

2007 Annual Report

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Letter from the Ombudsman



The Internet Corporation for Assigned Names and Numbers

30 June 2007

To the Chairman and the Board of Directors of ICANN,

I have the great pleasure of submitting to you the third annual report of the Office of the Ombudsman.

The 2006 – 2007 fiscal year was a busy one for the Office of the Ombudsman. The Office continues to receive a number of complaints and contacts on a regular basis from members of the ICANN community. Dealing with these issues, and the associated case management remains the priority of my Office. The Office maintains its roles in outreach, involvement in peer Ombudsman activities, and research.

The ICANN Office of the Ombudsman continues to distinguish itself as a Centre of Excellence in online dispute resolution, Ombudsmanship, and over the past year, in Ombudsman evaluation.

This annual report will document those key activities.

Finally, I would like to express my continued appreciation to you, the members of the ICANN community and supporting organisations, and the ICANN staff for the continued support my Office has received.

With best regards,

A handwritten signature in purple ink, which appears to read "F. Fowlie", is written over a horizontal line.

Frank Fowlie
Ombudsman



The Year in Review

2006–2007 was an active year for the Office of the Ombudsman. 375 complaints or community contacts for assistance were handled. Two major reports were prepared and delivered to the Board and the community. Hundreds of RegisterFly consumers turned to my Office seeking assistance.

The website at www.icannombudsman.org was revamped. An active Ombuds blog was initiated. Three major evaluations were completed. Ongoing client satisfaction surveys were put in place. I wrote a paper for publication in the International Ombudsman Yearbook dealing with client satisfaction.

I attended three ICANN meetings, three Ombudsman conferences (including making a major presentation at one), an international conference on Online Dispute Resolution, and three Ombudsman training sessions. I participated in a total of 20 outreach or training events.

I spent 128 days in travel status between Marina del Rey and other responsibilities. The majority of correspondence to my Office was responded to within the first 24 hours, or the first 48 hours if I was traveling.

The annual report was delivered in six languages. Complaints were received in and translation services provided in German, French, Turkish, Portuguese and Spanish.

All of this was accomplished on time, with a sole practitioner office and a very capable adjunct that covers the Office during my leave periods.

Creating Dialogue . . .
Affirming Fairness.

Ombudsman Activities

RECEPTION, REFERRAL AND INVESTIGATION OF COMPLAINTS

The charts and graphs contained within this annual report provide information about the volume of contacts, the country of origin, the classification of the complaints, and resolutions.

The number of complaints within my jurisdiction (actions, decision, or inaction by the Board, staff or supporting organisation) as a percentage of the whole is consistent with data I have been able to examine from other Ombudsman Offices.

- to enforce a constant message amongst ICANN and stakeholder communities, government officials, users and stakeholders, and my peer Ombudsman community that this Office of the Ombudsman is deserving of its reputation as a 'Centre of Excellence' for online dispute resolution, and Ombudsmanship generally.

My overriding goal is that all would see the office as a centre of excellence, where there is a preconceived idea of professionalism and good, fair service.

During FY 06-07 I have maintained membership in the Forum of Canadian Ombudsman, the United States Ombudsman Association, the International Ombudsman Association, the International Ombudsman Institute, as a Fellow in the Centre for Information Technology and Dispute Resolution, and the United Nations Expert Working Group on Online Dispute Resolution.

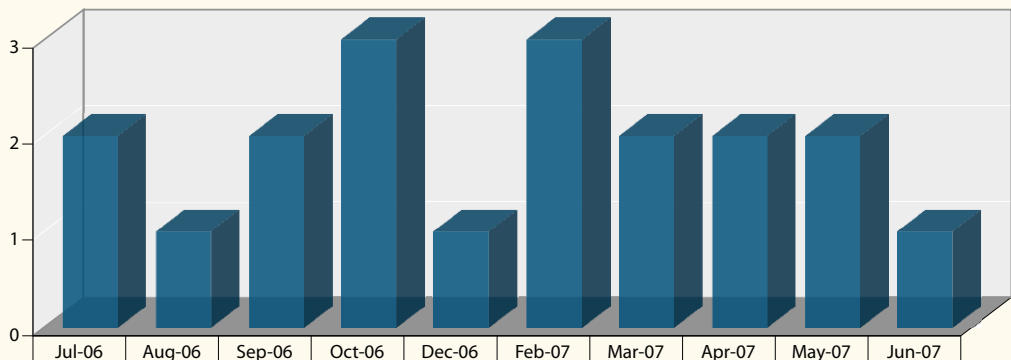
OUTREACH, CONSUMER EDUCATION AND PEER ACTIVITIES

To my definition outreach includes speaking to groups, hospitality, training events, and peer Ombudsman activity. My overall goal with Outreach is threefold:

- to inform the ICANN community about the existence and activities of the Office of the Ombudsman;
- to professionalise the Office through continual learning activities; and

I have made presentations to individuals, organisations, conferences, and academic institutions ranging from the International Ombudsman Association to participating in judging an essay contest with the Internetbar.org to undergraduate law students at the University of Massachusetts – Amherst.

The tables found within this annual report outline the Outreach activities I have participated in.



■ Monthly Outreach Activities	2	1	2	3	1	3	2	2	2	1
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2006-2007 Outreach Activities

Date	Activity	Location
01-Jul-06	International Ombudsman Association Training (5 Days)	Montreal
02-Jul-06	Courtesy Call Industry Canada, Public Service Ombudsmen	Ottawa
03-Aug-06	Written Communication Analysis Course (3 Days) (LSI)	Vancouver
04-Sep-06	United States Ombudsman Association Annual Conference (4 Days)	Des Moines
05-Sep-06	Site Visit - Brussels Office (5 Days)	Brussels
06-Oct-06	New Staff Orientation	Marina del Rey
08-Oct-06	New Staff Orientation	Marina del Rey
08-Oct-06	Southern California Ombudsman Caucus	Los Angeles
09-Dec-06	ICANN Meeting (9 Days)	São Paulo
10-Feb-07	North West Ombudsman Group Meeting	Vancouver
11-Feb-07	Telecommunities Canada	Vancouver
12-Feb-07	UMASS Law School (online discussion)	Amherst
13-Mar-07	International Ombudsman Ass'n Systemic Issues Course (2 Days)	Orlando
14-Mar-07	New Staff Orientation	Marina del Rey
15-Mar-07	ICANN Meeting Lisbon (9 Days)	Lisbon
16-Apr-07	International Ombudsman Association Annual Meeting (4 Days)	St. Louis
17-Apr-07	United Nations Expert Working Group Online Dispute Resolution (4 Days)	Liverpool
18-May-07	Undergraduate Lecture, Royal Roads University	Victoria
19-May-07	Forum of Canadian Ombudsman Biennial Meeting (4 Days)	Montreal
20-Jun-07	ICANN Meeting (9 Days)	San Juan

Statement on Respectful Online Communication

Drafted jointly and agreed to by consensus April 20, 2007 at the 5th International Forum on Online Dispute Resolution in Liverpool, England – held in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific:

“While information and communications technologies (ICT) enable unprecedented interactions between individuals around the world, they also introduce some dynamics that can degrade dialogue.

ICT enables people to communicate immediately and anonymously, often without moderation, and in some circumstances this encourages behavior (such as threats or insults) that most individuals would never engage in face-to-face.

This behavior may make people feel unwelcome, disrespected, or harassed in their online interactions. Ultimately, individuals may be dissuaded by these dynamics from participating, which undermines the vibrancy of our global conversation.

As a result, we encourage individuals to:

- communicate online with respect*
- listen carefully to others in order to understand their perspectives*
- take responsibility for their words and actions*
- keep criticism constructive*
- respect diversity and be tolerant of differences*

We embrace full and open communication and recognise the unique opportunity for expression in the online environment. We support freedom of speech and reject censorship. These principles are not intended to address what ideas can be expressed, but rather the tone with which communications takes place.”

Case Studies

UNHAPPY CUSTOMER

I have decided to include a letter from a complainant which on the face of it is disturbing. To put some context around this particular correspondence, the writer had written to the ICANN Ombudsman because he was dissatisfied with OEM software he had bought on line. The author wrote to my Office to complain that he was unhappy with his purchase, and to ask my Office to bring the vendors "to justice". My Office's response to inform the writer that as his issue did not concern an ICANN act, decision, or inaction, that I could not accept the complaint.

However, I think it is important to report to the Board and to the community a number of the issues which this letter raises. First, it demonstrates a common problem that, despite all of the information available on the ICANN, and the Office of the Ombudsman websites, in a number of languages, correspondents sometimes do not understand that ICANN has a narrow technical mandate with respect to the Domain Name System. It also shows a common misconception that the role of the Ombudsman is a general service complaints agency for the Internet as a whole, rather than its defined role as an alternative dispute resolution mechanism for complaints dealing with ICANN actions, decisions, or inactions. Thirdly, it demonstrates an ever-increasing trend towards what some have called a culture of meanness or literal violence in a detached, faceless world of emails.

Dear Mr. Fowlie,

Thank you very much for your email and notification that you will not take any action on a moral, ethical and legal issue of Russians depriving the free world of millions of dollars of hard currency with absolute impunity.

ICANN is a regulatory organisation entrusted with REGULATING the World Wide Web and doing this in a manner that will make it impossible for criminals to utilise the World Wide Web for their filthy purposes.

However, I and many others see that ICANN has gone mad with its lunatic attitude about the manner in which it supervises allocation of the global domain name system and today we see that Russians, a nation with no belief in any moral or ethical concerns or God is openly exploiting the web with impunity to de absolute evil.

This is absolutely ridiculous and the attitude that you have taken on the issue when you are a responsible member of this organisation is even more ridiculous.

It appears Sir that you are accustomed to taking your fat salary for doing nothing in a position which was entrusted to you so that you could do some good.

I think that the ridiculous oprganisation which ICANN has proven itself to be requires that all its upstart and irresponsible members, including you, should receive a thorough beating till you come to your senses. I wish that I could personally thrash you so well that your soddiness could come to your senses.

However, because I cant take a stick and beat the shit out of you filthy good for nothing idiot, I intend to bring your callous attitude to the attention of the press and the US government. It is about time that this soddy private organisation was thoroughly overhauled so that it did bring morality and ethics to the WWW, something which an idiot like you neither has an inclination of doing nor the will despite your fat pay check.

Thanks for nothing assehole.

CAN A PROCESS BE IMPROVED?

In the past two years my Office has received two complaints, and has self-generated a complaint concerning the same process. The process in question concerns the granting of a benefit or status by the organisation. The administrative function involves the reception of an application made by a party outside of ICANN. The process involves an investigation and recommendation by staff, and then a decision by an ICANN structure on the granting of the benefit or status. This matter was of such concern that my Office had received complaints from individual members of the ICANN structure.

The complaints have variously dealt with three different administrative issues. First, the process, which should normally be completed within 90 days, has taken much longer in some instances. Secondly, that when communicating a denial for the benefit or status to the applicant, that reasons for the negative decision were not provided. Third, that the number of members of the ICANN structure simply not voting on the application, or formally abstaining, meant that even though there were no negative votes cast, that there were not enough votes overall to form the quorum required, and the applications could not pass.

I have made over a dozen recommendations to the Board of Directors and the ICANN structure concerning this process. My hope is that the structure, the Board of Directors, ICANN staff, and my Office can work progressively to ameliorate this administrative process for the benefit of the applicants and the community.

Finally, it has been brought to my attention that some members of this structure feel dissatisfied with the manner that my Office has conducted this investigative and recommendation process. If the work of the Office of the Ombudsman has caused any person to feel discomforted, I offer my sincere apology. I believe that my work has been as an advocate for fair administrative processes, and that I have worked diligently to bring forward reasonable recommendations and accurate fact patterns to the attention of the structure, the Board, and the community within the standards of my profession.

The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the ICANN community who believe that the ICANN staff, Board or an ICANN constituent body has treated them unfairly. 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 as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

ICANN Bylaws, Article V, Section 2

Evaluation and Recommendations

During the fiscal year, the Office of the Ombudsman conducted three major evaluation studies as part of the planned mid-term, or formative evaluation. The three evaluation studies were Literature Based Review; Statistical Comparison; and Client Survey. These may all be found at <http://icann.org/ombudsman/program.html>.

The Literature Based Review was an innovative approach to evaluate the formation and operations of the Ombudsman’s Office. Over fifty evaluation criteria were found in the literature concerning Ombudsmen, and these criteria were compared to the ICANN Ombudsman operations. The Literature Based Review demonstrated that the Office of the Ombudsman is a centre of excellence in a number of ways:

- Despite being in the developmental process, it has matured into a responsive, flexible, and fair online dispute resolution system;
- It has a leading edge evaluation framework in place. Research conducted at ICANN on Ombudsman review is at the forefront in the field; the ICANN Ombudsman will, over time, be able to demonstrate value and program efficiency;
- It has a strong recognition of the necessity of outreach and community education;
- It has developed appropriate online tools for complaint intake and resolution;
- It is unique in its mix of Ombudsmanship and online dispute resolution;
- It has strong leadership from a well-qualified incumbent;
- It promotes a strong communications and feedback loop with the organisation;

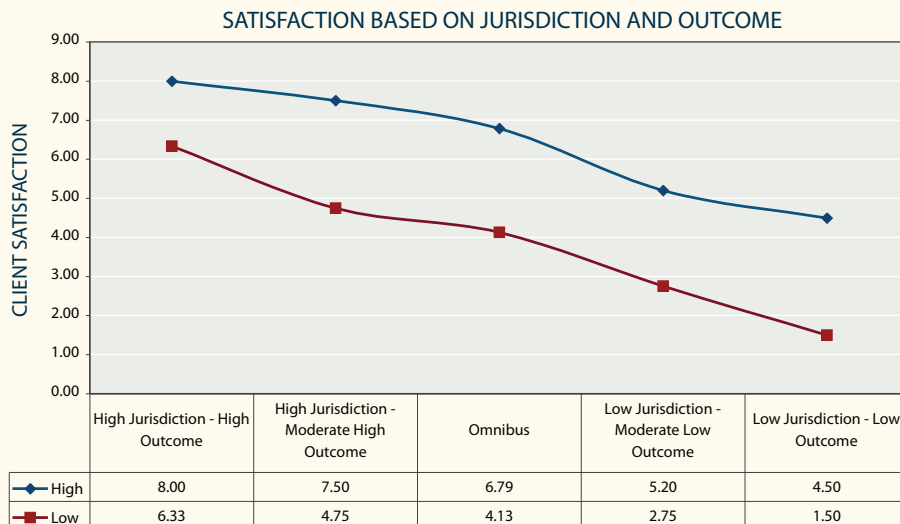


Figure 1 illustrates client satisfaction based on meeting expectations as per survey Question Five. The High Jurisdiction – High Outcome (ICANN act, decision, inaction which was resolved) satisfaction range is higher and tighter than the Low Jurisdiction – Low Outcome (registrar or domain name – complaint declined) range.

- It uses data and trend analysis to promote improvement in the organisation, and to advise other parties of potential issues;
- It participates in the range of Ombudsman fora; and,
- Despite being a sole practitioner office, it has established a continuity program for absences.

The Statistical Comparison contrasted the ICANN Office of the Ombudsman with three other Ombudsman operations, based on budgets, staff complements, and cases handled. This review demonstrated that the ICANN Office of the Ombudsman is efficient in operations, based on the volume of work it handles based on a “files per staff member” ratio, and cost per file.

The Client Survey involved re-ontacting persons who have made complaints or have contacted the Office of the Ombudsman for assistance. They were invited to participate in an online survey, hosted outside of ICANN. The online survey contained 17 questions ranging from general satisfaction levels to the material viewed on the Ombudsman website. The results indicated that the office has achieved a generally high level of satisfaction. Interestingly, the survey demonstrated that there is a direct link between the level of satisfaction and the Ombudsman’s jurisdiction over the issue raised. (See figure 1) The survey has continued on a monthly basis, and the results show a generally high level of satisfaction.

The results of these self evaluations were reviewed by an independent third party, who was selected by the Board Audit Committee. The outside evaluator has stated:

“The ICANN Office of the Ombudsman has developed and initiated the single most complete, deliberate, and meaningful assessment process deployed in the ombuds field to date. This process allows the Office to accurately declare it is structured to, and appears to function as, an ideal executive ombuds on behalf of the ICANN community.”

The Office of the Ombudsman has also undergone evaluation in the One World Trust Report on ICANN Accountability and Transparency. The Report mentions the Office of the Ombudsman at several points and recommends to ICANN an increased level of staffing support for the Office of the Ombudsman.

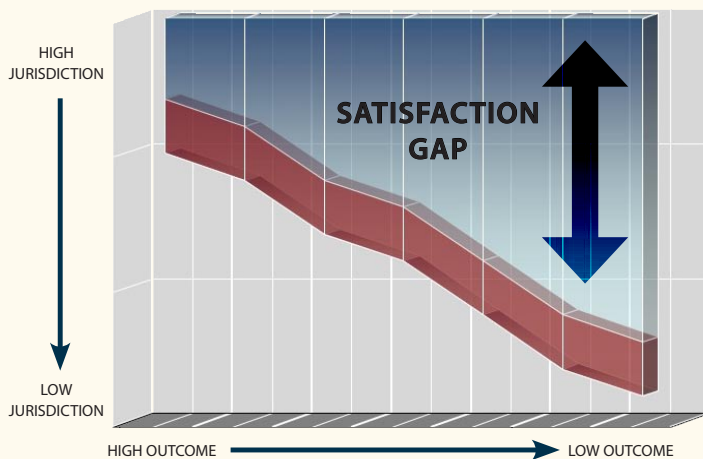


Figure Satisfaction Gap

Based on survey results and the figure “Satisfaction based on Jurisdiction and Outcome”, this figure demonstrates a ‘satisfaction gap’ that Ombudsman should be aware of. It appears that there is a direct relationship between the jurisdiction – outcome of a complaint, and a client’s satisfaction level. The satisfaction gap is the divergence between the client’s actual and potential levels of satisfaction at the end of an Ombudsman process. Research would indicate that high jurisdiction – high outcome complaints would create higher levels of satisfaction than low jurisdiction – low outcome complaints.

The Office of the Ombudsman Results Based Management Accountability Framework requires that I report on five performance indicators concerning four evaluation questions, and report to the Board on these on an annual basis.

1. Relevance – Is there an ongoing need for the Office of the Ombudsman?

The trend analysis for my Office is best documented through the various charts and graphs within the body of this report.

There are a number of indicators for the relevance of my Office. First is the volume of complaints received and the variety of issues brought to my attention. This indicates to me that the community continues to see my Office as a credible resource in dealing with issues of dispute.

Secondly, the variety of sources of complaints: individual domain name holders; applicants for administrative benefits provided by ICANN; ccTLD managers; organisations; and Board members, indicates to me that my Office is able to respond to a wide range of fairness based issues, and this wide acceptance of my Office is de facto recognition of its relevance.

Media analysis continues to evidence a positive reception of the Office in the community.

2. Are resources sufficient for the Office of the Ombudsman to carry out its mandate?

During the year, the Adjunct Ombudsman, Mr. Herb Wayne, assists my Office when I am on travel, vacation or sick leave by receiving and responding to correspondence from the community. Mr. Wayne has also attended two ICANN meetings, as a volunteer, to assist me in the operation of a physical office location.

In FY 06-07 the budget resources provided by ICANN have been sufficient to meet the operational, administrative, and outreach components of my mandate.

The One World Trust Report on ICANN Accountability and Transparency makes the following commentary on Ombudsman resources:

“The Ombudsman plays an important role within ICANN as an informal alternative dispute resolution mechanism. Since its formation, it has reduced the number of complaints handled through the formal complaint channels of the Reconsideration Committee. As the Ombudsman’s office continues to reach out to the community and raises awareness of the function within the ICANN community, there is the distinct possibility that the number of complaints it has to handle will increase. The office’s user group is the entire Internet community, yet it is currently staffed by a single full time Ombudsman and an adjunct Ombudsman that provides holiday cover. To ensure the continued effectiveness of the office, ICANN should continue to support the Ombudsman through the adjunct Ombudsman and also consider recruiting an additional full time member staff to provide administrative support to the office.”

Recommendation 4.3: ICANN should consider strengthening the capacity of the Ombudsman’s office by recruiting full time administrative support for the Ombudsman.”

There will not be an increase in the Ombudsman staff complement in FY 07-08. In fact, the Board of Directors has instructed me that as of June 30, 2007, that I am to operate my Office without the assistance of the Adjunct Ombudsman. Herb, thank you for all of your good work.

3. Cost effectiveness – Actual or potential improvements, efficiencies, or cost savings in ICANN program delivery or administration? Are there other models of Executive Ombudsmanship which ICANN could employ?

The Office of the Ombudsman has acted on complaints, made referrals, provided self help information, and has made recommendations as part of the alternative dispute resolution (ADR) processes. These steps, in the long run, provide for a more efficient overall operation by having a professional ADR service which allows the staff, supporting organisations, and the Board to focus on their core work, rather than dispute resolution. The number of requests for reconsideration has dropped. The recommendations made by the Office of the Ombudsman provide for the lowering of conflict temperature, and the improvement of services or processes.

The flexibility of the Office to respond to issues, language, culture, and a range of conflict styles, combined with a wide spectrum view of conflict resolution means that the Office offers responsive, timely, and relevant solutions, at an early time frame, and reduces antagonistic relationships between the parties. I cannot imagine a more efficient manner of delivering this service to the organisation and the community.

In FY 06-07 I made public two Ombudsman reports, each of which contained a number of recommendations. I have made these reports public in accordance with powers given to me under Bylaw V. I concur with United States Supreme Court Justice Louis Brandeis, who stated, "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

Bylaw V states that, "The Ombudsman shall be specifically authorised 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." Thus, I am required to post my reports on the website, unless I make a determination that there

is a particular reason not to do so. I found no reason that these reports should not be made public.

The One World Trust Report on ICANN Accountability and Transparency makes the following comment:

"In the Ombudsman framework there is a specific commitment made by the Board to respond to Ombudsman recommendations within 60 days of the next Board meeting. There is no similar commitment made in relation to responding to Reconsideration Committee recommendations. A commitment to provide timely response is important because it prevents protracted processes and also ensures the complainant is not forced to wait for a response an unnecessarily long period of time."

In both instances, the responses to my recommendations were not provided within the established 60 day period of time. In the case of the first report I am satisfied that my recommendations have been implemented. As of June 30, 2007, the end of the fiscal year, I have not received a response to my second set of recommendations; however, I have received correspondence from the Board of Directors indicating that a reply was being prepared.

What Clients Say about the Office of the Ombudsman:

"Thank you Mr. Fowlie, I appreciate your feedback on this matter. I also understand your position and role as Ombudsman. I will research the documents behind the links that you provided."

"Thank you for your reply. Your guidance is highly appreciated."

"Thanks for your efforts, Frank."

"Thanks. I appreciate your help."

"Dear Frank, thank you for I consider a PROMPT response. That is a good thing. I do appreciate your feedback and... That is all and I once again do appreciate you folks understanding and addressing my unpleasant experience."

"Well done! I finally withdrew my complaint, but ombudsman intervention was very important for the ALAC to take the necessary steps and move forward in its work. Thanks!!!"

"I was very pleasantly surprised at the prompt, personal interest taken in my issue. I had expected some kind of runaround, useless auto-advice, or a frustrating FAQ, and nothing more."

"It is a great thing that we finally HAVE an Ombudsman!"

Some recent quotes on Ombudsmanship:

The head of a state's government speaking about his Ombudsman:

"(He is) doing a good job. His job is not to lend comfort to me and to the government or any government of the day. His job is to expose areas where we're coming up short. ...the fact of the matter is that this stuff needs to be brought into the light of day."

The Ombudsman referred to above when speaking about the state's government:

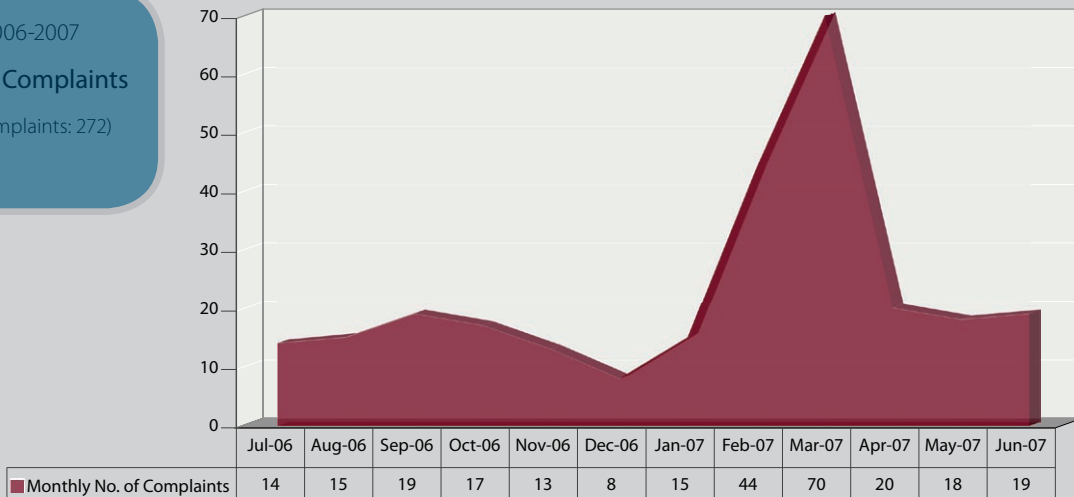
"It has been astute enough to know when our criticisms are right, humble enough to admit when it has been wrong, and generous enough in spirit to help us forge solutions to problems we have identified."



Figure 2

This figure shows the various pressures which impact on Ombudsman operations. The figure centers on the Ombudsman jurisdiction, which is established by Bylaw V. Community pressures which may impact the Ombudsman's operations include the volume of complaints, or the demands for service, made upon the Ombudsman, and the complaints' jurisdiction. Likewise, the Ombudsman is impacted by the Organisation, which determines the Ombudsman's mandate, and the resources to fulfill that mandate. In a balanced Ombudsman system, the resources allocated will be sufficient to meet the demands for service, and the Ombudsman's mandate will clearly determine the scope of issues in the Ombudsman's jurisdiction.

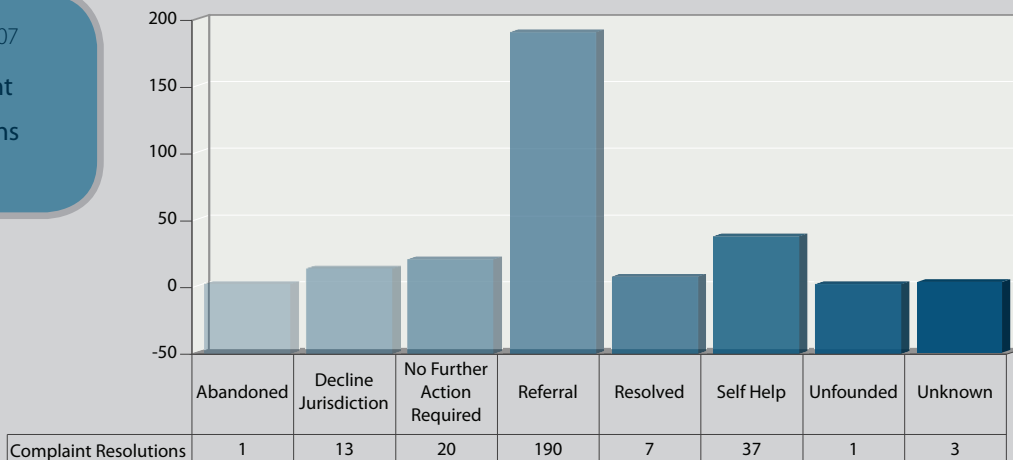
FY 2006-2007
Monthly Complaints
 (Total complaints: 272)



FY 2006-2007
Complaint Types

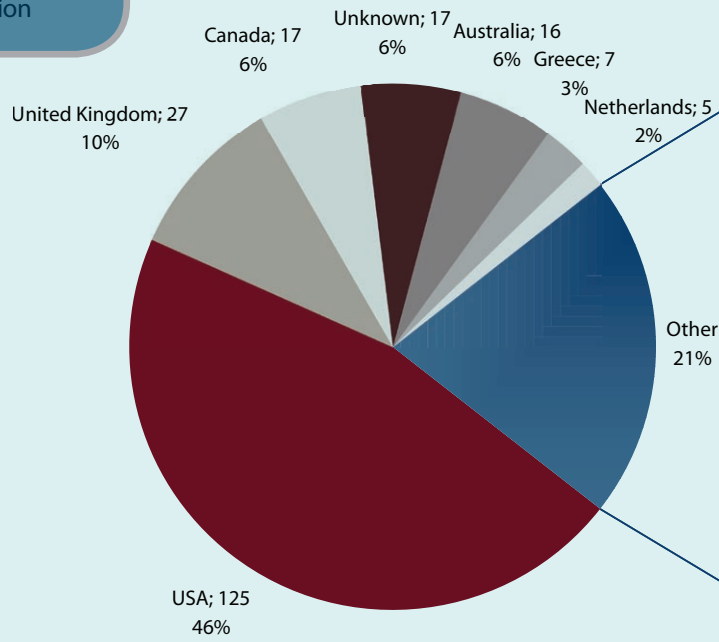


FY 2006-2007
Complaint Resolutions



FY 2006-2007

Complaints
by Geographic
Location



- Brasil; 4
- Turkey; 4
- France; 3
- Germany; 3
- Hong Kong; 3
- Ireland; 3
- Macedonia; 3
- New Zealand; 3
- S. Africa; 3
- Belgium; 2
- Israel; 2
- Switzerland; 2
- Thailand; 2
- Argentina; 1
- Austria; 1
- Colombia; 1
- Croatia; 1
- Czech Republic; 1
- Denmark; 1
- India; 1
- Indonesia; 1
- Italy; 1
- Japan; 1
- Lebanon; 1
- Malaysia; 1
- Malta; 1
- Pakistan; 1
- Portugal; 1
- Slovenia; 1
- Spain; 1
- Sweden; 1
- U.A.E.; 1
- Vietnam; 1

The Values of this office are:

Respect for Diversity The Office of the Ombudsman recognises and honours the fact that members of the ICANN community come from across the face of the globe. This diversity means that the Office of the Ombudsman will respect that different cultures view disputes and conflict through different lenses. The Ombudsman will always be open to learning about cultural differences in responding to disputes and conflict.

Excellence in Ombudsmanship The Office of the Ombudsman will strive to be a leader for 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 Ombudsman will also strive to ensure that ICANN's Office of the Ombudsman is well regarded as an institution of excellence in the peer community, such as The Ombudsman Association, the United States Ombudsman Association, and the Forum of Canadian Ombudsmen. I wish to develop deeper relationships with Ombudsmen in other regions of the world in the future to reflect the global nature of ICANN's constituency.

Professionalism The Ombudsman, in conducting his or her duties, will maintain and exemplify the highest standards of professional conduct, and respect for human dignity.

Confidentiality All parties, both within the community and ICANN, bringing information to the attention of the Ombudsman should feel assured that the information will be held in confidence, except when it is necessary to help resolve the complaint.

Impartiality In each and every situation, the Office of the Ombudsman will receive information from the community with no predisposed idea as to the outcome of the Alternative Dispute Resolution process, and without favouring any party in the process.

Independence The Office of the Ombudsman, in order to remain an impartial officer, will be independent of the normal ICANN structures.



Office of the ICANN Ombudsman

email ombudsman@icann.org

<http://icannombudsman.org>



Internet Corporation for Assigned Names and Numbers

Brussels

6 Rond Point Schuman, Bt. 5 | 1040 Brussels | BELGIUM
T +32 2 234 7870 F +32 2 234 7848

Marina del Rey

4676 Admiralty Way, Suite 330 | Marina del Rey, CA 90292 | USA
T +1 310 823 9358 F +1 310 823 8649

<http://icann.org>

DESIGN + EDITORIAL Tanzanica S. King