

Cheryl Langdon-Orr

ICANN-ALAC Chair 2007-2009

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28th October, 2008.

Dear Mr. Fowlie,

This letter (albeit unconscionably late) is intended to provide your office with the official At Large Advisory Committee (ALAC) response to the Report of your office with respect to case 06-317, related to the handling of the application for At-Large Structure (ALS) status for (x). On a personal note, and as Chair of the ALAC now for my second term of office, I find it and I believe the ALAC Executive Committee agree that it is simply unforgivable that for another year your Annual ICANN Ombudsman's Office Report has been published without this matter being properly addressed.

In particular, with respect to the recommendations for action proposed by you, within Office of the Ombudsman Report to the Board of Directors File 06-317, dated 11/1/2008, I hereby on behalf of the ALAC formally advise you as follows:

Recommendation 1:

Whilst the ALAC did not decide to follow your recommendation, as a consequence of a root-and-branch review the applicant was admitted as an ALS by virtue of the fact that the new process does allow 'umbrella' NGOs to become members of the community.

Recommendation 2:

As it is addressed to the ICANN Board of Directors, it is inappropriate that I comment further upon this recommendation.

Recommendation 3:

As a consequence of the new and improved applications handling process, I can inform you that applications are handled within the 90-day window required by the process. The only exceptions are where the applicant has either requested that their application be suspended, or if the information provided on their application is incomplete, and they are slow to respond to enquiries by the staff in order to gain greater clarity with respect to those incomplete or unclear answers on the application form.

You might also note that a standing Agenda item of the status of ALS applications is now (and has been since my role as ALAC Chair began in 2007) for our monthly ALAC teleconferences and links to this information appears on each meeting Wiki pages which is also publicly visible in a Google spreadsheet, found at <http://spreadsheets.google.com/pub?key=pDH-2Ym3VBKcDC3mA5enWfw>, if you review this reporting tool now your office will find that it is

absolutely clear whether an application is within the timeframes required by the process,. And indeed if there is a delay what the reason or rational; for this delay is.

Recommendation 4:

Those applications which were delayed at the time your report was provided were indeed dealt with expeditiously by the ALAC at that time, and as you have noted they are now an ALS.

Recommendation 5:

Whilst the ALAC review is looking at the ALS certification process, as I've previously mentioned the ALAC did in fact work assiduously on revamping the process following the publication of your report.

The new criteria, and process, as well as the guide for evaluation of applications, is now all available from the 'Legal and Organisational References' main menu link from www.atlarge.icann.org, and the relevant documents are available in all six UN languages and further that the process is now clearly spelt out on our ALAC website at <http://www.atlarge.icann.org/en/framework.htm>.

It is also I believe useful to note here, that to my understanding, at the present time the At-Large community is the only community in ICANN who has a transparent and documented process by which new community members are admitted, and also to my knowledge is the only community which has a published and documented set of criteria by which applications are judged.

Recommendation 6:

We believe that our new process has taken this recommendation into account. It provides the ability of applicants who were refused admission as At-Large Structures to appeal the decision directly to the ALAC; in any refusal letter applicants are also clearly advised of their options including reference to your office.

Recommendation 7:

As related above for Recommendation 6, we can confirm that our process now does clearly outline how it was reached. We note that in the most notable refusal to accredit an applicant, (x), and a copy of our reasons for refusing the application were sent to your office by copy in order to ensure that we were operating fairly and congruently with good practice and our process and criteria.

Recommendation 8:

Whilst I was involved with the ALAC at the time, I was involved in APRALO activities and I do know that both the then-current Chair did indeed do as you suggested and that the applicant also met face-to-face with Board Member Roberto Gaetano at the Lisbon ICANN meeting in connection with the application as he had been a member of the ALAC at the

time when the situation with (x) occurred.

Recommendation 9:

I believe that the ALAC members have at various times met with you as regards this recommendation. However, we do have some newer members who have not had this opportunity. Perhaps I might ask our staff to provide you with their details and you could then have some time with them in Cairo? Further during the Cairo meeting at our At-Large Summit Planning Meeting for Mexico in Feb/Mar 2009 I plan to propose that your office be invited to introduce yourself and the work you do within ICANN so that all our At-Large accredited Structures may also be properly oriented and briefed and I look forward to the opportunity to discuss this matter with you formally after Saturday the 1st of November when we meet.

Recommendations 10 and 11:

These recommendations address a scope far beyond that of the ALAC and therefore, I offer no further comment on them here.

Recommendation 12:

As a part of the new ALS application process and detailed criteria we asked the board to discard the redundant process and the current process now relies upon the same reconsideration process at the Board level which addresses other such issues. May I close in offering my personal, best wishes and on behalf of the ALAC our formal apologies that this reply has taken so long to reach you. I trust that you are well, and I look forward to seeing you in Cairo, as ever please feel free to contact me or the ALAC ExCom, ALAC-excom@atlarge-lists.icann.org at any time if you wish to discuss these matters further.

Kindest regards,

Digitally signed -> transmitted by email and hard copy (signed) delivered at Cairo Meeting of ICANN Nov 2008.

Cheryl Langdon-Orr

Chair of the ALAC 2007-2009

Redress and Recommendations

- 1) In light of the above, I recommend that the (applicant).org, immediately be given provisional ALS status by the ALAC.
- 2) I recommend that due to a lack of clarity in the rules concerning reconsideration, and unfairness in implementing them; that unless there is a substantive objection by the ALAC, the Board of Directors declare (applicant).org to be an ALS at its next scheduled Board meeting following submission of this report.
- 3) 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, monitor and report on the set of milestones previously implemented to deal with these applications in the noted three month time frame. Should these established milestones be exceeded the staff member should formally advise the ALAC of the default.
- 4) I recommend that any existing applications, exceeding three months past the application date, be dealt with in the shortest possible delay. As of January 25, 2007, there are a total of five applications exceeding the 90 time frame (including the (applicant).org application).
- 5) I recommend that the ALS certification review process, noted earlier in this report, be a priority item for evaluation and reform during the scheduled ALAC review. In light of expected exponential growth of ALS certification applications, I recommend that the review consider the streamlining or decentralizing of the process, and as much as possible to make certifications a product of administration rather than committee governance. I recommend that the

reviewers give particular heed to suggestions of past and present ALAC staff members. I recommend that the review formalize administrative milestones and the requisite communications process.

6) I recommend that the ALAC develop policies and procedures which empower it to remedy errors and oversights without having to revert to formalized complaint processes.

7) 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 or 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.**

8) I recommend that the ALAC Chair and ALAC Board Liaison speak with the (applicant).org applicant and tender an apology on behalf of ALAC for delay in processing the application.

9) While this may be a matter best implemented following the ALAC review in 2007, I recommend that all members of ALAC be given an orientation on the impact of administrative fairness on those processes which they administer on behalf of ICANN.

10) I recommend that members of supporting organizations be provided with an orientation to the Office of the Ombudsman by their ICANN staff member with a view to ensure that they understand the powers of the Ombudsman, and their responsibilities in Ombudsman investigations. I also recommend that the staff member orient new and existing ALAC members to all of the relevant Bylaw and policy provisions which govern the committee's work and activities.

11) I recommend that Bylaw V be amended to state:

ICANN employees, *committees*, *supporting organizations*, or Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

The Bylaw presently states:

ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

12) I recommend that the Office of the General Counsel and ALAC examine and make recommendations concerning the continuation of the ALAC reconsideration policy. In

my view this policy is redundant in consideration of the Board Reconsideration Committee (Bylaw IV).