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WS2 OMBUDSMAN SUBGROUP MEETING  
Monday, January 22, 2018 -- 19:00 – 20:00 UTC

>> SEBASTIEN BACHOLLET: Sebastien Bachollet speaking and welcome to this ICANN Ombuds Office Subgroup of the work stream two on ICANN Accountability. WE have restarted our work next in discussing the reports and we will do the same now. We will take the roll call and people on the phone if they can tell us who is he or she. I guess it's a phone in North America starting with one. Thank you for your participation. I didn't make any power point today. I think if we went through the document sent 20 minutes ago we'll be safe to conduct the call. Therefore, we'll observe the PDF file and we will go through each of the comments and we have the same document from last week with two additions. First addition was all the document receive after the deadline. I know at least both comments came after and we incorporate them. and the second element in addition to what we had last, we I start to make comments on discission point to start the discussion. I haven't done it for all yet, but we can follow the work even if I didn't start to prepare an answer. Is that okay with you? Any questions or comments?

Maybe now, Bernard, you can tell us now what was the additional comments we received if any thoughts from the board?

>> BERNARD TURNCOTTE: I believe there was the register's group was added in since the sheet we looked at last week.

>> SEBASTIEN BACHOLLET: Thank you. We have two types of groups comments that add what we will go through. Okay. Any other comments or questions? No? Then let's go. I guess that's the first one didn't need any discussion. It's just to thank us. I didn't make any comments here.

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It says this that the it's good to be set up through consideration with the community. My feeling on that is that we have already multiple parts on contact and consultation with the community. I don't see what's specifically here we need to do and but any specific comments on that? No? Yes, Cheryl, please.

>> CHERYL LANGDON ORR: Thanks, Sebastien. I was busy talking and I just said I would put my hand up and say it. I understand the desire to reiterate often the importance the confirmation of the community. I do think we have this covered. In terms of response for this particular overall comment, I would be noting in our notes column that we believe this is adequately covered. That allows us to you know, we agree that we believe we have this adequately covered. I think it's important we do our very best to show a reaction when it's other than wholesale report. Thanks.

>> SEBASTIEN BACHOLLET: Yes, agree. Thank you for your comments, Cheryl. At least we will add that in the in the document for next week. And as the captioning is starting that's great. May I just tell you that name is just with T at the end. I don't double all my letters. Thank you. Okay. Let's go to the next comment.

Here we have the question of the independence of the Ombuds. Can we I can't I don't know you all of you can move the or I'm the one able to do it. Just to be sure we need what we need to read. In this comment, the question of the independence is just link with the five year fix term, but I think we need to say it's also in Recommendation 9 with the way it must work, and we have also in Recommendation 7 explained that the office of the Ombuds will not be just a single person. It's never been really very few very small barrier where it was just one person, but it was the question of hiring an adjunct adviser Ombuds when it started we

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started to work it was just men at the moment. But it's it's it's something it's already at least two persons. Even if it's not two full time persons, it's two persons. It could be more depending of what we finally decide the office we need to do. And the question of being independent it's not to be able to work after the term of contract. My suggestion is that if they are not participating positive development. I didn't see too much trouble with that but if you have other idea or other sort on that, just please tell us.

Yes, Cheryl.

>> CHERYL LANGDON ORR: Thank you, Sebastien. Cheryl, again, for the record. I think this is a major issue for this group, and it's not an issue that other groups have not been concerned with. My personal opinion, this is not one I've checked with the [Indiscernible] on. My personal opinion is that there are compliant steps forward as a result of this review and report in improving in the independence of the Ombudsman. I think we need to recognize that, yes, there are concerns about independence of any office or any entity getting direct financial support with regard to independence from an external viewer point. However, the standards end and best practices and expectations of an Ombuds office are clearly able to be benchmarked to the highest level of demonstrable independence regardless of source of economic support. And before this increased time of contract as I step towards greater demonstrable independence is one we continue to support, but just as a contractor gets revenue from a prime resource, revenues have to be sourced somewhere so we need to look at the diligence to the standards of behavior rather than the source of revenue. I'm stumbling now that now on making that a good sentence. But I mean even if you're an independent entity, unless every person in the world who has a domain name is paying 5 cents of the support of this third party unrelated entity, where is the funds coming from? It's going to be

coming from ICANN. So the risk is also intended to be born always exist. It's the standard of behavior that's sure that's not going to be a worry. Anyway, that's my view. Thank you.

>> SEBASTIEN BACHOLLET: Thank you Cheryl. Yeah, I want to underline also that the the office will, if this is adopted, will not be any more directly connect with the board but with this community and that's helped to increase also to announce the independence. It's also one of the reasons we have work on that direction with this with this recommendation, I guess it's number 7. I need to check which number it is but that's maybe something we can add in our comments.

Okay. With this these other comments I guess we cover in the discussion we just have. And now let's go to next one.

Okay. That's the first time we have this comment I see coming from the board and I will read it.

We note the recommendation in this report are largely based on the external evaluator's recommendation provided to ICANN organization and the Ombuds Subgroup in July 2017. Clarity is needed as to whether the CCWG Accountability intends for its recommendation to overtake the work of the external evaluator or if the other aspect of the external evaluator's report still standard. For example, the CCWG Accountability's recommendations state that no changes are needed to the bylaw releasing to the Ombudsman. The external examiners, however, recommends that a more strategic focus starts through clarifying the language in the bylaws.

Yes, we have this discussion about bylaw changes or no bylaw changes. The reason is we we wanted to have quicker and easier implementation. Not to wait to change the bylaw. If one way we're able to change the bylaw, it will be great but that's not a question today. And I would say we over state, but in the same time in the explanation of the why of those recommendations, we didn't take all the inputs from the reviewers then if someone want to understand completely and in depths the recommendation, the one we are taking even without the bylaw changes. But if want to take understanding of what's behind all that, it's could be good to read the report of the external reviewer. But as matter of what we are proposing to change in the ICANN Ombuds office, it's our report and not the one of the reviewer that we're proposing today. Any comments? Others wants to speak?

Okay. If not, let's go to the next comment.

Yeah, and I will read what Cheryl just wrote. More of the CCWG recs can be implement ASAP and any bylaw changes can follow. And that's I agree with that.

Another ICANN board comment, overall comment. To the extent that the CCWG Accountability is focused on the speed of implementation and hopes to avoid any bylaws modifications or changes to the Ombudsman framework. The ultimate focus should be on the proper implementation of recommendation in order to hold ICANN accountable to meeting their intent.

We I suggest that we say we agree. The question is that we are not in the implementation phase. And taking into account how we implement it will be something to take in concern but it's not the case situations today.

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Cheryl, please.

>> CHERYL LANGDON ORR: Thank you, Sebastien. Here I think we in our answer is completely agree, but I can't help but point out clearly, they understand our answer to previous point without us even answering the previous point. Because you know what we're going to be saying about the effectiveness and speed of implementation from what we recommend as opposed to the [Indiscernible] out of the report in terms of bylaws is what they're telling. Yes, we agree but I just trying to think we probably need to work tendency to recognizes as per our previous response. This is indeed our intent. We most assuredly agree on that. But the point you made that this is not implementation phase, we are not an implementation team, I think is also worth our making here. So supportive, it's probably a very wordy [Indiscernible] what could be covered with what we agree. But then again, they've been very wordy with our section of analysis our recommendation.

>> SEBASTIEN BACHOLLET: Thank you, Cheryl. We'll take that into account to add to this comment. The second paragraph from the board comments. While a majority of the recommendations appear to be reasonable and productive enhancements to strengthen the office of the Ombuds, a few recommendations would benefit from additional clarification noted below. Specifically, recommendations on the notion of the diversity of staff available to the Ombuds office, Recommendation 7, the proposal for Advisory Panel, Recommendation 8, and the item of the Ombuds contract, Recommendation 9, raise important concerns for consideration.

I guess we will go through and answer all of them. The last paragraph is based on the inputs from the Ombuds. We understand that the current office of the Ombuds already has activity in

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place that might address some part of the recommendation as issued. In addition, the Ombuds has already started considering how some of the recommendation could be reached. For example, one way to deepen the understanding of the role and work of the Ombuds could be achieved through more regular communications, such as blog postings and other informative communications. Similarly, there are already reporting mechanisms in places, though those might be able to be better publicized and refine.

Yes. Yes. Yes. Life is going on, and we can't stop the Ombuds to work. We can't stop the work to talk with the Ombuds. And nobody can stop us to work and propose some modification and announcement and it's important from my point of view to raise what we're doing is not just because this is Ombuds office this Ombuds will do it. It's also to be sure that it will be in the duty of any future Ombuds office. ICANN a office. That's why it's also important why take all that importance. Cheryl, please.

>> CHERYL LANGDON ORR: I don't disagree with your final point in what we're intending in our work here is a clear concession of these good practices. As part of the fabric of the ICANN Ombuds office regardless of an individual who are working in it. I think that's what we're saying. I do say this point here is a good opportunity for us to recognize that the Ombuds' office has kept a very close and collaborative eye on what we've done and we appreciate the fact that they have both taken such a close interest in all of our, work. Have contributed where we have asked any clarifying questions and have and we're quite pleased that they are already working towards implementing some of their clearly well founded recommendations. Sort of recognize that this current Ombuds office is doing a great job of already trying to get ahead of the curve here and make sure they recognize that it's recognized publically. However, this is

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a matter of making it the expectation of all future activity, not just the activity we're working with now in the current situation. Thanks.

>> SEBASTIEN BACHOLLET: Thank you, Cheryl. Other comments? Suggestions?

Okay. Then let's go we'll take all but a part of Cheryl and I said during this to add in our column of response and comments. Let's go to next comments. Okay. I will do it. No. Okay. Thank you.

That's another ICANN board comments. I will read it as it's a new one first. The it's an overall comment. The implication on the resources is an important overarching consideration that should be considered for this and all recommendations. As a general observation ICANN operates within a specific budget based on limited funding. Recommendations that add costs to ICANN operation result in organization making trade off with other items such as implementation of new policy or innovation of existing program or services. Such policies without considering the impact on resources may lead to situation where the organization is unable to effectively meet community expectation with either or new recommendation or existing obligation. The CCWG Accountability should consider this factor and provide guidance in its final report regarding the priority importance and extent these recommendations and all the CCWG recommendations should be implement and in what time frame.

Cheryl, please.

>> CHERYL LANGDON ORR: Thank you, Sebastien. I seem to monopolizing the comments here today.



I agree. I mean, this is this statement it's a natural consequence of having a limited budget and a lot to do with it. And you know, I don't disagree with anything that's said. It's not really a work track issue. It's a accountability CCWG Accountability issue as you said. Where I could say I agree. You need to recognize I think, again with the wordiness, that absolutely there are always tensions between desires for implementation and cost of implementation and the budget [Indiscernible] on when and how they can be implemented. Notice I'm not saying if. But when and how. And that's, again it's an implementation issue but it's one that the CCWG as a whole should talk about, recognize, and perhaps make some recommendations in terms of prioritization in it's final report. Thank you.

>> SEBASTIEN BACHOLLET: Thank you, Cheryl. I suggest we send to that to the we'll cc' CCWG Accountability. I'll take of my hat to say a very bad thing. Really bad. Who ask us to create complaint office within the staff and where the money came from. I just think that sometime it's maybe also important to see what is happening in the other part of this recognition. But I stop here and I go back to my role, and if we can go to the next comments and see what we can say about it. And it's 1.09. We read it last week. The question of enforcement is we discuss it I guess last week also. It's the ICANN Ombuds office it's may help different groups to come to an agreement or one person against a group or and there is no enforcement. I don't see what we can do here and if we need to add something to my suggest answer.

>> CHERYL LANGDON ORR: It's not really a jewel. I think we're not pairing at each other. Rather pairing together with the responses together. This is Cheryl for the record. Yes, I agree with your comment but in fact, it is not just a matter of our Ombuds office and ICANN working this way. It's a standard mode of operandi of most Ombuds office that it acts under recommendation not under enforcement. It's heard by very well provide with specific terms

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from some of their Ombuds training and expected standards of quality services, et cetera. But I'm sure there's a mention somewhere in who has to operate on that that could serve us well to add into this response. Thanks.

>> SEBASTIEN BACHOLLET: Thank you. Let's follow our reading of comments received and our suggest answer. Of course we'll come back on that and review all of them hopefully with a bigger group next week or week after before we finalize our comments.

Okay. This one we thank you.

Let's go to the next one. 2.02. Here, we read it last week but here's it's try to say that what I say already about what is inside the external review report and our I'm not sure that having a comprehensive understanding of what is ICANN will add strategy focus, but of course, it's something we need to understood by anyone who want to join ICANN Ombuds office.

Let's go to the next one. That's a new one. It's an ICANN it's Recommendation 1. While the concept of having a more strategic focus is sound, there is not a lot of detail in the report as to what that means. The report seems to reject the external evaluator's recommendation on developing a more strategic focus through bylaws language. Clarification on what is intended here will be helpful. Regarding Recommendation 4. Required timelines for response. The recommendation seems to propose very detailed deadline by which the Board and other members of the community must respond to the request and reports. It is unclear what issue is being solved here. There may be, for example, certain reports which require more information to fully understand the nature of the dispute and status of the resolution. How would these deadlines work in practice with the rest of the community? What is the outcome of the deadline is not met? The current Ombuds has also informed the Board of the 30 day

response timeframe currently in place for the ICANN organization's input into report has worked well.

Maybe somebody else has a comment on that.

If not, I will read what I suggest. The report of subgroup and the external review include some details in the implementation process more detail if needed could be provided. If 30 days work well maybe 90 and 120 days will work too. Therefore, I don't see why we're so much impressed with putting some deadline to help the organization to be able some stand out, share by everybody if they are not following that, so be it. But it's for us say what we expect from this different group of the from the organization and to see how it can work.

Okay. Let's go to next comment. I guess I didn't have made any comment on this green one as it's agreed.

Let's go to next one. That was summary of our discussion last week. We asked the Ombuds office to provide an example of the used example follow the user. Share continuation of current and have Wayne Ombudsman this is not an issue with my office. I have a CMS that deals with this.

Okay. Any questions, comments?

Let's go to next one. Yes, Cheryl.

>> CHERYL LANGDON ORR: Cheryl for the record. We just encourage before printing any response to not use shorthand for customer management system but use full terminology. CMS may not be a familiar term to everybody. Thank you.

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>> SEBASTIEN BACHOLLET: Thank you. And fully agree. And let's go to next one. It's fully agree. Let's go to the next one.

It's also agreeing. No need to go through.

I didn't provide anything. Those two also. Support of Recommendation 4. This one is with a little carry out but I don't see any divergent with the report. Did somebody see it and just provide suggestion to answer better than my suggestion. Let's go to the next one.

That was discussed last time. And once again, we're talking about framework and date line and I don't see anything particular to say here.

Okay. We are here. The question is, is it all possible and we have already say previously in last call so that Ombuds office is not they are not taking decision that are binding to anybody. It's like trying to find a way to work through together with like complaint and the complainer and we hope it's acceptable by everybody. Let's go to the next one.

Except if somebody have a comment.

And we discuss it last time. And this suggestion of enforcement will completely change the way of the ICANN Ombuds works, and not just the ICANN as Cheryl explained earlier in this call. It's a behavior of a lot of the Ombuds office all around the world and in different industry or group or government, et cetera.

Therefore, we don't think that we need to find any way to enforce anything. Okay. Let's go to the next okay, it's agreeing. Let's leave that. If we need to say thank you. Yeah? Go ahead.

>> MAN: Can you state the number?

>> SEBASTIEN BACHOLLET: I will try to.

6.02. It's support. And let's go to 6.03 no, it's 7.01. It's also agree. I didn't provide any comment. Let's go to the next one. 7.02, it's also support.

Next one. We start with 8.01. Try to pull mine also. Okay. Recommendation 7 we discuss it, and we suggest that the recommendation it's open to other diversity. It's important to explain to the Ombuds office that they need to take into content as much as possibility as diversity. Gender it's a primary one we need to work on. I guess we'll discuss that nextg comments and there's one from the board. We will need to read it. And let's go to 8.02. The question of why we have set up first gender. It's because of the new policy about harassments. We'll go through in comments. Let's go to the next one 8.03. Okay.

That was some difference discrepancy between the [Indiscernible] document and summary and therefore, I guess it was fixed.

The next one is 8.04.

This one I need to read it as it is new comments made by the board and then I'll read the comment.

It's 8.04. Per the report the primary objective of this recommendation is to ensure that the community has choices as to whom in the Ombuds office of community can bring their complaint and feel more comfortable doing so. The ICANN board agrees that consideration need to be given on the availability of alternative resources for the Ombuds office. While ICANN is not able to employment decision based on consideration such as gender, nationality, or many other protected characteristics there are likely ways to coordinate adjunct resources to

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making available to the community additional, more diverse point of entry into the Ombuds office. That to be implemented. As a preliminary note, ICANN has already provided additional inroads into the Ombuds office. For example, female member of the senior leadership of ICANN have served as a first point of contact to raise complaints regarding harassment, where the complainant didn't feel comfortable going directly to the Ombuds. There are other inroads as well such as the complaint office or members of the ICANN executive team that can be initial point of contact for comfortable expressing complaints that can then be brought to the Ombuds. There might be a need to consideration of how culture differences impact the Ombuds office consideration of any individual matter and whether supplemental resources are necessary to better service the ICANN community.

I guess I'll read the other comments right now before I open the discussion.

The current Ombuds has informed the board that is developing a community liaisons network of trusted volunteers from the consultees to act as complaint intake for anybody who is uncomfortable approaching the Ombuds directly. We hope this also serves as a way to address the community concern. Additional information is needed to consider the full scope of the recommendation and any potential budgetary impact. If this recommendation seeks to have ICANN have a bigger staff in the Ombuds office as opposed to identify other ways to have supplemental resources available. The resources implication and leasable assessment could be far different. The recommendation even if limited to a need for supplementary resources on an as needed basis coupled with clearer process for intake based on the comfort level of the complainant still imposes a potential budgetary impact. Any comments? Yes, Cheryl, please.

>> CHERYL LANGDON ORR: I think this is, again, an opportunity where we can recognize that even without an implementation team looking at the specifics of resource allocation for support of a of a more diverse system, the current Ombuds office is already looking at ways to improve this specific issue. You can't disagree with this. It also goes back to the earlier comment from the board. Yeah, well, it's reality in terms of supply and demand. But I think it's an important to say yes, clearly this is the case. This is overarching for implementation of all our recommendations but also to for us to recognize that as the board as pointed out, the Ombuds office is currently looking at ways to at least reach towards this goal regardless of source availability.

Thanks.

>> SEBASTIEN BACHOLLET: Thank you, Cheryl. Other comments?

I will make one open question here. And I would suggest that we we stop we stop the discussion here as we will we finish with Recommendation 7. We can go through 8, 9, 10 and 11 at the next meeting. Here my concern and maybe it's a wrong concern but it's how you keep the confidentiality of something if you have higher staff, whatever level of staff or whatever thought of the community who are involved. The Ombuds is clear they have confidentiality obligation. But the other how you can be sure about that it's something I guess we need it's need to be work out by the ICANN Ombuds office during implementation phase. But I am really struggling with this, again, when we talk about gender violence and other diversity what it come first. As a comment, do we have the money for that. Yes, we need to have it, from my point of view. Therefore, I agree with Cheryl. It must be a never arching discussion with the

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[Indiscernible] but we have to be very careful on what we what is asked here and how we implement it. Thank you.

Cheryl, please.

>> CHERYL LANGDON ORR: Thank you, Sebastien. Just to react to your concerns on confidentiality and anybody that other than in an employment contract basis or contractor basis was brought in to assist by the Ombuds office, we have already within an ICANN context highest board of confidentiality requirements by actually right now well established nondisclosure and confidentiality agreement that are utilized with every noncom certainly. It's certainly not much of a stretch for an office such as Ombuds office who is passionately concerned about confidentiality to utilize the standard legal tools to insure enforceable confidentiality. Thank you.

>> SEBASTIEN BACHOLLET: Thank you, Cheryl. Any other comments?

If not and if you agree, I suggest that we stop the call here and we have reviewed the 7 first recommendation and the comments on those recommendations. And I suggest that we keep for the next call, in beginning of February, to discuss the Recommendation 8, 9, 10 and 11.

Bernard, do you have some comments on how we can work between now and the next call? I guess that you will be able to provide us a document with things we've discussed today, and I will try to add some comments in the Recommendation 8 through 11, and therefore, we will be able to provide you the document before the next call.

>> BERNARD TURCOTTE: Yes, I think that's the way to go, Sebastien.



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>> SEBASTIEN BACHOLLET: Thank you. I will discuss with Bernard and consider your suggestion, Cheryl, and we'll come back to you as soon as we figure out how there's two ways either we are able to finish in 90 minutes talking about last comments, and therefore, no need for more or we do the 8 through 11 comments about sorry 8 through 11 recommendations and the comments made about that and we have a next call to wrap up all and be sure that we have if I can say, a second reading, but we'll come back on to you.

Thank you for your participation. For the one listening to the recording, it's important that you send through the list your comments on that discussion. We hope that you will be participating at the next call because we need you. We are not enough participating today, but I hope that it will help to have the work done on time. Thank you very much and have a good day, good night all, and talk to you in a few days time. Thank you. Bye bye.

>> CHERYL LANGDON ORR: Thank you.