

## 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.

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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.

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