

Office of the Ombudsman
Report to the Board of Directors File 09-17

Office of the Ombudsman
Internet Corporation for Assigned Names and Numbers

Report to the Board of Directors

Ombudsman File 09-17
(Systemic issue with multiple complaints)

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From the ICANN Ombudsman Framework:

Confidentiality

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall only make enquiries or advise staff and Board members at ICANN of the existence and identity of a complainant in order to further the resolution of the complaint. ICANN staff and Board members are to hold the existence of a complaint and the identity of a complaint as confidential, except to further the resolution of a complaint.

This report shall not be further released by any party receiving the report without the consent of the Office of the Ombudsman.

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Introduction

ICANN Bylaw V, Articles 2 and 4 state:

“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).”

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Scenario

In conjunction with the 34th ICANN Meeting, held at Mexico City, the At – Large Constituency held an “At Large Summit” which consisted of some 90 individual internet users representative of the community. The ICANN Board of Directors had voted to include this in the umbrella of ICANN activities and assumed financial responsibility for the summit. This responsibility included the travel of the summit attendees which included a per diem allowance.

During the course of the summit a number of funded attendees sought out the assistance of the Office of the Ombudsman to deal issues related to the payment of the per diem. Some had made arrangements for a pre-travel wire transfer which had not been successful for some reason or another; other had arrangements for a bank transfer but the transfer was through an intermediary bank and had not arrived by the start of travel or the summit; other had received a partial – but not full cash payment; while others complained they had received no per diem funds at all.

Systemic Issues

In this case the systemic issue is defined by two factors. First, that a number of members of the community were affected by an ICANN process, and second, that the crux of the complaint lies not in an individual action, decision, inaction, but rather a systemic way of conducting business. These individual cases may all have been, somehow impacted by the applicant’s banking arrangements or completion of appropriate forms, etc.

The systemic issue in this case can be summarized as the process in which ICANN disbursed funds to community members, especially those who come from offshore and financial system developing states, as part of the organization’s financial obligations. This merits review and recommendations made by the Office of the Ombudsman as ICANN will, no doubt, continue to have such financial interactions with community members in the future.

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In this particular set of circumstances the Office of the Ombudsman notes, with great pleasure, that ICANN Staff, and members of the At – Large leadership worked diligently in a compressed time period to ensure cash payments to all involved. The basis of this report is to help improve the systemic issues and provide for future systems which will provide for certainty of process and reduced staff crisis management.

I note the validity of the comment made to me to the effect that despite all of the good works done by the At – Large group and ICANN Staff, that those persons affected by this will systemic will take this away as their primary memory of this summit. I conclude that each of the individual matters has been appropriately dealt with, and that community members were, in the end, fairly treated.

Redress and Recommendations

In this case each of the individual concerns have been resolved, and I make no finding at all whether ICANN has acted in an fair or unfair manner. Likewise, I make no finding that ICANN has acted fairly or unfairly on a systemic level. Rather, I rely on the bylaws which state: “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.”

In this case I find it appropriate to report to the board that there is a functionality, noted in the course of fact finding for a series of complaints, where is a systemic weakness which may be improved.

The office of the Ombudsman makes the following recommendations:

1. That the Board of Directors directs staff to conduct a “lessons learned” or best practices review of these incidents. The review should include the

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widest possible group of stakeholders including staff, members of the At Large, the ICANN security team, and the contracted agency assisting with the organization of the At Large Summit, and others as identified by staff. The purpose of this review is should be to develop an analysis of what occurred, and to consider a methodology for the disbursement of cash at future ICANN events.

2. That the Board of Directors should direct staff including finance and the security team, to consider options of cash disbursement which have the following as goals:
 - a. An ease of administrative process and minimization of costs;
 - b. Security of the organization and staff handling the cash;
 - c. Respecting the variances of banking systems and central bank foreign exchange policies;
 - d. Providing for diversity and a respectful environment in dealing with those receiving ICANN funds.

The Office of the Ombudsman recommends that payment method options such as PayPal or prepaid debit cards be considered.

3. That the Board of Directors directs staff that the results of both exercises be communicated back to both the Board of Directors and the Office of the Ombudsman.
4. Pursuant to Bylaw V I find no reason that this report not be posted on the website.