

Office of the Ombudsman

ANNUAL REPORT

1 July 2017 - 30 June 2018

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PURPOSE

THE PURPOSE OF THIS REPORT IS DESCRIBED IN [Article 5](#)

[Section 5.5 of the Bylaws](#): 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

It is with full acknowledgement of the support the ICANN Office of the Ombudsman receives from the ICANN community, organization, and Board of Directors, that I am pleased to submit my second Annual Report as the ICANN Ombudsman.

FY18 has been a very busy but productive year for the Office of the Ombudsman. One highlight included the first opportunity for the Ombudsman to conduct a substantive review of a [Reconsideration Request](#).

Through the year I have maintained my primary focus of serving the ICANN community. I am pleased to have participated in many ongoing conversations regarding harassment, sexual harassment, inappropriate behavior, and disrespect online and in person. I have worked extensively with members of the ICANN community, organization and Board to address harassment and sexual harassment (and other gender issues).

I have continued to engage with the community at the past three ICANN Public Meetings, as well as at opportunities elsewhere, such as the recent Global Domains Division Summit in Vancouver in May 2018 and the Internet Governance Forum in Geneva in December 2017. I have continued to participate online in community working groups and policy development teams as an observer or in a preemptive official manner (at the request of leadership teams) when conflict is brewing and tempers need to be held in check.

I continued, through the year, to nurture positive working relationships with ICANN personnel with visits to the Istanbul and Los Angeles offices. Whenever visiting an ICANN office, I would conduct an Ombudsman Orientation session for new personnel.

Unfortunately, a family emergency cut my stay at ICANN62 in Puerto Rico short and required cancellation of a professional development training opportunity with the International Ombudsman Association the following month. This demonstrated just one of the challenges of running a one-person office and the possibility of life intervening in professional matters. My precipitated departure from ICANN62 unfortunately had a negative effect on several ongoing cases in the community and I would like to take this opportunity to thank ICANN personnel and community members for their support and understanding.

The ICANN Office of the Ombudsman's new case management system (CMS) is entering its second year of operation and has proven itself to be an invaluable asset to operations and statistical reporting for the Annual Report. The new CMS has recently been updated with necessary modifications to align with ICANN privacy policies and new international legislation.

EXECUTIVE SUMMARY cont'd

A goal of the Office of the Ombudsman is to ensure that all elements of the Office, not just the CMS, reflect and adhere to all organizational, community, and legislative requirements regarding online and in-person interaction.

During the past year I continued to focus on promoting respect and diversity while upholding the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy. I have committed to the ICANN community and Board to engage an Adjunct Ombudsman in a timely manner.

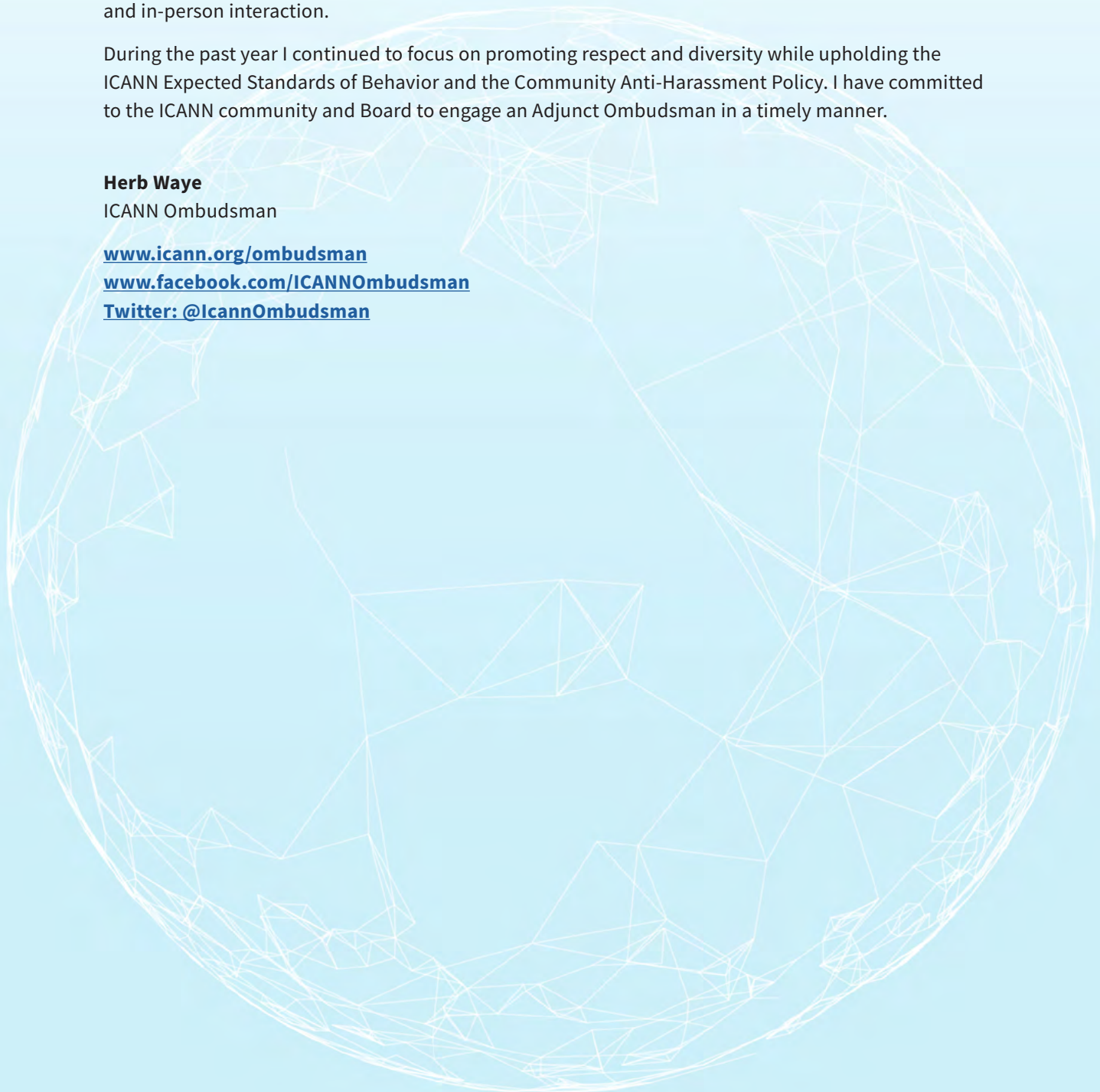
Herb Wayne

ICANN Ombudsman

www.icann.org/ombudsman

www.facebook.com/ICANNOmbudsman

[Twitter: @IcannOmbudsman](https://twitter.com/IcannOmbudsman)



REPORT ON ACTIVITIES

Ombudsman Functions

Conflict management is the Ombudsman’s primary function.



Case Management

- Complaint intake
- Investigation
- Resolution



Monitoring the Environment



Outreach to Community, ICANN org, and Stakeholders



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



Professional Development

REPORT ON ACTIVITIES cont'd

CASE MANAGEMENT



The Office of the Ombudsman received 132 complaints from July 2017 to June 2018. More than 63 percent of these were outside of the Ombudsman's jurisdiction, requiring a response but no action. All complaints are responded to within 24 to 48 hours.

There were 49 jurisdictional complaints requiring intervention, investigation, or active involvement of the Ombudsman (classified as Other). Out of these, only seven cases have been unresolved. There is one unresolved case remaining from FY17 as I continue to monitor an ongoing situation in the community. The remaining seven cases are issues still requiring the active involvement of the Ombudsman.

There were four complaints filed under the Community Anti-Harassment Policy, 15 for abusive discourse and one for discrimination. This demonstrates that almost half of the complaints filed involved unacceptable behavior in the community, hence the need for continued efforts by the Office of the Ombudsman, the community, the ICANN org, and the Board of Directors to make this community a safer place for all participants.

Together, complaints regarding consumer issues about domain names (29) and registrar/registry issues (27), constituted the majority of the non-jurisdictional complaints. The response from the Office of the Ombudsman consisted of a self-help email or a referral to the appropriate ICANN org function (usually Contractual Compliance or Global Support) along with an invitation to participate in the ICANN multistakeholder model if appropriate.

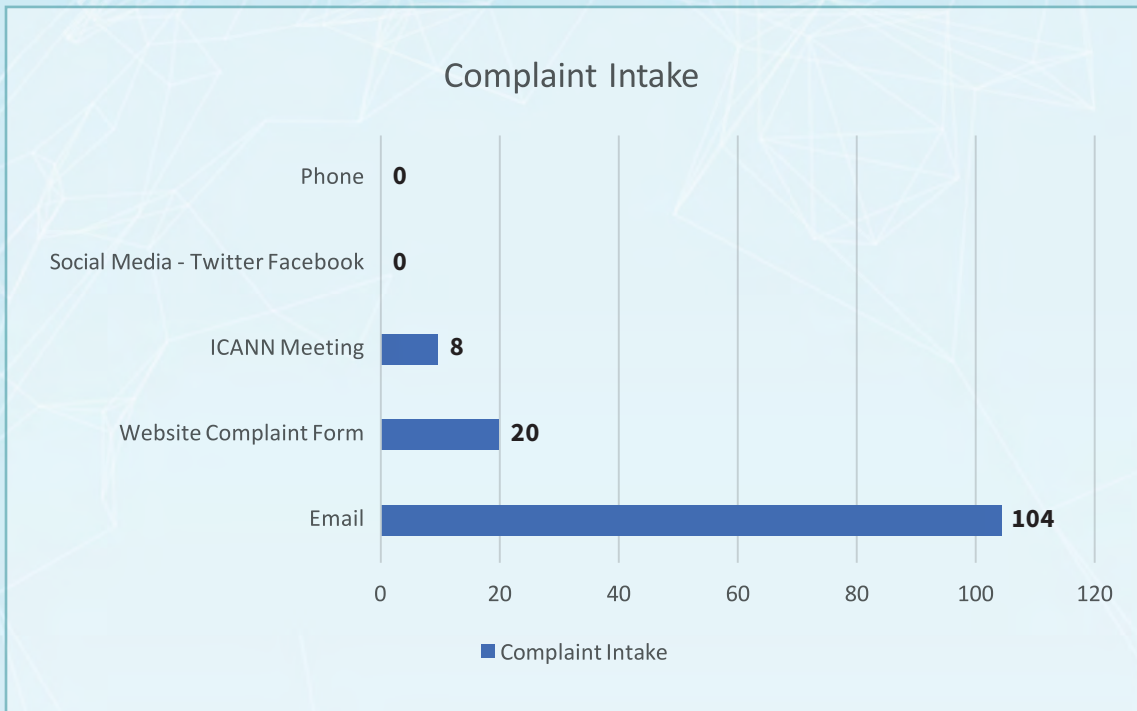
There were several instances when complaints were addressed to both the Office of the Ombudsman and the ICANN Complaints Officer. In all of the instances the complaint was more appropriately addressed by the ICANN Complaints Officer and was not logged in my CMS.

There has been extensive discussion in the past year regarding performance evaluation of the Office of the Ombudsman and one consideration has been the implementation of a ticketing system that includes an automatic feedback survey tool. As much as this is technically possible, performance surveys conducted in the past have not resulted in any feedback input from complainants. I have deferred implementing such a system for the time being. As such I would like to mention that the Office of the Ombudsman receives a significant amount of positive feedback in response to actions taken by the Office. Below are examples of some of the feedback received.

"Your included information helped me locate the web hosting company in USA that is registered under the ICANN policy. (<https://www.godaddy.com/help>) I have sent a complaint and waiting for a response."

"Thank you so much for getting back to me so quickly and pointing me in the right direction. I will make enquiries with the Contractual Compliance Department, Global Support and the community groups and hopefully I will be able to get some further guidance on this matter. It is just rather frustrating that the domain was taken for profit, hopefully there is a solution other than paying \$2,000."

REPORT ON ACTIVITIES cont'd



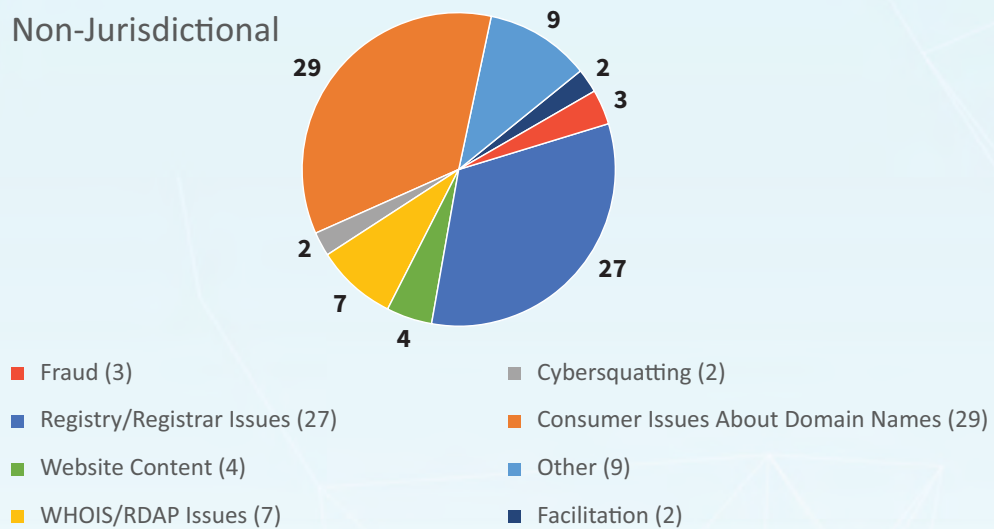
There is no longer a direct link between the online complaint form and the CMS. This allows a filtering of spam, accidental, or test complaint submissions and prevents an uncontrolled spike in case intake due to group campaigns the Office has been the victim of in the past.

REPORT ON ACTIVITIES cont'd

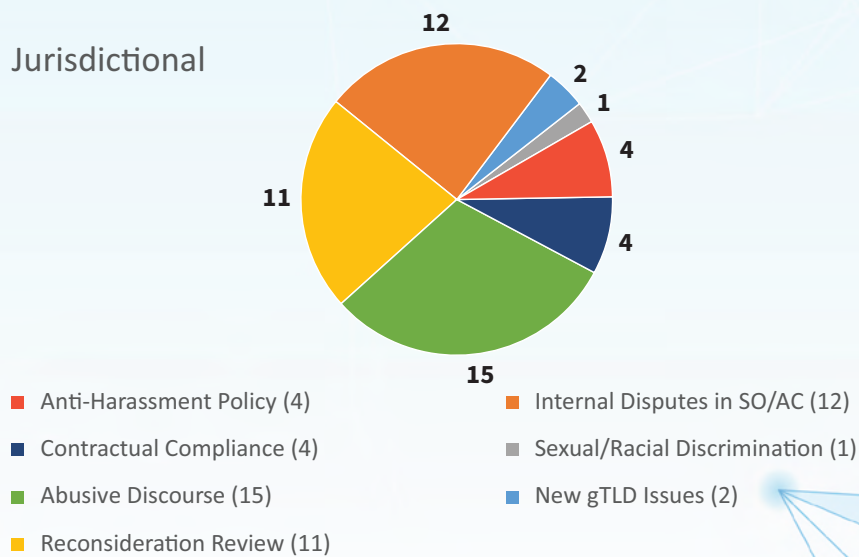
HOW THE OMBUDSMAN HANDLES NON-JURISDICTIONAL COMPLAINTS

- Response sent within two days
- Self-help information or referral
- New initiative provides links to ICANN community groups
- Invitation to participate in community policy development process, particularly if the complaint is about issues such as WHOIS privacy, registrar and registry contractual issues, public safety, and ALAC or GNSO working group topics

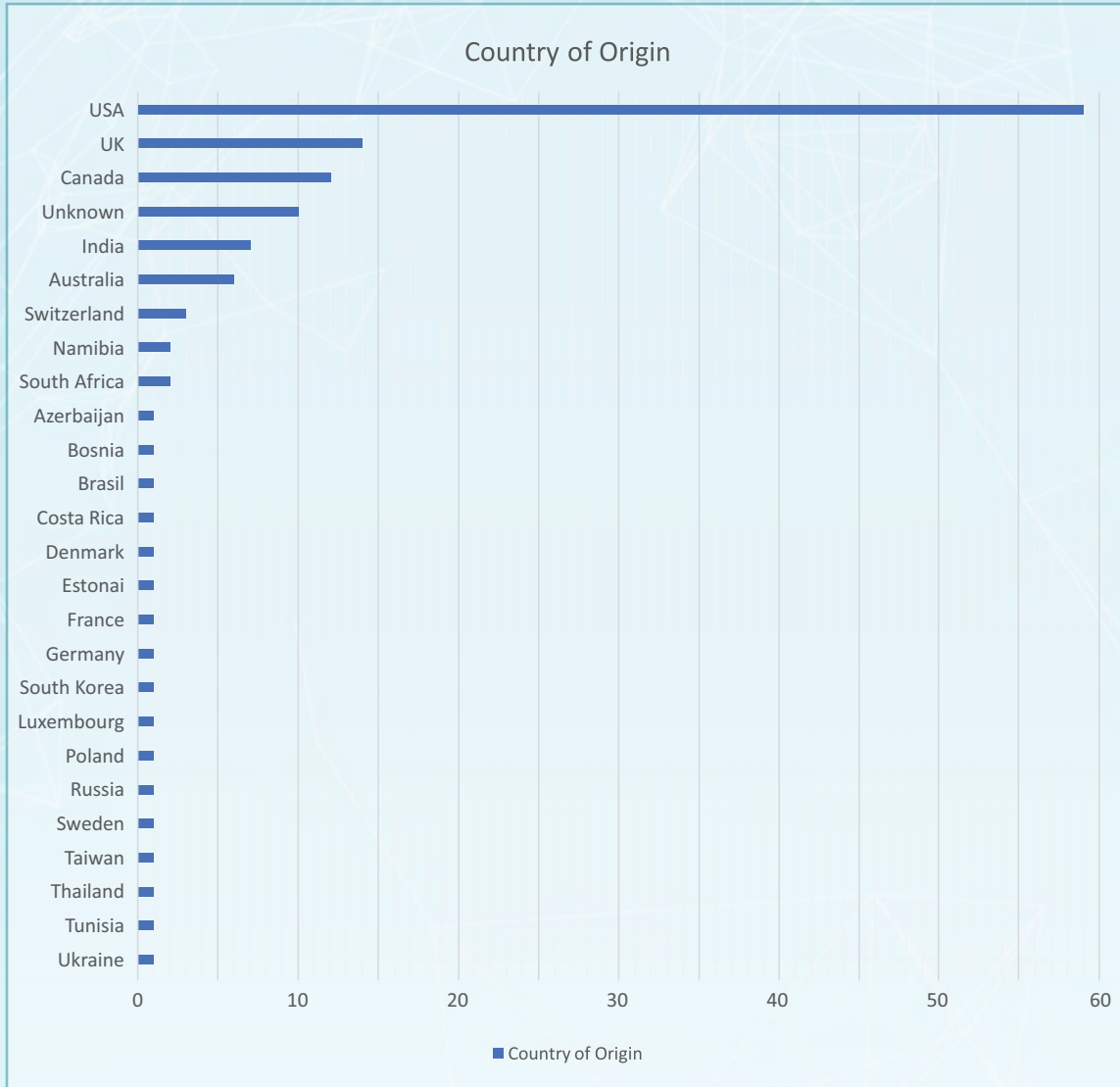
Non-Jurisdictional



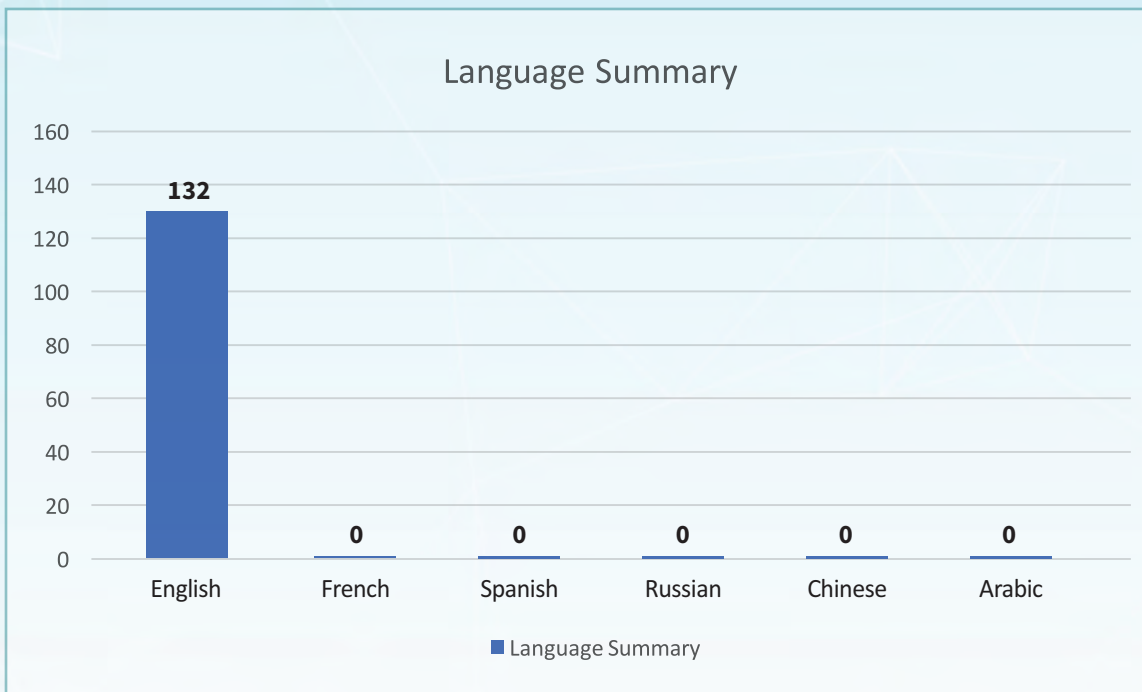
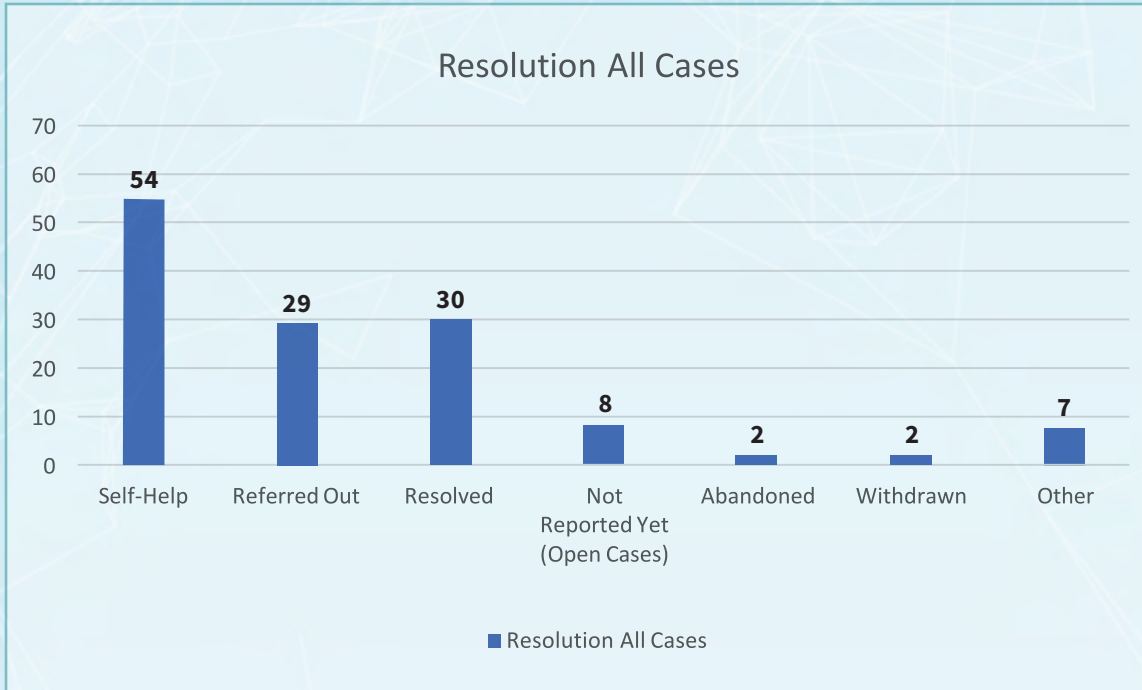
Jurisdictional



REPORT ON ACTIVITIES cont'd



REPORT ON ACTIVITIES cont'd



REPORT ON ACTIVITIES cont'd

MONITORING THE ENVIRONMENT



Throughout the year I continued to monitor the ICANN environment online, on teleconferences, and in-person at ICANN Public meetings and ICANN-related events such as the GDD Summit and the 2017 IGF. I have, usually as a result of ongoing conflict, participated as an observer in several working group meetings and on email lists to remind participants of the importance of adhering to the ICANN Expected Standards of Behavior. I would like to thank the leadership teams who have worked diligently with me to monitor and intervene when necessary with the goal of making ICANN a safe, harassment-free environment.

OMBUDSMAN ACTIVITIES AT ICANN60, ICANN61, AND ICANN62

- **Office hours at Ombudsman meeting office throughout meeting periods**
 - Benefit: Informal drop-in policy allows easy access in a confidential and discreet setting.
- **Participation in community sessions**
 - Benefit: Informal interaction with the groups that most frequently raise issues or that are the focus of frequent complaints.

Non-jurisdictional complaints make up a significant portion of my case load and demonstrate the general public's lack of knowledge regarding ICANN and its available resources. The Office of the Ombudsman is seen as the only available resource. I have adopted the practice of promoting community participation by not just offering self-help or referrals regarding complaints, but by taking the opportunity to educate and recruit. An example of this proactive measure can be demonstrated in the closing paragraphs of the non-jurisdictional complaint response, suggesting that the complainant contact the appropriate constituency group and participate in the ongoing discussions in the community regarding their issue.

To continue the discussion regarding ICANN's role in the community and its relationships with members of the global community, including registries, registrars, resellers, and end users, you can look at the following ICANN constituency groups and participate in the many ongoing discussions related to your concerns. These groups welcome participants with open arms.

gns0.icann.org/en

gns0.icann.org/en/about/stakeholders-constituencies

atlarge.icann.org

REPORT ON ACTIVITIES cont'd

OUTREACH



Outreach has been a key focus for the Office of the Ombudsman in FY2018 in order to increase awareness of the Ombudsman's role within the ICANN community and to promote the ICANN Expected Standards of Behavior. The following is a list of outreach events that focus on the role of the Ombudsman and/or promoting the ICANN Expected Standards of Behavior.

FY18 OUTREACH ACTIVITIES

- Los Angeles ICANN Office visit – one staff Ombuds Orientation
- Los Angeles ICANN Office visit – meet HR Staff at their retreat
- Los Angeles ICANN Office visit – GNSO Retreat
- Istanbul ICANN Office visit (prior to ICANN60)
- NARALO – Online Newbies Session (Opening Comments)
- Opening Comments – Public Forum (ICANN60/61)
- Opening Comments – Welcome Ceremony (ICANN62 – see below)
- Opening Comments – GDD Summit Vancouver
- Attendance IGF Geneva

I would like to note that the ICANN62 Welcome Ceremony was a brief 30-minute event that included an Ethos Award in honor of a deceased community member. As such, I took the initiative of contacting the Master of Ceremonies with the following request, the wording of which was incorporated into the initial remarks at the opening of the event:

"I have hesitated to ask for an opportunity to address the crowd at the welcome ceremony as I see it is only 30 minutes and there is an ethos presentation to be made. Can I ask you (or whoever will be the MC) to include in your opening comments a mention of the ICANN Expected Standards of Behavior and more importantly the Community Anti-Harassment Policy with a remark that ICANN promotes a safe and harassment-free environment for all and that any instances of harassment should be immediately reported to the Ombudsman or a leader in the community, so the incident can be properly and timely addressed? It will be nice getting the message out early in the meeting and mentioning it comes from me."

I continued throughout the year to interact with the community and others through blog posts, Facebook, and Twitter, promoting ICANN events, the Expected Standards of Behavior, and the Community Anti-Harassment Policy.

 www.facebook.com/ICANNOmbudsman

 [@IcannOmbudsman](https://twitter.com/IcannOmbudsman)

Blog: icann.org/news/blog

REPORT ON ACTIVITIES cont'd

PROMOTING AND ENFORCING ICANN EXPECTED STANDARDS OF BEHAVIOR



The ICANN Board adopted an updated version of the ICANN Expected Standards of Behavior in June 2016. The ICANN org and community have used similar standards for approximately ten years. With the adoption of the updated version I saw an opportunity to reinforce my objective of promoting respectful and appropriate behavior and tie the Expected Standards of Behavior in with the new Community Anti-Harassment Policy to reinforce everybody's right to a safe, respectful, and harassment free environment.

ICANN EXPECTED STANDARDS OF BEHAVIOR

<p>Act in accordance with ICANN's Bylaws. In particular, participants undertake to act within the mission of ICANN and in the spirit of the values contained in the Bylaws.</p>	<p>Adhere to ICANN's conflict of interest policies.</p>	<p>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.</p>	<p>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 sexually aggressive or intimidates based on attributes such as race, gender, ethnicity, religion, age, color, national origin, ancestry, disability or medical condition, sexual orientation or gender identity.</p>	
<p>Protect the organization's assets and ensure their efficient and effective use.</p>	<p>Act fairly and in good faith with other participants in the ICANN process.</p>	<p>Conduct themselves in accordance with ICANN policies.</p>	<p>Support the maintenance of robust mechanisms for public input, accountability, and transparency so as to ensure that policy development and decision-making processes will reflect the public interest and be accountable to all stakeholders.</p>	<p>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.</p>
<p>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.</p>	<p>Promote ethical and responsible behavior. Ethics and integrity are essential, and ICANN expects all stakeholders to behave in a responsible and principled way.</p>	<p>Facilitate transparency and openness when participating in policy development and decision-making processes.</p>	<p>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.</p>	

This has been translated into multiple languages for information only. The original and authoritative text (in English) may be found at: icann.org/en/system/files/files/expected-standards.

It has now been two years since the ICANN Board of Directors adopted the current version of the ICANN Expected Standards of Behavior in June 2016. The standards have nonetheless been present for more than 10 years. I continue to promote everybody's right to a safe, respectful, and harassment-free environment when attending an ICANN meeting or sponsored event by reinforcing the Expected Standards of Behavior and the new Community Anti-Harassment Policy.

REPORT ON ACTIVITIES cont'd

PROMOTING AND ENFORCING COMMUNITY ANTI-HARASSMENT POLICY

In the past year I was very pleased to see the interest and concern taken by the ICANN Board, members of the ICANN community, and ICANN organization in the discussions supporting anti-harassment, while promoting in parallel, the ICANN Expected Standards of Behavior. Throughout the year, the Office of the Ombudsman and the ICANN Board of Directors have received invaluable input from concerned community members. I would like to take this opportunity to assure all that by working together, we can and will make a difference.

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

Diversity in the Office of the Ombudsman is important. I continue to address and consider the issue of diversity in discussions with ICANN org, members of the ICANN Board, and community members as I work towards staffing the position of Adjunct Ombudsperson with the best candidate.

I would like to stress that anybody who thinks that they have been subjected to harassment can, and should, address the issue with any senior person in the ICANN organization, ICANN Board of Directors, or with any community leader with whom they feel comfortable, and ask that the incident be reported through them to the Office of the Ombudsman. I acknowledge that anonymity may be a concern and that some may be uncomfortable raising an issue with the Ombudsman because of a gender difference or any other reason. There is no place for harassment, bullying, or any other type of inappropriate behavior in today's world. It 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: icann.org/en/system/files/files/community-anti-harassment-policy.

REPORT ON ACTIVITIES cont'd

PROFESSIONAL DEVELOPMENT



I continue to maintain membership in three Ombuds organizations: (i) the International Ombudsman Association (IOA); (ii) the Forum of Canadian Ombudsman (FCO); and (iii) the International Ombudsman Institute (IOI). I was unfortunately required to cancel my attendance at the IOA Annual Conference and Professional Development opportunity to deal with a family emergency. The FCO Conference/Professional Development is biennial and as such their next conference will be April 2019. The general assembly for the IOI is held every four years, the next being in 2020.

I nevertheless had an opportunity to attend the International Ombudsman Institute capacity building workshop, "Human Rights on the Digital Age," held in Tallinn, Estonia. This informative training session offered me the unique opportunity to meet and learn from a group of ombudspersons from around the world and discuss issues directly related to the ICANN environment, such as privacy rights, and issues of diversity, gender, and personal information/data abuse.

The ICANN community and several members of the ICANN Board have in the past mentioned that the ICANN Ombudsman should have formal mediation training. As such, I am pleased to inform the community that over the past year I have been enrolled in the Canadian Institute of Conflict Resolution's Third Party Neutral program (www.cicr-icrc.ca). The program consists of four one-week training sessions covering conflict resolution skills, mediation skills, facilitation skills, and other related learning. The week-long modules are spread over a one-year period and I have successfully completed three of the four modules in the fiscal year. I will attend the fourth and final module in November 2018 to complete the mediation training.

REQUEST FOR RECONSIDERATION

As noted in last year's Annual Report, in October 2016, the Ombudsman role in ICANN expanded to include reviewing Reconsideration Requests, and in situations where the Ombudsman does not recuse himself, providing a substantive evaluation to the Board Accountability Mechanisms Committee (BAMC) for its review and consideration.

This past year, I recused myself nine times. On one occasion, Request for Reconsideration 18-3, I was able to provide a substantive evaluation to the BAMC. The BAMC agreed with my evaluation and the Board adopted the BAMC's recommendation on Reconsideration Request 18-3 in July 2018. I look forward to providing more substantive evaluations of Reconsideration Requests to the BAMC in the coming year.

A note on my standard for recusal: as Ombudsman, I will recuse myself when I, or the former Ombudsman, have previously taken a position on a matter, or been involved in some meaningful way in the action or inaction of which the Requestor seeks Reconsideration.

Again, my role obligates me to evaluate Reconsideration Requests in a formal way under Article 4 of the Bylaws; my main charter as Ombudsman under Article 5 remains an informal role. The two may not always be totally compatible.

As I am required to recuse myself when the Office of the Ombudsman at large has already taken a position, there exists a meaningful question as to how to balance the situation when a member of the community comes to me seeking advice about something that might lead to a Reconsideration Request. If I take a position in the matter under such circumstance, I will then recuse myself if and when a related Reconsideration Request is submitted to the Office for substantive evaluation.

My additional duty to provide substantive evaluations of Reconsideration Requests adds a new dimension and extends my role. As far as I am concerned, it does not diminish my primary role as Ombudsman to resolve disputes informally under Article 5. So please, come see about any and all such matters, but if they are likely to result in a Request for Reconsideration, be advised that engaging me informally will probably force me to bow out of providing a substantive evaluation of such Request under my formal Article 4 duties.

GOING FORWARD

In the coming year, the goals of the Office of the Ombudsman will generally focus on the community as they have in the past. Maintaining a high standard of professional behavior by all is critical to the efficient and effective functioning of the ICANN multistakeholder model. Everyone deserves to participate knowing the environment will be safe, professional, harassment-free, and respectful of diversity and cultural differences.

I have been working closely in the past year with the ICANN org to develop and implement various policy and legal obligations with regard to the Ombudsman processes. I will continue in the coming year to ensure the ICANN Ombudsman's online presence, framework, and actions are aligned with regulations and policies including: the European Union General Data Protection Regulation, the ICANN Open Data Initiative, and ICANN Data Retention Policies.

Fiscal responsibility will continue to be high priority for the Office of the Ombudsman. I have been able to combine travel to accomplish multiple objectives at a reduced cost. Visits to various offices, for example, are conducted as part of travel to ICANN Public Meetings, with visits planned to Brussels (ICANN63 or 65) and Singapore (ICANN64) in the coming year.

As my primary role is conflict management, I firmly believe developing and maintaining professional relationships with community members, the ICANN Board of Directors, and the ICANN organization is a critical component in successfully reducing conflict. For the most part, I have had positive experiences mediating issues of conflict in the past year, though I will admit there have been cases that have been more challenging and could have been handled differently. I accept those incidents as learning opportunities and continue to strive to improve my professional skills, learn from the more challenging incidents, and continue to offer a professional service to the community and organization in the coming year.

In closing, I would like to once again thank the ICANN community, ICANN Board of Directors, and ICANN organization for their support of the Office of the Ombudsman and its effort to make ICANN a safe, diverse, and harassment-free environment where everyone can enjoy participation to the fullest.

ICANN LOCATIONS

HEADQUARTERS

12025 Waterfront Drive
Suite 300
Los Angeles, CA 90094-2536
USA
Phone: +1 310 301 5800
Fax: +1 310 823 8649

REGIONAL OFFICES

Brussels, Belgium
6 Rond-Point Schuman
B-1040 Brussels, Belgium
Phone: +32 2 894 7400

Istanbul, Turkey
Hakki Yeten Cad. Selenium
Plaza No:10/C K:10
34349 Istanbul, Turkey
Phone: +90 212 999 6222

Montevideo, Uruguay
La Casa de Internet de
Latinoamérica y el Caribe
Rambla República de México 6125
11400 Montevideo, Uruguay
Phone: +598 2604 2222 ext 5701
Fax: +598 2604 2222 ext 4112

Singapore
South Beach Tower
38 Beach Road, Unit 04-11
Singapore 189767
Phone: +65 6816 1288

ENGAGEMENT CENTERES

Beijing, China
5th floor, No. 1 Building,
Software Park
Chinese Academy of Sciences
4 South 4th Street
Zhongguancun, Haidian District,
Beijing, China
queries.beijingec@icann.org

Geneva, Switzerland
Regus Center
Rue du Rhône 14
1204 Geneva, Switzerland
Phone: +41 22 819 1844
Fax: +41 22 819 1900

Nairobi, Kenya
Regus Center
17th Floor
ICEA Building, Kenyatta Avenue
PO BOX 15168-00400
Nairobi, Kenya
Phone: +254 (0)20 5157029
Fax: +254 (0)20 5157001

Washington, D.C., USA
801 17th Street, NW, Suite 400
Washington, DC 20006
USA
Phone: +1 202 570 7240
Fax: +1 202 789 0104

PARTNERSHIPS

Asunción, Paraguay
CEILAC at SENATICs Complejo
Santos E2 - Gral. Santos 1170
c/ Concordia

Cairo, Egypt
Km 28, Cairo Alex Desert Rd.
Smart Village, NTRA, B4 Bldg.
Giza, Egypt

Seoul, Korea
11F Platinum Tower
398 Seocho-daero, Seocho-gu
Seoul 06619
Republic of Korea
Phone: +82 2 405 6592
Fax: +82 2 405 6593