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WS2 OMBUDSMAN SUBGROUP MEETING
Thursday, January 11, 2018 – 13:00-14:00

>> SEBASTIEN BACHOLLET: Hello, Sebastien joining. Can you hear me okay?

>> BRENDA BREWER: Hi, Sebastien. We hear you well. Thank you.

>> SEBASTIEN BACHOLLET: Thank you.

>> SEBASTIEN BACHOLLET: Okay, hello, everybody. I hope that other people will join us in a few minutes, but let's start. This is Sebastien Bachollet speaking.

[This meeting is now being recorded]

>> SEBASTIEN BACHOLLET: Great. It's meeting number 32 of the ICANN Ombudsman CCWG Accountability Work Stream 2, 16th of January, 2018 and we will start this call and to start I would like at the first meeting of the year to hope that you have had good end of the year and any feasts you participated in and to have a very nice 2018 year.

We are gathered today and we will have a few other meetings in the next weeks to talk about the comments made on the [indiscernible] of the ICANN Ombudsman report, that's the report we have done. And I hope during this meeting to go through the current version of the comments. It seems that comments may arrive later, like the [indiscernible], but we will try to take that into account and to figure out how we can work on that. And the agenda today will be roll call. I will show you where we are with the participation of all the members of this group. And we will go through the comments and review them and talk about next

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meetings. I didn't prepare a slide for the next meeting, but for the others I have tried to do preparations that we will go through.

Let's go to the next slide. And just to show that sorry, I will not touch the button and somebody else will move. If you could go to the next slide. And it's just to follow the participation of the members of this group and to show you that we have also, as you may know, no change, [indiscernible] left the Board and it's now Sarah Deutsch that is in charge of this group and I hope she will come. And the other important point is one of our major participants, Avri Doria also joined the Board and I'm not sure if she will still follow this group. The ones who are today on the call are the ones who participate more in this group.

Okay, let's go to the next slide. And I have tried in the following slide to do to gather stream information. The first one is recommendation on the left hand side, it's a recommendation made by the external review. And on the right hand side you have the recommendation of our group. I will try to add this information in the next iteration of this slide. And then I have added on the next slide the comments we received, if there any comments regarding recommendation with a number. And at the end of the presentation we have the global comments on review and we will try to go through that.

What we have to decide is how we want to [indiscernible] the writing of our comments, our answer of the comments made by any groups or people. Maybe, Bernard, you have some thought on that and how it will be the easiest to do it and who is who will do this answer. As we get to the comments this morning, I did not try to start any answer, but maybe, Bernard, maybe you can tell us about your thought of that as the group may face this issue and you have some knowledge on that. Thank you. Bernard, please.

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>> BERNARD TURCOTTE: Thank you, Sebastien. What seems to have worked in the other groups, we're not imposing anything here, but what we sent you yesterday in the gathering of the comments per block is that this is done in a spreadsheet and usually we will work through the blocks and staff will note the answer of the Subgroup for each comment and then we go through it and at the end we look at it and we produce a few little global summaries. That seems to have worked well for the other groups which is why we've produced it the way we have.

>> SEBASTIEN BACHOLLET: Okay. It sounds good for me. And the only thing I have done is split this Excel sheet to be able to have it on the PowerPoint and to read it. And if I go to the next slide, yes, you have the two comments we received on the Recommendation 1, one for the [indiscernible] and one from the IPC [indiscernible] property [indiscernible] and you have the answers that they have made. If we go a little bit further, we have Recommendation 2 and I have done the same for Recommendation 2. And my suggestion is that if we need to add answer to each comments, each recommendation, I can add one slide or we can have it on another, but I can add one slide with what we want to answer. I will pick up on what we do here and I guess somewhere it will be recorded what we want to answer.

I suggest that we go quickly [coughing] to those first ones because, yes, an additional point on the spreadsheet you have two colors at the moment, green and orange, and I have taken the green as the title of each comment and when it's orange it will be another color. I guess this one is to support what we have said. I don't know if we want to add something, but let's go through do you want me to read the comments made by each of the participants of the comment period or it's okay if we can you can read it?

Bernard, please.

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>> BERNARD TURCOTTE: Just a note, there are four colors. There is dark green, light green, orange, and red. So the dark green is an absolute support. A light green, there is either a few additional suggestions or minor corrections. The orange is not necessarily support, there are suggestions and other things. And the red is a show of nonsupport for the recommendation. Thank you.

>> SEBASTIEN BACHOLLET: Okay, good. That means that I have not now I see that you are right. Okay, then I need to make some changes. But the first, in fact yes. Let's go and see if we want to comment on those comments or start an answer. I will be happy if someone wants to do you want me to read the comments or it's okay you have as we received this this morning and maybe for some of you it was the middle of the night or a bad time, it may be better if I read them. Just tell me what you want me to do. Bernard, I don't know if it's on your end, but if you want, go ahead.

>> BERNARD TURCOTTE: Terribly sorry, old hand, if you want to, I can read through these so we can start moving through these.

>> SEBASTIEN BACHOLLET: I will do it. And once again, in the first slide in each recommendation on the left hand side what the reviewer has said and what we have said as a Subgroup in the right.

And for the Recommendation 1, GNSO BC agrees and IPC agrees that ICANN Ombudsman Office should have a more strategic focus and urges WS2 to provide a more detail in its finalized recommendation. 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 goal and viability.

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From my take on that is in fact as we talk about the recommendation there is the rest of the report, both the report of the review and what is in the report and I don't see any difficulty, but do we need to have that included in the recommendation? I'm not sure. But if you have comments, we'll be happy to get them.

Bernard?

>> BERNARD TURCOTTE: I will put my hand down now [indiscernible].

>> SEBASTIEN BACHOLLET: That's okay. Welcome Alberto. We will go through all of them and we will come back on the next call, that will give you one week to think about that, but, of course, if you have some comments now, I will be happy to allow you to take them.

And the Recommendation 2 it's to take care of to include procedures that allow different types of complaints to be taken into account. And Business Constituency agree, [indiscernible] support Recommendation 2 and agree 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 that Ombuds Office deals with.

Once again, I think in the report, in the full report, there is an explanation of the matter that the Ombuds Office will not enter in and in the current document of the Ombuds it's also explained. And maybe what we can take on that is asking the Ombuds Office to set examples to help people to understand what Ombuds is taking care of and how it's trying to deal with that without taking too much detail to be to leave the [indiscernible] complete,

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but it could be a useful element to learn better about the Ombuds. Even if I think it's already done in some of the report, the annual report of the Ombuds.

Herb, do you have any thought on that or comments? If you wish.

Okay, I saw some comments you have a slow connection there. Okay. I also saw comments. Yeah, Cheryl writes that it's a continuation of what is currently done. And Herb says that it's not an issue with my office.

Okay, let's go to Recommendation 3. So I guess there are two comments, one with the Business Constituency and 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. We can thank them for their comments and maybe what we can take on that is it will be useful to have each group educating its members if and when it would be appropriate. Great.

Recommendation 4, I remind you that one of the main issues between our recommendation and the one of the external review, what we try to have no Bylaw changes and it's written as good practice, I will say, and here we talk about a number of days to answer the request from the ICANN Ombuds Office. And in the comment we have two, the one with the Business Constituency agree and one with IPC. I take it's more important, we believe that the [indiscernible] should be mutual, that means there's time to answer the question sent by the Ombuds Office, it must be also important to have a time for the Ombuds Office to answer to any question raised by complainant. And they thought it must be done within 30 days.

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My comments here is it's quite interesting because they talk about mutual answer and I will say a balance and they request less time or they suggest less time for the Ombuds Office to answer, but it's something we can work on.

Thank you, Cheryl, for your attention. Yes, it's [indiscernible] I forgot about this one. I will make that for the next version. Thank you.

Okay, recommendation 5 and it's a little bit [indiscernible] comments IPC with the timeline, but do we have any we don't have any comments.

On 7, I don't think we have comments, I saw one comment at large that says that if possible language must be taken into account for the [indiscernible] diversity at first, but it's the only comment on that.

Recommendation 8, the advisory panel. Yes, Bernard? Sorry.

>> BERNARD TURCOTTE: I have in my spreadsheet, 1, 2, 3, 4, 5, 6 comments on Recommendation 4. Did we go through all of those?

>> SEBASTIEN BACHOLLET: Oh, I see what's happened. No, and I know why. Okay. My work on that was, and I am sorry, I saw that it was just one page and I don't know why I missed the two other pages. I will go to the other recommendation about 4. This someone is supported and there are two other that says for the NCSG, the nature of the Ombuds Office decision is not binding, but [indiscernible] as to be clarified in Recommendation 4 suggests the community has to respond to the Ombuds Office inquiries and [indiscernible] the ICANN organization must respond to reasonable Ombuds Office inquiries, but not to be obliged to [indiscernible] with the Ombuds Office as stated in the report. Moreover [indiscernible] for the decision of the Ombuds Office is

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[indiscernible] I don't understand this sentence, but if a decision of the Ombudsman office is [indiscernible] it should be clarified in the Ombuds Office procedures.

Any comments on that one? We are just talking here about length as the time to answer queries or questions and there is no way nowhere written something that changed about the type of decision of the Ombuds and how people need to comply or not. It's not a binding decision and it's not with this comment 4 that we change anything on that.

We are not changing the framework as such, it's also explained in that document.

Okay, let's go to the next comment and go to the [indiscernible] comment while still about Recommendation 4. [Indiscernible] respond time is [indiscernible] the response time should be significantly shortened and they talk about 60 days with a possibility of 30 day extension for [indiscernible] circumstances. Additionally it is unclear for the recommendation what, if any, enforcement mechanisms are available to the ICANN Ombuds Office. In fact, there is no discussion as to whether the IOO should have any endorsement [indiscernible] mechanism. [Indiscernible] recommends that the Ombuds [indiscernible] enforcement that may be delegated to the ICANN Ombuds Office and to recommend that today's the Ombuds function are not independent from ICANN Org, therefore, all enforcement must be limited to ICANN Org [indiscernible] seems to be on the scope of the ICANN Office, ICANN Ombuds Office, then at a minimum it may be useful to [indiscernible] our matter resolved by the IOO may be referred to the appropriate bodies for enforcement as appropriate.

Any comments on that? In my comments it seems that with this suggestion it might change completely the role and the way Ombuds works, not just in ICANN, but generally speaking. Ombuds, it's not to decide, but to suggest a way of solving issues and I think if

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we follow the proposal here we will be both jeopardizing the Ombuds Office and the other with what we can do and what the Ombuds Office can do in ICANN.

One of you have your phone or the microphone open and is typing. No problem, but just to be sure that you know.

Okay, I will go to the next one here. We are in the orange and let's go to the last no, to the red from the GNSO Registry Constituency [indiscernible] sorry, with respect to Recommendation 5, requiring a group to respond to a formal request or report from the Ombuds within 90 days with the [indiscernible] seeking a 30 day extension from the Ombudsman the registries [indiscernible] does not support Ombuds ability to issue such order as drafted. The Registry is aware of the requirement and the ICANN Bylaws that the Ombudsman have access to [indiscernible] and [indiscernible] and inform [indiscernible] of complaints and to assist in this resolution where feasible, but while committed to ensure that the Ombuds have timely information, the Registry Secular Group retains discretion to all locate their resources including demands on their time and [indiscernible] best of balancing the [indiscernible] of its input on the Ombudsman issue. [Indiscernible] inconsistent with that principle will be [indiscernible] workable with respect for [indiscernible] requiring a substantive response to the Ombuds Registry, not for purposes or [indiscernible] that it's retained the discretion to retain the information and [indiscernible] to respond to Ombudsman request, as such the Registry recommends striking Recommendation Number 4 as the current Bylaws sufficiently require constituents to cooperate with our [indiscernible] Ombudsman and future ability to make [indiscernible] requests in what could be unreasonable time frames.

Any comments on that? Okay, I think we need to sorry, Bernard, please.

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>> BERNARD TURCOTTE: I'll just throw in these two comments. We're talking about a maximum of 120 days, that's four months. I don't think it's in any sense unreasonable, in my mind, which is why we started down this path anyway to try and put some time around it.

The second thing is as we just discussed, there is nothing Ombudsman can do to enforce anything, so I don't know why the Registry [indiscernible] has gotten their nose out of joint so much about it, but, I mean, to me it would seem that this I mean, it's not as we said, much earlier, this is not going to change the Bylaws. There is no direct consequence to not meeting the requirement except the shame and blame thing. I'm unsure about why there's such significant concern about this.

>> SEBASTIEN BACHOLLET: Thank you, Bernard.

Yeah, I agree with that. And I see that Cheryl writes, cannot compel or enforce. And if the Registry that's my personal addition to that, if the Registry Constituency is not able to answer in 120 days, what about all the other volunteers in this community? And I will stop here.

Okay, the last comments on Recommendation 4, it's IPC and it's supportive. If we go to Recommendation 5, let's go with the slide, Recommendation 5. And we are talking about timelines. Recommendation 5, BC agrees and IPC also.

Let's go to Recommendation 6. Sorry. The question of mediation training. And BC agrees no, BC comments, it is expected that anyone that will be engaged to enter this responsibility should have proven skill and training, so recommendation is agreed. And the IPC supports.

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I just want to stress here that it was not in the current request from an ICANN Ombuds Office and I think it's important that we make this recommendation to become part of the know how of the next, of the next one that will deal with Ombuds function.

Recommendation 7, we have okay, we have two I will check if it's two. Three recommendations on or comments on that. This recommendation is not clear. It is expected that an Ombudsman is a person and not persons and as such a question of choice of whom a complaint can be addressed and doesn't arise. However, it should be part of the job requirement to the Ombudsman that he or she is not in any way biased and this should be [indiscernible] by a past review of the past members of Ombudsman. From time to time a part time constituent could be retained by the office of the [indiscernible] expertise and the experience should be based on that, not the gender of those in the operation of the office, and, therefore, this recommendation may not be relevant. That's the Business Constituency.

Any comments on that? Bernard, if it's on your end, go ahead, please.

Okay, I just want to start a discussion on that. And I think what we are talking, "we" as a group, we are talking on the ICANN Ombuds Office. We are not talking about a person who must be either man or woman, sorry about that, but we are talking about the Ombuds Office and the way, the one higher to honor this office will organize its responsibility. But I remind you that one of the reasons this proposal was pushed for is in part of the job and the new lead job of the Ombuds was [indiscernible] policy and we saw it was very important that as a person who talks with one in trouble gets the right people in front of her or he and it's why we saw that some balance gender balance would be useful.

Now we go to the next comments, it's one I like, why we also suggest gender diversity, we [indiscernible] as to the extent practical. I think that our recommendation is open to

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other diversity. If you think that we need to order all the diversity and specifically after gender to put language, why not? But I think that what is important is to give these comments to the one who will under the Ombuds Office and leave this office to organize themselves.

And let's go to the next page, the NCSG, Noncommercial Stakeholder Group, we would also like to raise our concern about Recommendation 7 which currently reads as, okay, [indiscernible] and removes this subject to practicality. Yeah, and it was taken off, I guess. The Subgroup Rapporteur was suggested to change the language to the office of the Ombuds should be ideally configured so it has gender, and if possible other forms of diversity within its staff resources. This suggestion was supported by the group. We do not see this change reflected in the final report, which were put to public comments. Oh, did we miss something here? Okay. We will check and come back for the next meeting.

And now let's go to well, I would like to try to do it, all the comments of specific recommendation, and at the next meeting we will deal with global recommendation for the role report if you agree.

This one is about the panel and we have two supportive, but that will be in the January point of view.

Let's go to 9. Okay. The fixed term and 9. Here we have two from the BC agree, but extensions to be subject to community based feedback mechanism to the advisory panel containing Ombuds [indiscernible] of the previous five years. And IBC we encourage community feedback that feeds back into the IOO as part of this process.

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Bernard, if I'm not I guess we have comments. One of the comments about this global answer was something about this recommendation, too. We will go back. Let's take into account that community based feedback will be useful at the end of the first term.

And now let's go to recommendation 10. And what is included in that is a business plan of the Ombuds, the recommendation, we have support and agree by BC and IPC.

Now let's go to Recommendation 11. It's here that we talk about how we can deal about non complaints work. And then we have 1, 2, 3, 4 comments. And we recommend that the ICANN proposed will produce [indiscernible] expected to be observed by the Office of The Ombuds, therefore, we do not believe restricting the Ombuds from certain activity, socializing as suggested by certain members of the committee [indiscernible] detail to qualify in such policy. We expect the Ombuds would understand their role and would observe his/her duty accordingly. Community policy of the Ombudsman should not be a solution to fix performance issue. BC fully agrees and IPC supports. However, we request [indiscernible] the Ombuds Office would be involved within ICANN. Okay.

And the last one on this recommendation is from Registry stakeholder group, with respect to Recommendation 11, we have a concern about clarity, the role of the Ombuds is not to act as a neutral dispute resolution practitioner it is to act a neutral dispute resolution practitioner, the Ombuds may [indiscernible] in addition to complaints, it should be clear that the Ombuds does not have free reign to fully engage in policy development unless to the extent that the Ombuds is specifically asked to do so by the policy development process. The Registry believes that any level of Ombuds activity in the policy design process, if and as so requested, should be given as is without any implication of stamp of approval.

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Any comments on that? My first impression on this comments from the Registry Stakeholder Group is that it was written in different places that Ombudsman will not be involved in policy development at all, but if I am wrong, then tell me.

Okay, Bernard, please.

>> BERNARD TURCOTTE: Yeah, it's a little bit of a strange comment and we'll dig up the text referencing, but also the whole point of 11 is that the community can comment on it. So it's not recommending we do anything, it's recommending a process for the community to consider the Ombuds doing something else. So I think maybe this is just one of those where staff will go digging through the stuff and we can provide a fairly clear answer to that concern.

>> SEBASTIEN BACHOLLET: Okay, thank you. Bernard, may I give you the last one, it's agreed and I have already read it. Now, Bernard, we have 15 minutes to go, my suggestion is that we leave the last element of all comments on the report for the next session in one week. Hopefully you will have some time to read them and start to think about that. And accept that, Bernard, if you have any help to tell us how we go further after we sorry, we will read those overall comments next week, what else we have to do. I guess we have to wait for all the comments, like the Board ones, and maybe some late arrivals, but accept that I am very keen to get your feedback and suggestions for the next phase of our work. Thank you.

>> BERNARD TURCOTTE: Thank you. So just to be clear, the overall objective here is to get a revised report in for ICANN 61 in early March, Puerto Rico, that's what we have to keep our eye on. And if we start slowing down a bit, we will have to consider adding more meetings to make sure we meet that deadline. And that deadline is really critical. I'll just remind people why because we need to approve that in Puerto Rico so we can take

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we can include the revised report in the integrated report of all the recommendations for all the subgroups and publish that for a public comment as was agreed. So that's the timing crunch.

The Board comments are written and approved and didn't make it in yesterday because of the holiday in the U.S. I have been assured that they will be posted today. And we will integrate them into this document and any others. Given yesterday was a holiday, we usually give a 24 hour grace period and in this case I believe the Co Chairs will support putting in a 24 hour grace period. So we will have all of the comments and update the sheet. As the staff to help support you on this, what I will do after this call is go through the transcript and update a fourth column on all the points of the points that have been made or do some of the lookups as we asked today and we will try to get that out later today or early tomorrow so that you can have that for several days and start thinking about it.

Finally, if in the meantime you go through this document and you have any thoughts, questions, or suggestions on how to reply, as we always work in these groups, please post them to the list, that is not a problem.

I hope that this approach will be useful. We remain open to other suggestions if there are any. Thank you.

>> SEBASTIEN BACHOLLET: Thank you, Bernard. Klaus, please.

>> Thank you very much, Klaus Stoll for the record. Thank you for the meeting today. Also, we basically just went through the document. I thought it was quite useful for us to update it. And, also, it was important for me the last comments because I think we should tackle look, what I see there are no substantial big discussion points which will require

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months and months of discussion and replies. For me the only stumbling point at the moment is to have support with the [indiscernible] reply, but now hearing that it's basically will be available tomorrow, would it not be possible basically to have all these things on one sheet and go through it? And in two meetings it should be possible to get to these. I will not be able to join you next week due to health reasons. Thank you.

>> SEBASTIEN BACHOLLET: Klaus, thank you. Thank you very much, Sebastien speaking. I hope that your health trouble will be solved soon because I think you are it's now too long of time that you get some trouble with that, but we support you.

I wanted to say that we received from Bernard are an Excel sheet with all the information. It's just me who thought it would be easier to have it split by recommendation on the PowerPoint, but maybe was a bad idea. Next time, if staff can put Excel sheet on the Adobe Connect now that everybody knows about the documents, will be great. The ones sent by Bernard yesterday. And it's on these document that is Bernard suggestions that he will add another column with our answer to those comments and we will work on that.

One of the reasons I have tried to change it is because it's written in so little that it's very difficult to follow, but if you think that it's better to have just this document, it's okay with me and I will stop updating the PowerPoint and we will work on that document next week.

Okay, thank you for your comments.

Bernard, you have raised your hand. Thank you.

>> BERNARD TURCOTTE: Thank you. What we have done in the past is basically shrunk down the first two columns significantly since they are less critical and we used most of the screen for the comment and the response and that usually can provide

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enough size so that people can run through them. Also, given we distributed it ahead of time, all the time people can follow on their own computers if they want. Thank you.

>> SEBASTIEN BACHOLLET: Okay. Thank you. And I agree with that. One of the reasons I have made the PowerPoint was also to remind you what we are talking about as it was some months now that we didn't talk about this, our report. But next week we will work on this Excel sheet with the additional comments from Board and others eventually. And we will start to answer.

I would like to ask you specifically on the overall comments if you have feedback on that, it will be great if we could start some discussion on this, or at least you to be ready to give your inputs at the next call in one week.

Bernard?

>> BERNARD TURCOTTE: Sorry, old hand.

>> SEBASTIEN BACHOLLET: Okay. Just before we finish the call, next week our we have each week a call and next week it's at no, I don't remember if it's next week. Wait a second. Maybe you know, Bernard, when is the next call?

>> BERNARD TURCOTTE: I posted it in the chat, Monday 22 January 19:00.

>> SEBASTIEN BACHOLLET: Okay, then it will be on Monday and sorry for the change of the day. And it's at 19:00. And I hope to welcome all of you. And thank you very much for participating in this meeting today. It's a nice restart of our group. And I'll talk to you in a few days and we will update the documents before that. Thank you, Bernard, thank you, staff, and thank you to the participants, and thank to the one who is captioning, doing the transcript.

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Bye bye.

We can stop the recording.

Bye bye.

>> Bye.

[Meeting concluded]