

OFFICE OF THE OMBUDSMAN
ANNUAL REPORT
1 JULY 2019 - 30 JUNE 2020



ICANN

ONE WORLD, ONE INTERNET

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Purpose of the Report

The purpose of this report is described in [Article 5, Section 5.5 of the ICANN 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

The ICANN Office of the Ombudsman is pleased to submit its 2019-2020 Annual Report.

It has been an unprecedented year for the ICANN community, Board, organization, and Office of the Ombudsman (Office). The fiscal year began on a positive note at the ICANN66 Annual General Meeting in Montréal, with Barbara Curwin officially joining the Office and serving the community as Adjunct Ombuds. Although her function is as a fully operational asset, the addition of an Adjunct Ombuds was primarily in response to the ICANN community's recommendation for the Office to more fully represent diversity and bolster expertise in harassment, gender, equity, and diversity issues. The addition of staff to the Office is both anticipated and authorized by [Section 5.1 of the ICANN Bylaws](#).

- A. ICANN shall maintain an Office of Ombudsman ("Office of Ombudsman"), to be managed by an ombudsman ("Ombudsman") and to include such staff support as the Board determines is appropriate and feasible.

It is an Office of the Ombudsman, with such Office being managed by the Ombuds, including staff support that is appropriate and feasible. (Further legal and expert support for the Office is authorized by the [ICANN Bylaws, Article 4, Section 4.2 I. \(i.\)](#))

As the Adjunct Ombuds' role is primarily focused on supporting the Ombuds and serving the community at ICANN face-to-face meetings, the arrival of the coronavirus pandemic in early 2020 significantly changed the Office's service delivery. Barbara Curwin's participation as Adjunct Ombuds has greatly enhanced services to the community during this transitional time. Our work on this front is just beginning, and it will continue, though now it has been altered to a primarily virtual manner until such time as the world and ICANN resume some form of interaction as we once knew it.

Especially now in our current virtual environment, I have adjusted my focus as Ombudsman to online participation. I have participated as an observer in community working groups and policy development teams, with occasional participation in a more official manner usually at the request of the leadership teams (under the Office's charter under Article 5 of the ICANN Bylaws). A persistent and available online presence allows me to be there for the community, despite a lack of face-to-face meetings. It also offers frequent opportunities to observe policy development and issues that are often at the foundation of conflict between members of the community, especially on working groups and within teams. Observing online can allow me – albeit virtually – to experience first-hand the multiple interactions between the ICANN community and ICANN org support staff. Though conflicts are infrequent, it is good to have a better understanding of the environment, the issues involved, and the context in which conflicts arises. When in-person meetings resume, in-person will be different, with new concerns.

The Office of the Ombudsman continues to support, promote, and provide education concerning the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy. The Office adjusted from an in-person meeting at the ICANN66 Annual General Meeting (AGM), held in Montréal in October 2019, to virtual Public Meetings in March and June 2020 (previously scheduled to be held in Cancún and Kuala Lumpur, respectively). Working as a coordinated team has been a critical component in successfully staffing virtual offices for the community during local time zone meeting hours.

We stand together alongside the ICANN community, Board of Directors, and organization during this pandemic to serve in any way we can to ensure that fairness, respect, and professionalism continue to grow and endure for the foreseeable future.

Report on Activities

Ombudsman Functions

Conflict management is the Ombudsman's primary function:



Case Management

- Complaint intake
- Investigation
- Resolution



Monitoring the Environment



Outreach



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



Professional Development

Report on Activities

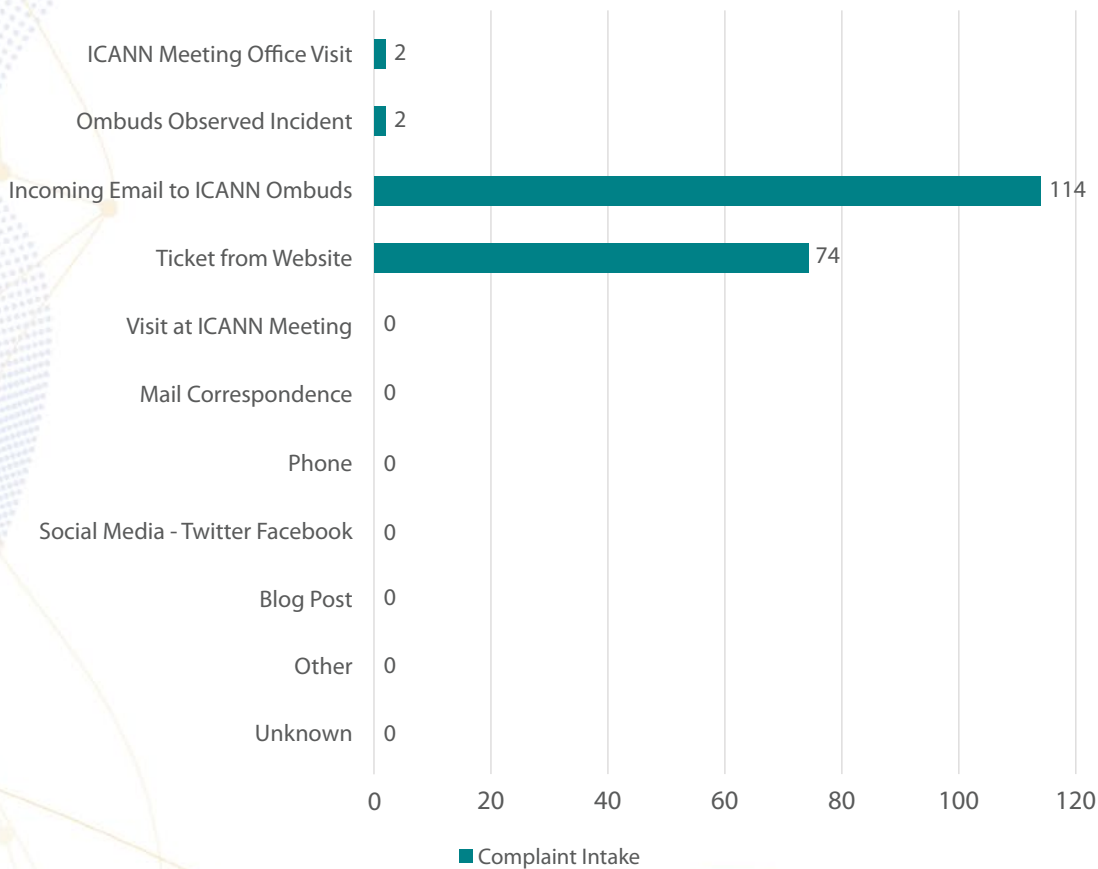
Case Management



The Office of the Ombudsman received 192 complaints from 1 July 2019 to 30 June 2020; this reflects an increase of 17% from the FY2019 and 45% from 2018. Of this year's complaints, 159 were outside of the Ombudsman's jurisdiction, thereby requiring a response but no action. All complaints made to the Office are responded to within 48 hours.

There was a slight drop in jurisdictional complaints from 35 (from July 2018 to June 2019) down to 33 (July 2019 to June 2020). A jurisdictional complaint requires intervention, investigation, or the active involvement of the Ombudsman. At the conclusion of June 2019, there were only four remaining open cases. One involving an incident of bullying and harassment from 2017 which remains open until the work group wraps up its mandate. A complaint of sexual harassment from early 2019 remains open due to an unwillingness of the subject to participate in the investigation conducted by the Office of the Ombudsman. The case is subject to ongoing interim sanctions imposed on the individual, who still has the choice to participate in the investigation. Two other complaints of abusive discourse remain open and under investigation.

Complaint Intake



Report on Activities

There was one complaint filed under the Community Anti-Harassment Policy for this reporting period. There were seven complaints for abusive discourse, consistent with last year's numbers. I believe ongoing initiatives by the Office of the Ombudsman, ICANN org, and the ICANN Board have heightened community awareness of the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy and can be credited with the decrease in complaints about individual behavior.

Consumer issues about domain names (32) and registrar or registry issues (25) once again constitute the majority of the nonjurisdictional complaints. A more comprehensive and informative response to nonjurisdictional complaints has resulted in very positive feedback from complainants. Initially implemented in 2018, a response from the Office of the Ombudsman now includes not only a referral to the appropriate ICANN org function (usually Contractual Compliance or Global Support), it also contains an invitation to participate in the ICANN multistakeholder model, if appropriate, with links to the various stakeholder groups, Supporting Organizations, or Advisory Committees (SO/ACs), depending on the complaint. There is also an invitation to contact the Office of the Ombudsman with feedback on their experience.

Example email response text:

There are several constituency groups that are actively discussing issues like yours in the ICANN community. I invite you to reach out to one you may find appropriate for your situation (commercial or noncommercial) to inquire with more knowledgeable individuals about (description of complaint) or when there is abuse. Participation at ICANN is free, and all are invited to participate in policy development or review. All community members are also encouraged to raise issues of abuse.

Please look through these links to ICANN constituencies. If you have further questions, please do not hesitate to reach out.

<https://gnso.icann.org/en/about/stakeholders-constituencies>

<https://atlarge.icann.org>

I welcome all feedback. Please let me know if this has been of assistance to you, or if you have further questions, by contacting: ombudsman@icann.org

Below are some of the examples of feedback from people contacting the Office of the Ombudsman. It is worth noting that all feedback has been positive.

Good day

Thank you for taking your time to reply to me, providing with all this information. I appreciated.

I will try take it up with them.

My host told me there is no much they can do while the domain is on redemption and that I just have to wait until it's really expire.

Thanks again

Dear Mr. Waye,

The response from the Compliance department and your response were very informative. Thank you very much for your time and effort, I will share my newfound knowledge with my colleagues.

Kind regards,

Report on Activities

First of all, thank you very much for your prompt response and for the graciousness with which you have addressed my concerns.

This is very helpful. Thank you so much!

Thank you for information Herb

*Thank you much for your response. I will check out those links. Thank you for the information
Take care*

I appreciate your response.

I will follow the instruction you sent to me. Since it is a commercial account, the compliance department should be able to assist me with filing the complaint, I need to open an

Hello Herb,

Thank you for pointing me in the right direction! It has indeed been helpful :)

All the best,

Thank you for your response. Happy father's day I will take a look thru with links and give you later feedback on how it goes thank you

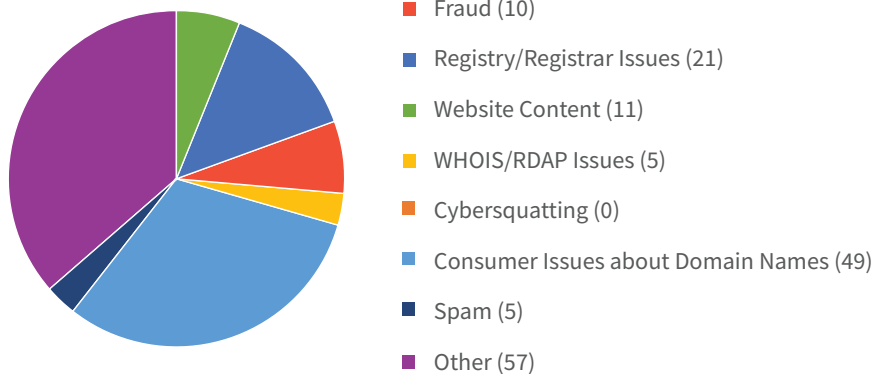
When complaints are co-addressed to both the Office of the Ombudsman and the ICANN Complaints Officer (and frequently include Global Support or Contractual Compliance) an evaluation of the complaint is done jointly to determine who will address the issue.

Report on Activities

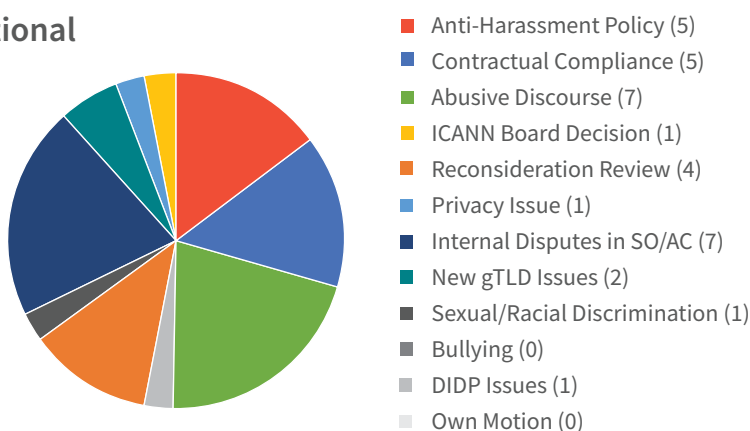
How the Ombudsman Handles Nonjurisdictional Complaints:

- Response sent within two days
- Self-help information or referral
- New initiative provides links to ICANN community groups
- Invitation to participate in the community policy development process, particularly if the complaint is about issues such as WHOIS or privacy, registrar or registry contractual issues, public safety, or At-Large Advisory Committee (ALAC) or Generic Names Supporting Organization (GNSO) working groups.

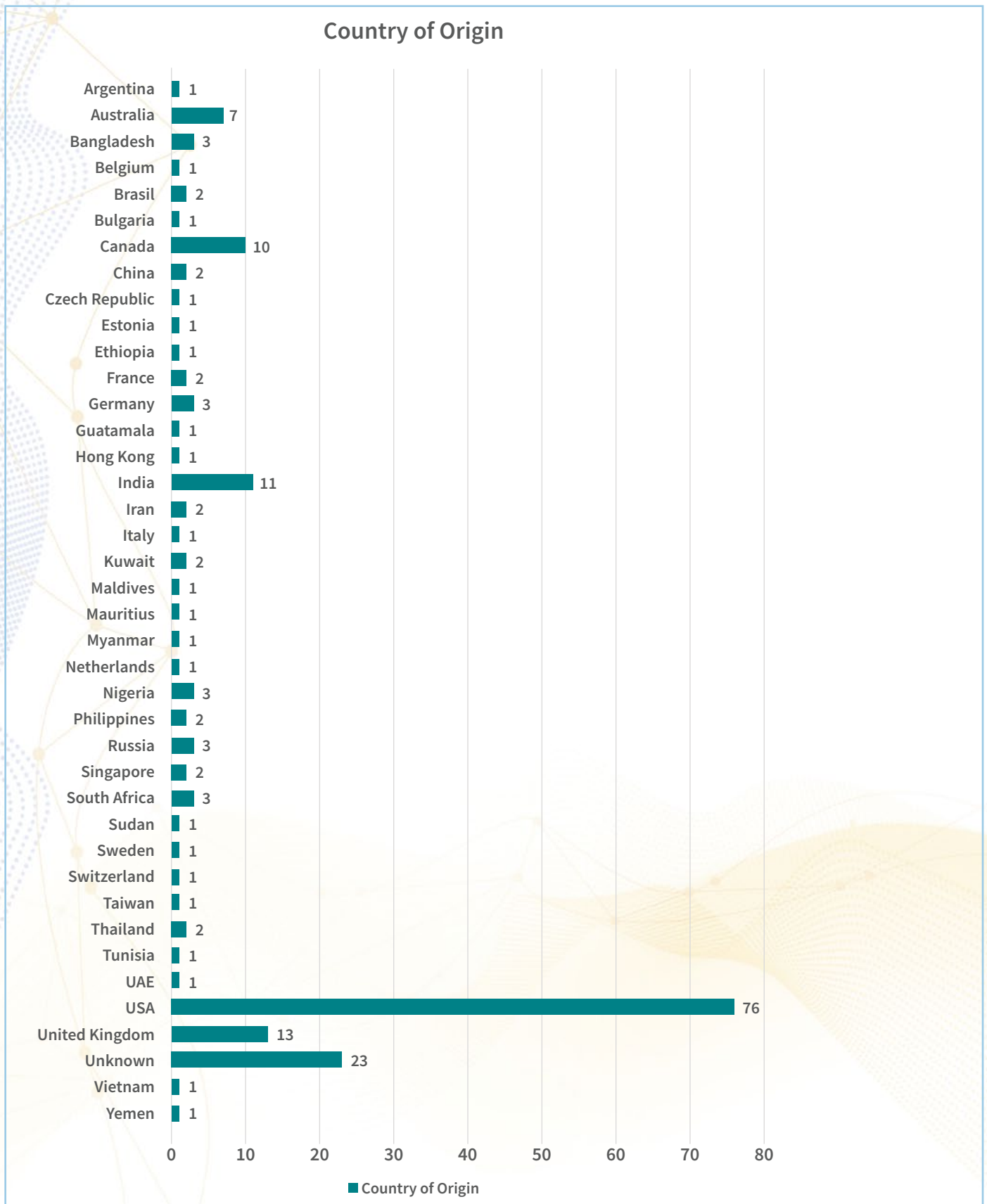
Non-Jurisdictional



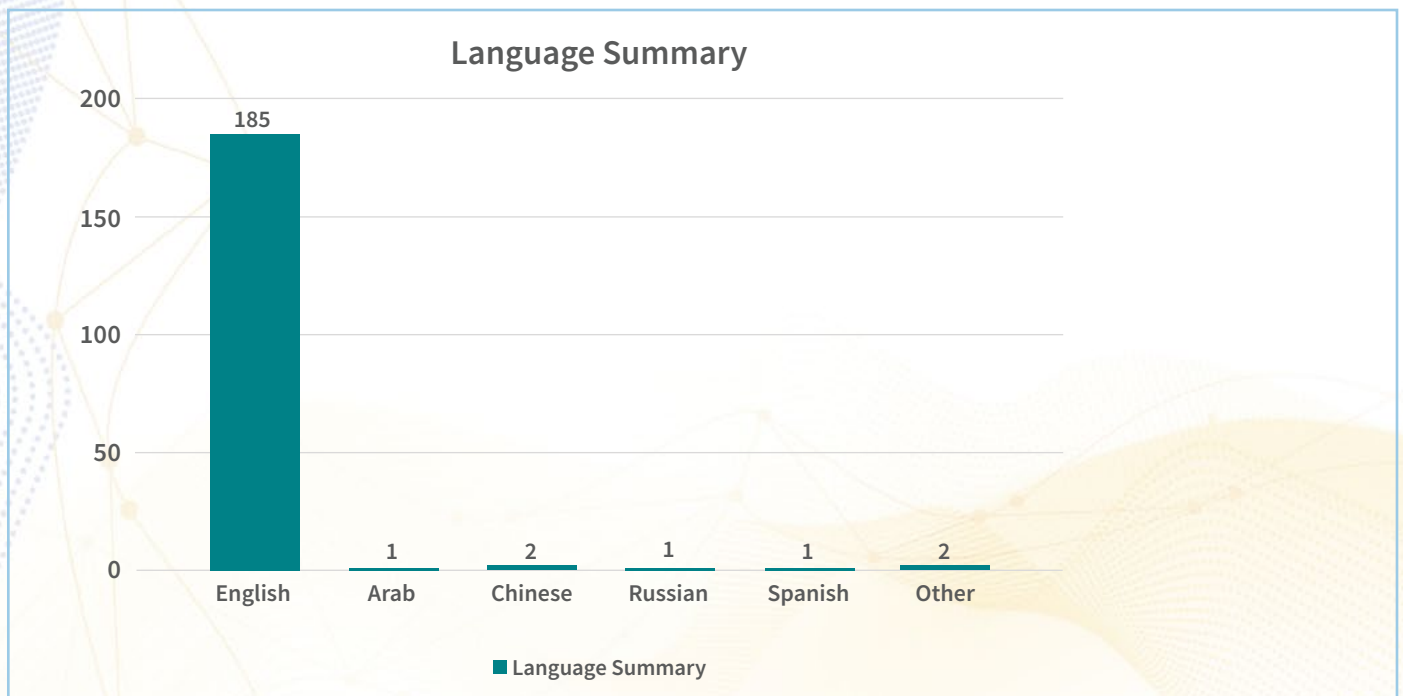
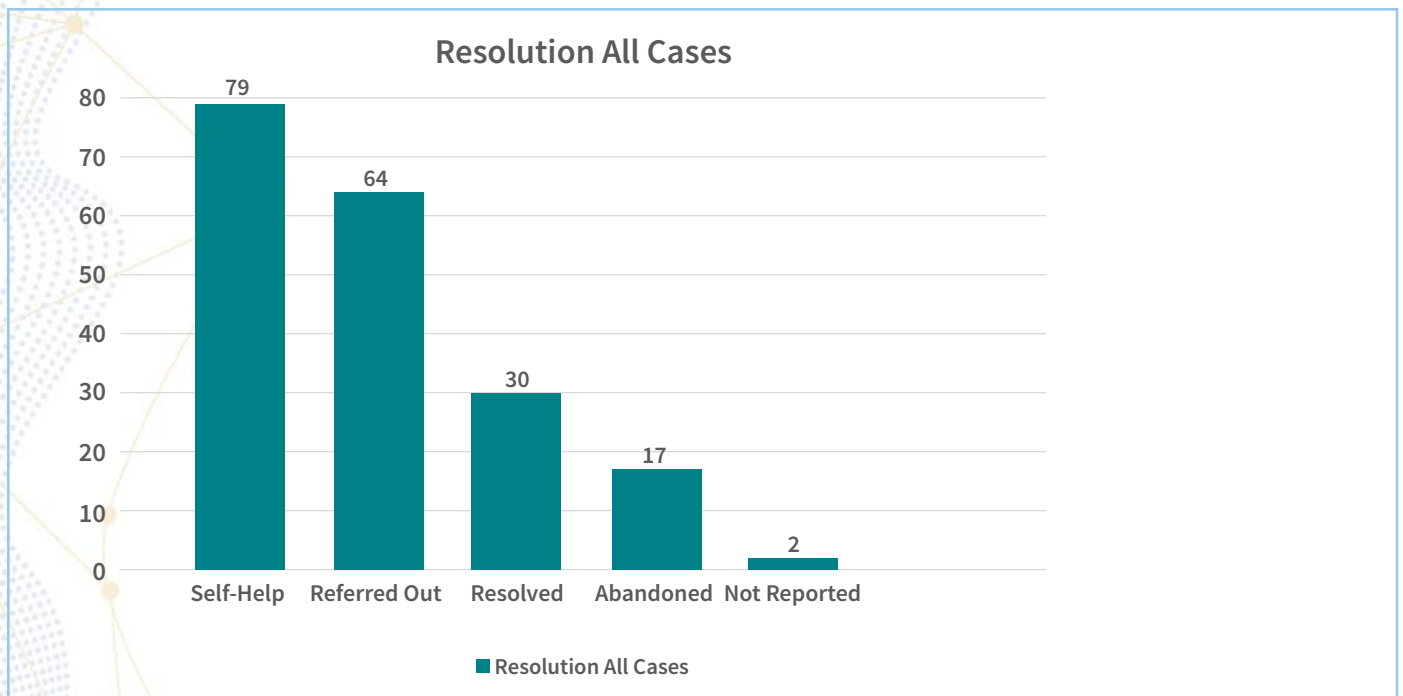
Jurisdictional



Report on Activities



Report on Activities



Report on Activities

Monitoring the Environment



Monitoring the environment has taken on an entirely new importance, as the impact of a pandemic has eliminated all opportunities for face-to-face meetings for the foreseeable future. The move from in-person meetings to virtual meetings has increased the need for a greater presence in the online environment.

The Office of the Ombudsman staffed a virtual office for the last two ICANN Public Meetings in March and June of FY20 during the meetings' scheduled time zones, Cancún and Kuala Lumpur, respectively. The Zoom platform enabled both Ombuds to be available for drop-in or scheduled meetings with ICANN community members. The platform places drop-in visitors into a waiting room which ensures confidentiality for those who may be meeting with the Ombuds at the same time. The Zoom room office hours and link were posted daily in the community chat on the meeting schedule page and on social media.

In the past, the team's online presence has primarily focused on work groups, stakeholder groups, or constituencies where problems existed and intervention or monitoring had been requested. Without face-to-face meetings, an extra effort has been made to participate and observe as many online meeting and working group calls as possible. As such, I have been present during as many Generic Names Supporting Organization (GNSO), At-Large, ICANN Board of Directors, and any other community public events as possible.

The Office also receives emails from many of the ICANN community email lists, which enables me to monitor the current events and tone of any controversial issues being discussed.

I firmly believe my online presence serves not only as a reminder for community members to adhere to the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy, but that it also offers me an opportunity to remain current with contentious issues or ongoing conflict. It also allows me to remain current (if not omnipresent) regarding the policy development processes that drive the ICANN community.

Ombudsman activities at ICANN63, ICANN64, and ICANN65:

- **Office staffed by a team: Ombudsman Herb Wayne and Adjunct Ombuds Barbara Curwin**
 - Benefit: Better availability for drop-in community members
 - Gender diversity for complainants who might wish to discuss a sensitive issue with Barbara
- **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

Report on Activities

Outreach



Outreach began in FY20 on a positive note, with a visit to ICANN's main office in Los Angeles. However, outreach was hampered by the pandemic, which necessitated virtual meetings in March and June 2020. Planned Ombuds oriented training, professional development, and conferences were also cancelled during the first half of 2020. None of the cancelled events resulted in fiscal loss to the Office of the Ombudsman.

It is worth noting that pandemic-related travel restrictions and the migration of the two FY20 ICANN Public Meetings from face-to-face to virtual resulted in the cancellation of Ombuds visits to the ICANN Office in Los Angeles and Singapore, and subsequent ICANN org staff Ombuds orientation training.

FY20 Outreach Activities

- **Visit to ICANN Office in Los Angeles in September 2019 with Adjunct for her orientation and opportunity to meet ICANN org staff. It was not possible to conduct a staff orientation during the visit.**
- **Attended at IGF 2019 in Berlin.**
- **All Ombuds related training and conferences for the Spring 2020 were cancelled due to the pandemic and organization travel restrictions.**

I continue to actively engage throughout the year with the ICANN community and other communities through blog posts, Facebook, and Twitter. I also promote ICANN events, the Expected Standards of Behavior, and the Community Anti-Harassment Policy.

 www.facebook.com/ICANNOmbudsman

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

 icann.org/news/blog

Report on Activities

ICANN Expected Standards of Behavior



The ICANN Board of Directors adopted the current version of the ICANN Expected Standards of Behavior in June 2016. Although officially adopted in 2016, the standards have informally been in effect for over 10 years. The Ombuds team continues to reinforce the Expected Standards of Behavior and the new Community Anti-Harassment Policy and everyone's right to a safe, respectful, and harassment-free environment when attending an ICANN meeting or sponsored event. I will not be comparing statistics for this Annual Report regarding harassment or inappropriate behavior as there was only one face-to-face ICANN Public Meeting in FY20. I cannot speculate whether holding virtual meetings has an impact on participant behavior resulting in a reduction of negative interpersonal experiences. My annual review of the ICANN Expected Standards of Behavior does not lead me to believe there are necessary amendments or additions or subtractions required for the Expected Standards of Behavior.

ICANN Expected Standards of Behavior

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.

Adhere to ICANN's conflict of interest policies.

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.

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.

Protect the organization's assets and ensure their efficient and effective use.

Act fairly and in good faith with other participants in the ICANN process.

Conduct themselves in accordance with ICANN policies.

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.

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.

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.

Promote ethical and responsible behavior. Ethics and integrity are essential, and ICANN expects all stakeholders to behave in a responsible and principled way.

Facilitate transparency and openness when participating in policy development and decision-making processes.

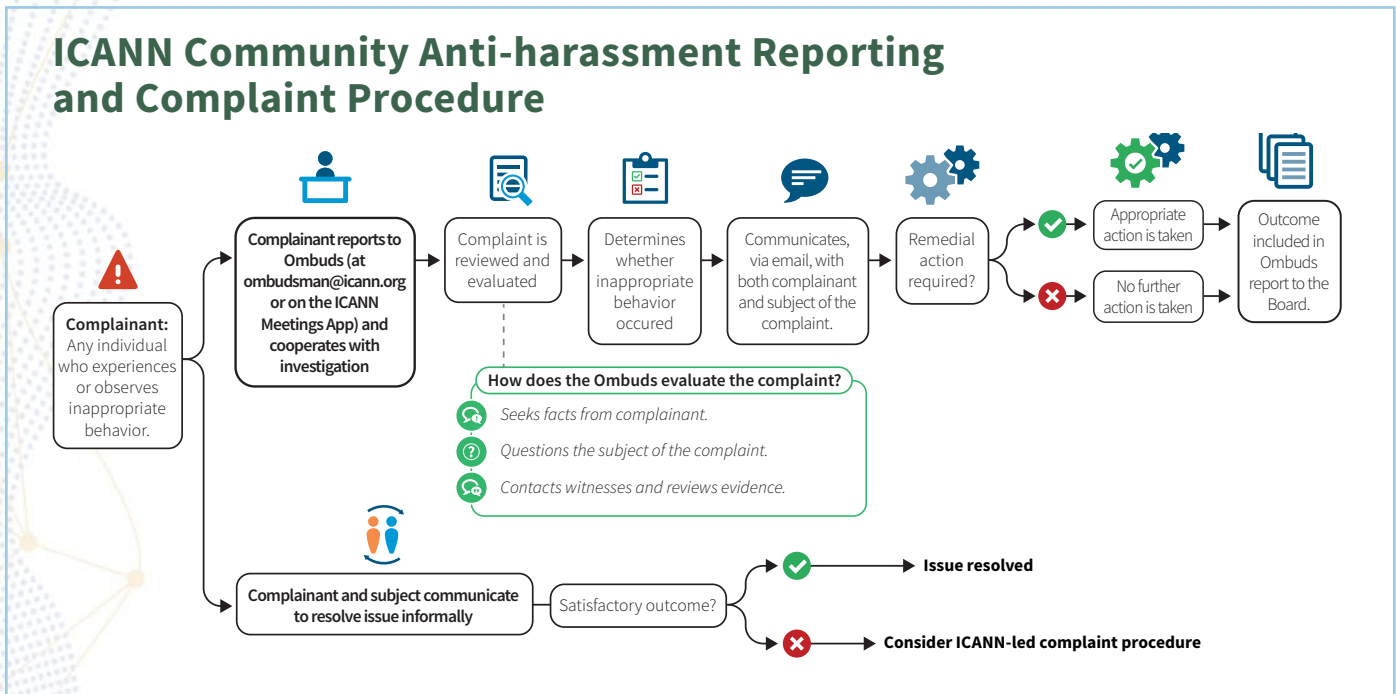
Act in a reasonable, objective and informed manner when participating in policy development and decision-making processes. This includes regularly attending all scheduled meetings and exercising independent judgment based solely on what is in the overall best interest of Internet users and the stability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

Report on Activities

ICANN COMMUNITY ANTI-HARASSMENT POLICY

Harassment, in any form, will never be tolerated by the ICANN community, or our society in general. As such, the Office of the Ombudsman, ICANN org, and the ICANN Board continue to work hand in hand to promote a safe and harassment-free environment. This joint effort has been conducted with ongoing input from the community and an all-inclusive determination to keep ICANN a safe and respectful environment that, ideally, will be free from harassment. One initiative from this collaboration involves a community anti-harassment training module, which will be available in the coming year.



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

Barbara Curwin is now permanently attached to the Office of the Ombudsman and attended her first meeting as Adjunct Ombuds at the ICANN AGM in Montréal in October 2019. It was her fourth ICANN Public Meeting, and she is now recognized and acknowledged by community members as an asset to the Office and a resource for the community regarding harassment and diversity.

Report on Activities

Anyone who has been subjected to harassment can and should report the incident to the Office of the Ombudsman. They can also report the incident to any senior person in the ICANN organization, to a Director on the ICANN Board, or to any community leader with whom they feel comfortable, who may then act as an intermediary with the Office of the Ombudsman. There is no place for harassment, bullying, or any other type of inappropriate behavior anywhere in today's world. Such behavior 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: <https://www.icann.org/en/system/files/files/community-anti-harassment-policy-24mar17-en.pdf>

Report on Activities

Professional Development



Barbara and I continue to maintain membership in three Ombuds organizations: the International Ombudsman Association (IOA); the Forum of Canadian Ombudsman (FCO); and the International Ombudsman Institute (IOI). Unfortunately, all conferences and training opportunities for the three organizations scheduled for 2020 were cancelled due to the pandemic, but we hope this will not continue in the coming year(s).

Barbara's training, specifically the IOA Foundations course, has tentatively been postponed to the fourth quarter of FY21. I also planned on attending training with IOA and FCO in the fourth quarter of FY20. As all my scheduled training was also cancelled, I will be exploring other professional development opportunities, in particular with the Osgoode Hall Law School with York University in Toronto, Canada, and a certificate program in Advanced Issues in Ombuds Practice.

Requests for Reconsideration

In the October 2016 version of the ICANN Bylaws, the Ombudsman role in ICANN expanded to include reviewing reconsideration requests and situations where the Ombudsman does not recuse himself, providing a substantive evaluation to the Board Accountability Mechanisms Committee (BAMC) for its review and consideration.

During this reporting period, four requests for reconsideration were brought before the Office of the Ombudsman. Three resulted in substantive evaluations being conducted by the Office and were reported to the Board Accountability Mechanisms Committee (BAMC) for consideration. The information regarding each request can be found at the following links:

<https://www.icann.org/resources/pages/reconsideration-19-2-namecheap-request-2019-07-22-en>

<https://www.icann.org/resources/pages/reconsideration-19-3-electronic-frontier-request-2019-08-01-en>

<https://www.icann.org/resources/pages/reconsideration-20-1-namecheap-request-2020-01-09-en>

Request for Reconsideration 20-1 brought by Namecheap, Inc. required one of the longer substantive analyses by the Ombudsman. The subject matter related to the alleged lack of transparency by ICANN org staff and the ICANN Board concerning a Renewed Registry Agreement for the .org top-level domain (TLD), and the concomitant allegation of a failure by ICANN to follow policies (as they were alleged to be) from 2002 in reaction to a Change of Control request. The .org situation was in the news – several United States Senators and at least one U.S. state Attorney General weighed in. In my substantive evaluation, I found that there was plenty of transparency and that the 2002 criteria were not, per se, policies. The 2002 criteria was considered as part of the Board’s decision to grant a requested Change of Control under the existing Registry Agreement with the Public Interest Registry (PIR), the .org registry operator. Ultimately, the Board did not grant PIR its requested Change of Control.

The Office of the Ombudsman recused itself from a fourth Request for Reconsideration.

<https://www.icann.org/resources/pages/reconsideration-19-4-merck-kgaa-request-2019-10-15-en>

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

The role of the Ombudsman is 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 roles are not always compatible.

As I am required to recuse myself when the Office of the Ombudsman 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. Please do come see me or reach out to me virtually about such matters. But please be aware that, if they are likely to result in a Request for Reconsideration, engaging me informally could require me to bow out of providing a substantive evaluation of such Request under my formal Article 4 duties.

Going Forward

In FY21, the primary goal of the Office of the Ombudsman is to adapt our service delivery to offer the community the same standard of professionalism and service, notwithstanding this current virtual environment.

FY20 saw the successful integration of Barbara Curwin as Adjunct Ombuds and her attendance in her new role at the Montréal AGM in 2019. Her participation was greatly appreciated during the second and third virtual Public Meetings of FY20 as the Office of the Ombudsman migrated to a virtual platform. The Office also staffed a virtual office to serve ICANN community members. This initiative will continue through ICANN Public Meetings during 2021, or until such time as we can all meet safely face-to-face (with proper distancing) again.

The pandemic has required an adjustment in all service provisions by the Office of the Ombudsman. As outreach, training, and service delivery migrates to a virtual environment, the Office of the Ombudsman must adjust to continue as a valuable asset to the people it serves. My hope is that by the end of the next reporting period, all elements of the Office of the Ombudsman will function as before, albeit in a virtual manner.

As the Office of the Ombudsman moves forward as an established and coordinated team and adjusts to a virtual environment, we will continue to collaborate in a myriad of ways with the community, the ICANN Board of Directors, and the ICANN organization. Together we can continue to keep ICANN a safe, diverse, and almost entirely harassment-free environment where everyone can enjoy participation – virtual or in-person – to the utmost.

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