

CCWG-Accountability Work Stream 2

ICANN Ombuds Office



Meeting #32
16 January 2018

Rapporteur: Sébastien Bachollet

CCWG-Accountability Work Stream 2

ICANN Ombuds Office



Agenda Meeting #32 Ombuds

- Roll Call / Apologies – Welcome
- Participation (and Dashboard)
- Review the comments from the public consultation of the ICANN Ombuds Office report
- Next steps
 - Next Meetings
- AOB

CCWG-Accountability

Work Stream 2



A world map where the continents are defined by a complex network of white nodes and connecting lines, set against a dark blue background. The nodes vary in size and are densely packed in some areas, creating a digital or network-like appearance of the globe.

Participation & Dashboard

WS2 Drafting Team “Ombudsman”

Active Participants

1. **Sébastien** Bachollet - **Rapporteur** (31)
2. Adebunmi Akinbo (2)
3. Alberto Soto (21)
4. Arshad Mohammed (-)
5. **Avri** Doria (19)
6. Carlos Vera Quintana (6)
7. **Cheryl** Langdon-Orr (23)
8. Chris LaHatte (previous Ombuds) (8)
9. Denise Michel (-)
10. Edward Morris (2)
11. Farzaneh Badii (9)
12. **Herb** Waye (Ombuds) (28)
13. José Francisco Arce (2)
14. Jimson Olufuye (1)
15. Karel Douglas (3)
16. **Klaus** Stoll (14)
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

- Sarah Deutsch ()
- ~~Asha~~ Hemrajani (22)
- Mike Silber (backup) (4)

Co-Chairs

- ~~Mathieu Weill~~
- **Jordan Carter** (1)
- Leon Sanchez (1)

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Work Stream 2



Recommendations
External review vs IOO Subgroup
Comments public consultation
of the ICANN Ombuds Office

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

The Ombuds Office should have a more strategic focus

GNSO-BC

Agree

GNSO-IPC

The IPC agrees that Ombuds Office “should have a more strategic focus”

(Recommendation 1), but urges WS2 to provide more detail in its finalized recommendations.

A more strategic focus for the Ombuds Office should mean that, in its enhanced role, it has comprehensive understanding of ICANN’s unique structure and its role in supporting ICANN’s goals and viability.

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*

The Ombudsman office should include 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**

GNSO-BC

Agree

GNSO-IPC

The IPC supports Recommendation 2 and agrees that the Ombuds Office should have procedures in place to categorize complaints and how each category should be handled; should set out which matters the Ombuds Office will not intervene in; and should provide illustrative examples that cover the most common controversies the Ombuds Office deals with.

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*
- *...*

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- **Board**
- **CEO**
- **Community groups**
- **Complaints Officer**

GNSO-BC

Fully agree

GNSO-IPC

The IPC supports the “soft launch” of the enhanced Ombuds Office across ICANN’s structure

The IPC commits to assist in educating its members when appropriate.

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

All relevant parts of ICANN should be required (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 the substantive response along with reasons.

Should the responding party not be able to meet the 120 days limit due to exceptional circumstances that party can apply to the IOO to seek an additional extension prior to the expiration of the original 90 days delay.

The application should be in writing, stating the nature of the exception and the expected time required to respond. The IOO will respond to such requests within a week.

GNSO-BC

Agree

GNSO-IPC

In regards to recommendation 4, which requires the community to respond to the Ombuds office in due time with reasoning, we believe such a responsibility should be mutual.

The timeliness of the Ombuds Office actions should be preserved (as is indicated in recommendation 5) and the office must provide reasons for its decision.

Also, if the responding party requests for additional extension in case of exceptional circumstances as mentioned in the Recommendation 4, the additional extension granted by the Ombuds Office should not be more than 30 days.

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

The ICANN Office of the Ombuds should establish timelines 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

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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

The Office of the Ombuds should be ideally configured so that it has gender, and if possible other forms of diversity within its staff resources (The primary objective of this recommendation is to ensure that the community has choices as to whom in the IOO they can bring their complaints to and feel more comfortable doing so)

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*

ICANN should establish an Ombuds Advisory Panel

- **Made up of 5 members to act as advisers, supporters, wise counsel for the Ombuds and should be made up of a minimum of at least 2 members with ombudsman experience and the remainder with extensive ICANN experience**
- **The Panel should be responsible for**
 - **Contribute to the selection process for new Ombuds which would meet the various requirements of the Board and community including diversity.**
 - **Recommending candidates for the position of Ombuds to the Board.**
 - **Recommending terms of probation to the Board for new Ombuds.**
 - **Recommend to the Board firing an Ombuds for cause.**
 - **Contribute to an external evaluation of the IOO every 5 years.**
 - **Making recommendations regarding any potential involvement of the IOO in non-complaint work based on the criteria listed in recommendation 11.**
 - **The Panel cannot be considered as being part of the Ombuds office and cannot be considered additional Ombuds, but rather external advisors to the office.**
 - **Any such advisory panel would require the Ombuds to maintain its confidentiality engagements per the Bylaws.**

Recommendation 8

Note: There are several important points which must be considered with respect to this recommendation

- The ultimate responsibility for the Ombuds office must remain with the Board – As a matter of fiduciary the Board cannot allow an “independent advisory panel” to make decisions on behalf of ICANN nor can it be allowed to override decisions by the Board.
- The Panel cannot be considered as being part of the Ombuds office and cannot be considered additional Ombuds, but rather external advisors to the office.
- Any such advisory panel would require the Ombuds to maintain its confidentiality engagements per the Bylaws.

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

The Ombuds employment contracts should be revised to strengthen independence by allowing for a:

- **5 years 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

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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?***

Recommendation 11

The following points should be considered and clarified publicly when looking at Ombuds involvement in any non-complaints work

- 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?

Recommendation 11

The additional recommendations by the Transparency sub-group with respect to involving the Ombuds in the DIDP process should be considered using the criteria in recommendation 11

This specific point will be noted in the public comment process for this document to gauge if the community supports these additional recommendations when considering the criteria in recommendation 11

Overall comments I00 Subteam report

GNSO-NCSG

The Ombuds Office procedures should be set through consultation with the community

I00 Subteam

Overall comments IOO Subteam report

GNSO-NCSG

The NCSG is not satisfied that the independence of the Ombuds Office has been sufficiently addressed.

The NCSG does not believe that the problem of independence of the Ombuds persons can be solved with 5-year fixed-term contracts.

If the meaning of this recommendation is that the Ombuds office, as an external entity, should be given a fixed-term contract, the NCSG supports this suggestion.

However, if this refers to individual Ombudspersons, the issue of independence will remain.

Since the Ombudsperson directly receives her/his revenue from ICANN, the fixed-term contract does not eliminate economic incentives that can potentially hamper the ombuds' independence.

It also does not preclude the Ombudsperson from taking up employment after their fixed-term contract ends with a stakeholder in the domain name industry.

IOO Subteam

Overall comments IOO Subteam report

GNSO-NCSG

We think that the accountability and independence of the Ombuds could only be maintained if it is an office and not a person. At present, the Ombuds is an ombudsperson.

We suggest that to ensure and maintain the independence of the office, the best way would be to use an external organization that provides ombuds services and does not have ICANN as its sole source of revenue.

IOO Subteam

Overall comments IOO Subteam report

GNSO-NCSG

The NCSG believes that the report is missing one very important point about independence and accountability of Ombuds office.

We think that under no circumstances should the Ombudspersons socialise and befriend community members.

This is a very obvious independence element which, unfortunately, has not made it into the report.

We suggest the subgroup to consider the situation when the decision maker of someone's case at a social event is talking and smiling at the party, which has a complaint filed against them.

Independence is seriously affected by social encounters and interactions.

We believe that the final report should include a recommendation for the Ombudsman's office to consult the community to establish appropriate rules around socialization and interactions so/as not to compromise their official role as an oversight mechanism.

IOO Subteam

Overall comments IOO Subteam report

INTA

While we generally support the recommendations, we do have specific comments regarding the efficiency and transparency of the IOO.

Our concerns focus on the response times proposed in recommendation 4 and to a general question of enforcement mechanisms available to the IOO.

IOO Subteam

Overall comments IOO Subteam report

ALAC

- The ALAC commends the subgroup and entire CCWG on ICANN Accountability for their work in producing this draft.
- The ALAC supports the draft as currently presented.

IOO Subteam