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STATUS: Ratification Pending

AT-LARGE ADVISORY COMMITTEE

ALAC Statement on Recommendations to Improve ICANN's Office of Ombudsman (IOO)

Introduction

Alan Greenberg, ALAC Chair and ALAC Member of the North American Regional At-Large Organization (NARALO), Bastiaan Goslings, ALAC Vice Chair and ALAC Member of the European Regional At-Large Organization (EURALO), and Seun Ojedeji, ALAC Member of the African Regional At-Large Organization (AFRALO), developed an initial draft of the Statement on behalf of the ALAC.

On 11 January 2018, the first draft of the Statement was posted on its [At-Large Workspace](#).

On that same date, ICANN Policy Staff in support of the At-Large Community sent a Call for Comments on the Statement to the At-Large Community via the [ALAC Work mailing list](#).

On 13 January 2018, a version incorporating the comments received was posted on the aforementioned workspace and the ALAC Chair requested that Staff open an ALAC ratification vote.

In the interest of time, the ALAC Chair requested that the Statement be transmitted to the ICANN public comment process, copying the ICANN Staff member responsible for this topic, with a note that the Statement is pending ALAC ratification.

ALAC Statement on Recommendations to Improve ICANN's Office of Ombudsman (IOO)

The ALAC commends the subgroup and entire CCWG on ICANN Accountability for their work in producing this draft. The ALAC supports the draft as currently presented. Nevertheless, we would like to make a few comments for CCWG's consideration.

Recommendation 7: While we acknowledge and support gender diversity, we also suggest that language diversity be considered in Staff resource configuration, to the extent practical.

Recommendation 11: We recognize that the items proposed will address important, high-level policies expected to be observed by the Office of the Ombudsman; therefore, we do not believe restricting the Ombudsman from certain activities (i.e. socializing) as suggested by certain members of the [Community](#) is a necessary detail to codify in such policy. We expect the Ombudsman would understand their role, hence would observe his/her duties accordingly; Community policing of the Ombudsman should not be a solution to fix a performance issue.

Once again, we would like to thank the CCWG for their work and the opportunity to contribute to this process, and we look forward to continuing our engagement in the process.



**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.

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



COMMENTS OF THE INTELLECTUAL PROPERTY CONSTITUENCY (IPC)

RECOMMENDATIONS TO IMPROVE ICANN'S OFFICE OF THE OMBUDSMAN

January 14, 2018

The Intellectual Property Constituency (IPC) of the Generic Names Supporting Organization (GNSO) is pleased to submit supportive comments on *Recommendations to Improve ICANN's Office of Ombudsman (IOO)* (Draft),¹ published for public comment on November 10, 2017.

The IPC supports the efforts the CCWG-Accountability Work Stream 2 (WS2) to examine enhancements to the Ombudsman's role and function. The Ombudsman role should play a key role in ensuring fairness in ICANN activities and decisions. The IPC agrees with the discussion in the Draft which reflects that, to date, the Ombudsman role and process can be improved. We offer the following input on the Draft:

- The IPC agrees that Ombuds Office “should have a more strategic focus” (Recommendation 1), but urges WS2 to provide more detail in its finalized recommendations. A more strategic focus for the Ombuds Office should mean that, in its enhanced role, it has comprehensive understanding of ICANN’s unique structure and its role in supporting ICANN’s goals and viability.
- The IPC supports Recommendation 2 and agrees that the Ombuds Office should have procedures in place to categorize complaints and how each category should be handled; should set out which matters the Ombuds Office will not intervene in; and should provide illustrative examples that cover the most common controversies the Ombuds Office deals with. The IPC supports requiring written substantive responses within a reasonable timeframe, with the ability for a responding party to seek an extension from the IOO (Recommendation 4); that the Ombuds Office establish timelines for complaint resolution and report on its ability to meet these timelines (Recommendation 5); establishing an Ombuds Advisory Panel (Recommendation 8); and that the Ombuds Office develop a communications plan in its annual report to ensure that the IOO publishes reports on its activity, collects and publishes statistics and complaint trend information, collects user satisfaction information and publicizes systemic improvements arising from the Ombuds’ work (Recommendation 10).

¹ <https://www.icann.org/public-comments/i oo-recs-2017-11-10-en>.

- The IPC supports the “soft launch” of the enhanced Ombuds Office across ICANN’s structure (Recommendation 3). The IPC commits to assist in educating its members when appropriate.
- The IPC supports the recommendation that the Ombuds Office provides mediation training to its Ombudsman (Recommendation 6).
- The IPC supports that Ombuds employment contracts be revised to strengthen independence by allowing for a [1] a 5 years fixed term (including a 12 month probationary period) and permitting only one extension of up to 3 years; and [2] the Ombuds to only be able to be terminated with cause. We encourage a community feedback mechanism that feeds into the IOO as part of this process.
- The questions raised in Recommendation 11 regarding the Ombuds Office’s involvement in any “non-complaint work” are important and the IPC supports this recommendation. However, we request further detail as to what “non-complaint work” the Ombuds Office would be involved with in ICANN.

Thank you for your consideration of these comments.

Respectfully submitted,

Intellectual Property Constituency

**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 inquires. 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>

Registries Stakeholder Group Statement

Issue: **Recommendations to Improve ICANN's Office of Ombudsman (IOO)**

Date statement submitted: **12 January 2018**

Reference URL: <https://www.icann.org/public-comments/ioo-recs-2017-11-10-en>

Background

The CCWG-Accountability Work Stream 2 developed 11 recommendations to Improve ICANN's Office of Ombudsman:

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 emphasize the importance of the Ombuds function by all relevant parts of ICANN, including:
 - Board
 - CEO
 - Community groups
 - Complaints Office
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.
5. The ICANN Office of the Ombuds should establish (KPIs) 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. 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).
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.
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
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.
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?

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.

Registries Stakeholder Group (RySG) comment:

The Registries Stakeholder Group (RySG) welcomes the opportunity to comment on the proposed Recommendations to Improve the ICANN Office of Ombudsman (IOO). The RySG wants to express its appreciation for the work and commitment of the members of the CCWG Accountability Work Stream Two on this issue.

The RySG wishes to make the following comments on the proposed recommendations.

With respect to **Recommendation #4** (requiring groups to respond to a formal request or report from the Ombudsman within 90 days, with the ability seek a 30-day extension from the Ombudsman), the RySG does not support the Ombudsman's ability to issue such 'orders' as drafted.

The RySG is aware of the requirement under ICANN bylaws that the Ombudsman have access to necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of complaints and to assist in dispute resolution where feasible. But while committed to ensuring the Ombudsman has timely information, the RySG retains discretion to allocate its resources (including demands on volunteer time) as it deems best in balancing important calls on its input. Ombudsman-issued deadlines are inconsistent with that principle and would be unworkable.

With respect to Recommendation #4's requiring a substantive response to the Ombudsman, the RySG notes, for purposes of clarity, that it retains the discretion to decide which information and records, if any, are 'necessary' to respond to Ombudsman requests. As such, the RySG recommends striking Recommendation #4 as the current Bylaws sufficiently require constituent bodies to

cooperate without granting the Ombudsman the unfettered ability to make unreasonable requests in what could be unreasonable time frames.

With respect to **Recommendation #11** (regarding the Ombudsman's efforts in "non-complaints work" – including involvement in policy design), the RySG has a concern about clarity.

The role of the Ombudsman is to act as a neutral dispute resolution practitioner. While the Ombudsman may accept "questions" in addition to complaints, it should be made clear that the Ombudsman does not have free rein to formally engage in policy development unless, and to the extent that, the Ombudsman is formally asked to do so by a policy development process. The RySG believes that any level of Ombudsman activity in a policy design process, if and as so requested, should be given 'as-is' without any implication of stamp-of-approval.

ICANN Board Input - CCWG WS2 Ombuds Report

Please find below the input from the Board on the CCWG WS2 Ombuds Report. This input factors in the need for clarity on some recommendations, as well as an assessment of the resource impact to the ICANN organization and thus the community.

The ICANN Board appreciates the opportunity to provide input to the CCWG WS2 report on the recommendations to improve ICANN's Ombuds Office. We are providing these inputs during the public comment process, and hope they assist the further deliberations by the Subgroup and CCWG-Accountability.

For reference, we note that the CCWG-Accountability Work Stream 2 provides the following recommendations on enhancing the Ombuds Office:

The Ombuds Office should:

- 1) Have a more strategic focus.
- 2) Include procedures that: distinguish between different categories of complaints; set out the kinds of matters where the Ombuds will not intervene; and deepen understanding of the Ombuds approach.
- 3) Develop a plan for a soft re-launch of the function, which should incorporate action to emphasize the importance of the Ombuds function with all relevant parts of ICANN.
- 4) Require all parts of ICANN to respond within 90 days (or 120 days with reason, including an option to request additional extension) to a formal request or report from the Office of the Ombuds.
- 5) Establish timelines for its own handling of complaints; report against these on a quarterly and annual basis.
- 6) Configure the office so that it has formal mediation training and experience within its capabilities.
- 7) Configure the office so that it has gender, and if possible other forms of diversity, within its staff resources.
- 8) Establish an Ombuds Advisory Panel.
- 9) Revise the Ombuds employment contracts to strengthen independence.
- 10) Create, as part of their annual business plan, a communications plan which would include a formal annual report, with published reports on activity, complaint trends, user satisfaction, and systemic improvements.
- 11) Publish clear guidelines when looking at Ombuds involvement in any non-complaints work.

We also note that the recommendations in this report are largely based on the external evaluator's recommendations provided to ICANN organization and the Ombuds Subgroup in July 2017. Clarity is needed as to whether the CCWG-Accountability intends for its recommendations to overtake the work of the external

evaluator, or if other aspects of the external evaluator's report still stand.¹ 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 recommendations in order to hold ICANN accountable to meeting their intent.

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 diversity of staff available to the Ombuds office (Recommendation 7), the proposal for an Advisory Panel (Recommendation 8), and the term of the Ombuds contract (Recommendation 9) raise important concerns for consideration.

Based on inputs from the Ombuds, we understand that the current Office of the Ombuds already has activities in place that might address some part of the recommendations as issued. In addition, the Ombuds has already started considering how some of the recommendations 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 place, though those might be able to be better publicized or refined.

The implications on resources is an important overarching consideration that should be considered for these and all recommendations. As a general observation, ICANN operates within a specific budget based on limited funding. Recommendations that add costs to ICANN's operations result in the organization making trade-offs with other items, such as implementation of new policies, or innovation of existing programs or services. Such policies, without considering the impact on resources, may lead to a situation where the organization is unable to effectively meet community expectations with either the new recommendations or existing obligations.

The CCWG-Accountability should consider these factors and provide guidance in its final report regarding the priority, importance, and extent these recommendations (and all the CCWG's recommendations) should be implemented, and in what timeframe.

This input is intended to provide observations and information to further the CCWG-Accountability's efforts as it finalizes its full report.

¹ For example, the CCWG-Accountability's recommendations state that no changes are needed to the Bylaws relating to the Ombudsman. The external examiner, however, recommends that a more strategic focus start through clarifying the language in the Bylaws.

Regarding Recommendation 1: More Strategic Focus

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 recommendations seem to propose very detailed deadlines by which the Board and other members of the community must respond to requests 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 and resolution. How would these deadlines work in practice with the rest of the community? What is the outcome if a deadline is not met?

The current Ombuds has also informed the Board that the 30-day response timeframe currently in place for the ICANN organization's inputs into reports has worked well.

Regarding Recommendation 7: Configuring the office so that it has gender, and if possible other forms of diversity, within its staff resources.

Per the report, the primary objective of this recommendation is to ensure that the community has choices as to whom in the Ombuds Office the community can bring their complaints and feel more comfortable doing so.

The ICANN Board agrees that consideration needs to be given on the availability of alternative resources for the Ombuds Office. While ICANN is not able to make employment decisions based on considerations such as gender, nationality, or many other protected characteristics, there are likely ways to coordinate adjunct resources to making available to the community additional, more diverse points of entry into the Ombuds Office, that can be implemented. As a preliminary note, ICANN has already provided additional inroads into the Ombudsman office. For example, female members 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 Complaints Officer, or members of ICANN's executive team that can be an initial point of contact for comfortably expressing complaints that can then be brought to the Ombuds. There might also be a need for consideration of how cultural differences impact the Ombuds Office's consideration of any individual matter, and whether supplemental resources are necessary to better serve the ICANN community.

The current Ombuds has informed the Board that he is developing a community liaison network of trusted volunteers from the constituencies to act as complaint

intake for anybody who is uncomfortable approaching the Ombuds directly. We hope this also serves as a way to address this 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 identifying other ways to have supplemental resources available, the resource implication and feasibility assessments could be far different. This recommendation, even if limited to a need for supplementary resources on an as-needed basis, coupled with a clearer process for intake based on the comfort level of the complainant, still imposes a potential budgetary impact.

It would be useful to have clarity on the scope and the limitations envisioned within this recommendation.

Regarding Recommendation 8: Establishment of an Ombuds Advisory Panel.

The recommendation to include an advisory panel is a significant change, and does not seem appropriate for implementation at this time. The Board suggests that focusing on how the Ombuds Office can be strengthened should come first, and then consideration can come later as to whether additional advisory mechanisms are needed. When reading this recommendation, the Board identified many of questions that support this conclusion. These include:

- What is the role of the broadly powered Advisory Panel in relation to the proper role of ICANN org and the Board with respect to the Office of the Ombuds?
- What is the scope of advice that the Advisory Panel is to give the Ombuds, outside of involvement on non-complaint work? Or, does the Advisory Panel only have power to contribute to the hiring, firing and evaluation of the Ombuds Office?
- How does the notion of an Advisory Panel with powers relating to selection and termination of candidates work in practice with the Section 5.2 of the ICANN bylaws, which requires the Office of the Ombuds to be independent. Is it foreseen that there is a bylaw change here?
- Would the Advisory Panel be purely advisory or more of 'wise counsel'?
- How would the proposal work with Section 5.1(c) of the Bylaws, which require 3/4s vote of the entire Board to dismiss the Ombudsman? What weight would the Board put in such Advisory Panel's recommendations on termination?
- How is the expertise of the Advisory Panel assessed in relation to the tasks it to undertake in relation to the Ombudsman?
- How can the Ombuds retain the confidentiality obligations per the ICANN Bylaws, with the role of the Advisory Panel?
- Is the 5-year evaluation cycle intended to replace the role of the Accountability and Transparency Review Team in assessing the Ombudsman as part of ICANN's accountability work?

- How are conflict of interest considerations to be assessed with regards to the Advisory Panel?

Lastly, while the report notes the Ombuds would be required to maintain its confidentiality engagements per the Bylaws, as noted above, it is unclear how in practice the advisory panel would function with the Ombuds in light of these requirements.

Regarding Recommendations 9: Revising Ombuds employment contracts.

The Board understands the reasoning behind the recommended changes to the Ombuds employment contract, but is concerned that the creation of a 5-year fixed term contract with strict termination limitations may not provide motivation for high performance from the Ombuds. It should be a collective goal across ICANN that the Ombuds strive for exemplary performance in service to the ICANN community, and not be rewarded through keeping a contract because the minimum performance levels have been met. Similarly, if the Ombuds is doing a good job and is gaining trust and expertise, why would there be a recommendation to only extend his/her term for up to 3 years? Further, the current Ombuds has reported to ICANN that he does not view this recommendation as a means to promote or protect the independence of the office.

The CCWG-Accountability might consider alternative ways of addressing issues it is seeking to solve, so as to not discourage high quality Ombuds and experience. It may be preferable to retain Ombuds compensation based on some objective criteria, such as delivery on the reporting goals detailed in recommendation 10 of this report.

Regarding Recommendations 11: Publishing clear guidance when looking at Ombuds involvement in non-complaint work.

The guidance detailed in the report is a strong enhancement and clarification for the Ombuds function, and the Board supports this recommendation.

We note that an interdependency exists between this work and the work of the Transparency Subgroup. The Transparency Subgroup recommends some specific involvement of the Ombuds in the DIDP process. To the extent the Transparency recommendation is an expansion of the role of the Ombuds, it would be valuable to apply this criteria to the Transparency report recommendation to consider requests to expand the Ombuds role.

Acknowledgment

We thank the CCWG-Accountability and the Ombuds Subgroup for its work on the draft recommendations and look forward to providing further inputs as appropriate during the finalization of the recommendations by the community.



Etienne Sanz de Acedo
Chief Executive Officer

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Submitted to: comments-ioo-recs-10nov17@icann.org.

January 12, 2018

Patrick Dodson
Senior Manager, Strategic Initiatives
ICANN
12025 Waterfront Drive, Suite 300
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Re: CCWG-Accountability Work Stream 2 (WS2) - Draft Recommendations to Improve ICANN's Office of Ombudsman

Dear Mr. Dodson:

The International Trademark Association (INTA) appreciates this opportunity to comment on the Draft Recommendations to Improve ICANN's Office of Ombudsman (IOO), published on November 10, 2017 ("Recommendations"). INTA supports the published Recommendations and thanks the work of the sub group for moving the issue in the right direction.

While we generally support the recommendations, we do have specific comments regarding the efficiency and transparency of the IOO. Our concerns focus on the response times proposed in recommendation 4 and to a general question of enforcement mechanisms available to the IOO.

The current text of Recommendation 4 reads,

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 Ombudsman. 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.

While a mandatory response time is welcome and the process described above is positive, in INTA's view the response time should be significantly shortened. A lengthy process may deter members of the community from seeking assistance from the IOO. For the IOO to have a meaningful role, it must have the power to act and address issues more quickly and efficiently. INTA recommends that the response time be shortened to 60 days with a possible 30-day

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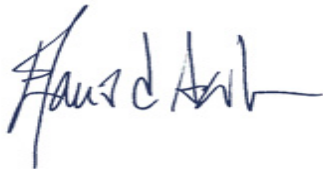
extension due to exceptional circumstances. A full, fair and expeditious review of the matter at issue will go a long way strengthening the ombuds functions.

Additionally, it is unclear from the Recommendations what, if any, enforcement mechanisms are available to the IOO. In fact, there is no discussion as to whether the IOO should have any enforcement powers or mechanisms. INTA recommends that the working group examine reasonable and appropriate mechanisms of enforcement that may be delegated to the IOO. INTA recognizes that, today, the ombuds functions are not independent from ICANN org. Therefore, enforcement may be limited to what ICANN org may implement.

If enforcement mechanisms are deemed to be beyond the scope of the IOO then, at a minimum, it may be useful to map how matters resolved by the IOO may be referred to appropriate bodies for enforcement as appropriate.

Should you have any questions about our comments, I invite you to contact Lori Schulman, INTA's Senior Director of Internet Policy at 202-261-6588 or at lschulman@inta.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Etienne Sanz de Acedo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Etienne Sanz de Acedo
Chief Executive Officer

About INTA and the Internet Committee

Founded in 1848, INTA is a global not-for-profit association with more than 5,700 member organizations from over 190 countries. One of INTA's goals is the promotion and protection of trademarks as a primary means for consumers to make informed choices regarding the products and services they purchase. During the last two decades, INTA has also been the leading voice of trademark owners within the Internet community, serving as a founding member of the Intellectual Property Constituency of the Internet Corporation for Assigned Names and Numbers (ICANN). INTA's Internet Committee is a group of over 150 trademark owners and professionals from around the world charged with evaluating treaties, laws, regulations and procedures relating to domain name assignment, use of trademarks on the Internet, and unfair competition on the Internet, whose mission is to advance the balanced protection of trademarks on the Internet.