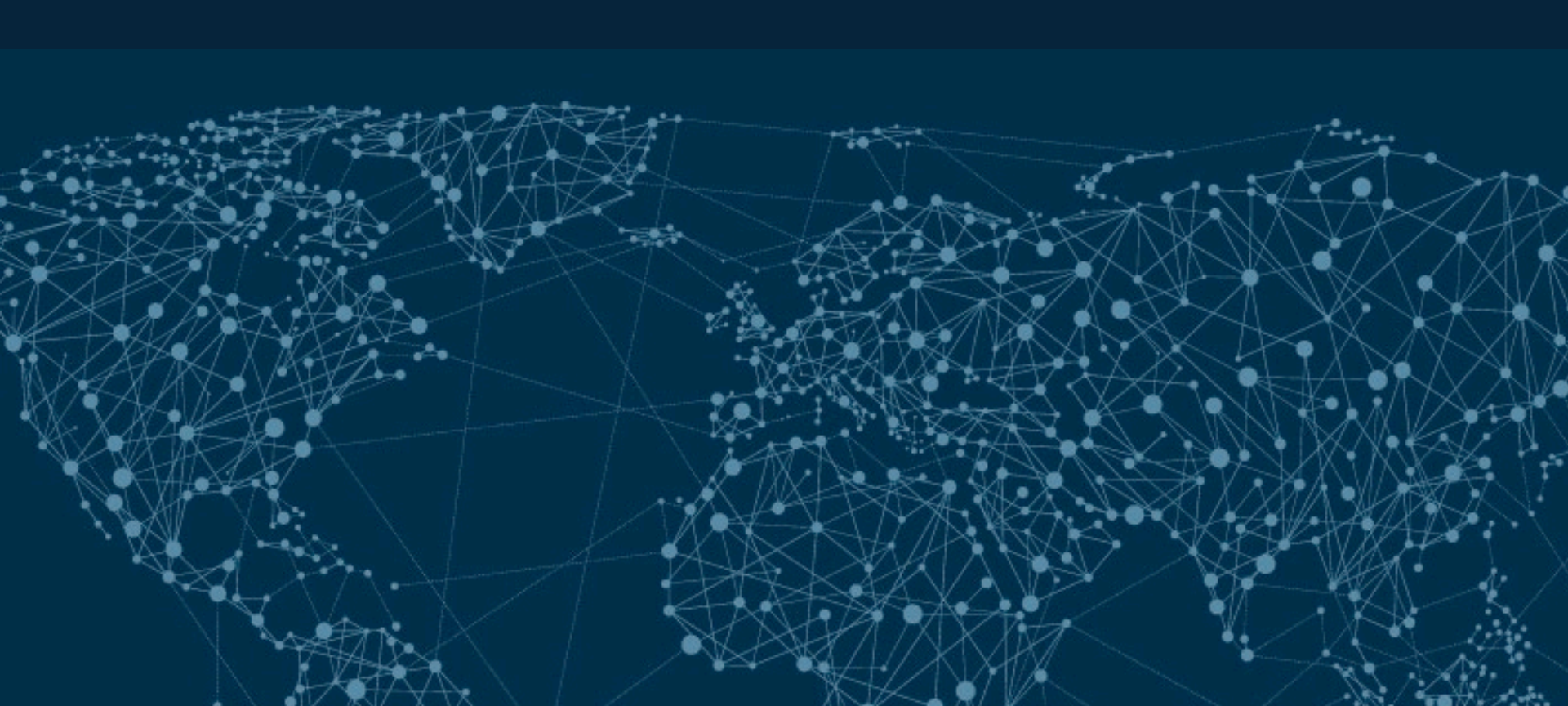
Third, the process of corporation functions and various ICANN groups adopting new policy will inevitably involve those groups seeking the Ombuds 'seal of approval' – eg. "will this implementation be OK?". Again, that would compromise the Ombuds independence.

A world map where the continents are defined by a complex network of white dots and thin white lines, set against a solid teal background. The dots vary in size and are interconnected by thin lines, creating a mesh-like structure that outlines the major landmasses.

Next steps for the ICANN Ombuds Office SubTeam

Next steps IOO SubTeam

- Prepare a draft report answering (at least) the following topics
 - ICANN's Bylaws of the Ombuds Office's
 - Replacement Ombudsman Framework by Procedures
 - Plan to be developed for a soft re-launch
 - Framework to respond to a formal request or report from the Office of the Ombuds. The response should indicate the substantive response along with reasons
 - Framework to establish an Ombuds Advisory Panel
 - Framework to develop a policy for any Ombuds involvement in non-complaints work
- Coordination with the other subgroups
- Prepare a new schedule



Thank You