

OFFICE OF THE OMBUDSMAN

# ANNUAL REPORT

1 JULY 2021-30 JUNE 2022

ONE WORLD. ONE INTERNET

# TABLE OF CONTENTS

Purpose of this Report	3
Executive Summary	4
Report on Activities: Ombudsman Functions	5
Case Management	6
Monitoring the Environment	13
Outreach	14
Promoting and Enforcing the ICANN	
Expected Standards of Behavior	15
Professional Development	18
Requests for Reconsideration	19
Going Forward	20

# **PURPOSE OF THIS REPORT**

The purpose of this report is described in <u>Article</u> 5, <u>Section 5.5 of the ICANN Bylaws</u>:

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 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**

#### The ICANN Office of the Ombudsman is pleased to submit its 2022 Annual Report.

The FY22 meetings saw a return to face-to-face meetings following an easing of restrictions due to the COVID-19 pandemic. As ICANN completed 24 months of virtual operations, the Office of the Ombudsman is now adapting to combine the new norm of online operation and distance meetings (via Zoom) to a new hybrid format that blends in-person and virtual participation as demonstrated via the Community Forum in March 2022 and the Policy Forum in June 2022, following the wholly virtual Annual General Meeting (AGM) in the fall of 2021.

The Ombuds team of Herb Waye (Ombuds) and Barbara Curwin (Adjunct Ombuds) maintained an active presence online at the AGM: the Ombuds attended the Community Forum and the Policy Forum meetings in person, while the Adjunct attended both virtually, staffing the virtual office. The Ombuds Office's primary goals continue to focus on diversity, inclusion, and equity, promoting a harassment-free environment, and making the community aware of and enforcing the ICANN Expected Standards of Behavior.

As organizations around the world reverted from solely online back to conventional, in-person work practices, professional development opportunities for the Ombuds team became less available as professional Ombuds organizations attempted to adapt to a new way of doing business once again. In fact, a certificate program with Osgoode Hall Law School at York University, for which both the Ombuds and Adjunct were enrolled, was cancelled at the last minute. Unfortunately, there were no further opportunities for the rest of the fiscal year. Professional development nonetheless continues through the International Ombuds Association annual conference and monthly training opportunities.

The focus of the Ombuds team remains on active participation with the community both online and now in person at ICANN meetings. The Ombuds continues to participate as an observer in community working groups and policy development teams, with occasional participation in a more official manner usually at the request of the leadership teams (under the Office's charter in Article 5 of the ICANN Bylaws).

The Office of the Ombudsman continues to support, promote, and provide education on the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy.

The Office of the Ombudsman stands with the ICANN community, Board, and the organization (org) during this global pandemic, and now with a return to in-person meetings, endeavors to serve in any way it can to help ensure that fairness, respect, and professionalism continue to grow and endure for the foreseeable future. The office has adapted efficiently and effectively to virtual operations, and now with the return to in-person meetings, will strive to promote equitable and fair hybrid participation where virtual and in-person participants are treated as if everyone was in the room.

#### **Ombudsman Functions**

Conflict management is the Ombudsman's primary function:



## **Case Management**

- Complaint intake
- Investigation
- Resolution



**Monitoring the Environment** 



Outreach



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



**Professional Development** 

### **Case Management**



The Office of the Ombudsman received 172 complaints from 1 July 2021 to 30 June 2022. This is a substantial decrease from the previous fiscal year but is in line with previous years' numbers. Of those complaints, 159 were nonjurisdictional, requiring a response but no action. The Office of the Ombudsman strives to respond to all complaints within 48 hours of reception.

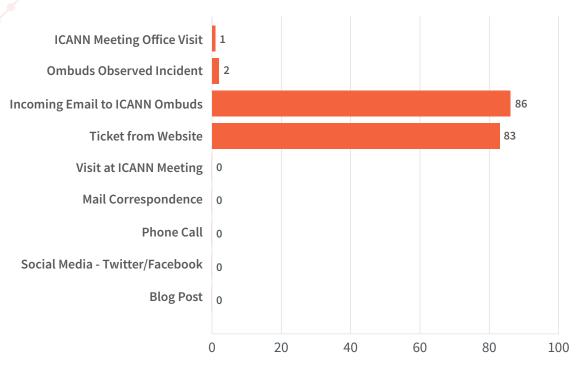
There were 13 jurisdictional complaints requiring intervention, investigation, or some form of informal involvement by the Office of the Ombudsman. At the conclusion of June 2022, all complaints were closed, with only one case remaining from a previous year that remains open due to an unwillingness of the subject to participate in the Office's investigation. This case is subject to ongoing interim sanctions imposed on the individual, who still has the choice to participate in the investigation should they decide they wish to participate in person at an ICANN meeting.

There were no complaints under the Community Anti-Harassment Policy for this reporting period. The Office received three complaints about abusive discourse. I believe these low numbers can be credited to ongoing initiatives by the Office of the Ombudsman, ICANN org, and the ICANN Board aimed at heightening community awareness of the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy. The online presence of the Ombuds in community activities has been a successful initiative and now as we move back to in-person meetings, I am expecting an increase in conflict in the future.

There were four complaints directed at Contractual Compliance, primarily regarding delays in service response times, which were all resolved with collaboration from the Contractual Compliance function.

Consumer issues with domain names (41) and registrar or registry issues (33) again constituted the majority of the nonjurisdictional complaints. A more comprehensive and informative response to nonjurisdictional complaints has resulted in very positive feedback from complainants. Initially implemented in 2018, responses from the Office of the Ombudsman now include both a referral to the appropriate ICANN org function (usually Contractual Compliance or Global Support), and an invitation to participate in the ICANN multistakeholder model, if appropriate, with links to the various stakeholder groups, SOs, or ACs (depending on the nature and context of the complaint). Complainants are also invited to contact the Office of the Ombudsman with feedback on their experiences.





#### Example email response text:

There are several constituency groups that are actively discussing issues like yours in the ICANN community. I invite you to reach out to one you may find appropriate for your situation (commercial or noncommercial) to inquire with more knowledgeable individuals about (description of complaint) or when there is abuse. Participation at ICANN is free, and all are invited to participate in policy development or review. All community members are also encouraged to raise issues of abuse.

Please look through these links to ICANN constituencies. If you have further questions, please do not hesitate to reach out.

https://gnso.icann.org/en/about/stakeholders-constituencies

https://atlarge.icann.org

I welcome all feedback. Please let me know if this has been of assistance to you, or if you have further questions, by contacting <a href="mailto:ombudsman@icann.org">ombudsman@icann.org</a>.

Below are some of the examples of feedback from people who contacted the Office of the Ombudsman. It is worth noting that all such feedback has been positive.

#### Hi Herb,

I appreciate your prompt response and all the links you have provided me. As for the cooperation from the registrar, yes and no: Just see what the response from my ISP was, still threatening me with suspension if this happens again (even though I did not do anything) and asking me for information to provide to the complainant, while they don't want to provide me the complainant information.

In any case, once again, thank you for your help. I will undoubtedly use the resources you sent me.

Thank you.

Dear Herb
Thanks very much for taking the time to provide this information and for your consideration. I will do as you advised and contact WIPO.
appreciate your help.
Thank you for your assistance.
The information has been helpful, keep up the good work.
Kind regards
неу Mr.Waye,
Good to know that, thank you for your help. That's really nice of you.
We will follow up.
Have a nice day.
Dear Herb,
Thanks a lot, that really do me a lot of help. I will contact the advisory committee for further information.
Have a good day.
will look at the resources provided. Thank you.
ні Herb,
Thank you for your extensive, considerate, and helpful response.
James
Thank you- I did found a place to submit a "service ticket"- I appreciate your help.
ні Herb,
Thank you for your response.
can see from the information you have provided, that we need to get in touch with an attorney.
think the only way forward is to contact the current owner, which has been very difficult so far.
Hi Herb, thank you very much for your reply. That information is indeed very helpful. I think the issue may be resolved as of right now, but I'll still go through those resources you provided in case this crops up again. Again, thank you for your help and I appreciate you taking the time to point me in the right direction.

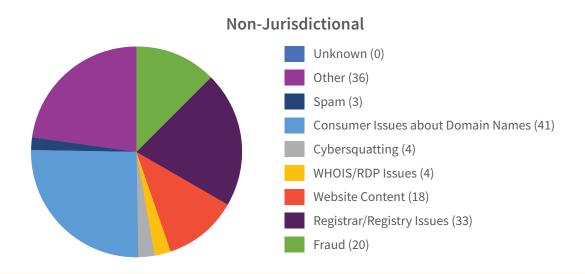
Thanks

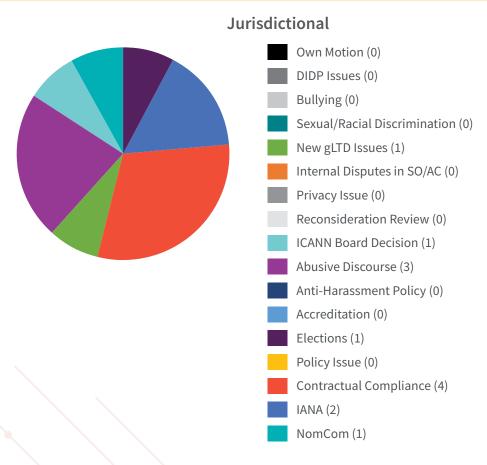
Good morning!	
Thank you for your reply and the tips you posted on how to fight illegal spam emailing. A co-compliance department has been filed.	omplaint to the contract
At the moment, this is the only such detailed answer in the case. Thank you.	
Thank you for your response and I apologize for just now responding almost a month later of your email. I do appreciate you however as I often don't get direction so truly, Thank you.	as I just was able to gain access to
Sir,	
Thank you very much for the valuable information.  Regards	
Thank you for your response	
I had no hopes of getting a response while writing that email.	
Thank you	

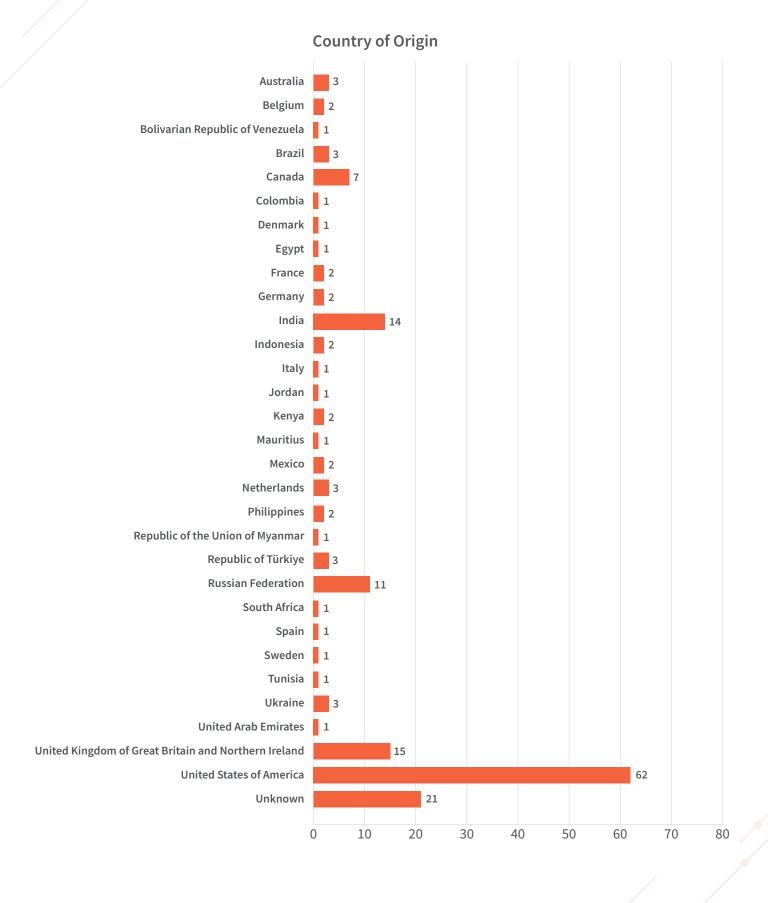
When complaints are co-addressed to both the Office of the Ombudsman and the ICANN Complaints Officer (and frequently Global Support or Contractual Compliance), an evaluation of the complaint is done jointly to determine who will first address the issue.

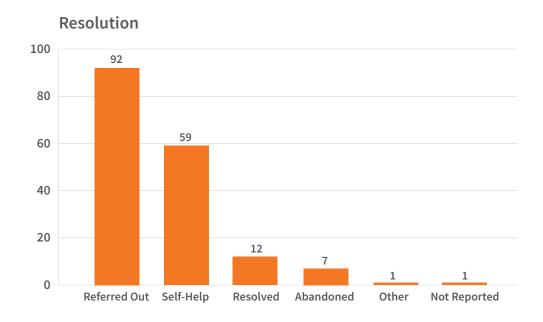
## **How the Ombudsman Handles Nonjurisdictional Complaints:**

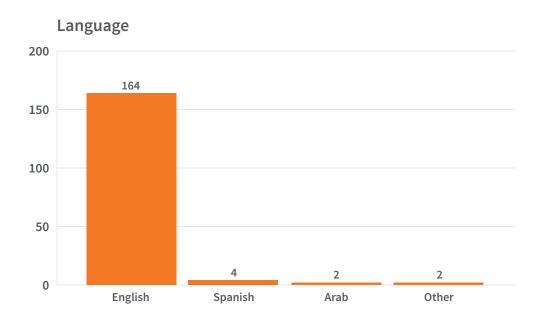
- Response sent within two days.
- Self-help information or referral.
- Provides links to ICANN community groups.
- Invitation to participate in the community policy development process, particularly if the complaint is about issues such as WHOIS or privacy, registrar or registry contractual issues, public safety, or matters concerning the At-Large Advisory Committee (ALAC) or Generic Names Supporting Organization (GNSO) working groups.











## **Monitoring the Environment**



Monitoring the environment, and active engagement with the community, has taken on an entirely new importance for the Office of the Ombudsman as the existence of a pandemic eliminated opportunities for face-to-face meetings. The move from in-person meetings to virtual meetings increased the need for a greater presence in the online environment.

As ICANN slowly transitions from pandemic to post-pandemic life, and as we begin to participate in hybrid meetings across the globe, the Office of the Ombudsman has permanently changed how it monitors the environment and actively engages with the community.

The Office of the Ombudsman hosted a virtual office for the first ICANN Public Meeting in FY22 during the Annual General Meetings' scheduled time zone, Seattle WA, USA. Working on the Zoom platform, the Ombuds team could ensure confidentiality by controlling participation in the room; drop-in visitors were placed into waiting rooms, ensuring confidentiality for those who might be meeting with the Ombuds at the same time. The Zoom room office hours and associated link were posted daily in the community chat on both the meeting schedule page and on social media.

When the pandemic forced ICANN operations into a virtual world in 2020, a gap in Ombuds' operations became apparent and was quickly filled by increasing online presence at GNSO, ALAC, ICANN Board, and ICANN org online meetings, as well as other virtual public events. Now that the meetings and community work are returning to a hybrid virtual and in-person format, the Ombuds team must continue to focus its attention to all community work, and not revert to only focusing its attention on face-to-face events.

The Office of the Ombudsman also continues to monitor multiple ICANN community email lists to understand current events and the tone of any controversial issues under discussion. This new initiative has proved very beneficial, as many issues that fall under the Ombuds Office's jurisdiction, such as elections and rules of procedure, are discussed and often heatedly debated on the mailing lists.

Being present is "half the battle," and the Office of the Ombuds team firmly believe our presence at community meetings, working groups, webinars, and training sessions (to name a few opportunities) is extremely valuable in reminding everyone to respect both the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy.

An added benefit is that it also allows us to stay current on many policy development processes that drive the ICANN community, and to be aware of areas of friction before they escalate.

# Ombudsman activities at ICANN72 (Seattle – Virtual), ICANN73 (Puerto Rico – Virtual), and ICANN74 (The Hague – Virtual/In-person):

- · Office staffed by a team: Ombudsman Herb Waye and Adjunct Ombuds Barbara Curwin
  - Benefit: Better availability for drop-in community members
  - Gender diversity for complainants who might wish to discuss sensitive issues
- Office hours at Ombudsman meeting office throughout meeting periods
  - Benefit: Informal drop-in policy allowed easy access in a confidential and discreet setting (both virtual and in person)
- Participation in community sessions
  - Benefit: Informal interaction with the groups that most frequently raise or generate issues or that have been or been the focus of frequent complaints

#### **Outreach**



Outreach during FY22 has remained limited to solely a virtual online presence. Despite a shift to a hybrid method of attendance for ICANN74 (Ombuds in person and Adjunct virtual), the return to in-person participation at ICANN meetings is still being severely impacted by restrictions in travel and operational rules, which ICANN has upheld to continue to protect ICANN staff and community members.

The following is a list of calendar items of online meetings attended by the Ombuds team during the fiscal year.

ACTIVITY	ACTIVITY COUNT	% OF TOTAL	HOURS	% OF HOURS
Admin: Board & ICANN org	3	1%	2.50	0%
Casework	2	1%	1.00	0%
Community Video Conference	148	57%	206.50	37%
ICANN AGM	21	8%	86.00	15%
ICANN Community Forum	11	4%	89.00	16%
ICANN Policy Forum	8	3%	50.50	9%
ICANN Video Conferences	24	9%	30.00	5%
Meeting	1	0%	1.00	0%
Ombuds Profession Networking Meetings	37	14%	88.50	16%
Professional Development	1	0%	1.50	0%
Staff Admin Needs	4	2%	7.00	1%
	260		563.5	

#### **FY22 Outreach Activities:**

- Participation as an observer in regional online events, including APAC Space, EURALO events, NARALO events, Middle East events, LACRALO events, and AFRALO events. ICANN org webinars, and Board meetings with SOs and ACs
- Virtual attendance at IGF 2021
- Participation in networking and professional development with the Forum of Canadian Ombuds (FCO), the International Ombuds Association (IOA), and the International Ombuds Institute (IOI)
- Participation on the IOA Diversity Equity Inclusion and Belonging (DEIB) Committee and representing it on the IOA International Outreach Committee

The Ombuds team continues to engage throughout the year on a proactive basis with the ICANN community and other communities through blog posts, Facebook, and Twitter. The Ombuds also promotes ICANN events, the Expected Standards of Behavior, and the Community Anti-Harassment Policy.





icann.org/news/blog

#### **ICANN Expected Standards of Behavior**



The ICANN Board of Directors adopted the current version of the ICANN Expected Standards of Behavior in June 2016, although the guidelines that form the basis for the Expected Standards have been in effect since ICANN's inception. The Ombuds team continues to promote and reinforce the Expected Standards of Behavior and the Community Anti-Harassment Policy, and to reiterate everyone's right to a safe, respectful, and harassment-free environment when attending an ICANN meeting or sponsored event. The move from

face-to-face meetings to an entirely online environment and now to hybrid meetings has demonstrated that conflict is not reserved for in-person and face-to-face incidents, that virtual interaction is just as susceptible to conflict, just in a different way, generally through chat or email exchanges. The Ombuds team believes their active presence in most online working groups helps mitigate conflict and promote good behavior.



#### ICANN EXPECTED STANDARDS OF BEHAVIOR

Adopted 26 June 2016

Those who take part in ICANN's multistakeholder process, including Board, staff and all those involved in Supporting Organization and Advisory Committee councils, undertake to:







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.



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 exually aggressive or intimidates based on attributes such as race, gender, ethnicity, religion, age color, sational origin, ancestry, diabelity or medical condition, sexual orientation or gender identity.









processes will reflect the public interest

and be accountable to all stakeholders



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.



**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.



**Promote** ethical and responsible behavior. Ethics and integrity are essential, and ICANN expects all stakeholders to behave in a responsible and principled way.



**Facilitate** transparency and openness when participating in policy development and decision-making processes.



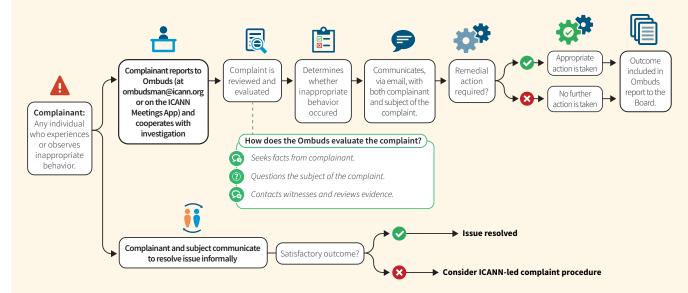
Act in a reasonable, objective and informed manner when participating in policy development and decision-making processes. This includes regularly attending all scheduled meetings and exercising independent judgment based solely on what is in the overall best interest of Internet users and the stability 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.

This has been translated into multiple languages for information only. The original and authoritative text (in English) may be found at: <a href="https://www.icann.org/resources/pages/expected-standards-2016-06-28-en">https://www.icann.org/resources/pages/expected-standards-2016-06-28-en</a>.

#### **ICANN Community Anti-Harassment Policy**

Harassment, in any form, is never tolerated in the ICANN community. As such, the Office of the Ombudsman, ICANN org, and the ICANN Board continue to work hand in hand to promote a safe and harassment-free environment. By actively participating as an observer in as many online meetings and working groups as possible, the Ombuds teams acts as a (gentle) reminder to all to keep ICANN safe and harassment free for all.

## **ICANN Community Anti-harassment Reporting and Complaint Procedure**



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 yet unwelcome, merely identifying the behavior as offensive or inappropriate often results in a change in behavior and an apology..

Recognizing the value of diversity, the Ombuds team and its gender balance sees itself as a valuable resource and example for the community regarding harassment and diversity.

Anyone who has been subjected to harassment can and should report the incident(s) to the Office of the Ombudsman. They can also report the incident(s) to any senior person in ICANN org, or to any community leader with whom they feel comfortable – those receiving reports may then act as intermediaries with the Office of the Ombudsman. There is no place for harassment, bullying, or any other type of inappropriate behavior anywhere in today's world. Such behavior will not be tolerated in the ICANN community.

There is no place for harassment, bullying, or any other type of inappropriate behavior in today's world.

The Community Anti-Harassment Policy PDF is available in Arabic, Chinese, English, French, Russian, and Spanish: <a href="https://www.icann.org/en/system/files/files/community-anti-harassment-policy-24mar17-en.pdf">https://www.icann.org/en/system/files/files/community-anti-harassment-policy-24mar17-en.pdf</a>

## **Professional Development**



The Ombuds team continues to maintain membership in three Ombuds organizations: the International Ombudsman Association (IOA); the Forum of Canadian Ombudsman (FCO); and the International Ombudsman Institute (IOI). As most organizations continue to adapt to online learning, professional development opportunities have become more readily available.

The majority of professional development opportunities have come from in-service sessions offered by the IOA at various times during the year and include sessions on conflict, case management, and diversity and equity issues. This includes both the IOA and the FCO annual conferences and is captured in "Professional Networking Meetings" in the calendar report.

The Ombuds team of Herb and Barb, through the FCO, were scheduled to participate in the York University Osgoode Hall Law School program *The Osgoode Certificate in Online Dispute Resolution: Practical Strategies for Managing Conflict and Improving Engagement*, but unfortunately the program was cancelled at the last minute. There were no similar programs offered at the conclusion of this fiscal year.

# REQUESTS FOR RECONSIDERATION

IIn the October 2016 version of the ICANN Bylaws, the Office of the Ombudsman's role in ICANN expanded to include reviewing reconsideration requests and, in situations where the Ombudsman does not recuse himself, providing a substantive written evaluation to the Board Accountability Mechanisms Committee (BAMC) for its review and consideration.

During this reporting period, three requests for reconsideration were filed with the BAMC for consideration. None of the three requests for reconsideration were referred to the Ombuds Office for evaluation, as they were dismissed by the BAMC.

https://www.icann.org/resources/pages/reconsideration-21-3-dot-hip-hop-request-2021-12-16-en

https://www.icann.org/resources/pages/reconsideration-22-1-palage-request-2022-02-24-en

https://www.icann.org/resources/pages/reconsideration-22-2-nnic-bis-request-2022-04-13-en

The Ombudsman will recuse himself when he or a former Ombuds has previously taken a position or been involved in some meaningful way in the action or inaction of which the requestor seeks reconsideration.

The role of the Ombudsman is to evaluate reconsideration requests in a formal way under Article 4 of the Bylaws; the Ombudsman's main charter under Article 5 remains playing an informal role. These two roles are not always compatible.

The Ombudsman's additional duty to provide substantive evaluations of reconsideration requests adds a new dimension to and extends the role. It does not diminish the primary role of the Ombudsman to resolve disputes informally under Article 5. The community is encouraged to reach out to the Ombudsman about such matters, but to be aware that, if they are likely to result in a request for reconsideration, engaging the Ombudsman informally could prevent his providing a substantive evaluation of such a request under his more formal Article 4 duties.

# **GOING FORWARD**

In FY23, as ICANN continues to shift to a hybrid version of its public meetings while maintaining a high level of virtual engagement with the community, the Office hopes to start evolving into a more strategic service, looking at issues of diversity and interpersonal conflict from a systemic optic which will hopefully prove to be an effective and efficient way of dealing with issues before they escalate into major conflict.

With ICANN Public Meetings continuing to be held fully or in part as virtual events, the Office of the Ombudsman will continue host virtual drop-in office hours during ICANN75, ICANN76, and ICANN77 while staffing a meeting venue office for in-person participants. Active, and moving forward proactive, engagement remains the mission of the Office of the Ombudsman.

As the pandemic has required an adjustment in all service provisions by the Office of the Ombudsman for the past two years, outreach, training, and service delivery were adjusted for that virtual environment. All elements of the Office of the Ombudsman continue to function as before, even in a complete virtual manner, and with a move to shift to hybrid ICANN meetings, pre-pandemic service provision standards can no longer apply as the world has embraced the online environment and now adapts it into a new hybrid way of life.

As the Office of the Ombudsman moves forward as an established and coordinated team, which for now operates in a virtual environment, my hope is to incorporate the Adjunct role into day-to-day operations to make the team, as a model of diversity and equity, a greater asset for the ICANN Community. Working conjointly with the ICANN Board of Directors, ICANN org, and the Community as a whole, we endeavor to keep ICANN a safe, diverse, and harassment-free environment where everyone can enjoy participation – virtual or in-person – to the fullest.

Stay safe and be kind.

# **ICANN OFFICE LOCATIONS**

#### **HEADQUARTERS**

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