

Office of the Ombudsman

ANNUAL REPORT

1 July 2016 - 30 June 2017

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PURPOSE



THE PURPOSE OF THIS REPORT IS DESCRIBED IN THE BYLAWS:

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such an annual report should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the website.

EXECUTIVE SUMMARY

FY17 was a busy year for the Office of the Ombudsman, and one that brought a new Ombudsman as well as a new formal role for the Ombudsman in the Reconsideration Request process.

After ten years as the Adjunct Ombudsman, I stepped into the role of Ombudsman on 27 July 2016. Shortly after, with the adoption of the new ICANN Bylaws in October, the scope of the Office of the Ombudsman expanded to include an additional formal role within the Request for Reconsideration process.

In my first year in the role, my primary objective has been to turn the focus of the Office of the Ombudsman outward to the ICANN Community. I was inspired to make this change in part by the Board's approval of the revised ICANN Expected Standards of Behavior, which generated much conversation in the community regarding harassment, sexual harassment, inappropriate behavior, and disrespect online and in person. Also, the winding down of active issues relating to the New gTLD Program had freed up time and resources from within the Office of the Ombudsman, creating space and bandwidth for me to actively begin to promote the Office of the Ombudsman as a resource to the community that supports their service as we enter a new phase of transition and renewal.

FOCUSING ON ENGAGEMENT

Over the past year, I have engaged with the ICANN community at each of the three meetings. Outside of those meetings, my proactive interactions have focused primarily on the At-Large and Generic Names Supporting Organizations (GNSO) communities, and to a lesser degree to the Governmental Advisory Committee (GAC) and some of its working groups. This is because the At-Large and GNSO tend to be more readily accessible outside of the ICANN meeting dates through coordination with their leadership and the ICANN organization liaisons.

ICANN org is an important partner to me in my work and investigations, and I've spent the year actively nurturing vital relationships between the Office of the Ombudsman and ICANN org. I have visited two of ICANN's regional offices (Istanbul and Singapore) and one ICANN engagement center (Washington D.C.) in the past year and have profited from the opportunity to conduct Staff Orientation Sessions for the office and remote staff. I have also worked from the Los Angeles office several times in the past year and, in conjunction with ICANN Human Resources staff, conducted orientation sessions for new employees each time.

The Cross-Community Working Group (CCWG) on Enhancing ICANN Accountability, proceeding with Work Stream 2, has offered an excellent opportunity for the Office of the Ombudsman to be closely involved with the community. I continue to participate as an observer in eight of the CCWG sub-groups: Jurisdiction, Diversity, Staff Accountability, Reviewing the Cooperative Engagement Process, Human Rights, Transparency, Guidelines of Good Faith, and Ombudsman. Of note is that the Ombudsman sub-group conducted an external review of the Office of the Ombudsman; a task delegated from the Accountability and Transparency Review Team 2.

EXECUTIVE SUMMARY cont'd

STREAMLINING OPERATIONS

One of my first actions was to replace the ten-year-old case management system with a new product that was both compatible with current technology and more user friendly for statistical reporting. The new case management system provides security by storing data on an external and secure server, protecting data confidentiality without requiring an independent server to keep the data in-house.

I have been a sole practitioner for the past year. As the work of the CCWG-Accountability work progresses through the coming year, the role of the Office of the Ombudsman will be re-evaluated and when that is complete, I will proceed with the staffing of the Adjunct position I formerly held.

OTHER ISSUES

The Office of the Ombudsman also has the authority to investigate systemic issues. I did not conduct any systemic investigations in the past year though I am closely monitoring several Community Applications for new gTLDs that have been subject to multiple accountability mechanisms that have impacted timely delegation of the strings. ICANN and the Board of Directors are actively addressing these new gTLD Community Applications.

Herb Waye

ICANN Ombudsman

www.icann.org/ombudsman

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[Twitter: @IcannOmbudsman](https://twitter.com/IcannOmbudsman)

REPORT ON ACTIVITIES

Ombudsman Functions

Conflict management is the Ombudsman's primary function.



Case Management

- Complaint intake
- Investigation
- Resolution



Monitoring the Environment



Outreach to Community, ICANN org, and Stakeholders



Promoting and Enforcing the ICANN Expected Standards of Behavior and Community Anti-Harassment Policy



Professional Development

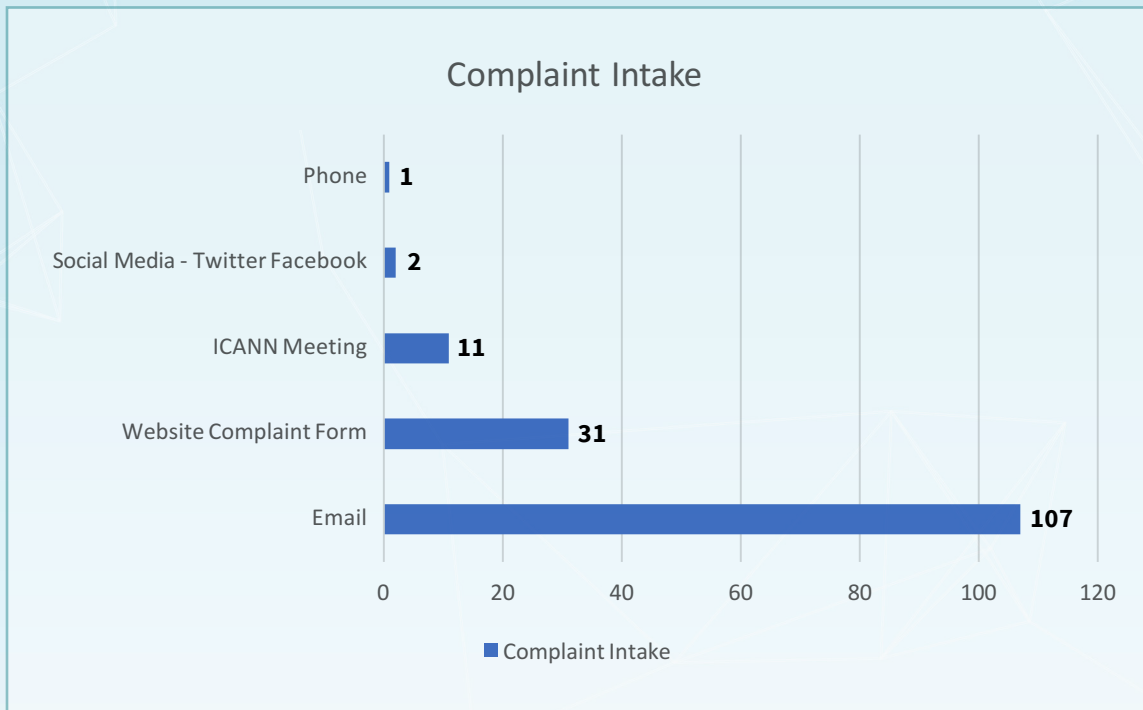
REPORT ON ACTIVITIES cont'd

CASE MANAGEMENT



The Office of the Ombudsman received 190 complaints from July 2016 to June 2017. More than 70 percent of these were outside of the Ombudsman’s jurisdiction, requiring a response but no action. All complaints are responded to within 24 to 48 hours.

There were 51 jurisdictional complaints requiring intervention, investigation or some active involvement of the Ombudsman (classified as Other). Of these, all but twelve cases have been resolved. Seven of the unresolved cases are on hold, meaning that they await completion of some process initiated by ICANN to resolve the issue or are subject to a formal accountability mechanism such as Reconsideration. The remaining five cases are issues still requiring the active involvement of the Ombudsman.



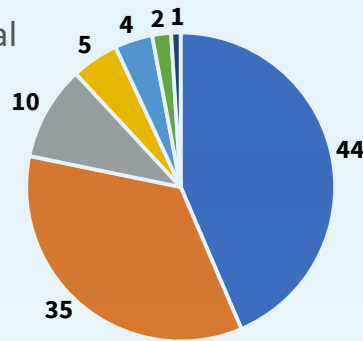
There is no longer a direct link between the online complaint form and the case management system. This allows the Office of the Ombudsman to filter spam, accidental, or test complaint submissions and prevents an uncontrolled spike in case intake due to group campaigns the office has been subjected to in the past. This filtering ability will likely result in a slight reduction in case intake for the reporting period of FY17.

REPORT ON ACTIVITIES cont'd

HOW THE OMBUDSMAN HANDLES NON-JURISDICTIONAL COMPLAINTS

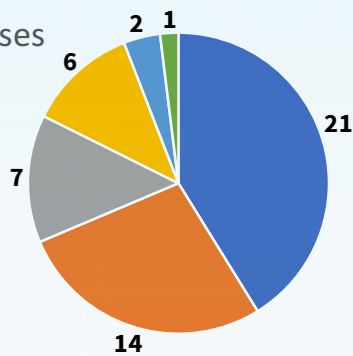
- Response sent within two days
- Self-help information or referral
- New initiative provides links to ICANN community groups
- Invitation to participate in community policy development process, particularly if the complaint is about issues such as WHOIS privacy, registrar and registry contractual issues, public safety, and ALAC or GNSO working group topics

Non-Jurisdictional



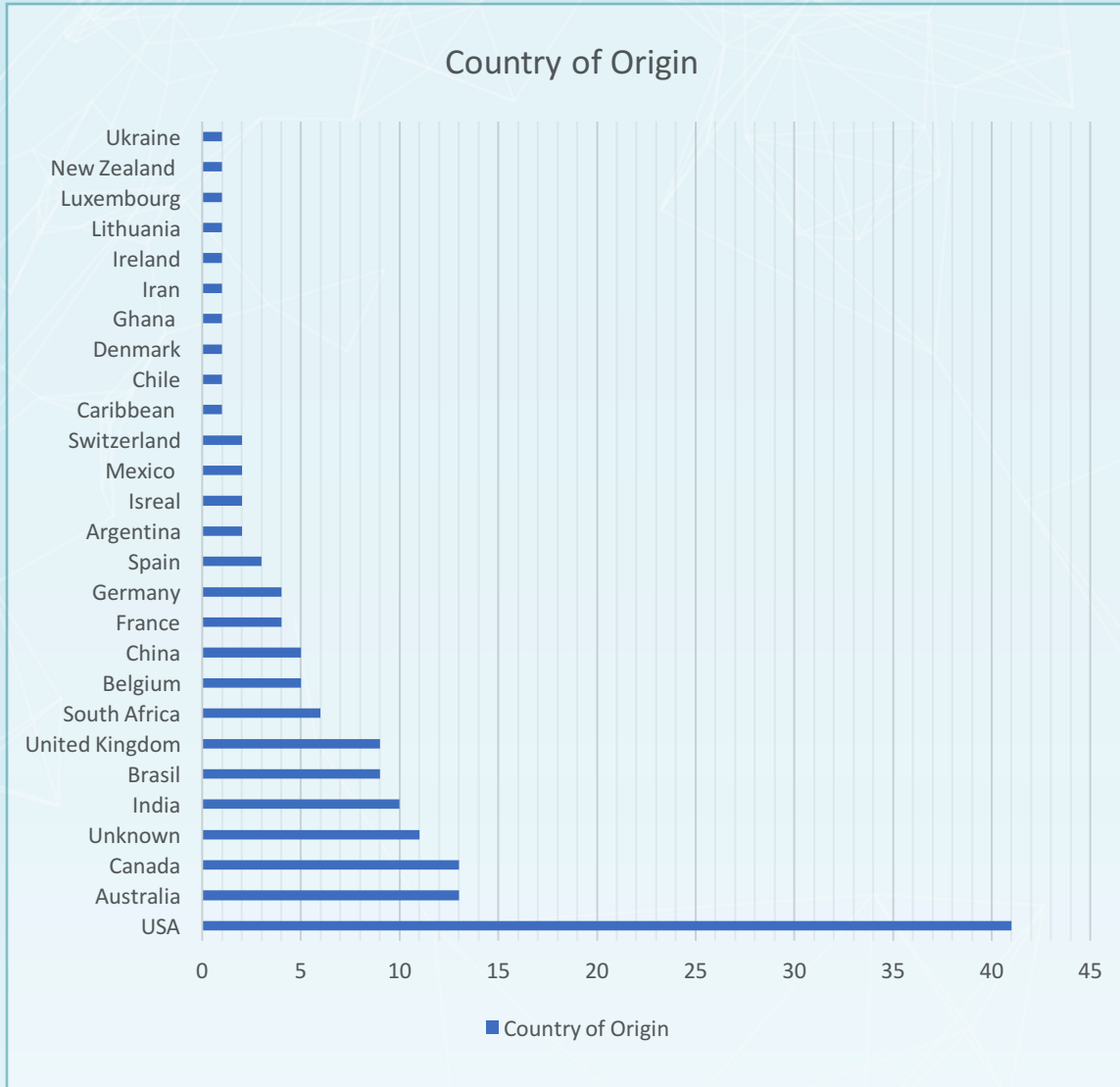
- Consumer Issues About Domain Names
- Registry/Registrar Issues
- (3 WHOIS/RDAP Issues)
- Website Content
- Cybersquatting
- Spam
- Fraud

Jurisdictional Cases

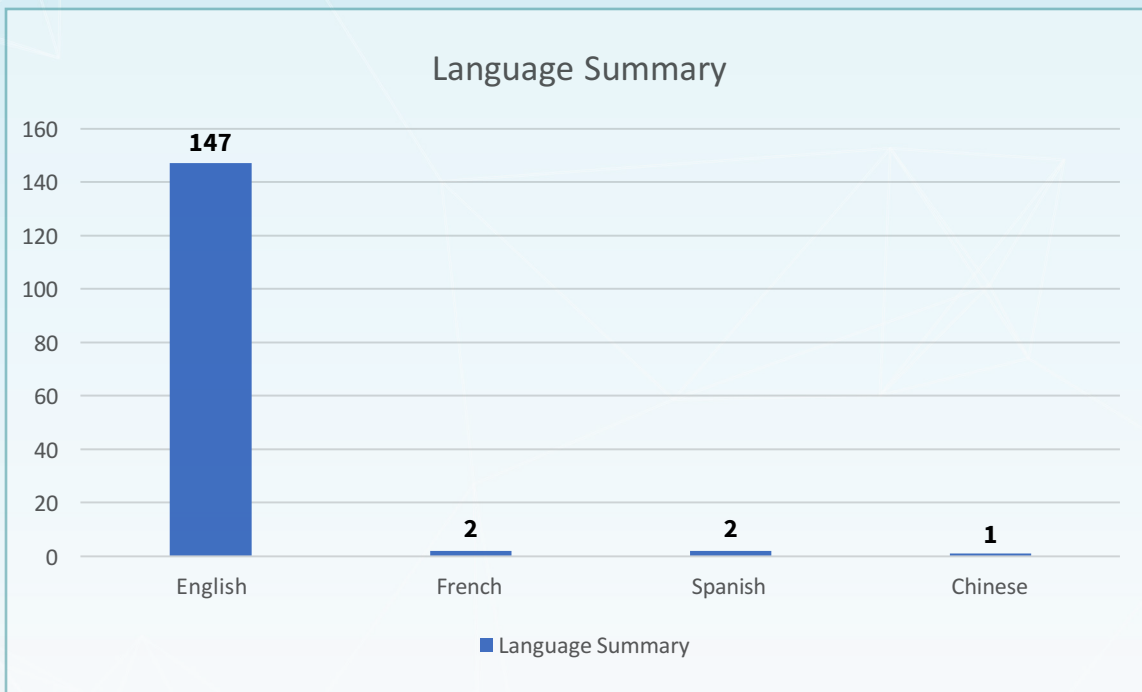
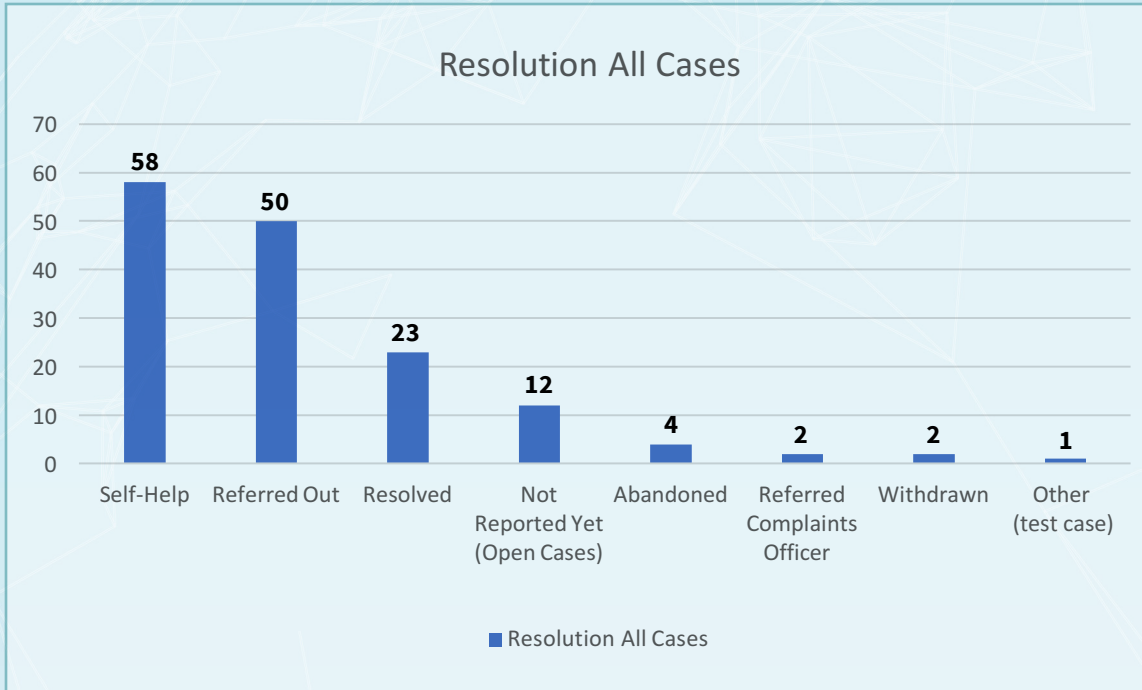


- Other - Requiring Ombuds Intervention
- Abusive Discourse
- New gTLD Issues
- Internal Disputes SO/AC
- Privacy Issue
- Reconsideration Review

REPORT ON ACTIVITIES cont'd



REPORT ON ACTIVITIES cont'd



REPORT ON ACTIVITIES cont'd

MONITORING THE ENVIRONMENT



Monitoring the environment takes place online, in teleconferences, and in-person at ICANN's three regional meetings and at various regional supporting organizations and advisory committee meetings held throughout the year. For example, I participate as an observer in many of the CCWG-Accountability working groups and sub-groups, helping to raise awareness of the Office of the Ombudsman and to directly involve me with the community. I also monitor several email lists for community groups and working groups where inappropriate or disrespectful behavior between group members has been brought to my attention.

OMBUDSMAN ACTIVITIES AT ICANN57, ICANN58, AND ICANN59

- **Office hours at Ombudsman office throughout the meeting**
 - Benefit: Informal drop-in policy allows easy access in a confidential and discreet setting.
- **Participation in community sessions**
 - Benefit: Informal interaction with the groups that most frequently raise issues or that are the focus of frequent complaints.

In addition to my regular activities and availability at ICANN meetings, I also make a point of attending commercial stakeholder sessions as both a learning opportunity and an opportunity for the registrant, registrar, and registry participants and their stakeholders to acknowledge my interest in their world. I feel this is important because many of the non-jurisdictional complaints I receive are related to commercial disputes regarding domain registration.

REPORT ON ACTIVITIES cont'd

OUTREACH



Outreach has been a key focus for the office in FY17, in order to expand knowledge about the role of the Ombudsman within the community, and also to promote and discuss the ICANN Expected Standards of Behavior. The following is a list of outreach events focusing on the role of the Ombudsman and/or promoting the ICANN Expected Standards of Behavior.

FY17 OUTREACH ACTIVITIES

- Three Los Angeles ICANN Office staff Ombuds Orientations
- Singapore ICANN Office (and regional) staff Ombuds Orientation (following ICANN57)
- Istanbul Office (and regional) staff Ombuds Orientation (prior to ICANN59)
- Washington Office staff Ombuds Orientation (conjointly with IOA training)
- Opening comments at Public Safety Working Group (GAC) (ICANN57)
- Working meeting with GAC European Committee (ICANN57)
- Opening Comments at GNSO Public Meeting (ICANN57)
- Opening Comments at the ICANN57 and ICANN58 Public Forums
- Opening Comments at NARALO Monthly Call
- Opening Comments at NARALO/ARIN (New Orleans)
- Opening Comments at GDD Forum (Madrid)
- Opening Comments at ccNSO Monthly Call
- Opening Comments at the ICANN59 RDS PDP WHOIS Working Group session

I also communicate with stakeholders and others through blog posts, Facebook, and Twitter. Recent topics have included the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy.



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[@IcannOmbudsman](https://twitter.com/IcannOmbudsman)

Blog: icann.org/news/blog

REPORT ON ACTIVITIES cont'd

PROMOTING AND ENFORCING ICANN EXPECTED STANDARDS OF BEHAVIOR



The ICANN Board adopted an updated version of the ICANN Expected Standards of Behavior in June 2016. The ICANN org and community have used similar standards for approximately ten years. With the adoption of the updated version I saw an opportunity to reinforce my objective of promoting respectful and appropriate behavior and tie the Expected Standards of Behavior in with the new Community Anti-Harassment Policy to reinforce everybody's right to a safe, respectful, and harassment free environment.

ICANN EXPECTED STANDARDS OF BEHAVIOR

| | | | | |
|--|---|--|---|---|
| <p>Act in accordance with ICANN's Bylaws. In particular, participants undertake to act within the mission of ICANN and in the spirit of the values contained in the Bylaws.</p> | <p>Adhere to ICANN's conflict of interest policies.</p> | <p>Treat all members of the ICANN community equally, irrespective of nationality, gender, racial or ethnic origin, religion or beliefs, disability, age or sexual orientation; members of the ICANN community should treat each other with civility both face-to-face and online.</p> | <p>Respect all members of the ICANN community equally and behave according to professional standards and demonstrate appropriate behavior. ICANN strives to create and maintain an environment in which people of many different backgrounds and cultures are treated with dignity, decency and respect. Specifically, participants in the ICANN process must not engage in any type of harassment. Generally, harassment is considered unwelcome hostile or intimidating behavior -- in particular, speech or behavior that is sexually aggressive or intimidates based on attributes such as race, gender, ethnicity, religion, age, color, national origin, ancestry, disability or medical condition, sexual orientation or gender identity.</p> | |
| <p>Protect the organization's assets and ensure their efficient and effective use.</p> | <p>Act fairly and in good faith with other participants in the ICANN process.</p> | <p>Conduct themselves in accordance with ICANN policies.</p> | <p>Support the maintenance of robust mechanisms for public input, accountability, and transparency so as to ensure that policy development and decision-making processes will reflect the public interest and be accountable to all stakeholders.</p> | <p>Listen to the views of all stakeholders when considering policy issues. ICANN is a unique multistakeholder environment. Those who take part in the ICANN process must acknowledge the importance of all stakeholders and seek to understand their points of view.</p> |
| <p>Work to build consensus with other stakeholders in order to find solutions to the issues that fall within the areas of ICANN's responsibility. The ICANN model is based on a bottom-up, consensus-driven approach to policy development. Those who take part in the ICANN process must take responsibility for ensuring the success of the model by trying to build consensus with other participants.</p> | <p>Promote ethical and responsible behavior. Ethics and integrity are essential, and ICANN expects all stakeholders to behave in a responsible and principled way.</p> | <p>Facilitate transparency and openness when participating in policy development and decision-making processes.</p> | <p>Act in a reasonable, objective and informed manner when participating in policy development and decision-making processes. This includes regularly attending all scheduled meetings and exercising independent judgment based solely on what is in the overall best interest of Internet users and the stability and security of the Internet's system of unique identifiers, irrespective of personal interests and the interests of the entity to which individuals might owe their appointment.</p> | |

This has been translated into multiple languages for information only. The original and authoritative text (in English) may be found at: icann.org/en/system/files/files/expected-standards.

With support from the ICANN Board, ICANN org and many of the Supporting Organizations and Advisory Committees (SO/AC) I have been offered, throughout the year, the opportunity to present opening comments at the ICANN57 and ICANN58 Public Forums, several SO/AC work sessions, online meetings, and various ICANN sponsored events. The focus of my opening comments directly relates to the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy as a reminder that our goal is constructive and respectful dialogue in a safe environment.

REPORT ON ACTIVITIES cont'd

PROMOTING AND ENFORCING COMMUNITY ANTI-HARASSMENT POLICY

The ICANN Board passed a unanimous resolution at ICANN58, effectively putting into place the new ICANN Community Anti-Harassment Policy that not only supports ICANN's Expected Standards of Behavior, but now gives community members recourse if they think they have witnessed, or believe they are victims of, inappropriate behavior or harassment.

Frequently, people may be unaware that their behavior is offensive or inappropriate, possibly due to differences in cultural or social norms. It is important to consider that the behavior may not be intentional or malicious. For that reason, the Community Anti-Harassment Policy complaint procedure begins with the option of communicating with the person responsible to resolve the issue informally. If the behavior is unintentional or potentially unwelcome, merely identifying the behavior as offensive or inappropriate often results in a change in behavior, and very likely, an apology.

The role of the Ombudsman in dealing with inappropriate behavior or harassment is first and foremost to address the issue as informally as the circumstances allow. There is clearly a continuum of severity that must be considered. The Ombudsman will not treat an inappropriate comment the same way as an allegation of sexual harassment or assault. One complaint may call for an informal intervention, where the next may call for the involvement of law enforcement. The Ombudsman will also take into consideration whether the reason for the complaint is a one-time event or a recurring behavior.

The policy further authorizes the Ombudsman to impose sanctions on an offender if deemed necessary. Though considered to be an action of last resort, the sanctions do serve to remind community participants that they will be held accountable for their actions and there may be repercussions for harassing behavior. With an extensive background in harassment training and policy implementation, I understand not only the impact harassment has on an organization, but more importantly, the often devastating impact it has on the victim. There is no place for harassment, bullying, or any other type of inappropriate behavior in today's world.

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The Community Anti-Harassment Policy PDF is available in Arabic, Chinese, English, French, Russian, and Spanish: icann.org/en/system/files/files/community-anti-harassment-policy.

REPORT ON ACTIVITIES cont'd

PROFESSIONAL DEVELOPMENT



I continue to maintain membership in three Ombuds organizations, the International Ombuds Association (IOA), the Forum of Canadian Ombuds (FCO), and the International Ombuds Institute (IOI). I attended the general assemblies of all three organizations in the past year, which involved keynote speakers, professional development, and networking opportunities.

I would also like to point out that to be fiscally responsible I have attempted to coordinate professional development with outreach activities, ICANN regional meetings, or similar such events. Thus, following ICANN57 in Hyderabad, India, I attended the IOI World Conference in Bangkok, Thailand, followed by a visit to the ICANN Singapore office to conduct Ombudsman Orientation for the regional staff.

Similarly, prior to ICANN59 in Johannesburg, South Africa, I conducted an Ombudsman Orientation for ICANN org in Istanbul, Turkey. I also benefited from an IOA Professional Development Seminar in Alexandria, Virginia to conduct an Ombudsman Orientation with the ICANN Washington, D.C. staff. On three occasions, I have coordinated visits to the ICANN Los Angeles office with Ombudsman Orientation for new staff.

REQUEST FOR RECONSIDERATION

In October 2016, with the adoption of new Bylaws by ICANN, the scope of the Office of the Ombudsman expanded to include an additional formal role pertaining to Requests for Reconsideration.

You can find the full definition of the role under [Article 4](#), Section 4.2 of the new ICANN Bylaws, but to state simply, the Ombudsman is now asked to review and consider Reconsideration Requests, and provide a substantive evaluation to the ICANN Board Accountability Mechanisms Committee for their review and consideration. The Ombudsman may recuse from the process if he or she has previously taken a position on the matter, or been involved in some way.

The addition of a formal role like this to the conventional informality of an Ombudsman framework presents certain challenges. The Ombudsman must choose thoughtfully between recusal or proceeding with the review. In fairness to the community members who may be involved in future Reconsideration Requests, I must ask the following question: If the Ombudsman can recuse if he or she has already taken a position, then to what extent may this impact the involvement of the Ombudsman prior to, or further to, a Reconsideration Request? It is a matter we must think carefully about.

I wish to stress to the ICANN community that this formal involvement will be done in a professional and impartial manner, which should not exclude the informal involvement on the Office of the Ombudsman (if permitted by [section 5.3a](#) of the Bylaws) should the community member wish to at any time, bring any matter to the Ombudsman as per [Article 5](#) of the Bylaws.

GOING FORWARD

Several issues remain on the radar of the Office of the Ombudsman. Maintaining a high profile on the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy will continue to be a priority for the Office.

I hope for a decrease in complaints yet expect an increase as the community becomes more aware of the necessity for, and importance of, a safe and harassment free environment. I expect members will also become more comfortable reporting incidents to my office as I promote an informal and inviting open door policy.

The New gTLD Program, though proceeding smoothly in most aspects, is still struggling with regards to some Community Applications. The Board-imposed review hopefully will be concluded and published soon with positive outcomes that will allow this topic to progress for all involved.

Several complaints emerged from ALAC and GNSO, resulting from ambiguity in the various versions of the Bylaws, rules of procedure, and charters. I hope to arrange an opportunity to discuss the importance of consistency and clarity with leadership as many of the groups proceed with reviews of their various documents. Confusion often results when individuals or leadership teams must interpret what is written rather than simply apply it.

Finally, I hope to maintain the many productive relationships I have developed in the past year and continue to develop and foster others. I profoundly believe relationships are the lifeblood of a community and as my primary role focuses on interactions between the ICANN community, the ICANN Board, ICANN org, and its support teams, I will continue to do everything in my power to make ICANN a safe, diverse, and harassment-free environment where everyone can enjoy participation to its fullest.

ICANN LOCATIONS

HEADQUARTERS

12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094-2536
USA
Phone: +1 310 301 5800
Fax: +1 310 823 8649

REGIONAL OFFICES

Brussels, Belgium

6 Rond-Point Schuman
B-1040 Brussels, Belgium
Phone: +32 2 894 7400

Istanbul, Turkey

Hakki Yeten Cad. Selenium
Plaza No:10/C K:10
34349 Istanbul, Turkey
Phone: +90 212 999 6222

Montevideo, Uruguay

La Casa de Internet de
Latinoamérica y el Caribe
Rambla República de México 6125
11400 Montevideo, Uruguay
Phone: +598 2604 2222 ext 5701
Fax: +598 2604 2222 ext 4112

Singapore

South Beach Tower
38 Beach Road, Unit 04-11
Singapore 189767
Phone: +65 6816 1288

ENGAGEMENT CENTERES

Beijing, China

5th floor, No. 1 Building,
Software Park
Chinese Academy of Sciences
4 South 4th Street
Zhongguancun, Haidian District,
Beijing, China
queries.beijingec@icann.org

Geneva, Switzerland

Regus Center
Rue du Rhône 14
1204 Geneva, Switzerland
Phone: +41 22 819 1844
Fax: +41 22 819 1900

Nairobi, Kenya

Regus Center
17th Floor
ICEA Building, Kenyatta Avenue
PO BOX 15168-00400
Nairobi, Kenya
Phone: +254 (0)20 5157029
Fax: +254 (0)20 5157001

Washington, D.C., USA

801 17th Street, NW, Suite 400
Washington, DC 20006
USA
Phone: +1 202 570 7240
Fax: +1 202 789 0104

PARTNERSHIPS

Asunción, Paraguay

CEILAC at SENATICS Complejo
Santos E2 - Gral. Santos 1170
c/ Concordia

Cairo, Egypt

Km 28, Cairo Alex Desert Rd.
Smart Village, NTRA, B4 Bldg.
Giza, Egypt

Seoul, Korea

11F Platinum Tower
398 Seocho-daero, Seocho-gu
Seoul 06619
Republic of Korea
Phone: +82 2 405 6592
Fax: +82 2 405 6593