



OFFICE OF THE ICANN
OMBUDSMAN
Creating Dialogue. Affirming Fairness.

Annual Report *Fiscal Year 2012*

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ICANN
Ombudsman

Introduction

I'm pleased to present my first annual report as the ICANN Ombudsman after my appointment on 28 July 2011 through to 30 June 2012.

The purpose of this report is clearly stated in 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.

I inherited the position looked after by Herb Waye on an interim basis after Frank Fowlie finished his term in 2010.

My term began with a two-week training session with Frank in August 2011, for which he prepared a plan for transition in the office. Using this plan he introduced me to the ICANN staff and structure, and I learned the basics of the ICANN Ombudsman role. I also talked with Herb Waye about current issues and the challenges ahead. Frank and I subsequently used the experience to write a paper on best practices for these types of transitions, which has been published by the International Ombudsman Association.

What The Ombudsman Does

As the ICANN Ombudsman, I am an objective advocate for fairness within the ICANN community. The office is a symbol to the community of ICANN's commitment to good governance, by the advocacy for fairness. A multi-stakeholder organization like ICANN must accommodate many diverse ideas, ambitions, cultural aspirations and values.

Not everyone knows what an ombudsman does. Some see me as a sort of guardian or consumer advocate. It's OK that people don't know

what I do, because part of my role is outreach.

The ICANN community is broader than staff and the dedicated volunteers who attend ICANN meetings. Virtually anyone who interacts with ICANN is a member of the ICANN community. I have taken a liberal approach when people come to me with issues, rather than exclude those on a strict interpretation of jurisdiction.

Position when I started and Changes

It was obvious when I was appointed community use of the Office of the Ombudsman had slipped considerably. One of my first priorities was to re-establish confidence in the office and conduct more outreach to ensure that the ICANN community was aware of my appointment and my approach to handling of my position. I have also tried to raise my profile in a number of different ways. In particular I now have a Facebook page, I write regularly for my ombudsman blog at <http://omblog.icann.org> on various topics, and I have published one paper on an ombudsman issue in *New Zealand Lawyer*, and had another paper published in a peer-reviewed journal, the *Journal of the International Ombudsman Association (JIOA)* Volume 5 (2). I also have two other papers in preparation. As well as the ombudsman community, I have sought to be involved in the wider Internet community by joining the Internet Society, both the international and New Zealand bodies, and contribute from time to time to various blogs. I have a major advantage this year, in that there were three significant conferences in New Zealand, but which are international in content.

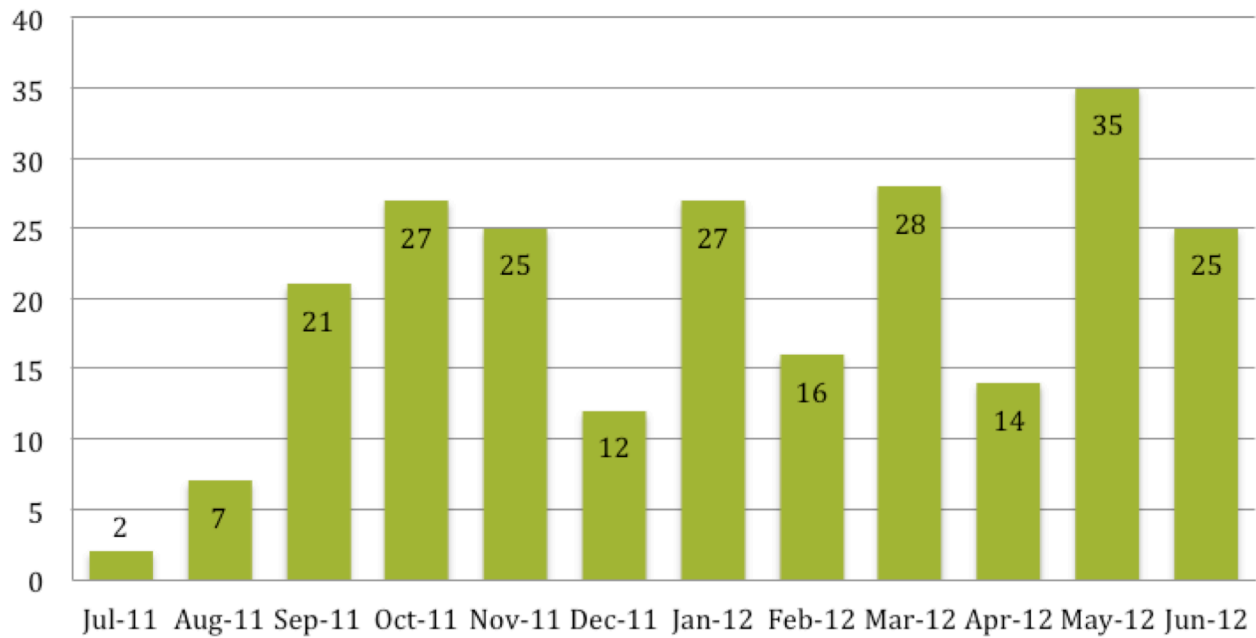
Complaints and resolutions

The number of complaints increased from 10 to 132 during my first year and I have not compared the previous year for this reason. The ten-fold increase speaks for itself.

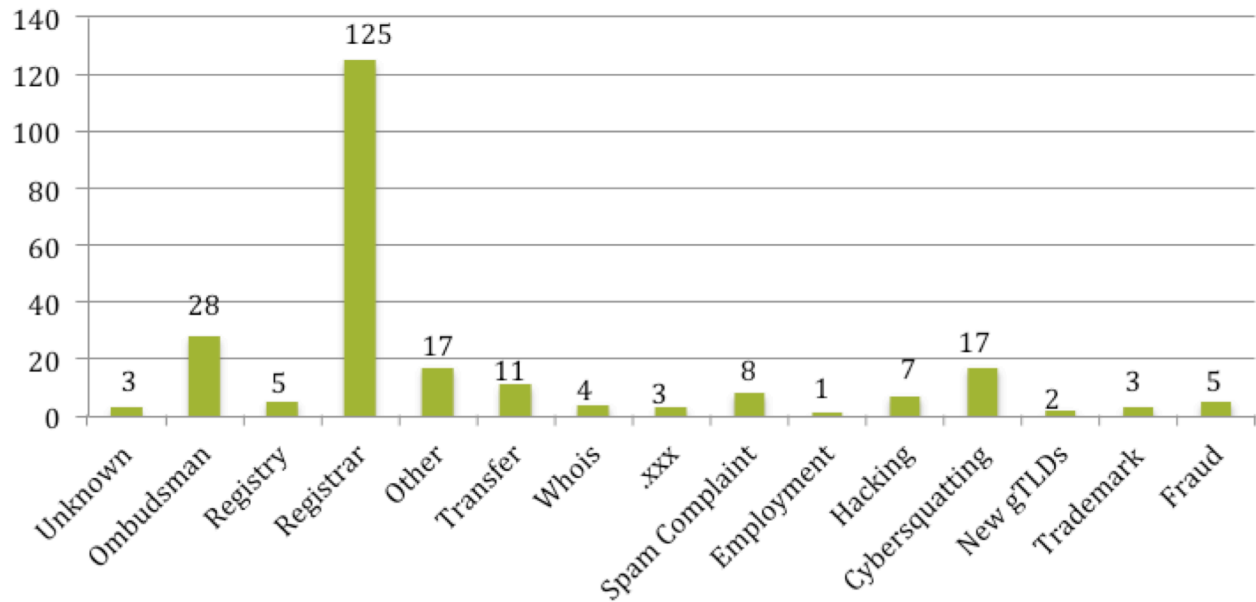
I include complaint statistics in this report, and you'll see that many complaints received are outside of the Ombudsman's jurisdiction. This is because the office is structured for use in a relatively narrow scope of investigations about specific issues. This raises several issues. First, should the Bylaw and framework be revised to widen the jurisdiction in order to offer broader assistance? Second, is there an organizational need for general complaint handling within the ICANN community?

ICANN's contractual compliance department handles a very large caseload of matters, including those related to ICANN's Registrar Accreditation Agreement, as well as other issues. I often refer matters to the contractual compliance department and have developed good relationships with the team. But certainly some inquiries and complaints do have limited remedies.

Complaints Received by Time



Complaints by Type



Common Complaints

The majority of complaints received are outside my jurisdiction, but I have had a number of complaints about issues such as governance and new gTLD application refunds. Some of these are ongoing and under continuing investigation, with strong attempts to mediate the differences

as my strategy. There have also been other complaints that while within jurisdiction, the complainants have not progressed the complaint and not followed up my questions and investigation, which meant I could not reach any conclusions. Where I have conducted an investigation and written a report, I have posted this on my blog and my website.

The majority of non-jurisdictional complaints I receive are about a registrar and a customer. While these are outside my scope, I try to help resolve the matter between the parties when I see that the issue is one of communication difficulties rather than unfairness. Unfortunately, many consumers are not aware of the issues which can arise when a domain name registration expires, but there have been a few cases where names have been stolen and where the details of the registration have been lost, causing problems.

In some cases where I felt there was unfairness, I have intervened despite the lack of jurisdiction, to some criticism. For example, I was asked to negotiate with a web site that features police arrest photographs to remove a particular photograph of a 17-year-old person who had not been charged by the police with any offense. I decided to get involved, although the matter was outside of my jurisdiction, and I wrote a blog post about it that was criticized in a number of places. In cases where there is international content, it is way beyond the means of many complainants to initiate legal proceedings. Where there has been unfairness, but I do not have jurisdiction, it can be frustrating not to help.

Systemic Issues

In my first year as ombudsman I have been conscious of the specific requirement to identify any systemic issues that may require investigation and report to the board. A systemic issue would be one where there was a consistent failure or ongoing problem, which was not being resolved despite efforts of the parties. While there are themes to the complaints, I have not identified any issues that I would describe as systemic in nature. ICANN has very strong policies on review and self-examination. In addition, the ICANN community is articulate and ready to voice comments on any matters where there is disagreement. This reduces the chance of a systemic issue being unresolved. This does not mean of course that I should cease to be vigilant. Part of my regular task is to read reports from the community, as well as the media coverage, where there is often no inhibition about criticism. There are a number of blogs specializing in ICANN issues, and they do not hesitate to deliver sometimes scathing criticism. To ensure that I am aware of such issues I have also developed relationships with commentators, so that they know that I am approachable and ready to listen if there were any systemic issues.

Outreach

Attendance at ICANN meetings is one of the high points of my job. Dealing with people online is adequate, but it is difficult to form good working relationships sometimes without eyeballing your colleagues. For me the ICANN meetings are essential in ensuring that the Office of the Ombudsman is viewed as a credible dispute resolution paradigm. There generally seems to be a need for the Ombudsman to be present and I have undertaken substantial mediations at each meeting. In addition, as more people learn that I am available, I get more visitors to my office. This can be a slow process, but as my profile builds within the community, I would hope that I achieve a reputation of being approachable and useful. I also get to meet new staff at ICANN and present them with an orientation on the Ombudsman role. This is a staff requirement but great because I meet so many new staff, which is a real privilege.



Meeting Board and staff in Dakar.

ICANN 42 – Dakar, Senegal

I attended my first ICANN meeting in Dakar, Senegal. This was a most important meeting for me, because although I had met ICANN staff in my induction in Los Angeles, I had not yet met any members of the community. The attendance at this meeting was smaller than some partly

because of the distance to be travelled for many,

and it was indeed a formidable trip for me, taking over a day from New Zealand. However, the ICANN community was very welcoming, and I met with as many members as possible.

ICANN 43 – San Jose, Costa Rica

Costa Rica was a fascinating meeting because it was the first engagement with Spanish-speaking members of the ICANN community. There were a number of robust engagements within the community, and I was able to facilitate some dispute resolution, with interesting challenges of mediating through an interpreter. I received a complaint about an advertisement for ICANN 44 in Prague but the Prague meeting hosts involved were very helpful and cooperative and removed the questioned ads.

ICANN 44 – Prague, Czech Republic

Prague also presented some fascinating challenges, and because of growing awareness of my office, and my availability, I spent time with many visitors. It does present a challenge on occasions, with a balance between my need to conduct outreach with the ICANN community at a meeting, but also spending time with visitors in my office discussing issues. As with Costa Rica, I was also able to conduct a further mediation and a facilitation of a problem.

Increased Use of Office of Ombudsman By Community

If the number of complaints is a measure of increased awareness, the tables on page three show that the community has begun to use my office to a far greater extent, especially compared with the same period last year. The increase is from 10 complaints for the same period in 2011, to 132 complaints for the same period in 2012. While of course many are non-jurisdictional, often I am able to direct the complainant to the appropriate place to solve the problem. The complainants are generally grateful for such help.

Metrics

I have considered various methods of measuring the success of my office. I have tried using surveys for one particular aspect, the ombudsman 101 training, although the number of return surveys was small. I am not sure how accurate this is, except that those participating in training regarded the training as useful, and agreed it increased their knowledge.

I believe the increased use of my office is a principal metric demonstrating the confidence in the office as well as greater awareness. Part of my function is serving as a lightning rod for complaints, and there certainly are many of these out in the ICANN community. It is interesting that when I have on occasion challenged vocal critics, that none of them have actually followed up with a complaint to my office. This is nothing to be complacent about, because even after almost a year in office, there is probably still some trepidation about use of the Ombudsman.

Virtually all complaints have a reply within 24 to 48 hours. Occasionally there is a delay, but seldom for more than a day or so, because I am travelling. By ensuring that I have wireless connections wherever I travel, I can keep in close touch with my complaint management system.

Number of Complaints Received, by Country

- | | |
|---|---|
| 1. Argentina, Argentine Republic (1) | 21. Japan (1) |
| 2. Armenia (1) | 22. Namibia (2) |
| 3. Australia, Commonwealth of (9) | 23. Netherlands, Kingdom of (2) |
| 4. Austria, Republic of (3) | 24. Pakistan, Islamic Republic of (2) |
| 5. Bahrain, Kingdom of (1) | 25. Puerto Rico (1) |
| 6. Bangladesh, People's Republic of (1) | 26. Russian Federation (2) |
| 7. Belgium, Kingdom of (1) | 27. Singapore, Republic of (2) |
| 8. Brazil, Federative Republic of (1) | 28. South Africa, Republic of (4) |
| 9. Bulgaria, People's Republic of (1) | 29. Spain, Spanish State (3) |
| 10. Canada (17) | 30. Sweden, Kingdom of (5) |
| 11. China, People's Republic of (2) | 31. Switzerland, Swiss Confederation (2) |
| 12. Costa Rica, Republic of (1) | 32. Trinidad and Tobago, Republic of (2) |
| 13. Cyprus, Republic of (1) | 33. Turkey, Republic of (4) |
| 14. Denmark, Kingdom of (1) | 34. Uganda, Republic of (1) |
| 15. Germany (4) | 35. United Arab Emirates (3) |
| 16. Greece, Hellenic Republic (1) | 36. United Kingdom of Great Britain & N. Ireland (31) |
| 17. Guernsey (1) | 37. United States of America (107) |
| 18. Hong Kong (1) | |
| 19. India, Republic of (11) | |
| 20. Italy, Italian Republic (6) | |

Training

I have a very strong commitment to ongoing training, as outlined in the report. In addition to the specific ombudsman training, I have also attended other relevant seminars and participated recently in two trial mediations with counterparts in Canada, England and Kenya to resolve



Training in Macao with colleagues from IOI.

disputes online using Skype. This promises to be a useful tool specifically for me.

Looking Ahead

My goals for fiscal year 2013 are:

- Continuing outreach and measures to increase accessibility
- Continuing to grow the access and credibility of the complaint system
- Establishing a new case management system to modernise the present software
- Continuing to establish relationships with the Internet community internationally and New Zealand
- Developing a complaint management protocol for complaints about me
- Developing an office manual for the Ombudsman Office
- Continuing the training process, both at international and local conferences
- Developing relationships with ombudsmen both locally and internationally

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Email:
ombudsman@icann.org

Online Complaint Form:
ombudsman.icann.org/complaints/