

OMBUDSMAN SUBGROUP MEETING

Thursday, August 21, 2017 - 19:00 to 20:00

>> MR. BACHOLLET: Thank you very much, Sebastien Bachollet speaking and Rapporteur of this Subgroup on the ICANN Ombuds office. And, we have only four participants. We think that it's, we will have the call, because we have a document to review today. The document was sent unfortunately only a few hours before this meeting, but it will be useful to get your feedback and where we need to have some, some possibility to amend the document.

We will take the participation and the roll call by the Adobe Connect room. If there are any participants just on the phone line, they can tell us now.

Okay. Thank you. Then we are who we are here in this meeting today. And welcome and we will go through the document that Bernie mainly and myself have tried to comment. It was external review of the ICANN Ombuds office. I suggest that, I will give the floor to Bernard because he has done the main part of this job, and I want to thank him a lot because it would haven't been down without his help.

We had some changes and we get agreement together, at least to propose to you those comments. Mainly it's to see how we can implement in an easy way without too much other or less other probable the recommendation from the external reviewers. And it is what the purpose of our proposal. And thank you Yvette to put the document on the screen. When it's in red, it's the comments made by Bernard and myself. Mainly to show some alternate wording or if we think that we don't need to change it and then some comments.

Bernard, may I ask you to give us your feedback on that and what was the purpose of this work. Thank you.

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>> Yes. I will, Sebastien, but Sebastien did note, we did have a fair amount of exchanges all the way through the weekend, so not only mine.

But my focus on this wasn't to try and change the spirit of the recommendations, but I was discussing with Sebastien. It was mostly about how do we approach this to facilitate the notion of implementation. The recommendations as they were presented in the external evaluator's report often cited the requested changes to the bylaws, and I wasn't certain that was necessary all the time.

So, we'll go through this and we'll stop at each section and take questions.

So, as an over arching comment. For those external evaluation recommendations that suggest a specific implementation mechanism, such as changing bylaws, to allow for shorter implementation ICANN will try to find alternate solutions to changing the bylaws, which would meet the requirements. It is probable that some of these recommendations, if they are accepted will require bylaws changes and some of the recommendations which may come from other WorkStream 2 sub groups, may also require some changes, but the objective should remain to implement the requirements of the recommendations in the most effective manner possible. This being said, all recommendations should be considered for approval, but with some rewording to meet the above implementation realities to allow for the most efficient and effective implementation.

So, this sets the stage. Formally we wanted to write it in the document so everyone and what we were trying to do. We're not trying to change the spirit of the recommendation, we're just trying to craft this into something that's going to be easier and give some more flexibility to ICANN to implement.

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Any thoughts or questions on these at this point? All right. I'm not seeing anything. So we'll just go one by one through the recommendations.

The first one was 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. We're suggesting alternate world that could be the Ombuds office should have a more strategic focus and we'll let ICANN figure it out. Does that sound okay for everyone?

I get a green tic from Cheryl. All right. And don't be shy if you come up with something, just, you can shout out and we'll take your questions.

Number two, the ombudsman framework should be replaced by procedures that distinguish between different categories, set up the kind of matters and provides illustrate I have examples.

So to recommendation could be worded as the Ombuds office should include procedures and then we have exactly the same items that were listed. So instead of again lock being it into something very specific like the framework. Because let's remember, there are two things. There are the things that are described in the bylaws, and then there is the framework which August many times what's described in the bylaws but is consistent with the bylaws. And so, instead of saying you have to change one or the other, you have to make the amendments. The suggestioning are good, we're just saying we need those procedures. Let ICANN figure out where to put them.

Would that be okay too?

Not seeing any objections. We'll move on.

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Number 3, once I can has agreed to a revised configuration for the office of the Ombuds, a plan should be developed for soft relaunch of the function which should incorporate action to emphasize the importance of the openly buzz function by all relevant parts of ICANN including the bored CEO and community groups and complaint officer.

And I didn't see any issue with that recommendation. It doesn't lock in that we would have to change bylaws or anything else. That could stand as is.

Are there any objections as keeping that recommendation as is?

Seeing none, we'll move on to 4. Thank you Cheryl.

The ICANN bylaws and any relevant roles of ICANN groups should be amended to oblige all relevant parts of ICANN. Brackets should include the corporation, the board and committees and anybody 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 a substantive response along with reasons.

Now, one of the issues here is if you're talking about all the SOs/ACs, you would have to actually, we would actually be saying that we would be imposing changes in the bylaws to the Constitution of all the SOs/ACs. And the reality in ICANN is that some of these SOs actually for the CCNSO, I can cannot oblige it to change its Constitution in the bylaws.

So, that would create a bid of a con none drum to present this recommendation the way it is. We're not saying it's a bad recommendation, again, but really have to adapt it so that it's workable. Otherwise, on a technical basis, certainly some SOs would certainly object to it being worded like this.

So what we're proposing in this case because of that is all relevant parts of ICANN should be required, should include corporations, the board and the committees and blah, blah, blah, to respond within 90 days or 120 days with reason, to formal request or report from the office of the Ombuds. The response should indicate the substantive response along with reasons.

So, we're going from all relevant parts of ICANN should be required instead of forcing a change of the bylaws. And I think that's a much saner approach. And there is no reason why simply to SO AC accountability, this wouldn't be taken on by most SOs/ACs, that's simply a good practice to work well within the community and I think that will be received very well versus saying this group, the Ombuds WorkStream 2 is telling you, you have to change your bylaws.

So, any objections to this rewording?

Not seeing anything, we'll move on.

5, the ICANN office of the Ombuds should establish time lines, KPIs for it's own handling of complaints and report against these on the quarterly and annual basis. Assign doesn't lock anyone into anything and it makes sense.

And this is why we got those external people to look at things, because they can recommend sensible things that make sense in the overall practices of the Ombuds in the real world.

Any objections to 5? No? Okay.

Moving on to 6. The office of the Ombuds should be configured so that it has formal mediation training and experience within its capabilities. Again, this recommendation could stand as is. I don't see any issues with bringing that on.

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Any issues with recommendation 6? All right.

Moving on to recommendation 7. The office of the Ombuds should be ideally configured subject to practice cattle so that it has gender and if possible other forms of diversity within its staff resources.

Again, I think this is probably a very sensible recommendation and should be left as is.

Do we have any issues with recommendation 7? Okay. I think that will sort of meet up with some of the diversity requirements any ways. So, we're good on that.

Now, 8. That's another one that for which probably Sebastien and I had the most discussions. I'll read it first and then I'll give you some of the discussions that were had.

ICANN should be establish an Ombuds advisory panel made up of 5 or 7 H 6 members to act as support (indiscernible) and accountability mechanism for the Ombuds. The panel should be made up of a minimum of two members with ombudsman experience, and three or four members with extensive ICANN experience. The panel should be responsible for commissions an independent review of the Ombuds function every 3 to 5 years.

Now, part of Sebastien's view of this, is this should be a completely independent unit, this Ombuds advisory panel. And really, the reality is any structure, such as an advisory panel needs a structure in which to exist. And if it's not within the ICANN structure, then it's very unclear what it could be part of. And if it's not part of the ICANN structure, there are several fundamental problems, in that the board is responsible for everything that is ICANN. You can not have an advisory panel that is beyond the authority of the board which could make decisions, or make requirements on ICANN which is not under the control of the board.

So, I think the reality is, we have to understand that.

The second thing is per the charter of the ombudsman in the bylaws T. this talk of a panel could not be seen as additional Ombuds people for use by the Ombuds office. This is really an advisory panel for the Ombuds office and is not something there to deal or adjudicate special cases. And that also means that the Ombuds office cannot breach its confidentiality requirements versus this advisory panel.

So, there is a whole bunch of little things we have to consider in here. There is probably a very good idea or two idea to have some people that are very experienced with the community and have a lot of experience in Ombuds to be a sounding board for the Ombuds, and vice versa, currently it is the BGC that is responsible for the Ombuds office. It could be another committee, whatever defined by the board. And so such an advisory panel could sit in between those two groups to provide better oversight of the Ombuds function and to provide advice to either the Ombuds office, if there are things they are uncertain about in a general fashion and not for specific cases as we mentioned earlier, and also for the BGC or the board, because let's be clear, it's a very, very specific type of function which has very specific kind of requirements. And it's not every board member that's very well versed in what is or should be good procedures for an Ombuds.

So, having this, if you will advisory panel, they could be the buffer in between. And that's how we have tried to reword this. So, what we've ended up with after some work over the weekend is there are several important points which must be considered. I've listed those and discussed it.

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So, what we would look at is ICANN should establish an Ombuds advisory panel made up of 506 members to act as advice psychologist support he is as counsel tore the Ombuds and could also advise the board, BGC and BCC with respect to Ombuds related matters.

So, really setting up that notion of a buffer between the Ombuds and the board make things, if you will, more professional and more (indiscernible).

The panel should be made up of minimum of two members. That stays the same. And the panel should be responsible for (indiscernible) function every three to five years. And as requested by the BGC. Maybe that's not clear enough, I'll have to work on that on that wording specifically.

So, really we're trying to keep the notion here, and we're trying to position it at that buffer.

I see Cheryl has her hand up. So Cheryl, over to you.

>> Thank you. Bernie. If I could. Just a minor clarification in terms of the document that we'll be taking forward to the committee Working Group plenary. I'm totally supportive of the way that you've recommendation, that's fine.

I wondered if we were planning to and if so, how we would include the explanatory points, the proceed to new eight. I think the explanatory points are really rather important. I don't think they just belong in a footnote. So I'm wondering if we could find our way to include them, but to have them clearly not a recommendation aspect per se, but a preamble explanation to the recommendation. Thanks.



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>> MR. BACHOLLET: (This is Bernard). You know, what we're doing here, Cheryl, is just making sure the Subgroup is comfortable with, and let me back up a bit.

When we accepted the recommendations from the external auditor, we said, yes, this is what you're recommending. We accept your recommendations. But we also said we would look at those recommendations and decide how we would incorporate them into our final report.

So, what Sebastien and I decided is we would get this first chunk done and then once we have that, that will be the basis for incorporating it into the final report. And so, I think comments like you're making, we can include in, when we're writing that final report, if you find those things are useful. Does that answer your question, Cheryl? Okay. I see a green tic. That sounds good.

Are there any other questions on this one?

>> Bernie, it's Sebastien. I would like to add one thing. First of all, in the captioning, when you get the captioning, please change the name of the previous speaker, it was Sebastien are instead of Bernard. Because it seems that I am the only one talking.

But today it is not that case. Now it's Sebastien speaking, definitely.

I wanted just to add one point about this discussion. What I was personally trying to push it, to augment or to try to go with as much as possibility independence of the Ombuds office, and I think this is a buffer between the board and the ICANN Ombuds office that could be a good way to go into that direction.

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Beginning of the discussion, I was thinking about too of having an Ombuds advisory panel independent from the board, but if it's not from the board, it must be from the community, then it's quite complicated to set up and it will require a lot of changes into the bylaws. Therefore, the proposal we have today, I guess is the, is a good one.

Just to be sure, while were BGC and BCC board committee, board composition committee, is today because the board governance committee of the board, it's in charge of taking care of the first first selecting the ombudsman and that was the only thing for the moment. Maybe in the future it will be the question of not hiring an ombudsman but an Ombuds office. That could be one change.

And the other is the remuneration of the Ombuds office and the objective set up and so on; when we come to money or to dollars, it's done by the board (indiscernible) committee.

It's why those two committees were highlighted here.

But the main point is that what we think it could be useful to have this Ombuds advisory panel to be the buffer from between the board and the full board and the Ombuds office. And all ways of describing the other points could be a good help if the advisory panel take care of, for example, helping with the selection and some other points in the relation with the Ombuds.

Here what I wanted to say. Thank you.

>> Thank you Sebastien. And I have to say, you know, I wrote this to Sebastien this weekend. It was a back and forth, and but it was construct active. It was a very good dialogue we had and I think we both came to the conclusion that creating this buffer zone would be the best way to try and meet the objective.

All right. I think we've talked this one to death.

Number 9. The bylaws and the Ombuds point of contract should be revised to strengthen independence by allowing for a five year fixed term, the Ombuds only be able to be terminated with cause.

So, what we're proposing in line with the overarching statement at the beginning of the document is to reword this as the Ombuds employment contracts should be revised to strengthen independence by allowing and exactly the same recommendations. So, instead of saying the bylaws, we sort of removed that part and we leave it up to ICANN to make sure that's implemented properly.

Are there any issues with this? I see Cheryl's green tic, thank you. And I'm not seeing any hands.

All right. Number 9, that would be done.

Number 10. The Ombuds should have a part of their annual business, as part of their annual business plan a communications plan, including the form annual report, publishing reports on activity, collecting and publishing statistics and complaint trend information. Collecting user satisfaction information, and publicizing systemic improvements rising from the Ombuds work.

Again, as stated above, if we're not being overly specific in how we need to implement this, we're recommending that this recommendation could stand as is.

So, number 10. Are we good with that? Looks like.

All right. Thank you everyone. We're almost done with recommendation 11.

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With input from the cross community ICANN should develop policy for any Ombuds involvement in noncomplaint work that addresses whether there is unique value that the Ombuds can add through the proposed role or function, whether the proposed recording accountability arrangements may compromise perceived independence, whether the proposed role function would limit the Ombuds ability to subsequently review a matter, whether the workload of the proposed role function would limit the Ombuds's ability to prioritize their complaints related work, whether any open involvement with the design of new or revised policy or process creates impression of a seal of approval. And whether the proposed Ombuds input may be seen as shortcut or substituting for full stakeholder consultation.

So, in considering this one, really instead of saying, you know, pushing this out into the community at this point in the way this is worded, I think is going to cause confusion and delay and is going to be, honestly, a nightmare to implement if we work it like this.

Basically, the community has charged WorkStream 2 to look into these things and propose things, and WorkStream 2 has chartered this group to take care of that. So, I don't see this as pushing it back out to the community to get this type of thing done.

The other thing is that we're not going to be after WorkStream 2 undertaking, I do not believe we're going to be undertaking any additional significant work to changing the Ombuds function. So really, and I'll get to you in a second, Cheryl.

So, what I did is I tried to restructure this for saying, if we ever consider looking at noncompliance work, we have to consider these things.

Cheryl, over to you.

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>> Thank you Bernie. Cheryl language done or for the record. It's a minor point, but I just wanted to raise it.

In the (indiscernible) and I'm supportive of the me particulars, I wondered if we might say in the introduction, which has following. (indiscernible). Whether it could rate the following points should be considered and clarified publicly when looking at Ombuds involvement in any noncompliance work. Because I think that's probably the insurance of the transparency aspect that I suspect might have community would be keen on having anyway. And it stops any ambiguity over we can realize therefore, if it's public by clarification, then any rebuttal would have to be taken early on. That's all. Thanks.

>> (Bernard). Thank you, Cheryl. I think that's fine. And I'll turn to our wrap tour to see if it's comfortable with that.

>> MR. BACHOLLET: Yeah. No problem, I think it's useful. I was thinking to add something about giving, coming back to the role of the advisory panel, but I think we don't need to add that. That's preferable what Cheryl suggested. We want to keep that transparent, we are what the Ombuds will do, not in the heart of the subject, but why he's doing in one direction and none other, and which limit he's taking to account for no compliance work. No problem, I agree. Thank you.

>> Thank you very much Sebastien. Well, folks, that's it. So basically, I think we've got, we'll be reporting on the two pieces of input that we've got. Hopefully there will be no spelling mistakes. Sorry. It happens when you're rushing things over the weekend.

So, as we said at the beginning of the call, basically we should probably post this for the group and give them a week to look at it; saying those that did meet thought it was okay with these minor amendments.

And so, I think that covers my role. So, Sebastien, back to you.

>> MR. BACHOLLET: Thank you Bernard.

Yes. That's the end of your role now. I don't think we have a lot of other subjects we want to discuss, but just to be sure, we have our next call, it's in three weeks, September 11, if I remember well. And for the call number 29.

I hope that we will have closed this discussion on this document and we will see how we incorporate that in what we hope to be a report, global report from this Subgroup. And we'll see how we start the work on that.

My other concern, not too much to the people who are on the call, because obviously they participate, but we need some input from the other on their recommendation. But also when we have the Google document, we just have Bernie and myself who comment this document. And I know that it's difficult to find time for each of us, and the others who are not on the call. But it's something that we need, because at the end, frankly, we are this Subgroup, we are the only one who will make substantive comments, hopefully during the (indiscernible) comments we will have some additional ones, hopefully to support our work, but if we don't do the work now, nobody will do it after that. It's something we need to close in the next few weeks.

That said, yes, the next call then is on September 11 at 1 p.m. UTC. And before closing the call, do we have any other business?

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Okay. Thank you very much everybody. Thank you for your inputs. Once again, Bernard, thank you very much for your hard work and we are here because you help us a lot. And thank you for the rest of the staff to support us during this WorkStream 2 ICANN Ombuds Subgroup.

Take care and talk to you in three weeks and online before. Bye bye.

The call is now ended. Bye.

(End of call).