

CCWG-Accountability-WS2-Ombudsman-ExternalEvaluation-Recommendations-Commentary

Overarching comment – For those external evaluation recommendations that suggest a specific implementation mechanism, such as changing Bylaws, to allow for a shorter implementation ICANN will try to find alternate solutions to changing the Bylaws which would meet the requirements. It is probable that some of these recommendations, if they are accepted, will require Bylaws changes and some of the recommendations which may come from other WS2 Sub-groups may also require some changes but the objective should remain to implement the requirements of the recommendations in the most effective manner possible.

This being said all recommendations should be considered for approval but with some rewording to meet the above implementation realities to allow for the most efficient and effective implementation.

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.

Alternate wording could be: The Ombuds Office should have a more strategic focus.

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 to another channel (with the complainant's permission)
- provides illustrative examples to deepen understanding of the Ombuds approach

This recommendation could be worded as:

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

- Board
- CEO
- Community groups

· Complaints Officer

This recommendation could stand as is.

4 - The ICANN By-laws 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 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.

This recommendation could be worded as:

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.

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.

This recommendation could stand as is.

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

This recommendation could stand as is.

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.

This recommendation could stand as is.

8 - ICANN should establish an Ombuds Advisory Panel:

- made up of 5 or 6 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 2 members with ombudsman experience and 3-4 members with extensive ICANN experience
- The Panel should be responsible for commissioning an independent review of the Ombuds function every 3-5 years

There are several important points which must be considered here:

- The ultimate responsibility for the Ombuds office must remain with the Board – The fiduciary duty issue is that the “independent advisory panel” cannot make decisions on behalf of ICANN nor can it override decisions of the Board. .

- The Panel could not be considered as being part of the Ombuds office but rather external advisors to the office (these are not additional Ombuds).
- Any such advisory council would require the Ombuds to maintain its confidentiality engagements.
- Within this context with the exception of providing an Accountability Mechanism the recommendation could stand as

8 - ICANN should establish an Ombuds Advisory Panel:

- made up of 5 or 6 members to act as advisers, supporters, wise counsel for the Ombuds and could also advise the Board (BGC and BCC) with respect to Ombuds related matters.
- The Panel should be made up of a minimum of 2 members with ombudsman experience and 3-4 members with extensive ICANN experience
- The Panel should be responsible for commissioning an independent review of the Ombuds function every 3-5 years

9 - The By-laws and the Ombuds employment contracts should be revised to strengthen independence by allowing for a:

- 5 year 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

This recommendation could be worded as:

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

- 5 year 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

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 publicising systemic improvements arising from the Ombuds' work.

This recommendation could stand as is.

11 - With input from across the community, ICANN should develop a policy for any Ombuds involvement in non-complaints work that addresses:

- 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?

This recommendation could be worded as:

11 - The following points should be considered 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?