

Office of the Ombudsman
Report to the Board of Directors File 09-29

Office of the Ombudsman
Internet Corporation for Assigned Names and Numbers

Report to the Board of Directors

Ombudsman File 09-29

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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.

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 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).”

“Should the Ombudsman begin an “own initiative” complaint, the Ombudsman will advise either the Chairman, Chief Executive Officer, or Corporate Secretary of the existence of the complaint.”

“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.”

Scenario

On April 21, 2009, the Office of the Ombudsman has received a complaint from a member of the Business Constituency (BC), a group which operates as a stakeholder body within the Generic Names Supporting Organization (GNSO). In a resolution of the ICANN Board of Directors (Resolution 7 of the March 6, 2009 Meeting – held at Mexico City) the Intellectual Property Constituency (IPC) was charged to commission a team of volunteers (The Implementation Recommendation Team or IRT) to develop and propose solutions to trademark protection issues related to the new Generic Top Level Domain processes.

The IPC was charged by the Board of Directors to assemble a team of 15 volunteers and to draft a report by April 24, 2009. The IPC attempted to attract members by emailing the GNSO Council list. The IPC was determined to appoint members who would provide as a wide variety of geographical, legal and business representation as possible. Fifteen members were appointed to the committee and a number of persons who had applied were not accommodated based on the principle of wide representation.

The BC member has made three specific complaints to the Office of the Ombudsman:

1. *That there was not a fair call for applications for candidates for the IRT. The complainant was unaware of the call for candidates and a candidate the*

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complainant had encouraged to participate as a volunteer to the team was not asked to serve on the IRT by the IPC;

- 2. That the IRT has not provided sufficient records of its meetings to be considered to have discharged its work in an open and transparent manner; and;*
- 3. That the IRT members have not provided sufficient conflict of interest disclosure to the community.*

On May 29, the Office of the Ombudsman provided an interim report of findings to the complainant indicating that all three complaints had been investigated, and were determined not to have been matters of unfair administrative practices (See Appendix 1). On June 14, the complainant responded with a lengthy letter, which in part stated:

There are two overarching problems with your response:

- 1. It is inexcusably late. As four-time British Prime Minister Williams Gladstone observed, "Justice delayed is justice denied." It is difficult to understand why your investigation and resulting report consumed 6.5 weeks from the time of receipt of our complaint. You were well aware that the IRT was required to issue its Final report on May 24th (later extended by staff fiat to May 29th). Assuming your neutral objectivity at the inception of your inquiry, if our allegations were correct it was incumbent for your office to intervene while the IRT was still in operation and receiving ICANN staff and financial support. Your delay in reaching a final conclusion assured that the IRT would be undisturbed by any finding against its mode of operation had that been your conclusion.*
- 2. It fails to even address the central foundation of our complaint – that the IRT was a "constituent body" of ICANN and thereby bound to act in accordance with ICANN Bylaws. We believe that we put forth a persuasive case for that proposition in our original letter, yet your report sidesteps it completely. The*

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Bylaws require that “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness” – and we emphasize the requirement for conformance to “the maximum extent feasible” and not to the minimum amount excusable, which appears to have been the standard utilized by the IRT. Our belief that the IRT was a “constituent body” was further buttressed by the visual evidence of the letterhead on which our invitation to present to its San Francisco meeting arrived – the ICANN name and logo next to “Implementation Recommendation Team”, conveying the clear message that the IRT was an official entity within ICANN. (See Appendix 2 for the complete letter)

On June 15, the Office of the Ombudsman replied to the complainant addressing these issues:

You state that there are two over-arching problems with the draft report. First, you infer that the Office of the Ombudsman purposefully and improperly delayed the conclusion of our investigation and reporting to deny your organization administrative justice. I dismiss this suggestion out of hand as malicious and fallacious. The Office of the Ombudsman conducted a prompt and timely review of the matter, and was reliant on a fair internal process to investigate, interview, and consult with internally affected parties. Many of these parties are volunteers in the stakeholder process and it is appropriate to bear in mind their professional schedules.

Your second over-arching issue is poorly founded. The Office of the Ombudsman has in no way implied that the Implementation Recommendation Team (IRT) was not an ICANN constituent body. If it had not been, the Office of the Ombudsman would have not had jurisdiction over your original complaint, and it would have been rejected by my Office in the first instance. If you believe that an ICANN body has not acted in accordance with the terms of the ICANN Bylaws the normal demand for redress would be

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made to the Independent Review Panel should you be dissatisfied with the informal review undertaken by the Office of the Ombudsman.

Based on the information presented in your letter I will make further enquiries about the manner in which the Business Constituency promulgated the announcement concerning the request for candidates. This will be conducted during the Sydney meeting, and I will report to the parties concerned shortly thereafter. Again, while it is regrettable that the () was not able to seat a candidate on the IRT, I presently find that there was adequate and fair information before the community to enable nominations to be made on a wide basis. (See Appendix 3 for the complete response)

The Office of the Ombudsman has now concluded its enquiries with respect to the manner in which the BC informed its members about the opportunity to act as volunteers with the IRT.

Systemic Issues

The Office of the Ombudsman has determined that the deadline for the receipt of applications for memberships on the IRT was noon (EDT) on Friday, March 13, 2009. The Office has further determined that executive members of the BC were in receipt of correspondence from the IPC asking for volunteers to self identify for membership on the IRT on March 11, 2009. There may have been a posting of this opportunity to the BC list, however, I am informed that the list was moderated at that time, and the opportunity was not posted prior to the March 13 deadline. On Thursday, March 19, a BC Councilor re-sent the information on self nomination to the BC, and this was promulgated to the BC membership.

Analysis

During the course of my investigation I conducted a survey of all members of the BC to determine if they had been informed of the opportunity to self identify as a

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volunteer to the IRT. There were two facts which emerge. First, there were a number of BC members who informed me that if they had had the opportunity, that they would have volunteered. Second, that only the BC Councilors and Secretariat were informed of the opportunity to volunteer.

At this stage of ICANN's development, as it strives to reach independence, I find it inconsistent that this opportunity would not have been shared with the widest group possible. During my survey of BC members, I received comments such as, "Ah, yes, the usual ICANN opaqueness and clubbiness, know it only too well;" and, "A few handpicked BC members obviously received personal invitations to be on the IRC." These comments from the wider BC membership indicate to the Office of the Ombudsman that there is a degree of frustration with the BC members, apart from the complainant, who may have wished to participate on the IRT.

I find that this is a systemic issue as it has broadly affected all members of the BC on these particular events.

Definitions

The Code of Administrative Justice (2003)¹ defines the following:

UNJUST

To be just is to be impartial, equitable and fair and to make well-founded decisions. Being unjust has substantive as well as procedural aspects.

The merits of a decision may be questionable or the process in arriving at a decision or act may be flawed and both circumstances may result in injustice. Conversely, valid claims may be unjustly dismissed for procedural or technical reasons.

Black's Law Dictionary defines unjust and just as:

¹ Ombudsman of British Columbia, Public Report 42, March 2003

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Unjust: Contrary to right and justice or to the enjoyment of his rights by another, or to the standards of conduct furnished by the laws.

Just: Conforming to or consonant with what is legal or lawful; legally right; lawful. Correct, true, due, reasonable. In accordance with the law and justice.

General Comments

The definitions above assist the Office of the Ombudsman in determining the basis of administrative fairness concerning this complaint. To be just, fair, and reasonable, in other words, to have provided an equitable opportunity for all member of the BC to have self nominated for membership of the IRT would have been the goal of this administrative activity. In this case I find that the members of the BC did not receive that opportunity to participate, and that this is an unfairness.

However, in this circumstance, I have reviewed the process used by the IPC to appoint members to the IRT and have formed the opinion that even if the complainant had been informed of the opportunity to participate on the IRT that their application would likely have been rejected due to the similarity of the complainant to other applications from the same nation, profession, and relative business interests. I do opine that other members of the BC who responded to my Office during the course of my investigation would likely have had a greater opportunity for selection as they represented a wider community.

Finally, I note that despite the finding that the lack of notice of the opportunity to participate for members of the BC was unjust, and therefore an administrative fairness, that at this point in time, I can find no meaningful redress for the complainant. The IRT has completed its work and submitted its report. There is not a further opportunity for BC members to participate in this activity.

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I am also informed by a BC Councilor that there are changes in the manner in which the BC list is moderated, and that in the future, such delays in posting to the BC should be avoidable. Therefore, any recommendation I would make to improve that process has already taken place. I do note that the members of the BC retain the opportunity to debate the IRT report as part of the regular ICANN processes.

Conclusion

I find in the events relating to this particular complaint that the members of the BC were systemically treated in an unfair manner by not being informed of the opportunity to self identify as potential members of the IRT.

Appendix 1

Interim Investigation Report to Complainant

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Thank you for your recent set of correspondence, drawing to my attention a number of issues concerning the Implementation Recommendation Team (IRT). Please consider this to be my preliminary report into your complaints. Should you have any questions or concerns arising from this review, please do contact me. If your concerns are satisfied by this correspondence, I will close my file. As a courtesy to you, I will leave the file open until June 15th in order to provide adequate time for you to respond. Should you be attending the upcoming ICANN meeting at Sydney I would also be pleased to meet with you there to discuss any concerns you may have.

If I understand your complaints correctly, you have informed me of three concerns which relate to the administrative fairness in the formation and operation of the IRT. If these are not an accurate portrayal of your concerns, please do revert to me.

1. That there was not a fair call for applications for candidates for the IRT. You have complained that you were unaware of the call for candidates and a candidate you encouraged to participate was not asked to serve on the IRT;
2. That the IRT has not provided sufficient records of its meetings to be considered to have discharged its work in an open and transparent manner; and,
3. That the IRT members have not provided sufficient conflict of interest disclosure to the community.

I propose to evaluate your concerns on a one by one basis.

First, from your May 8th correspondence it appears that you have concerns that you were not given a fair opportunity to either participate in the IRT as a member, or to encourage others to do so.

I have verified the traffic on the GNSO listserv; verified the content of the ICANN website and news releases; and have had discussions with the President of the Intellectual Property Constituency (IPC) to determine what steps were taken to advise community members of the opportunity to serve as a member of the IRT. My investigation leads me to believe that there was an announcement of the call for candidates on the GNSO list²; that the call was included in the ICANN Newsletter³ and on the ICANN website⁴.

I am informed by the IPC President that all GNSO constituencies and ICANN supporting organizations were informed of the call for candidates. While it is regrettable that you did not learn of the call for candidates until the last minute, I can find no evidence that ICANN acted in any way to prevent you or any

² <http://gns0.icann.org/mailling-lists/archives/council/msg06420.html>

³ <http://www.icann.org/en/newsletter/archive/newsletter-20090306.htm>

⁴ <http://www.icann.org/en/announcements/announcement-6-06mar09-en.htm>

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other person from learning of the call for candidates. As well, the evidence that I have before me indicates that those community members selecting IRT candidates did so with a view to ensure a variety of values and perspectives in the discussions, and also a fair geographic distribution of the membership.

I am further informed that the IPC, when forming the IRT membership had received more applications from candidates than could reasonably be selected to for a working team of 15 people, as was the direction from the Board. It appears that unsuccessful applicants were not selected to ensure a wide representation of view, and geographic location. I also understand that you were invited by the IRT to and did make a presentation to the IRT at its meeting in San Francisco.

Based on the above, I can find no evidence that the opportunity to serve as a member of the IRT was either unfairly administered, or that the general make-up of the members was unfair to those who were not selected.

Second, your April 21 letter makes two specific recommendations for my Office to consider, the first of which deals with openness and transparency. Your citation and analysis of ICANN Bylaw requirements for open and transparent operations is noted.

In my analysis of your complaint I have looked at general principles of Access to Information; and have also compared the operations of the IRT with other ICANN bodies. It seems to be a generally accepted standard in the public domain that certain discussions can be held by participants without having to provide verbatim reports. While ICANN strives for openness and transparency, there are times when it reports on its discussions by way of minutes, as opposed to full verbatim reports.

Certainly the ICANN Board of Directors operates in the above described manner. Board meetings are portrayed to the community in the form of minutes, and not verbatim reports. I am also informed that other supporting structures hold in camera sessions when there is consensus to do so. I note that when it is decided to use minutes as opposed to verbatim recordings, that the minutes reflect this decision being made.

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The IRT minutes for its inaugural March 25 meeting⁵ contain the following at item

- 4: Reporting & Transparency – the call today was recorded since IRT operational protocols being decided on the call; minutes of this call and all meetings shall be posted on the wiki; many team members raised concerns about being able to participate fully and effectively if team work was fully public; agreed to closed mailing list, recordal of calls for IRT members only, no distribution of MP3, discussions to be confidential except general updates and ideas may be shared provided no attribution; issue of conflicts raised and agreed participants shall submit statements of interest.

It is my understanding that appropriate minutes have been recorded of all IRT meetings, that these minutes have been posted on the web for the benefit of the community, and that statements of interests are included in the IRT's final report. Based on all of the above, I cannot make the determination that ICANN has acted unfairly by producing minutes as opposed to verbatim recordings of the IRT meetings.

Third, you have requested that the IRT release and make public conflict of interest disclosure statements. One of the principles in freedom and information and privacy is not to release third party information held by an agency, government, organization, etc. In this case, the holding of disclosure information provided by the members of the IRT should be respected by ICANN. I note that ICANN requires members of the Board of Directors to make conflict of interest disclosure, but that these statements are held confidentially by the organization. I can see no reason why members of the IRT would not be extended the same level of privacy given to members of the Board.

I note that the members of the IRT are all identified in the final report by their position and place of employment, that the final report also includes statements of interest for each IRT member, and that the final report is available on the web.⁶

I find that it is not an unfairness for ICANN refuse to release third party information about members of the IRT.

Thank you for contacting the Office of the Ombudsman with your concerns. Should you have any questions, concerns, or further information you wish to provide me concerning my preliminary report please contact me by email, or through the case management system, as I will be on overseas travel status over the coming weeks.

⁵ https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090410223141-0-23728/original/MTGMINS-March25.pdf

⁶ https://st.icann.org/data/workspaces/new-gtld-overarching-issues/attachments/trademark_protection:20090407232008-0-9336/original/IRT-Directory.pdf

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Best regards,

Frank Fowlie

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Appendix 2

Reply letter from complainant

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Dear Mr. Fowlie:

I am writing in response to your e-mail of June 3, 2009, which provided the results of your investigation of the allegations of the () of April 21, 2009. We alleged that the Implementation Recommendation Team (IRT) constituted by ICANN to let intellectual property interests develop proposed “solutions” for new gTLDs was operating in violation of relevant provisions of the ICANN Bylaws, and requested prompt corrective action to require compliance.

We have carefully reviewed your findings and regret to say that we find them tardy, nonresponsive, and non-persuasive. It is precisely this type of inadequate process and unconvincing result that leads so many within the ICANN community to regard it as an organization lacking effective assurance of accountability.

There are two overarching problems with your response:

1. It is inexcusably late. As four-time British Prime Minister Williams Gladstone observed, “Justice delayed is justice denied.” It is difficult to understand why your investigation and resulting report consumed 6.5 weeks from the time of receipt of our complaint. You were well aware that the IRT was required to issue its Final report on May 24th (later extended by staff fiat to May 29th). Assuming your neutral objectivity at the inception of your inquiry, if our allegations were correct it was incumbent for your office to intervene while the IRT was still in operation and receiving ICANN staff and financial support. Your delay in reaching a final conclusion assured that the IRT would be undisturbed by any finding against its mode of operation had that been your conclusion.
2. It fails to even address the central foundation of our complaint – that the IRT was a “constituent body” of ICANN and thereby bound to act in accordance with ICANN Bylaws. We believe that we put forth a persuasive case for that proposition in our original letter, yet your report sidesteps it completely. The Bylaws require that “ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness” – and we emphasize the requirement for conformance to “the maximum extent feasible” and not to the minimum amount excusable, which appears to have been the standard utilized by the IRT. Our belief that the IRT was a “constituent body” was further buttressed by the visual evidence of the letterhead on which our invitation to present to its San Francisco meeting arrived – the ICANN name and logo next to “Implementation Recommendation Team”, conveying the clear message that the IRT was an official entity within ICANN.

Turning to the specific points of your report:

- In regard to whether the ICANN community was adequately informed of the opportunity to submit applications to be considered for membership on the IRT, I have reviewed the three documents

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referenced in your report and, contrary to your conclusion, they confirm that the notice was not widely distributed in a timely manner. The first document is an e-mail sent by Kristina Rosette of the Intellectual Property Constituency (IPC) to members of the GNSO Council on March 11, 2009 at 6 PM – this was a scant 36 hours prior to the deadline for submission of applications, set for 12 noon on Friday, March 13th! The second document is the ICANN Weekly Newsletter of March 7, 2009 which contains a brief introductory notice of the Board’s decision to constitute the IRT but which does not state that applications for membership were being solicited, much less provide the application criteria and procedures and the submission deadline. That brief notice links to the third and final document, a March 6, 2009 ICANN press release entitled “Trademark Issues to be Addressed Ahead of Internet Address Expansion” which repeats the same general information about the Board’s decision to constitute the IRT but nowhere mentions that there is an ongoing application process for interested parties or that there is a submission deadline one week later. In sum, these documents provide evidence that the application process was not widely noticed to the ICANN community in a timely fashion, only that this information was distributed to members of the GNSO Council one-and-one-half days prior to the application deadline (which in turn explains why members of the Business Constituency, of which () is a member, did not receive any notice of the opportunity to apply until after the deadline had passed, and why general members of the ICANN community received no clear and timely notice at all). These documents reinforce the impression that the opportunity to apply for IRT membership was likely conveyed on a highly selective basis by the IPC to individuals they pre-approved for solicitation.

- It is clear from the IRT membership list that no representation was provided to the professional domain investment community, despite the fact that we nominated a highly qualified individual on the afternoon on March 13th after learning of the application opportunity at the very last moment by sheer happenstance. We have previously stated that we do not regard the opportunity to make a 30 minute presentation as in any way equivalent to full time participation.
- In regard to the transparency of the IRT process, particularly its decision to not release mp3 recordings or transcriptions of its meetings and to only provide vague and general minutes in their stead, we do not believe that your comparison of the IRT to the ICANN Board is an appropriate one. The ICANN Board has certain fiduciary responsibilities under California law which may sometimes require confidential deliberations (we note, however, that the Board’s consistent practice of only releasing summary minutes of its telephonic meetings came under sever criticism at the June 4, 2009

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U.S. Congressional oversight hearing on ICANN). The better comparison is to the GNSO and various ICANN working groups, all of which generally provide public access to full recordings of their proceedings. They somehow manage to contribute to the ICANN process in a full and effective way without invoking confidentiality as the rule rather than the exception. That is, they take seriously the Bylaws requirement to operate in a transparent manner to the maximum extent feasible.

- As to statements of interest for IRT members, we recognize that such statements are included in its Final Report but do not understand why they could not have been released at the outset, especially given our skepticism for the claim that members of the IRT were acting in an individual capacity and not on behalf of their employers or clients (a claim belied by the IRT's rationale for non-transparency and confidentiality, which was that many of its members might not have been permitted to participate by those very same employers or clients if the meetings were fully open to public review).
- Finally, while not raised in our initial letter, we believe that the ICANN community has a right to know exactly how much ICANN expended in staff time and related compensation, and in direct expenditures for the support of travel expenses of IRT members and ICANN staff, as well as the portion of staff salary associated with their IRT activities. Given that support was made available for 15 IRT participants for travel, accommodations, and related expenses for two multi-day meetings in Washington and San Francisco, and that the salary and expenses of supporting ICANN staff (we observed three present in San Francisco) should also be included, we would estimate that it falls in the range of \$50-100,000. The community might well wish to ask why funds were made available for this IPC-directed enterprise when other constituencies and advisory groups are repeatedly told that they cannot be provided requested financial support.

As we expected, the IRT has proposed "solutions" for new gTLDs that are heavily biased in favor of the IP interests that selected its membership and dominated it, and that do not adequately consider the interests and concerns of registrants. The Global Protected Marks List, for example, proposes a preemptive regime that has no basis in trademark law; were ICANN to adopt this recommendation it would be assuming legislative functions that go far beyond its legitimate role as technical coordinator of the DNS.

Likewise, the proposal for a Uniform Rapid Suspension (URS) system is overbroad, provides insufficient due process for registrants, has no effective appeals process for registrants who believe their domains have been unfairly suspended, and has no effective sanctions against abusive complainants. The URS really should be called the URSP because it would constitute a radical new Policy that would almost

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completely displace the UDRP at all new gTLDs. Only the GNSO, which consists of a broad array of constituencies (not just the IPC acting in the guise of the IRT) is supposed to develop and recommend to the ICANN Board substantive policies relating to gTLDs – yet we suspect that ICANN may well try to short-circuit that deliberative process and rush through part or all of the IRT recommendations on the excuse that they are mere implementation details for new gTLDs. That would be an inexcusable and dangerous precedent.

We continue to believe that what is needed is not an entirely new and untested trademark protection scheme for new gTLDs but the convening within ICANN of a fair, open, inclusive, deliberative and fully transparent process for comprehensive UDRP reform that takes the perspectives and interests of all parties into account and that results in a uniform policy across all gTLDs, both incumbent and new, that fairly balances the rights of trademark owners and registrants.

We and others shall clearly state our views on the IRT recommendations and the proper process going forward at the upcoming ICANN meeting in Sydney. And if ICANN does try to do an end run around its own prescribed policymaking process we shall likely seek redress through means other than an appeal to its Ombudsman office.

Sincerely,

Appendix 3

Office of the Ombudsman Response

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Dear (),

I acknowledge receipt of your correspondence dated June 12. Thank you for your comments. Please be advised that I have reviewed these and trust you will accept the communication below as my response.

First, I wish to advise of you the avenues of redress available to you. You have indicated in your ultimate paragraph that you may wish to seek redress beyond the jurisdiction of the Office of the Ombudsman. I must first advise you that should you escalate your complaint to formal dispute resolution system, that my Office will close your file, as I cede jurisdiction when formal Dispute Resolution is invoked by the complainant.

You have three potential sources of redress being: a request for review to the Board Governance Committee; a request for a review by the Independent Review Panel (IRP); or a review by the courts. Should you wish information on requesting either of the internal review procedures, please feel free to request information from my Office, or from the Office of the General Counsel (amy.stathos@icann.org).

You state that there are two over-arching problems with the draft report. First, you infer that the Office of the Ombudsman purposefully and improperly delayed the conclusion of our investigation and reporting to deny your organization administrative justice. I dismiss this suggestion out of hand as malicious and fallacious. The Office of the Ombudsman conducted a prompt and timely review of the matter, and was reliant on a fair internal process to investigate, interview, and consult with internally affected parties. Many of these parties are volunteers in the stakeholder process and it is appropriate to bear in mind their professional schedules.

Your second over-arching issue is poorly founded. The Office of the Ombudsman has in no way implied that the Implementation Recommendation Team (IRT) was

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not an ICANN constituent body. If it had not been, the Office of the Ombudsman would have not had jurisdiction over your original complaint, and it would have been rejected by my Office in the first instance. If you believe that an ICANN body has not acted in accordance with the terms of the ICANN Bylaws the normal demand for redress would be made to the Independent Review Panel should you be dissatisfied with the informal review undertaken by the Office of the Ombudsman.

Based on the information presented in your letter I will make further enquiries about the manner in which the Business Constituency promulgated the announcement concerning the request for candidates. This will be conducted during the Sydney meeting, and I will report to the parties concerned shortly thereafter. Again, while it is regrettable that the () was not able to seat a candidate on the IRT, I presently find that there was adequate and fair information before the community to enable nominations to be made on a wide basis.

I note that you wish to receive information on the expenditures related to the IRT's work. I would suggest that this request be made directly to Mr. Doug Brent, ICANN's Chief Operating Officer, to Mr. Kurt Pritz, ICANN Vice President, or to Mr. Kevin Wilson, ICANN's Chief Financial Officer. Their email addresses are doug.brent@icann.org; kurt.pritz@icann.org; and kevin.wilson@icann.org.

Finally, the IRT report is still part of ICANN's multi-stakeholder consensus building process. While I understand that you believe that () has not had an opportunity to participate in the IRT, it does have the opportunity to debate the report, along with all other ICANN constituent bodies, during the upcoming Sydney meeting, June 21 – 26, 2009. I trust that your organization will avail itself of this opportunity.

Should you have any further information you wish to draw to the attention of the Office of the Ombudsman, please do attend the Office which will be operating at the Sydney meeting, or by email communication with me at any point.

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Best regards,

Dr. Frank Fowlie, DCR
Ombudsman