Annex 5.1 –Ombuds (IOO) Sub-Group Final Report and Recommendations – CCWG-Accountability WS2 – March 2018

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Executive Summary

The CCWG-Accountability's final report for Work Stream 1 (WS1), Recommendation 12 proposed that a number of topics that were not essential for the transition and could not be completed in WS1 (due to time constraints of the transition) be undertaken in a Work Stream 2 (WS2) effort by the CCWG-Accountability. This recommendation was approved by the CCWG-Accountability's Chartering Organizations as well as the ICANN Board at its 10 March 2016 meeting.

In addition to this, the ATRT2 recommendation for the evaluation of the ICANN Office of the Ombuds (IOO) was transferred to the CCWG-Accountability WS2 to avoid overlap or duplication of work.

To undertake this work, the CCWG-Accountability WS2 created an IOO Sub-Group, which was charged with presenting a report to the CCWG-Accountability WS2 Plenary for consideration.

After some initial discussions, the IOO Sub-Group decided to focus its work on the external review of the IOO.

The Request for Proposal for Assessment of the ICANN Office of Ombudsman is quite detailed and lays out the requirements, which align with those of Recommendation 12 of the WS1 Final Report as well as the request from ATRT2, quite clearly and can be found in Annex 5.1.1 of this document.

The final report of the external evaluator can be found in Annex 5.1.2 of this document, which concluded that:

- *the Ombuds function is valued and provides an essential 'safety valve' for fairness*
- *it does not however meet all expectations, with a number feeling that it does not have enough power or independence*
- *there is no single 'model' that can be readily applied to the ICANN Ombuds function and that to deliver confidence in fairness and to meet the range of expectations, it will need to adopt a multi-faceted approach*
- *the current Ombuds function is close to what is needed, but could use some re-configuring and strengthening*

The final report also identified five areas for improvement:

1. Clarify role and processes – manage expectations
2. Standing and authority
3. Strengthen independence

4. Strengthen transparency

5. Policy for non-dispute roles

To address the need for improvement, the report made 11 recommendations, which are listed in the body of this report and in Annex B.

It is also important to note that the CCWG-Accountability WS2 created eight sub-groups to work on the various aspects of WS1 Recommendation 12, and that it was understood that there could be overlaps between these sub-groups in their recommendations and the IOO sub-group.

It is expected that the only significant overlap between sub-groups will be between IOO and Transparency Sub-groups. The Transparency recommendations that overlap with the IOO are:

- Recommendation 13 – The exception for information requests which are "not reasonable, excessive or overly burdensome, not feasible, abusive, or vexatious or made by a vexatious or querulous individual" should be amended to require the consent of the Ombudsman before it is invoked.

- Recommendation 19 – The Ombudsman's mandate regarding the DIDP should also be boosted to grant the office a stronger promotional role, including by integrating understanding of transparency and the DIDP into ICANN's broader outreach efforts, by publishing a list of the categories of information ICANN holds, and by reasonable monitoring and evaluation procedures, such as publishing the number of requests received, the proportion which were denied, in whole or in part, the average time taken to respond, etc.

The IOO Sub-Group approved the objectives of all the recommendations made by the external evaluator, but did modify some of the implementation requirements to allow for more flexibility and speed in implementation, especially when considering Bylaws changes. It is also important to note that these do not modify the Charter of the Office of the Ombudsman (section 5.2 of the ICANN Bylaws) or the Jurisdiction of the Office of the Ombudsman as documented in the ICANN Ombudsman Framework.

The proposed recommendations are:

1. The Ombuds Office should have a more strategic focus.

2. 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.

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

emphasis the importance of the Ombuds function by all relevant parts of ICANN, including:

- Board
- CEO
- Community groups
- Complaints Officer

4. All relevant parts of ICANN should be required (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. Should the responding party not be able to meet the 120-day 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-day 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.

5. 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.

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

7. Ideally the Office of the Ombuds should be 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.)

8. ICANN should establish an Ombuds Advisory Panel:

    - Made up of five members to act as advisers, supporters, and wise counsel for the Ombuds, and should be made up of a minimum of at least two members with Ombudsman experience and the remainder with extensive ICANN experience.
    - The Panel should be responsible for:
        - Contributing 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 five 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.

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

    - Five-year fixed term (including a 12-month probationary period) and permitting only one extension of up to three years (the extension should be subject to a community based feedback mechanism to the Advisory Panel covering Ombuds performance over the previous years).

    - The Ombuds should only be able to be terminated with cause.

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 publicizing systemic improvements arising from the Ombuds' work.

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

    - Whether there is unique value that the Ombuds can add through the proposed role or function?

    - Whether the proposed reporting/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 ability to prioritize their complaints-related work?

    - Whether any Ombuds involvement with the design of new or revised policy or process, meets the requirement of not, in any way, creating a 'stamp of approval'?

    - Whether the proposed Ombuds input may be seen as a 'short-cut' or substituting for full stakeholder consultation?

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.

Background

The CCWG-Accountability's Final Report for Work Stream 1 (WS1), Recommendation 12 proposed that a number of topics that were not essential for the transition and could not be completed in WS1 (due to time constraints of the transition) be undertaken in a Work Stream 2 (WS2) effort by the CCWG-Accountability. This recommendation was approved by the CCWG-Accountability's Chartering Organizations as well as the ICANN Board at its 10 March 2016 meeting. Annex 12 of the Final Report included the following requirement:

> *"Considering Enhancements to the Ombudsman's Role and Function*
>
> *Through the enhanced Request for Reconsideration process (see Recommendation #8: Improving ICANN's Request for Reconsideration-Accountability Process), has given the CCWG increased responsibility to the Ombudsman.*
>
> *The Ombudsman can perform a critical role in ensuring that ICANN is transparent and accountable, preventing and resolving disputes, supporting consensus-development, and protecting bottom-up, multistakeholder decision-making at ICANN. ICANN's Office of Ombudsman must have a clear charter that reflects, supports, and Mission, Commitments and Core Values, and must have sufficient authority and independence to ensure that it can perform these important roles effectively. As part of Work Stream 2, the CCWG will evaluate the current Ombudsman charter and operations against industry best practices and recommend any changes necessary to ensure that the ICANN Ombudsman has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders."*

In addition to this, the ATRT2 recommendation for the evaluation of the IOO was transferred to the CCWG-Accountability-WS2 to avoid overlap or duplication of work. ATRT2

Recommendation 9.3 Review Ombudsman Role (page 7 & 58) read:

> *"The Board should review the Ombudsman role as defined in the bylaws to determine whether it is still appropriate as defined, or whether it needs to be expanded or otherwise revised to help deal with the issues such as:*
>
> *i. A role in the continued process of review and reporting on Board and staff transparency.*
>
> *ii. A role in helping employees deal with issues related to the public policy functions of ICANN, including policy, implementation and administration re-lated to policy and operational matters.*
>
> *iii. A role in fair treatment of ICANN Anonymous Hotline users and other whistle blowers, and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment."*

To undertake this work, the CCWG-Accountability WS2 created an IOO Sub-Group, which was charged with presenting a report to the CCWG-Accountability WS2 Plenary for consideration.

The Charter of the Office of the Ombuds can be found in the ICANN Bylaws at: https://www.icann.org/resources/pages/governance/bylaws-en/#article5 .

This is augmented by the ICANN Ombudsman Framework, which can be found at: https://www.icann.org/en/system/files/files/ombudsman-framework-26mar09-en.pdf .

Review Ombudsman Role

After some initial discussions, the IOO Sub-Group decided to focus its work on the external review of the IOO. This required:

- Supporting the production of an RFP.
- Supporting the selection of a contractor.
- Meeting with the contractor to provide background.
- Reviewing the draft report from the contractor.
- Accepting the final report from the contractor.

The Request for Proposal for Assessment of the ICANN Office of Ombudsman is quite detailed and lays out the requirements, which align with those of Recommendation 12 of the WS1 Final Report, as well as the request from ATRT2, quite clearly and can be found in Annes 5.1.1of this document.

The final report of the external evaluator can be found in Annes 5.1.2 of this document and the Executive Summary of the report summarizes the report as follows:

> *Our review of the ICANN Ombuds function is set out below. The structure of the Report includes rather more explanatory material than first anticipated – because we encountered such a range of perspectives and expectations of what an ombuds function should involve.*
>
> *We identified that the ICANN ecosystem has different types of complaints – with different dynamics, requiring different processes and with different possible range of outcomes.*
>
> *We compared the ICANN environment and its ICANN ombuds function to a number of existing ombuds 'models' we are familiar with – in different sectors, styles of organisations and countries.*
>
> *We interviewed a cross-section of experienced ICANN people and in conjunction with the WS2 Ombuds Subgroup, conducted a survey of some 84 members of the ICANN world.*
>
> *We concluded that:*
>
> - *the Ombuds function is valued and provides an essential 'safety valve' for fairness*
> - *it does not however meet all expectations, with a number feeling that it does not have enough power or independence*
> - *there is no single 'model' that can be readily applied to the ICANN ombuds function and that to deliver confidence in fairness and to meet the range of*

expectations, it will need to adopt a multi-faceted approach

- *the current ombuds function is close to what is needed, but could use some re-configuring and strengthening*

We also considered some of the suggestions that are being floated for non-complaints work that could be given to the Office of the Ombuds.

We identified five areas for improvement:

1. Clarify role and processes – manage expectations

ICANN's Ombuds function is multi-faceted. To achieve clarity and to manage stakeholder expectations, it needs both an overall 'umbrella' conception of its role (as 'keeper of fairness') and a set of practical distinctions as to how it will deal with complaints (and when it won't) from a suggested three groupings of potential matters: Governance; Corporation and Community

2. Standing and authority

The standing of the Ombuds Office needs to be strengthened. Some of this will come from other areas of recommendation – ie. Greater clarity and definition of its role, stronger perceived independence, greater transparency will all help. Recommended rule-changes (below) will assist. Standing is also a product of sustained effort by many to support the Office and keep the Ombuds function in the consciousness of the community.

While we do not see a current case for the Ombuds to have decision-making powers, we think that it should be clearer that their reports and recommendations carry weight and must be responded to (not necessarily complied with). We suggest amendments to the Bylaws to oblige timely responses.

We also think that there would be advantages if the Ombuds Office has internal mediation skills and experience.

3. Strengthen independence

There is a clear need to strengthen the perception of the Ombuds function's independence. We recommend the addition of an Ombuds advisory panel – independent of the Board - to take some of the oversight work currently done by the Governance Committee and to add a system of guidance and support for the Ombuds. We also suggest some detail change to the Ombuds employment.

4. Strengthen transparency

As part of recognizing community expectations, we recommend a refreshed focus on reporting and transparency and a greater emphasis from the Office on public reporting.

5. Policy for non-dispute roles

In dealing with proposals for the Ombuds taking on other 'honest-broker' roles, we suggest that the ICANN community should avoid responding in an ad-hoc way and develop a set of principles or a policy to set out the basis for any such roles.

The summary of the recommendations is presented here:

Recommendation 1. The statement in Article 5 of ICANN's Bylaws of the Ombuds Office's Charter should be changed to give the office a more strategic focus.

Recommendation 2. The Ombudsman Framework should be replaced by procedures that:

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

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 the Board, CEO, Community groups, Complaints Officer, etc.

Recommendation 4. The ICANN Bylaws 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.

Recommendation 5. The ICANN Office of the Ombuds should establish timeliness KPIs for its own handling of complaints and report against these on a quarterly and annual basis.

Recommendation 6. The Office of the Ombuds should be configured so that it has formal mediation training and experience within its capabilities.

Recommendation 7. The Office of the Ombuds should be ideally configured (subject to practicality) so that it has gender diversity within its staff resources.

Recommendation 8. ICANN should establish an Ombuds Advisory Panel, made up of five or six 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 two members with ombudsman experience and three to four

members with extensive ICANN experience. The Panel should be responsible for commissioning an independent review of the Ombuds function every three to five years.

Recommendation 9. The Bylaws and the Ombuds employment contracts should be revised to strengthen independence by allowing for a five-year fixed term (including a 12-month probationary period) and permitting only one extension of up to three 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 an obligation to formally report annually, to publish reports on activity, to collect and publish statistics and complaint trend information, to collect user satisfaction information, and to publicize systemic improvements arising from the Ombuds' work.

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 prioritize 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?*

The IOO Sub-Group accepted these recommendations in July 2017 and noted that it would consider how best to incorporate these in its draft recommendations.

Recommendations from Other CCWG-Accountability WS2 Sub-Groups for the IOO

Because the CCWG-Accountability WS2 created eight sub-groups to work on the various aspects of WS1 Recommendation 12, it was understood that there could be overlaps between these sub-groups in their recommendations and the IOO Sub-Group had to consider the recommendations from the other sub-groups that affected the IOO.

All sub-groups having completed their recommendations, the current set of overlaps are:

- Diversity – No explicit recommendation
- Guidelines for Standards of Conduct Presumed to be in Good Faith Associated with Exercising Removal of Individual ICANN Board Directors – None
- Human Rights - No explicit recommendation
- Jurisdiction – No explicit recommendation
- Ombudsman – N/A
- SO/AC Accountability - No explicit recommendation, but note the following from the latest version of the SO/AC Accountability Recommendations:
  - *Therefore, our group's conclusion is that the IRP should not be made applicable to activities of SO/AC/Groups. The appropriate mechanism for individuals to challenge an AC or SO action or inaction is though ICANN's Ombuds Office, whose bylaws and charter are adequate to handle such complaints.*

    We note that duties and powers of the Ombuds Office may be further enhanced and clarified through recommendations of the CCWG Work Stream 2 project "Considering enhancements to the Ombudsman's role and function", as provided in ICANN Bylaws.
- Staff Accountability – No explicit recommendation
- Transparency – Explicit recommendations:
  - Recommendation 13 – The exception for information requests which are "not reasonable, excessive or overly burdensome, not feasible, abusive, or vexatious or made by a vexatious or querulous individual" should be amended to require the consent of the Ombudsman before it is invoked.
  - Recommendation 19 – The Ombudsman's mandate regarding the DIDP should also be boosted to grant the office a stronger promotional role, including by integrating understanding of transparency and the DIDP into ICANN's broader outreach efforts, by publishing a list of the categories of information ICANN holds and by reasonable monitoring and evaluation procedures, such as publishing the number of requests

received, the proportion which were denied, in whole or in part, the average time taken to respond, and so on.

The IOO Sub-Group will consider the impact of these recommendations in its own recommendations.

Recommendations

Note: The IOO Sub-Group approved the objectives of all the recommendations made by the external evaluator, but did modify some of the implementation requirements to allow for more flexibility and speed in implementation, especially when considering Bylaws changes. It is also important to note that these do not modify the Charter of the Office of the Ombudsman (section 5.2 of the ICANN Bylaws) or the Jurisdiction of the Office of the Ombudsman as documented in the ICANN Ombudsman Framework.

1. The Ombuds Office should have a more strategic focus.

2. The Ombudsman office should include procedures that:

    a. Distinguish between different categories of complaints and explains how each will be handled.

    b. 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).

    c. Provide illustrative examples to deepen understanding of the Ombuds approach.

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 emphasis the importance of the Ombuds function by all relevant parts of ICANN, including:

    a. Board

    b. CEO

    c. Community groups

    d. Complaints Officer

4. All relevant parts of ICANN should be required (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. Should the responding party not be able to meet the 120-day 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-day 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.

5. The ICANN Office of the Ombuds should establish timelines (KPIs) for its own handling of complaints and report against these on a quarterly and annual basis.

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

7. Ideally, the Office of the Ombuds should be 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.)

8. ICANN should establish an Ombuds Advisory Panel:

    a. Made up of five members to act as advisers, supporters, wise counsel for the Ombuds and should be made up of a minimum of at least two members with Ombudsman experience and the remainder with extensive ICANN experience.

    b. The Panel should be responsible for:

        I. Contributing to the selection process for new Ombuds, which would meet the various requirements of the Board and Community, including diversity.

        II. Recommending candidates for the position of Ombuds to the Board.

        III. Recommending terms of probation to the Board for new Ombuds.

        IV. Recommend to the Board firing an Ombuds for cause.

        V. Contribute to an external evaluation of the IOO every five years.

        VI. Making recommendations regarding any potential involvement of the IOO in non-complaint work based on the criteria listed in Recommendation 11.

    c. 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.

    d. Any such advisory panel would require the Ombuds to maintain its confidentiality engagements per the Bylaws.

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

    a. Five-year fixed term (including a 12-month probationary period) and permitting only one extension of up to three years (the extension should be subject to a Community-based feedback mechanism to the Advisory Panel covering the Ombuds' performance over the previous years).

    b. The Ombuds should only be able to be terminated with cause.

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

publicizing systemic improvements arising from the Ombuds' work.

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

    - Whether there is unique value that the Ombuds can add through the proposed role or function?
    - Whether the proposed reporting/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 ability to prioritize their complaints-related work?
    - Whether any Ombuds involvement with the design of new or revised policy or process, meets the requirement of not, in any way, creating a "stamp of approval"?
    - Whether the proposed Ombuds input may be seen as a "short-cut" or substituting for full stakeholder consultation?

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.

Annex 5.1.1

Project Overview
to the
Request for Proposal
For
Assessment of the ICANN Office of Ombudsman

Date of Issue: TBD

1.0 Introduction

1.1 About this Document

The Internet Corporation for Assigned Names and Numbers ("ICANN") is seeking a provider to conduct an independent assessment of the Office of Ombudsman, as defined in Article 5 of ICANN Bylaws. This assessment is part of the overall objective to enhance ICANN accountability alongside the IANA stewardship transition and it will be supported by the Working Stream 2 Process and more specifically by the ICANN Ombuds Office Drafting Team (IOO-DT) a multistakeholder group. The assessment is also in line with the recommendation issued by the Second Accountability and Transparency Review Team (ATRT2) , see Final Report Section 9.3.

In seeking a comprehensive proposal for these services, ICANN is placing maximum emphasis on several key components of value including expertise with similar processes, multistakeholder community and policymaking, demonstrated practices, and the ability to work within the guidelines established in this RFP. Additional ideas and suggestions are welcome.

Note: This 'Project Overview', even if it provides all the information relevant for the RFP such as the RFP background, scope, requirements, deliverables and timeline, does not constitute the complete RFP packet by itself. There are several other documents included as part of the RFP packet that require participants to provide information to ICANN in a structured format. For a full list of documents included in the RFP, along with detailed instructions for responding to the RFP and use of the ICANN Sourcing tool, refer to the Instructions document provided separately.

1.2 Overview of the Internet Corporation for Assigned Names and Numbers (ICANN)

The Internet Corporation for Assigned Names and Numbers' (ICANN) mission is to help ensure a stable, secure and unified global Internet. To reach another person on the Internet, you have to type an address into your computer - a name or a number. That address has to be unique so computers know where to find each other. ICANN helps coordinate and support these unique identifiers across the world.

See www.icann.org for more information.

1.3 Background to the ICANN Office of Ombudsman

The ICANN Ombudsman is independent, impartial and neutral. The Ombudsman's function is to act as an informal dispute resolution office for the ICANN community, who may wish to lodge a complaint about ICANN staff, board or problems in supporting organizations. The purpose of the office is to ensure that the members of the ICANN community have been treated fairly. The Office of Ombudsman is impartial and will attempt to resolve complaints about unfair treatment, using techniques like mediation, shuttle diplomacy and if needed, formal investigation. The Ombudsman cannot make, change or set aside a policy, administrative or Board decision, act, or omission, but may investigate these events, and to use ADR technique to resolve them and make recommendations as to changes.

More information

ICANN Ombudsman Homepage

ICANN Ombudsman Framework

About ICANN's current Ombudsman

Ombudsman Annual Reports

2.0 Ombudsman Assessment

2.1 Period of this Review

This is a one-time review. The final report as well as any attachments should be delivered no later than 15 April 2017.

2.2 Scope of the Review

The Office of the Ombudsman is defined in the ICANN Bylaws, Article 5, Section 5.1 - Section 5.5. For more information, see: https://www.icann.org/en/system/files/files/adopted-bylaws-27may16-en.pdf

https://www.icann.org/ombudsman

Within ICANN, its stakeholders came together to make recommendations on enhancements to ICANN's accountability, through the Cross Community Working Group on Enhancing ICANN Accountability (CCWG-Accountability). The CCWG-Accountability determined in the first phase of its work that the role of the Ombudsman should be considered for further enhancements.

As defined in the CCWG-Accountability Work Stream 1 Report (Annex 12):

> *Through the enhanced Request for Reconsideration process (see Recommendation #8: Improving ICANN's Request for Reconsideration Process), the CCWG-Accountability has given increased responsibility to the Ombudsman.*
>
> *The Ombudsman can perform a critical role in ensuring that ICANN is transparent and accountable, preventing and resolving disputes, supporting consensus-development, and protecting bottom-up, multistakeholder decision-making at ICANN. ICANN's Office of Ombudsman must have a clear charter that reflects, supports, and respects ICANN's Mission, Commitments and Core Values, and must have sufficient authority and independence to ensure that it can perform those important roles effectively. As part of Work Stream 2, the CCWG will evaluate the current Ombudsman charter and operations against industry best practices and recommend any changes necessary to ensure that the ICANN Ombudsman has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders.*

For more information, please see: https://www.icann.org/en/system/files/files/ccwg-accountability-supp-proposal-workstream-1-recs-23feb16-en.pdf

As the CCWG-Accountability was deliberating and developing its recommendations, ICANN was working on the implementation of a recommendation from the Second Accountability and Transparency Review Team that called for a review of the role of the ICANN Ombudsman.[1]

As ICANN was conducting a search for a reviewer to implement the ATRT2 recommendation, the CCWG-Accountability work clearly indicated that the role of the Ombudsman would be reviewed during Work Stream 2. Moreover, the CCWG-Accountability was making recommendations for modifications to the Ombudsman's responsibilities. To avoid duplication of effort, ICANN noted that the ATRT2 recommendation appeared to be overtaken by the CCWG-Accountability work, and further work on the ATRT2 recommendation was removed from ICANN's ATRT2 implementation workplan.

The CCWG-Accountability's next phase (or Work Stream 2) includes consideration of what further enhancements can be made to the Ombudsman role and function.

The CCWG-Accountability's Work Stream 2 efforts on the Ombudsman kicked off in mid2016, and can be followed at: https://community.icann.org/display/WEIA/Ombudsman. As part of their work, the Ombudsman subgroup has agreed to consider the findings of an independent assessment of the Ombudsman role (similar to the assessment anticipated as part of the ATRT2 implementation). To that end, an independent assessment of the Office of the ICANN Ombudsman will be coordinated with the Ombudsman subgroup. The independent assessment of the Office of the Ombudsman is expected to take approximately two months.

ICANN is seeking qualified reviewers to conduct the assessment in an efficient and effective manner. The information outlined below illustrates the scope of work and the criteria for selection.

The assessment is planned to start in [DATE] and conclude in [DATE] 2017.

2.3 Scope of Work

The objective of this RFP is to identify an independent reviewer ***to conduct a comprehensive assessment of the current Office of the Ombudsman charter and operations, including its unique role in the ICANN community, against relevant best practices and provide***

[1] The ATRT2 Final Report Recommendation 9.3 (Review of Ombudsman Role) states:

> The Board should review the Ombudsman role as defined in the bylaws to determine whether it is still appropriate as defined, or whether it needs to expanded or otherwise revised to help deal with the issues such as:
> a. A role in the continued process of review and reporting on Board and staff transparency.
> b. A role in helping employees deal with issues related to the public policy functions of ICANN, including policy, implementation and administration related to policy and operational matters.
> c. A role in fair treatment of ICANN Anonymous Hotline users and other whistleblowers, and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment.

recommendations necessary to ensure that the Office of the Ombudsman has the tools, independence, and authority needed to be an effective voice for ICANN stakeholders.

The Independent Reviewer will be responsible for delivering a Report, incorporating inputs as received through the community input processes.

2.4 Review Work Method and Criteria

The work methods are expected to include the following:

- Examination of documentation, records and reports
- One-on-one interviews
- Observation of the current Ombudsman Office structure and operations
- Online surveys comprised of quantitative and qualitative elements focused on evaluation criteria. These surveys will aim to collect feedback from all of ICANN's Supporting Organizations (SOs) and Advisory Committees (ACs); the ICANN Board of Directors; interested members from ICANN community; ICANN employees.
- Consultation with the ICANN Community, notably the IOO-DT to assure the review is conducted

  according to remit and is based on relevant facts and figures.

ICANN will supply the criteria to be used in conducting the Assessment of the office of Ombudsman, which were developed in collaboration with the WS2 subgroup. These criteria include but are not limited to the following areas:

1) Evaluation of the current Office of the Ombudsman existing charterand operation against relevant best practices; determination of whether it is fulfilling its purpose within the ICANN structure;
2) To determine whether any factor affects the independence, impartiality and fairness of the ombuds office considering its current structure.
3) Assertion of whether there are any additional roles to be assumed by the Office of the Ombudsman within ICANN; and
4) Determination of how the enhanced role of the Ombudsman would interact with the other ICANN accountability mechanisms, to avoid duplication and optimize its effectiveness; and
5) Based on the findings from the comprehensive and in-depth analysis conducted, the review report shall provide suggestions and recommendations for any change in structure or operations which is desirable to enhance and improve the Office of the Ombudsman's independence and effectiveness within ICANN;

2.5 Structure of the Assessment Report

The review report should include the following sections:

1) **Executive Summary**: This section should provide a clear and easy to understand summary of findings and recommendations.

2) **Facts:** This section should provide data on all aspects as described in the Scope of Work section above.

3) **Analysis:** This section must provide an in-depth analysis of the data collected, and show correlations amongst the various data sets.

4) Conclusions:

a. Based on the findings from analyzing the data collected, the report must identify elements that are working well and those that need improvement.

b. The report should provide suggestions and recommendations on ways to improve independence and effectiveness of the office of the Ombudsman

2.6 Other

The final report and any attached documents will be submitted in the English Language. The report will be submitted to CCWG-Accountability Work Stream 2 as an electronic document.

3.0 High Level Selection Criteria

The decision to select a final provider as an outcome of this RFP will be based on, but not limited to, the following selection criteria:

1) Understanding of the assignment
   - Understanding of the assignment, timeline and expected deliverables

2) Knowledge and expertise
   - Strong knowledge and understanding on the roles and functions of the Ombudsman office
   - Demonstrated experience in conducting broadly similar examinations of the Ombudsman office
   - Demonstrated experience in conducting such a review for a global organization that consist of employees and/or volunteers:
     - coming from different part of the World
     - living and working in different cultural environment
     - using multiple languages
     - looking for gender equality

- having diverse policies and privacy concerns

- Demonstrated understanding of not-for-profit or non-governmental organizations
- Commitment to working with ICANN's multistakeholder setup, including a demonstrated understanding of and commitment to ICANN's requirements for transparency and accountability
- Basic knowledge of the multistakeholder model policymaking and an understanding of ICANN's organization as well as ICANN community
- Suitability of proposed CVs

3) Proposed methodology

- Work organization, project management approach, timelines
- Suitability of tools and methods of work
- Clarity of deliverables
- Suitability for engaging volunteers within volunteer-based organizations 4) Flexibility, including but not limited to:
- Geographic, gender and cultural diversity
- Meeting the timeline
- Ability to adjust to circumstances that could extend the assessment
- General adaptability

4) Reference checks (see template)

5) Financial value

6) Independence including no conflict of interest

4.0 High Level Business Requirements

In order to be considered, the providers must be able to demonstrate ability to meet the following business requirements:

i. Ability to provide a complete response based on ICANN specifications by the designated due date (see below).

ii. Availability to participate in finalist presentations via conference call/remote participation (see below).

iii. Ability to execute a professional services agreement substantially in accordance with the terms and conditions of ICANN's Contractor Consulting Agreement (contact ICANN staff for a copy). iv. Ability to begin work on or around 20 February 2017 and complete on or around 15 April 2017.

v. Conduct of periodic update calls, frequency to be determined.

vi. Demonstrated ability to develop work methods, data gathering mechanisms and evaluation/assessment approaches based on the specific objective and quantifiable criteria supplied by ICANN.

vii. Ability to conduct examination work using remote tools.

viii. Ability to provide the following deliverables (note that deliverables and dates may change due to community work schedules)

ix. Ability to travel to ICANN58, should it be deemed relevant and fit within the work plan.

	Deliverable description	Estimated Due Date	Notes
a)	Work plan and timeline	1 March	
b)	Conducting interviews (skype/telephone)	1 March onwards	
c)	Design and launch online survey	5 March	ICANN58 starts 11 March
d)	Preliminary findings for discussion with Review Working Party	1 April	
h)	Final Report issued and posted	15 April	

5.0 Project Timeline

The following dates have been established as milestones for this RFP. ICANN reserves the right to modify or change this timeline at any time as necessary. All responses (including proposals, supporting documentation, questions, etc.) must be submitted via the ICANN Sourcing Tool. See the Instructions document for further instructions. Access to the ICANN Sourcing Tool may be obtained by sending a request to review_rfp@icann.org

Activity	Estimated Dates	Lead
RFP published	9 January 2017	Multistakeholder Strategy and Strategic Initiatives Staff (MSSI)
Participants submit any RFPrelated questions to ICANN	20 January 2017 by 23:59 UTC	RFP Candidates
ICANN responds to participant questions	25 January 2017	ICANN Organization
RFP due date	**31 January2017 by 23:59 UTC**	**RFP Candidates**
Preliminary evaluation of responses	1 February-8 February 2017	ICANN Organization, with input from the IOO-DT
Target for final evaluations, contracting and award	20 February 2017	ICANN Organization, with input from the IOO-DT

Start of Review	**1 March 2017**	**Independent Examiner/MSSI Staff**
Final Report for discussion with the Ombudsman Subgroup	1 April	Independent Examiner
Final Report issued and posted	**15 April 2017**	**Independent Examiner/ ICANN Organization**

6.0 Terms and Conditions

General Terms and Conditions

1. Submission of a proposal shall constitute Respondent's acknowledgment and acceptance of all the specifications, requirements and terms and conditions in this RFP.

2. All costs of preparing and submitting its proposal, responding to or providing any other assistance to ICANN in connection with this RFP will be borne by the Respondent.

3. All submitted proposals including any supporting materials or documentation will become the property of ICANN. If Respondent's proposal contains any proprietary information that should not be disclosed or used by ICANN other than for the purposes of evaluating the proposal, that information should be marked with appropriate confidentiality markings.

Discrepancies, Omissions and Additional Information

1. Respondent is responsible for examining this RFP and all addenda. Failure to do so will be at the sole risk of Respondent. Should Respondent find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any question arise concerning this RFP, Respondent must notify ICANN of such findings immediately in writing via e-mail no later than three (3) days prior to the deadline for bid submissions. Should such matters remain unresolved by ICANN, in writing, prior to Respondent's preparation of its proposal, such matters must be addressed in Respondent's proposal.

2. ICANN is not responsible for oral statements made by its employees, agents, or representatives concerning this RFP. If Respondent requires additional information, Respondent must request that the issuer of this RFP furnish such information in writing.

3. A Respondent's proposal is presumed to represent its best efforts to respond to the RFP. Any significant inconsistency, if unexplained, raises a fundamental issue of the Respondent's understanding of the nature and scope of the work required and of its ability to perform the contract as proposed and may be cause for rejection of the proposal. The burden of proof as to cost credibility rests with the Respondent.

4. If necessary, supplemental information to this RFP will be provided to all prospective Respondents receiving this RFP. All supplemental information issued by ICANN will form part of this RFP. ICANN is not responsible for any failure by prospective Respondents to receive supplemental information.

Assessment and Award

1. ICANN reserves the right, without penalty and at its discretion, to accept or reject any proposal, withdraw this RFP, make no award, to waive or permit the correction of any informality or irregularity and to disregard any non-conforming or conditional proposal.

2. ICANN may request a Respondent to provide further information or documentation to support Respondent's proposal and its ability to provide the products and/or services contemplated by this RFP.

3. ICANN is not obliged to accept the lowest priced proposal. Price is only one of the determining factors for the successful award.

4. ICANN will assess proposals based on compliant responses to the requirements set out in this RFP, any further issued clarifications (if any) and consideration of any other issues or evidence relevant to the Respondent's ability to successfully provide and implement the products and/or services contemplated by this RFP and in the best interests of ICANN.

5. ICANN reserves the right to enter into contractual negotiations and if necessary, modify any terms and conditions of a final contract with the Respondent whose proposal offers the best value to ICANN.

Annex 5.1.2 – Final Report of the External Evaluator (separate file due to formatting issues)

Annex 5.1.3 – Other Considerations and Comments

Comments on independence from Farzneh Badii

1. I don't think we can solve the problem of independence by giving the ombudspersons a 5 years contract. I have provided my reasons before. If by 5 years fixed contract you mean the Ombuds office as an entity should be given a fixed term contract that is fine. But ombudspersons getting fixed five-year contract won't solve the problem.

2. Ombuds has to be an office and not a person. At the moment it's a person. I think to maintain the independence of the office, we need to have preferably an external organization that provides ombuds services and its revenue is not only dependent on ICANN. That way we can ensure independence.

3. Under no circumstances, the ombudspersons should socialize and befriend community members (this is a very obvious independence element, have you ever encountered the decision maker of your case at a social event talking and smiling at the party you filed a complaint against? It is written in first year legal text books that independence is very much affected by social encounters and interactions)

Additional comments by External Evaluator

1. The ICANN Ombuds function is quite unusual – it is neither an in-house Ombuds, nor a Government Ombuds, nor an Industry or sector Ombuds – so very difficult to provide solid comparisons with 'industry best practice'.

2. Reflecting this, the Panel proposed is something of a hybrid – a little like a governing body, a little like a stakeholder advisory group, a little like an expert advisory committee. It is intended to provide a breadth of perspectives to act as a sounding board and wise counsel to the Ombuds Office – and to advise the Board (as the decision-maker) on key matters it must decide about the Ombuds Office.

3. To our knowledge there is no directly comparable existing panel. The Energy and Water Ombudsman of Queensland (EWOQ) is a government (statutory) body which is nonetheless funded by industry fees and levies. The relevant Minister of the State Government is the governing authority – but with no say in operations or complaint decision-making. He or she takes advice from an Advisory Council – on approving an annual budget, on appointing an Ombudsman and on any proposals for change to the law. Not quite the same as the proposed ICANN Panel – but with some similarities.

4. It is important to recognise that Independence is only one aspect of an effective Ombuds function – and it must be considered in balance with other objectives such as credibility, accessibility, efficiency, accountability and so forth. To illustrate, a private legal mediator with experience in family law matters and mid-level commercial disputes could be contracted to consider ICANN complaints – they may get top marks for independence however they would likely get very poor marks for background knowledge, technical credibility and accessibility. (It takes more than independence to achieve recommendations or decisions

that will be accepted).

5. We considered the idea of an external mediation/law firm and rejected it because of what we considered was its poor fit with the ICANN environment (norms vary widely across the community, rapidly evolving, only some aspects governed by black letter law, need for intimate understanding of cultures and interests of different segments of the community, etc). Our experience of external ombuds functions such as these is that they become very legalistic (to compensate for lack of knowledge) and almost invariably have much higher rejection rates (rejecting the complaint). The view becomes not what was “fair in all the circumstances”, but “did the person or entity that is complained about breach any rule”.

6. Fixed term contracts and remuneration were only considered to be one small part of the independence framework – but an obvious one that needed fixing.

7. Socializing is, I agree with FB, a problematic issue. We would not support a blanket ban on the Ombuds Office staff circulating at Conferences and participating in what I would call ‘light touch’ social events. It is valuable for the Ombuds staff faces to be known and for them to create an impression of approachability. It is not however, appropriate for them to be seen as a regular ‘member’ of one or other community group or faction, nor aligned closely with staff or Board members, etc. That is a matter of applying the appropriate mature, professional behaviors – talking to all, circulating around the ‘room’, avoiding late night drinking sessions, absenting oneself from sensitive discussions, not discussing specific complaints - in other words, engaging but maintaining a professional ‘distance