

## **ICANN Ombudsman Framework**

### **Introduction**

The Office of Ombudsman and the work that the Ombudsman does are established by Article V of the ICANN Bylaws.

<http://www.icann.org/general/bylaws.htm#V>

The Ombudsman is independent, impartial, and neutral. The Ombudsman's function is to act as an Alternative Dispute Resolution (ADR) office for members of the ICANN community who may wish to lodge a complaint that the staff, board or a constituent body has treated them unfairly. The purpose of the Ombudsman is to ensure that the members of the ICANN community have been treated fairly. The Ombudsman will act as an impartial officer and will attempt to resolve complaints about unfair treatment by ICANN using ADR techniques.

The Ombudsman reports only to ICANN's Board of Directors. The Ombudsman cannot be removed from office, except by a 75% vote of the Board.

The Ombudsman may post complaints and resolutions to a dedicated portion of the ICANN website (<http://www.icann.org/ombudsman/>): (i) in order to promote an understanding of the issues in the ICANN community; (ii) to raise awareness of administrative fairness; and (iii) to allow the community to see the results of similar previous cases. These postings will be done in a generic manner to protect the confidentiality and privilege of communicating with the Office of Ombudsman.

The Ombudsman will provide an Annual Report to the Board of Directors, and this will be posted on the website.

The Ombudsman will conduct appropriate outreach and consumer awareness with the ICANN community to raise the level of understanding of the Ombudsman process, and to encourage the use of ADR processes.

The Ombudsman will adhere to the standards of practice adopted by The Ombudsman Association, as they may be applicable. (See <http://www.ombuds-toa.org/downloads/TOA%20code-sop.pdf>.)

The Ombudsman will act as a leader by modeling and promoting fairness, equality, clarity, innovation, and by providing assistance to ICANN and the community in developing an awareness of the Ombudsman role.

The Office of the Ombudsman will strive for certification and peer recognition with relevant Ombudsman bodies.

### **Jurisdiction of the Ombudsman**

The ICANN Ombudsman will receive and have jurisdiction over complaints of unfairness concerning:

- Decisions, actions, or inactions by one or more members of ICANN staff;
- Decisions, actions, or inactions by the Board of Directors that may be inconsistent with the Articles of Incorporation or the Bylaws.
- Decisions, actions, or inactions by constituent bodies.

The Ombudsman does not have jurisdiction over complaints concerning:

- Internal administrative matters;
- Personnel issues;
- Issues relating to membership on the Board; or
- Issues relating to vendor/supplier relationships.

The Ombudsman may decline jurisdiction over a complaint in the following circumstances:

- The person making the complaint knew, or ought to have known of the decision, recommendation, act, or omission to which the complaint refers more than 60 days before the complaint was received by the Ombudsman;

- The subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;
- The complaint is repetitive, trivial, vexatious, frivolous, non-substantive, otherwise abusive, or not made in good faith;
- Having due regard for all the circumstances, further action by the Ombudsman is not necessary to resolve the complaint;
- The complaint is abandoned; or is withdrawn in writing by the complainant;
- The complainant revokes the ADR process by engaging in either a formal review process under Article IV of the Bylaws; or engages in an outside legal process.

<http://www.icann.org/general/bylaws.htm#IV>

### **Powers of the Ombudsman**

The Ombudsman shall use various ADR techniques to facilitate the fair, independent, impartial, and timely resolution of complaints.

The Ombudsman does not have the power to make, change or set aside a policy, administrative or Board decision, act, or omission. To the extent a complaint is made relating to a policy, administrative or Board decision, act, or omission, the Ombudsman does have the power to investigate these events, and to use ADR techniques to attempt to resolve the complaint.

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 may notify the Board of Directors of the circumstances.

Where there exists no further opportunity for ADR techniques to be applied, or there is no likelihood of a successful Ombudsman resolution, the Ombudsman shall advise the complainant of the formal review procedures.

If the Ombudsman declines jurisdiction, he shall inform the complainant in writing of the decision.

The Ombudsman may make recommendations to the Board of Directors with respect to matters arising from complaints reviewed and investigated by the Ombudsman. Where the Ombudsman makes a recommendation to the Board of Directors and to the extent the Board deems it appropriate and feasible, the Board should endeavor to respond to the Ombudsman's recommendation within 60 days after the Board meeting following receipt of such a recommendation.

### **Confidentiality**

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall also take all reasonable steps necessary to preserve the privacy of, and to avoid harm to, those parties not involved in the complaint being investigated by the Ombudsman.

The Ombudsman shall only make inquiries about, or advise staff or Board members of the existence and identity of, a complainant in order to further the resolution of the complaint. The Ombudsman shall take all reasonable steps necessary to ensure that if staff and Board members are made aware of the existence and identity of a complainant, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a complaint.

The Ombudsman has the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible. Private and internal communications not distributed via public websites may be designated as confidential by the party providing such information and records. Nothing shall stop the Ombudsman from treating information confidential if the Ombudsman deems it appropriate to do so.

In general terms, due to the very nature of the work of the Office of the Ombudsman, the Ombudsman *will resist* testifying in any process

which would reveal informal, confidential information given to the Ombudsman during the course of an investigation.

## **Receiving a Complaint**

All complaints to the Office of Ombudsman must be made in writing.

The Office of Ombudsman shall provide an interactive form on the ICANN website to facilitate the filing of complaints.

Written complaints to the Office of Ombudsman shall contain the following information:

- Information about the complainant:
  - Name, address, postal address, phone number, email contact, domain name;
- The date of ICANN act, omission, or decision, and a description of that act, omission, or decision;
- A description as to how the complainant has sufficient personal interest in the matter;
- The nature and basis of the complaint about the act, omission, or decision;
- A synopsis of contact between the complainant and the ICANN staff or Board on the issue, if applicable;
- Any other information the complainant wishes to provide.

Should the Ombudsman believe starting an investigation on his/her “own motion” would be appropriate, the Ombudsman will request authority to do so from a Board committee to be determined by the Board of Directors. That committee shall then determine, based on the information provided by the Ombudsman and any information it obtains on its own, whether such an “own motion” investigation is sanctioned by the committee and thus whether or not the Ombudsman is authorized to proceed with that investigation. (See attached flow chart for complaint processing.)

## Internal Fairness Procedure

Upon the completion, but before transmittal, of a draft report to the Board of Directors, the Ombudsman will first provide the relevant ICANN department, committee, organization or individual(s) an opportunity to review, respond and provide feedback to the draft report. The Ombudsman will consider feedback generated by this Internal Fairness Procedure in the preparation of a final report for the Board. The relevant department, committee, organization or individual(s) should endeavor to respond to the Ombudsman, or request an extension to respond, within 30 calendar days from receipt of the draft report.

### Procedure after review

Complaints to the Office of Ombudsman shall be dealt with in an informal, timely, and confidential manner (except as noted above). Communication with complainants will normally be by email or telephone to expedite the exchange of information. When the Office of Ombudsman closes a complaint, it will be in one of the following categories, and the complainant, where possible, will be notified by email:

- **Resolved:** When the matter that the complainant brought to the Ombudsman has been resolved between the parties to the satisfaction of the Ombudsman.
- **System Improvement:** When during the course of conducting an investigation the Ombudsman makes a recommendation to ICANN (either informally or via report to the Board), which the Ombudsman believes may lead to the increased fairness of a process.
- **Referral:** When a complaint does not lie within the jurisdiction of the Ombudsman, and the complainant is either a) passed directly to the responsible staff person within ICANN, or b) given a point of reference outside of ICANN such as the Office of Fair Trading.
- **Self Help:** When the contact requires only the transmittal of information enabling the complainant to be self empowered to

- deal with the matter of the contact on their own (i.e. information found on various ICANN webpages).
- **No further Action Required:** The Ombudsman may begin initial steps in handling a matter and then find that there is no further action required due to the circumstances (i.e. the complaint may be related to a time sensitive issue, or on evaluation the complaint may not warrant investigation (trivial)).
  - **Decline Jurisdiction:** The Ombudsman may decline jurisdiction, as described in the Ombudsman Framework, for matters such as the timeliness of a complaint, lack of personal interest, trivial, vexatious, etc., or in a circumstance where the complainant escalates the complaint to a formal process pursuant to Article IV of ICANN's Bylaws.
  - **Unfounded:** When the Ombudsman investigates a complaint and determines that the matter presented to the Ombudsman was unfounded.
  - **Withdrawn:** When a complainant notifies the Ombudsman that the complaint need not be pursued further.
  - **Abandoned:** When a complainant ceases to be involved in the Ombudsman process without notice to the Ombudsman.
  - **Unresolved and escalated by complainant per Article IV of Bylaws.**
  - **Resolved with Notification to the Board.**
  - **Resolved with Recommendation to the Board.**

