



**Comment on Draft
Recommendations to
Improve ICANN’s Office of
Ombudsman**

Status: FINAL

Version: 2

14-Jan-2018

Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants, as defined in our Charter:

The mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

BC Comments on Draft Recommendations to Improve ICANN's Office of Ombudsman (IOO)

The BC appreciates the work of the ICANN Office of Ombudsman (IOO) Sub-group of the CCWG - Accountability Work Stream 2¹. It believes that the Office of the Ombudsman is important to the long-term health of ICANN as a unique Multi-stakeholder entity.

On the recommendations provided by the IOO sub-group, the BC comments as follows:

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

Comment: The BC agrees with this recommendation. Indeed, the Ombuds Office should have a long term relevance to the sustainability of ICANN unique governance ecosystem.

Recommendation 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

Comment: Agreed.

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, and Complaints Officer*

Comment: Fully agreed.

¹ ICANN comment page at <https://www.icann.org/public-comments/ioo-recs-2017-11-10-en>

Recommendation 4 - All relevant parts of ICANN should be required (should include the Corporation, the Board and Committees and anybody or group with democratic or delegated authority) to respond within 90 days (or 120 days with reason) to a formal request or report from the Office of the Ombuds. The response should indicate the substantive response along with reasons. Should the responding party not be able to meet the 120 days limit due to exceptional circumstances that party can apply to the IOO to seek an additional extension prior to the expiration of the original 90 days delay. The application should be in writing, stating the nature of the exception and the expected time required to respond. The IOO will respond to such requests within a week.

Comment: Agreed.

Recommendation 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.

Comment: Agreed.

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

Comment: It is expected that anyone that would be engaged to handle this responsibility should have proven mediation skills and training. So, recommendation is agreed.

Recommendation 7 - The Office of the Ombuds should be ideally configured (subject to practicality) so that it has gender, and if possible other forms of diversity within its staff resources (The 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).

Comment: This recommendation is not clear. It is expected that an Ombudsman is a person and not persons and as such the question of choice of whom a complaint can be addressed does not arise. However, it should be part of the job requirements for the Ombudsman that he or she is not in any way biased, and this should be ascertained by review of past engagement of the potential Ombudsman. From time to time, a part time consultant could be retained by the office of the Ombuds. Qualifications, expertise, and experience should be the prevailing standard -- not the gender of those employed in the Office. Therefore, this recommendation may not be relevant.

Recommendation 8 - ICANN should establish an Ombuds Advisory Panel:

- Made up of 5 members to act as advisers, supporters, wise counsel for the Ombuds and should be made up of a minimum of at least 2 members with ombudsman experience and the remainder with extensive ICANN experience
- The Panel should be responsible for:

- Contribute to the selection process for new Ombuds which would meet the various requirements of the Board and community including diversity.
- Recommending candidates for the position of Ombuds to the Board.
- Recommending terms of probation to the Board for new Ombuds.
- Recommend to the Board firing an Ombuds for cause.
- Contribute to an external evaluation of the IOO every 5 years.
- Making recommendations regarding any potential involvement of the IOO in non-complaint work based on the criteria listed in recommendation 11.
- The Panel cannot be considered as being part of the Ombuds office and cannot be considered additional Ombuds, but rather external advisors to the office.
- Any such advisory panel would require the Ombuds to maintain its confidentiality engagements per the Bylaws.

Comment: Agreed.

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

- 5 years fixed term (including a 12 month probationary period) and permitting only one extension of up to 3 years
- The Ombuds should only be able to be terminated with cause

Comment: Agreed, but extension should be subject to a community-based feedback mechanism to the “Advisory Panel” covering Ombuds performance over the previous 5years.

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

Comment: Agreed.

Recommendation 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 prioritise their complaints-related work?
- Whether any Ombuds involvement with the design of new or revised policy or process, creates the impression of a 'seal of approval'?
- Whether the proposed Ombuds input may be seen as a 'short-cut' or substituting for full stakeholder consultation?

Comment: Fully agreed.

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.

Comment. Agreed.

--

This comment was drafted by Jimson Olufuye, with edits by Marilyn Cade and Steve DelBianco. It was approved in accord with the BC charter.