

**Statement of the Non-Commercial Stakeholders Group
on the CCWG-Accountability Work Stream 2 (WS2) draft recommendations on the ICANN
Ombuds Office (IOO)**

The Non-Commercial Stakeholders Group (NCSG) appreciates the opportunity to submit this comment on the October 2017 report of the CCWG-Accountability-WS2 Draft Recommendations on the ICANN Ombuds Office (IOO).

The NCSG would like to thank the members of the IOO subgroup for their efforts in developing the proposed set of recommendations intended to improve the role and function of the Ombuds office. We have carefully reviewed these recommendations, and we would like to raise several concerns that in our informed opinion we consider not to have been addressed in the report:

- 1) The Ombuds Office procedures should be set through consultation with the community.
- 2) The NCSG is not satisfied that the independence of the Ombuds Office has been sufficiently addressed. The NCSG does not believe that the problem of independence of the Ombuds persons can be solved with 5-year fixed-term contracts. If the meaning of this recommendation is that the Ombuds office, as an external entity, should be given a fixed-term contract, the NCSG supports this suggestion. However, if this refers to individual Ombudspersons, the issue of independence will remain. Since the Ombudsperson directly receives her/his revenue from ICANN, the fixed-term contract does not eliminate economic incentives that can potentially hamper the ombuds' independence. It also does not preclude the Ombudsperson from taking up employment after their fixed-term contract ends with a stakeholder in the domain name industry.
- 3) We think that the accountability and independence of the Ombuds could only be maintained if it is an office and not a person. At present, the Ombuds is an ombudsperson. We suggest that to ensure and maintain the independence of the office, the best way would be to use an external organization that provides ombuds services and does not have ICANN as its sole source of revenue.
- 4) The NCSG believes that the report is missing one very important point about independence and accountability of Ombuds office. We think that under no circumstances should the Ombudspersons socialise and befriend community members. This is a very obvious independence element which, unfortunately, has not made it into the report. We suggest the subgroup to consider the situation when the decision maker of someone's case at a social event is talking and smiling at the party, which has a complaint filed against them. Independence is seriously affected by social encounters and interactions. We believe that the final report should include a recommendation for the Ombudsman's office to consult the community to establish appropriate rules around

socialization and interactions so/as not to compromise their official role as an oversight mechanism. .

- 5) In regards to recommendation 4, which requires the community to respond to the Ombuds office in due time with reasoning, we believe such a responsibility should be mutual. The timeliness of the Ombuds Office actions should be preserved (as is indicated in recommendation 5) and the office must provide reasons for its decision. Also, if the responding party requests for additional extension in case of exceptional circumstances as mentioned in the Recommendation 4, the additional extension granted by the Ombuds Office should not be more than 30 days.
- 6) The nature of the Ombuds office decisions are non-binding, but such nature has to be clarified. In recommendation 4 suggests, the community has to respond to Ombuds Office inquiries. We agree that the community, and ICANN the organization, must respond to reasonable Ombuds Office inquiries, but not to be obliged to comply with the decisions of the Ombuds Office (as stated in the report). Moreover, the procedure for if a decision of the Ombudsman's office is not complied with should be clarified in the Ombuds Office procedures.
- 7) We would also like to raise our concern about recommendation 7, which currently reads as: "Recommendation 7. The Office of the Ombuds should be ideally configured (subject to practicality¹) so that it has gender diversity within its staff resources". The CCWG plenary discussed this issue and agreed that recommendation 7 removes the term "subject to practicality".² The sub-group rapporteur was suggested to change the language to: "... The office of the ombuds should be ideally configured so that it has gender, and if possible other forms of diversity within its staff resources" (Transcript of the meeting, page 19). This suggestion was supported by the group. We do not see this change reflected in the final report which was put up for public comment.

Thank you very much for considering our comments. We are at your disposal should you require clarification on our recommendations.

¹ Emphasis added by the NCSG.

² <https://community.icann.org/pages/viewpage.action?pageId=71598541>