

Office of the Ombudsman
Internet Corporation for Assigned Names and Numbers

Review of steps taken to implement recommendations made
to the Board of Directors

Ombudsman File 05-1090

Office of the Ombudsman
Report to the Board of Directors File 05-1090

This report contains the recommendations made by the Office of the Ombudsman in November 2005, concerning a complaint regarding ALAC voting procedures, and the responses made to the Ombudsman by ALAC, September 2006.

Redress and Recommendations

In light of the above, I recommend that the proposed bylaw change regarding ALAC voting be actioned by the Board of Directors in the shortest possible delay.

Ombudsman's note: This recommendation was met with a Bylaw change at the 2005 Annual meeting, held at Vancouver.

I recommend that (), be reconsidered as At-Large structures. It would be a greater unfairness, and would also impugn the credibility of the process, if the proponents were required to resubmit an application and wait another period of time for consideration for certification. I recommend that ALAC conduct a re-vote on all three applications at the Vancouver ICANN meeting in the forthcoming weeks.

ALAC Response: All three organizations are now certified At Large structures (see <http://alac.icann.org/applications/>). The vote was called without need for resubmission of the application. The organizations were informed of the ongoing process.

Ombudsman's note: I am satisfied that this recommendation has been met.

I recommend ALAC take steps to ensure that applications for certification be treated in a more expeditious fashion, both for the benefit of the applicant, and ALAC. I recommend that ALAC, in consultation with the ICANN At-Large staff member, develop a set of milestones to deal with these applications in the noted three month time frame.

ALAC Response: ALAC has discussed changes to its Bylaws to address the points raised by the Ombudsman, and proposed changes that were adopted by the Board in its public meeting in Vancouver (see <http://www.icann.org/minutes/minutes-04dec05.htm>).

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This step was necessary for allowing ALAC to successfully repeat the vote and certify the North American structures.

Ombudsman's comment: I have no information that performance milestones have been set, nor that the recommendation has been rejected.

I recommend that the proposed changes to the ALS certification process, noted earlier in this report, be expedited.

ALAC Response: The bylaws change had already been discussed and proposed to the Board for its 2005-11-08 teleconference. This text, approved by the Board (see <http://www.icann.org/minutes/minutes-08nov05.htm>), has been posted for public comments, and could be finally approved only at the Vancouver public meeting after the public comment period elapsed. To the best of our knowledge, no substantive comment was received, and therefore the Board adopted the text without modification.

Ombudsman's note: I am satisfied that this recommendation has been met.

I recommend that the ALAC develop minimum participation standards for its members, and a procedure for replacing members who do not meet these minimum participation standards.

ALAC Response: ALAC has discussed the matter, and there is rough consensus on what should be a standard set of criteria for participation. However, ALAC feels that the authority to remove its members from office lies with the body that has appointed them, i.e. the Board: ALAC can only make a recommendation to the Board to take action, based on documented absence or otherwise participation below the standard. Another solution to address the problem of low participation could be a time limit for the Board-appointed members.

Ombudsman's note: I am not certain that a "rough consensus" represents a standard of practice, nor a policy, and I do not believe that a policy or procedure for removing non-participating members has been implemented.

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I recommend that all existing applications, exceeding three months past the application date, be dealt with in the shortest possible delay.

ALAC Response: All pending application at the date of the report were dealt with within few days from the Bylaws change of voting methods. The Board changed the bylaws on 2005-12-04, the ALAC vote was called on 2005-12-15 and the voting period ended on 2005-12-22.

Unfortunately, for a completely different set of reasons, we are again late in processing some applications. However, the vote started on 2006-09-21 at 12:00 noon UTC will address the 10 applications that were pending for more than two months.

Ombudsman's note: I am disappointed to read that, once again, applications are not being processed within a three month time frame. I believe that a set of process milestones should be set, and followed, as per my previous recommendations.

I recommend that in communicating a rejection of certification, that ALAC communicate the reasons for the denial, consistent with the Code of Administrative Justice (2003) which states:

Reasons are the basis for judgments. Formally, "reasons" provide the rationale behind and justification for decisions or actions. They provide a summary of analysis and are a means to facilitate understanding as well as a means to allow meaningful appeal of such decisions and actions.

Adequate reasons will be those which are sufficient to allow an understanding of the issues considered and the decisions reached. Appropriate reasons will be logically linked to the questions with which the decision-maker dealt.

Principle: In assessing the adequacy and appropriateness of reasons, three major factors are important:

- a) Whether the person's concerns are addressed directly and completely;
- b) whether the reasons plainly state the rule upon which the decision proceeds and whether the rule as applied to the facts logically produces the decision reached; and
- c) whether the reasons are comprehensible to the recipient.

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ALAC Response: The only application rejected so far (with the exception of the three cases referenced by the Ombudsman) was the application of (). I do believe that the communication given to the applicant was compliant to the rules highlighted by the Ombudsman.

Ombudsman note: I am satisfied that this recommendation has been met.