

OFFICE OF THE OMBUDS

ANNUAL REPORT

1 JULY 2022-30 JUNE 2023

ONE WORLD, ONE INTERNET

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EXECUTIVE SUMMARY

The ICANN Office of the Ombuds Annual Report provides a summary of activities, analysis, and recommendations for the period ending 30 June 2023, or ICANN Fiscal Year 2023 (FY23), as described in Article 5, Section 5.5 of ICANN's Bylaws:

"The Office of Ombuds 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."

The Ombuds Office maintained an active presence online and in person at the ICANN75 Annual General Meeting, ICANN76 Community Forum, and the ICANN77 Policy Forum. In early 2023, Linda Mainville joined the Ombuds team as an Adjunct Ombuds. Later in 2023, Linda attended the 2023 Community Forum virtually and the 2023 Policy Forum in person. The primary goals of the Ombuds Office are continuing its focus on diversity, inclusion, and equity, promoting a harassment-free environment, and making the community aware of and enforcing the ICANN Expected Standards of Behavior.

The focus of the Ombuds team remains on active participation with the community both online and in person at ICANN Public Meetings and elsewhere. The Ombuds continues to participate as an observer in community working groups and policy development teams, with occasional participation in a more official manner at the request of the leadership teams (under the Office's charter in Article 5 of the ICANN Bylaws).

The Ombuds Office continues to support, promote, and provide the ICANN community education on the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy.

During FY23, the Ombuds team participated in a variety of professional development activities such as participating in monthly trainings provided by the International Ombuds Association and the Forum of Canadian Ombuds, and attending the International Ombuds Association's annual meeting. The Ombuds Office's professional development activities provide valuable opportunities to upgrade our skills and knowledge, and they enable us to network with other Ombuds across the globe.

The Ombuds Office proudly stands with the ICANN community, Board, and the organization (org) during this global pandemic, and now with a return to in-person meetings, endeavors to help ensure that fairness, respect, and professionalism continue unabated. During the pandemic, the Office adapted efficiently and effectively to virtual operations, which continues along with in-person activity today. The Office strives to promote equitable and fair hybrid participation, with both virtual and in-person participants being treated as if everyone is equally "in the room."

PROCESS OVERVIEW

The ICANN Office of the Ombuds receives a variety of submissions each year. All submissions to the Ombuds Office are promptly reviewed to determine whether the subject matter falls within the jurisdiction of the Ombuds. Submissions that are not within the Ombuds Office's purview are categorized as non-jurisdictional, while those within the Office's remit are categorized as jurisdictional and subsequently considered "complaints." All submissions, regardless of jurisdiction, are reviewed and responded to within two business days. Jurisdictional complaints may require intervention, investigation, or informal involvement from the Ombuds, whereas non-jurisdictional submissions receive guidance or referral to a resource that is better suited to address the concern raised by the submitter. In cases where jurisdiction is not clear or where multiple complaints mechanisms are available, the Ombuds Office collaborates with other ICANN functions and the original submitter to determine the best, or preferred, path forward.

Jurisdictional Complaints

The Ombuds Office uses the following steps to evaluate, mediate, and make determinations about complaints made or referred to the Office:

Step 1: Intake. Once a determination is made that a submission to the Ombuds Office falls within the jurisdiction of the Office and constitutes a complaint, the Ombuds explains its role and remit to the complainant and asks clarifying questions. These clarifying questions serve a threefold purpose: to clearly identify the complainant's cause for concern; to pinpoint the most important issue(s) the complainant wants reviewed; and to determine what outcome or relief the complainant seeks.

Step 2: Investigate. An investigation involves the Ombuds Office's process of examining a complaint while respecting the complainant's desired level of confidentiality. During an investigation, the Ombuds gathers facts and analyzes policy to understand and determine the merits of a complaint. The Ombuds then consults with the parties involved to try to resolve the problem between the parties or make recommendations to resolve the complaint. Examples of investigative techniques the Ombuds Office uses are: examining relevant documents; reviewing meeting recordings and email listservs; communicating directly with parties familiar with the matter; and contacting the appropriate ICANN organization (org) functions or staff to gather information that may lead to the resolutions of the complaint.

Step 3: Determination. Once an investigation is completed, the Ombuds assesses whether the allegations have been substantiated and discusses recommendations and options for resolution with the complainant. Complaints are typically settled informally using dispute resolution strategies such as shuttle diplomacy and mediation. For complaints that cannot be settled informally, the Ombuds may make recommendations to the ICANN Board for its consideration.

Non-Jurisdictional Complaints

Submissions that are determined to be outside the jurisdiction of the Ombuds Office are responded to within two business days. When a submission falls outside the jurisdiction of the Ombuds Office, the Ombuds responds and provides information and guidance to support the needs of submitter, such as:

- Providing information and references to the submitter so they may identify the best way to help themselves.
- Referring the submitter to the appropriate ICANN mechanism or ICANN function.
- Inviting the submitter to participate in ICANN's bottom-up multistakeholder model, particularly when the issue pertains to:
 - ICANN policy and policy development.
 - ICANN-affiliated registrars or registries.
 - Contractual Compliance matters.
 - WHOIS or privacy.
 - Matters related to public safety.

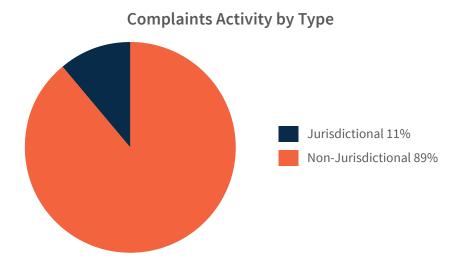


SUBMISSION AND COMPLAINTS ACTIVITY

The Ombuds Office received and reviewed 223 submissions for the fiscal year ending 30 June 2023 ("FY23"). Of the 223 submissions received during FY23, 25 were deemed jurisdictional complaints and 198 were non-jurisdictional.

Jurisdictional Complaints

The Ombuds Office charter stipulates that the Ombuds' purpose is to address complaints from the ICANN community regarding fair treatment by one or more of three parties: ICANN community participants or constituent groups, ICANN org, or ICANN Board.



In FY23, there were 25 complaints that met the jurisdictional criteria across eight complaint types. As of 30 June 2023, 21 of the jurisdictional complaints were resolved, the outcomes of two complaints are still pending, one complaint is still being investigated, and one complaint is waiting for comment from the complainant. The below table reflects the number and type of jurisdictional complaints received in FY23, as well as the subject of each complaint. When interpreting the table, there are two things to keep in mind: First, the type of complaint is based on what the complainant is claiming and not the Ombuds' determination following the investigation; and two, the subject of a complaint to the Ombuds Office can be ICANN org (staff), community participant, or the ICANN Board, as described in the Ombuds Office's Charter found in Section 5.2 of the ICANN Bylaws.

JURISDICTIONAL COMPLAINTS		
Complaint Type	Subject of Complaint	# of Cases
Contractual Compliance	ICANN Org	9
Community Anti-Harassment Policy	Community Participant	4
Abusive Discourse	Community Participant	3
Other (Facilitation)	Varies	3
Elections	Community Participant	2
IANA	ICANN Org	1
Internal Community Group Disputes	Community Participant	1
New gTLD Issues	ICANN Org	1
Policy Issue	Community Participant	1

JURISDICTIONAL COMPLAINT STATUS		
Complaint Status	# of Cases	
Ombuds Resolved	21	
Outcome Pending	2	
Investigating	1	
Waiting for Comment	1	

Of the 25 jurisdictional complaints received in FY23, 11 stated the subject of their complaint was a community participant, 14 stated ICANN org was the subject, and there were zero complaints where the ICANN Board was the subject.

As with previous years, ICANN Contractual Compliance remains the most common topic of jurisdictional complaints and all together accounted for nine of the 25 jurisdictional complaints in FY23 to the Ombuds. Complaints regarding ICANN Contractual Compliance are typically due to what the complainant perceives as a lengthy delay between their report to Contractual Compliance and the response, which complainants consider to be a lack of fairness.

Contractual Compliance complaints are typically resolved quickly through effective collaboration with ICANN's Contractual Compliance function, and by providing a deeper explanation to the reporter regarding the progress of their complaint.

In FY23, the Ombuds Office received four complaints pursuant to the ICANN Community Anti-Harassment Policy; this constituted the second most common jurisdictional complaint type. Of the four complaints, two were resolved, one was resolved with a recommendation to the Board, and one was unfounded. The four complaints made pursuant to the Community Anti-Harassment Policy in FY23 are tied with FY18 for the largest number of this complaint type since the ICANN Community Anti-Harassment Policy was established in March 2017. The number of complaints by fiscal year is as follows: four in FY18, two in FY19, two in FY21, zero in FY22, and four in FY23. The increase in such complaints since FY19 may be attributed to several factors, including: heightened awareness of the Community Anti-Harassment

Policy; heightened trust in the Ombuds Office and the sense of safety provided by such; internal personal stress relating to returning to in-person meetings following the COVID-19 global pandemic; or simply an increase in behavior that community members might see as inappropriate or harassing in nature.

Non-Jurisdictional Submissions

The remit of the Ombuds Office is to address complaints from the ICANN community regarding fair treatment by one or more of three parties: ICANN community participants or constituent groups, ICANN org, or ICANN Board. Submissions to the Ombuds Office that do not meet these criteria are considered non-jurisdictional. Regardless of jurisdiction, the Ombuds Office responds to all submissions. In the case of non-jurisdictional submissions, the Ombuds Office advises the submitter that the Ombuds Office does not have jurisdiction over their matter and provides guidance for alternative mechanisms where the submitter may seek assistance.

In FY23, there were 198 non-jurisdictional submissions distributed across eight submission types. As of 30 June 2023, 107 were referred out to other venues for assistance, 85 were provided with self-help information, five were abandoned, and one was resolved. The number of non-jurisdictional submissions received in FY23 and their submission types are listed below, as is the status of these submissions as of 30 June 2023.

NON-JURISDICTIONAL SUBMISSIONS		
Submission Type	# of Cases	
Registrar or Registry Issues	57	
Consumer Issues About Domain Names	51	
Fraud	27	
Other	27	
Website Content	21	
Cybersquatting	10	
Spam	3	
WHOIS or RDAP Issues	2	

NON-JURISDICTIONAL SUBMISSION STATUS		
Submission Status	# of Cases	
Referred Out	107	
Self-Help	85	
Abandoned	5	
Resolved	1	

The 198 non-jurisdictional submissions received in FY23 represent a nominal increase of 4 percent over FY22, which had 159 non-jurisdictional submissions. As in previous years, registrar or registry issues (57), consumer issues with domain names (51), and fraud (27) are the top three non-jurisdictional submission types received by the Ombuds Office. Regardless of jurisdiction, the Ombuds Office welcomes the opportunity to support and provide guidance to submitters seeking assistance from ICANN.

Additional Activity Statistics

Submissions and Complaints by Referral Source

There are eight categories of referral source that the Ombuds Office uses. The below table lists each referral source type, and the numbers of jurisdictional complaints and non-jurisdictional submissions.

SUBMISSIONS AND COMPLAINTS BY REFERRAL SOURCE		
Referral Source	Jurisdictional Complaints	Non-Jurisdictional Submissions
Incoming Email to ICANN Ombuds Office	13	112
Ticket From Website	3	86
Ombuds Observed Incident	4	0
ICANN Meeting Office Visit	3	0
Mail Correspondence	2	0
Phone Call	0	0
Social Media	0	0
Blog Post	0	0

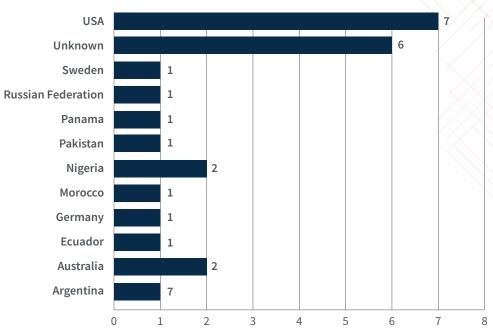
Submissions by Language

There were six different languages in which submissions were received. The below table lists these six languages, and the numbers of jurisdictional complaints and non-jurisdictional submissions for each.

Language	Jurisdictional	Non-Jurisdictional
Chinese	0	1
English	21	189
French	1	3
Turkish	0	1
Russian	0	1
Spanish	3	3

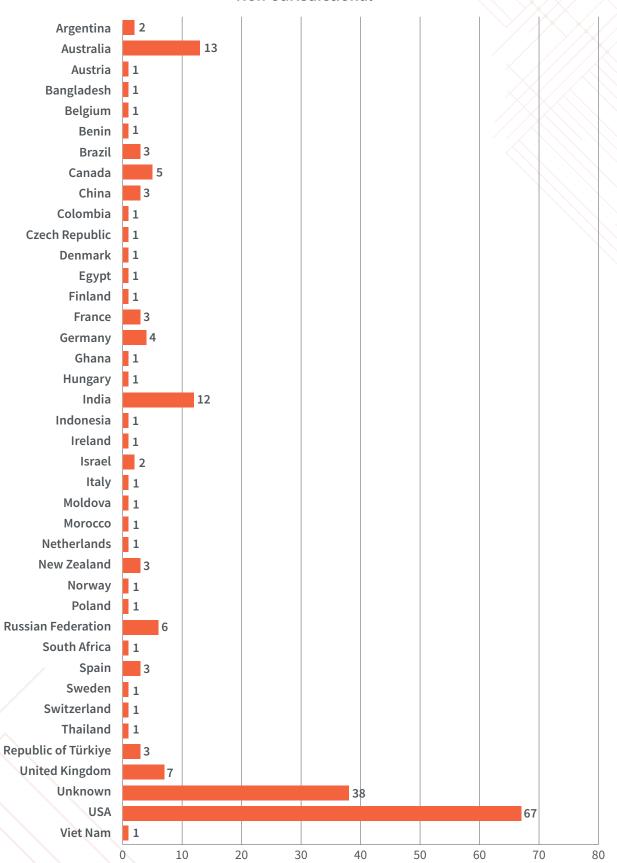
Submissions by Country





Submissions by Country





REQUESTS FOR RECONSIDERATION

In the October 2016 version of the ICANN Bylaws, the Ombuds Office's role in ICANN expanded to include reviewing Requests for Reconsideration (RfR) and, in situations where the Ombuds does not recuse themselves, providing a substantive written evaluation to the Board Accountability Mechanisms Committee (BAMC) for its review and consideration.

During this reporting period, three RfRs were filed with the BAMC. Two of the requests were summarily dismissed by the BAMC, and one request was referred to the Ombuds Office for review and consideration. The information regarding each request can be found at the following links:

Request for Reconsideration Number	Result
Request 22-3: https://www.icann.org/resources/pages/reconsideration-22-3-zydus-lifesciences-request-2022-07-15-en	Dismissed by BAMC
Request 22-4: https://www.icann.org/resources/pages/reconsideration-22-4-bryan-ealba-request-2022-07-21-en	Dismissed by BAMC
Request 22-5: https://www.icann.org/resources/pages/reconsideration-22-5-zydus-lifesciences-request-2022-08-11-en	Accepted by the Ombuds Office (see details below)

Request for Reconsideration 22-5, brought by Zydus Lifesciences Ltd., was accepted, reviewed, and considered by the Ombuds. The subject matter related to a dispute regarding the domain name www.zydus.com. The dispute was filed with the World Intellectual Property Organization (WIPO) under the Uniform Domain Name Dispute Resolution Policy (UDRP) and Zydus did not agree with WIPO's decision. WIPO is one of six Approved Dispute Resolution Service Providers under the UDRP.

Zydus had previously filed RfR 22-3 claiming that WIPO was ICANN staff (or the equivalent of ICANN staff for the purposes of a Reconsideration Request). In 22-3, the BAMC concluded that the WIPO Panel is not ICANN staff and summarily dismissed that RfR. WIPO and its Dispute Panels are not ICANN staff (or their equivalent), and as such there was no proper jurisdiction for the BAMC and Board to grant relief based on an RfR pertaining to a WIPO Panel's decision. Following the BAMC's dismissal of 22-3, Zydus subsequently requested reconsideration of the Board's dismissal and submitted RfR 22-5. The BAMC did not summarily dismiss this complaint, and the Ombuds did not recuse themselves from evaluating the request.

The Ombuds' evaluation concluded that, as the Board had determined in dismissing 22-3, a WIPO Dispute Panel under the UDRP is not ICANN staff, and recommended dismissal of RfR 22-5. The Ombuds also wondered whether Zydus bringing 22-5 was not tantamount to an abuse of process, and whether the rules for reconsideration request reviews should be interpreted or modified so that reconsideration of a dismissal by the Board of a prior RfR may also be summarily "dismissable." The BAMC and Board agreed that RfR 22-5 should be denied for the same reasons as RfR 22-3.

The Ombuds will recuse themselves when they or a former Ombuds have previously taken a position or been involved in some meaningful way in the action or inaction for which the requestor seeks reconsideration. This means that engaging the Ombuds Office in a matter that later leads to an RfR could result in the Ombuds recusing themselves from providing a substantive evaluation of the request. Since 2016, under Article 5 of ICANN Bylaws, the Ombuds Office is responsible for providing substantive evaluations of RfRs for Board consideration, which has added a new dimension to the Ombuds role.

This augmentation of responsibilities in relation to RfRs expands the Ombuds' role, but it does not diminish the primary role of the Ombuds to resolve disputes informally under Article 5 for the ICANN Bylaws. The community is encouraged to reach out to the Ombuds about such matters, but community members should be aware that if there are issues likely to result in an RfR, engaging the Ombuds informally could prevent them from providing a substantive evaluation of such a request under the more formal Article 4 duties.



ICANN Expected Standards of Behavior

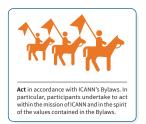
Following Public Comment, the ICANN Board of Directors adopted the current version of the ICANN Expected Standards of Behavior in June 2016, although the guidelines and policies that form the basis for the Expected Standards have been in effect since ICANN's inception. The Ombuds team continues to promote and reinforce the Expected Standards of Behavior and the Community Anti-Harassment Policy at each meeting, and to remind the community that every participant has the right to a safe, respectful, and harassment-free environment when attending an ICANN Public Meeting or sponsored event. The move from in person meetings to an entirely online environment – and now to hybrid meetings – has demonstrated that conflict is not reserved for in-person and face-to-face incidents; that virtual interaction is just as susceptible to conflict, just in a different way, generally through chat or email exchanges. The Ombuds team believes their active presence in most online working groups helps mitigate conflict and promote good behavior.



ICANN EXPECTED STANDARDS OF BEHAVIOR

Adopted 26 June 2016

Those who take part in ICANN's multistakeholder process, including Board, staff, and all those involved in Supporting Organization and Advisory Committee councils, undertake to:







Treat all members of the ICANN community read at members of the Count Community, 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.



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









and transparency so as to ensure that policy-development and decision-making processes will reflect the public interest and be accountable to 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



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.





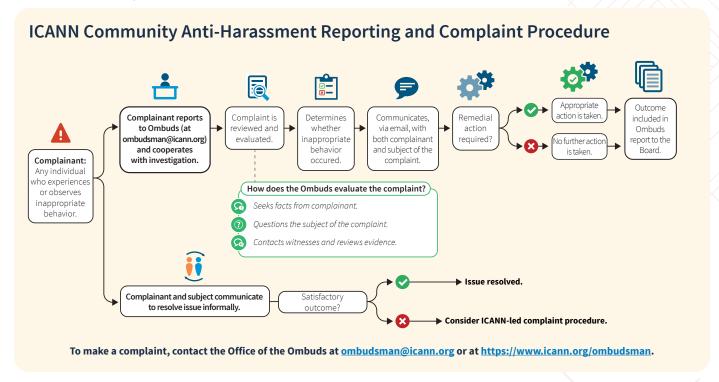


Act in a reasonable, objective, and informed manner when participating in policy-development and decision-making processes. This includes regularly attending all scheduled meetings and exercising independent judgment based solely on what is in the overall best interest of Internet users and the stability 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.

This has been translated into multiple languages for information only. The original and authoritative text (in English) may be found at: https://www.icann.org/resources/pages/expected-standards-2016-06-28-en.

ICANN Community Anti-Harassment Policy

Harassment, in any form, is never tolerated in the ICANN community. As such, the Ombuds Office, ICANN org, and the ICANN Board continue to work hand in hand to promote a safe and harassment-free environment. By actively participating as an observer in as many online meetings and working groups as possible, the Ombuds team stands as a reminder to all to keep ICANN safe and harassment free for all.



Frequently, community members 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 in question 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 unwelcome, merely identifying the behavior as offensive or inappropriate often results in a change in behavior and an apology.

Making a report of harassment to the Ombuds Office is always confidential and informal in nature. Confidentiality is key to supporting the safety of anyone who feels they have been harmed, and the informal approach to working with parties creates a comfortable, nonjudgmental setting to air any concerns.

Any community participant who has been subjected to harassment can and should report the incident to the Ombuds Office. They can also report the incident to any senior person in ICANN org, or to any community leader with whom they feel comfortable. Those receiving reports may then act as intermediaries between the Ombuds Office and the reporter or complainant.

To reiterate, there is no place for harassment, bullying, or any other type of inappropriate behavior anywhere, and such behavior will not be tolerated in the ICANN community.

The Community Anti-Harassment Policy PDF is available in Arabic, Chinese, English, French, Russian, and Spanish: https://www.icann.org/en/system/files/files/community-anti-harassment-policy-24mar17-en.pdf

OTHER ACTIVITIES

Monitoring the Environment



Monitoring the ICANN environment online, in email list archives, on teleconferences, at ICANN Public Meetings, and at ICANN-related events such as the Contracted Parties Summit and the Internet Governance Forum (IGF) constitute a significant portion of the Ombuds' time. Such activities provide the Ombuds Office with insight into the controversial issues and tone of discussion within the community and enables it to respond to them accordingly. Maintaining this level of awareness

allows the Ombuds Office to be more proactive in providing assistance.

The Ombuds' presence online or in-person helps mitigate abusive behavior in real-time. However, monitoring the extremely active Supporting Organization (SO) and Advisory Committee (AC) email lists remains an ongoing challenge. The Ombuds Office is frequently contacted and informed of abusive, disrespectful, or bullying behavior in email exchanges that are posted to SO or AC email archives. It would be practically impossible to subscribe to and monitor all email lists in the ICANN community. And so, the Ombuds Office relies on community members to identify instances that they believe violate the ICANN Expected Standards of Behavior or the ICANN Community Anti-Harassment Policy so that the Ombuds Office can, when appropriate, intervene or otherwise assist the leadership of the respective group in dealing with an incident. The Ombuds Office greatly appreciates the various leadership teams and community members that have diligently collaborated with it to monitor and intervene when necessary with the goal of making ICANN a safe, harassment-free environment.

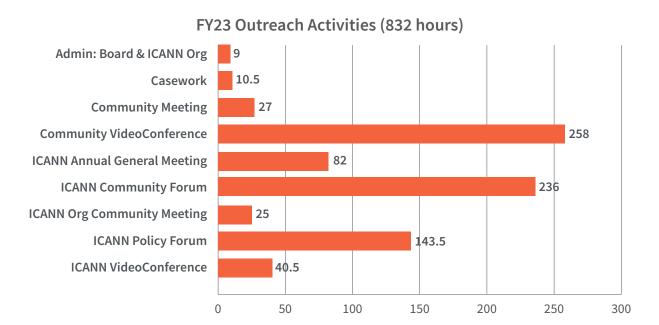
Simply being present is "half the battle," and the Ombuds Office firmly believes its presence at community meetings, working groups, webinars, and training sessions (to name a few opportunities) is extremely valuable in reminding community members to respect the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy. An added benefit is that it also allows the Ombuds Office to stay current on many policy-development processes that drive the ICANN community, and to become aware of areas of friction before they escalate.

Outreach



Outreach remains a key focus of the Ombuds Office. Education initiatives, Ombuds Orientation Sessions for staff, and a physical presence at ICANN Public Meetings, various ICANN-sponsored events such as the Contracted Parties Summit, and other ICANN-related events such as the IGF are fundamental activities that promote the role and effectiveness of the Office.

The Ombuds Office actively engaged with the ICANN community throughout the year, and simultaneously engaged with other communities mainly through blog posts, posts on X, formerly known as Twitter, ICANN event promotions, the ICANN Expected Standards of Behavior, and the ICANN Community Anti-Harassment Policy.



Professional Development



The Ombuds team continues to maintain membership in three Ombuds organizations: the International Ombuds Association (IOA), the Forum of Canadian Ombuds (FCO), and the International Ombuds Institute (IOI). As most organizations continue to adapt to online learning, professional development opportunities have become more readily available.

The majority of professional development opportunities have historically come from in-service sessions offered by the IOA at various times during the year and include sessions on conflict, case management, and diversity and equity issues. The Ombuds Office participated in such sessions at various events throughout the year, including the IOA Annual Conference and the FCO Annual General Meeting.

The new Adjunct Ombuds, Linda Mainville, participated in a variety of workshops during the IOA's Annual Conference, including a session discussing how to best position the Ombuds as an active change agent in the realm of diversity and inclusion, particularly within the tech sector.

The ICANN Ombuds participated in various networking sessions including Monthly Virtual Coffee Chats with colleagues from the FCO.

GOING FORWARD

In FY23, ICANN continued its shift to a hybrid version of its Public Meetings while maintaining a high level of virtual engagement with the community. The Ombuds Office hopes to start evolving into a more strategic service, looking at issues of diversity and interpersonal conflict from a systemic perspective, which will hopefully prove to be an effective and efficient way of dealing with issues before they escalate into major conflicts.

Given that ICANN Public Meetings continue to be held either fully or in part as virtual events, the Ombuds Office will continue to host virtual drop-in office hours during ICANN78, ICANN79, and ICANN80. The Ombuds Office will continue to staff a meeting venue office for in person participants at ICANN meetings. Proactive engagement with the ICANN community will remain the central mission of the Ombuds Office.

As the Ombuds Office moves forward as a coordinated team, it strives to incorporate the Adjunct role into day-to-day operations to make the Ombuds Office team a model of diversity and equity. Working conjointly with the ICANN Board, ICANN org, and the ICANN community as a whole, the Ombuds Office endeavors to keep ICANN a safe, diverse, and harassment-free environment where everyone can enjoy participation – virtual or in person – to the fullest.

The Ombuds Office reminds the community – stay safe and be kind.

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