

Office of the Ombudsman  
Report to the Board of Directors File 09-58

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Internet Corporation for Assigned Names and Numbers

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Introduction

ICANN Bylaw V, Article 2 states:

“The Ombudsman shall serve as an objective advocate for fairness and shall seek to evaluate and where possible resolve complaints about unfair or inappropriate treatment by ICANN staff, the Board, or ICANN constituent bodies, clarifying the issues and using conflict resolution tools such a negotiation, facilitation, and “shuttle diplomacy” to achieve these results.”

“The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.”

The Ombudsman Framework contains the following provisions:

“Where, in the conduct of an investigation of a complaint, the Ombudsman forms an opinion that there has been a serious breach of administrative fairness, or maladministration, the Ombudsman shall notify the Board of Directors of the circumstances (see key principles regarding administrative fairness in the "Code of Administrative Justice 2003" Ombudsman British Columbia).”

The Internet Corporation for Assigned Names and Numbers (ICANN) Office of the Ombudsman has completed an investigation report and forwarded a set of 10 recommendations to the ICANN Board of Directors for consideration. The Ombudsman, Dr. Frank Fowlie, had received a complaint from a community

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member that they had been treated unfairly by ICANN constituent body. The community member believed that they had been the victim of uncivil and disrespectful communication.

The Ombudsman investigated the matter, and consulted with an international expert on civility. The Ombudsman found the complaint to be substantiated. The Ombudsman has made recommendations to the Board, ranging from the provision of training on cross cultural communications and civility, to an academic study on the effects of on-line bullying within the ICANN processes.

The ICANN Accountability & Transparency Frameworks and Principles were promulgated in January 2008<sup>1</sup>. At Page 28 one finds a set of expected standards of behaviour which, in part, state:

Those who take part in ICANN multi-stakeholder 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.
- Listen to the views of all stakeholders when considering policy issues. ICANN is a unique multi-stakeholder 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

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<sup>1</sup> <http://www.icann.org/en/transparency/acct-trans-frameworks-principles-10jan08.pdf>

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ICANN process must take responsibility for ensuring the success of the model by trying to build consensus with other participants.

In recent years a large body of literature has been developed by social psychologists, and the business and scientific communities on the impact of bullying or incivility on workplace. The universal conclusion appears to be that bullying and incivility has negative effects on the workplace, productivity, relationships, and the recruitment and retention of participants. ICANN is not immune to these impacts.

As ICANN enters its Affirmation of Commitments phase of organizational development, I feel that it is critical for ICANN to demonstrate that respectful communication is a cornerstone of its working environment. It is critical to engage participants from all regions and cultures of the world, and ICANN must create a welcoming environment that honors a variety of societal norms, and contexts.

During the course of my investigation, I have consulted with ICANN's Manager of Public Participation, Kieren McCarthy, and solicited his views on the impact of bullying and uncivil behaviour in the organization. He states:

I'll be brief and I'll be blunt: I think that the unusually high degree of uncivil behaviour within ICANN's processes is the single biggest problem that ICANN faces in its aim to be representative of the global Internet community.

Getting involved in ICANN, participating at anything more than the most shallow level, means that you will, sooner or later, be subjected to aggressive, unpleasant, and often personally abusive behaviour from individuals you have never met.

The more deeply involved in ICANN's processes you become, the greater the likelihood of being the target of aggressive, often personal, attacks.

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The impact of this is that many thousands of people from across the globe who decide to get involved in the organization – which remains largely voluntary - flee and pursue other interests instead. This is especially true of non-English speakers and especially true of cultures that are more reserved.

Having worked for two years with the single goal of increasing global participation within ICANN, I can say with no hesitancy that the aggressive and uncivil culture that has developed within ICANN is the single biggest factor preventing community numbers from reflecting global Internet users - both in numbers and in terms of geographic representation.

The problem is also endemic, and so frequent that many consider it to be just a part of being involved in ICANN. Worse, the result of this implicit acceptance of bullying is that those who would normally be punished in a different environment can perversely end up in positions of greater responsibility.

That is why I am glad this issue has become one of formal review by your office. I would like to see the spotlight put on this issue and for there to be a formal recognition that this is an issue so damaging to the organization as a whole that it needs to be properly and publicly discussed.

ICANN cannot continue to do nothing about this problem, or to continue to hope that the community itself will find the solution organically. It would have happened by now if it was ever going to. Most importantly, don't take my word for it. If people honestly believed that the issue was going to be tackled and tackled effectively, there would be no shortage of community members willing to share their experiences and frustrations with this destructive and intimidating type of behaviour.

There is an apparent polarization of the various participants in the ICANN processes. There are some who are abusive, uncivil, bullying, and disrespectful in the ICANN space; it also demonstrates that there are those who yearn for a civil environment. An important consideration for those who set the standards of behaviour for the organization is not to necessarily focus on those who behave badly, but rather to honour the participation of those who wish to participate with civil and respectful discourse. The risk is that the bullying and divisive behaviour will cause those who wish to participate to turn away from ICANN, and their valuable voices will either not be heard, or simply silenced. As a bottom up

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organization, it seems counter-productive to the tenets of ICANN to allow this to occur.

“Civility costs nothing and buys everything.”

Lady Montagu, 1756

I am concerned that ICANN is facing a civility crisis. I believe that so long as unfettered uncivil communication is given the opportunity to flourish at a grass roots level that there will be risks to ICANN. These risks include: the incapacity to recruit participants from high context cultures; that those who presently are involved with ICANN processes may feel inclined not to participate, or may feel intimidated or humiliated by participating; and finally, that valuable contributors may walk away from the organization with a sense that ICANN lacks professionalism or a welcoming environment.

In an environment polarized between those who wish to act uncivilly and by doing so driving others away from the ICANN process; and those wishing to act within the context of the ICANN Expected Standards of Conduct and by doing so, move the ICANN agenda forward, I believe, that on balance, ICANN owes due consideration to enabling the latter, and educating the former. As contemporary author Malcolm Gladwell would surmise, this is a tipping point for ICANN. It has the opportunity to move forward either with status quo; or with a newly civil environment with respectful communications.

Some of the Ombudsman’s recommendations include:

- 1) I recommend that ICANN engage with a university, or seek outside legal advice, to make a study of what other organizations in the voluntary sector use as benchmarks to determine when participant behaviour becomes so disruptive that the organization wishes to sever its relationship with an individual. The study should also consider the range of sanctions used by

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organizations, and the appeal functions available to protect the interests and reputations of those involved.

- 2) I recommend that the Board of Directors engage with a university to conduct a study regarding the effects of bullying and un-civil behaviour on participation in ICANN processes. I recommend that all other recommendations be implemented while this study is underway.
- 3) I recommend that ICANN provide training at least twice a year (once at an ICANN Meeting, and once at Marina Del Rey) on cross cultural issues, and on civility. The training should be open for the community, volunteers on supporting organizations, advisory committees, ad hoc work groups etc, board members, staff and contractors. I note that the ICANN Office of Human Resources and the Office of the Ombudsman have collaborated with experts to develop a one day seminar on cross cultural dialogue and dispute resolution. I recommend that this course be conducted by a facilitator twice yearly. This should be appended by a seminar on civility (see, for example, John Hopkins University<sup>2</sup>).
- 4) I recommend that the Board of Directors direct supporting organizations, advisory committees, ad hoc work groups etc, on at least an annual basis, to read the expected standards of behaviour into the minutes of the organization or unit.
- 5) I remind the Board of Directors of my recommendation in file 09-08 to develop a policy for maintaining a respectful workplace for staff, service providers, and volunteers. I recommend that this policy be developed and implemented forthwith.

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<sup>2</sup> <http://krieger.jhu.edu/civility>

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- 6) I recommend that the Board of Directors direct staff to develop an administrative policy to deal with the removal of slanderous, libelous, uncivil or disrespectful posting to websites or lists under the ICANN aegis. This administrative policy would also consider “back door” transactions.
- 7) I recommend that ICANN consider the creation of a position of “Ethics Officer” to review the implementation and operationalization of the ICANN Transparency and Accountability Mechanism, and to review instances where there may have been breaches of the ICANN Expected Standards of Behaviour.
- 8) I recommend that the Board of Directors ratify the Statement on Respectful Online Communication as an ICANN policy document.<sup>3</sup>

The Ombudsman expects to have a response from the Board of Directors within 60 days. This time frame is established in the Ombudsman Framework.

ICANN Bylaw V states, “The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.” In this case the Ombudsman has determined that it would be inappropriate to post the full report, but believes that the community should be informed of the investigation.

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<sup>3</sup> <http://www.icann.org/ombudsman/respectful-communication.pdf>