

ICANN OFFICE OF OMBUDS FRAMEWORK AND PROCESS

This document describes the ICANN Office of Ombuds (Ombuds Office or Office) scope, responsibilities, and high-level Process for handling complaints and conflict resolution (Ombuds Office Framework and Process). In particular, it aims to help all parties in a given Ombuds matter to understand the role undertaken by the Ombuds in that matter, as well as what those participants can expect and what is expected of them.

This Framework and Process will supersede and replace the 2009 Ombudsman Framework.

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PART A: FRAMEWORK

1. DEFINITIONS

- 1.1 “Board” means ICANN’s Board of Directors.
- 1.2 “Bylaws” means ICANN’s current Bylaws, as set forth at <https://www.icann.org/en/governance/bylaws>.
- 1.3 “Case” means a discrete contact, process, or engagement, that is in scope for the Office, and on which the Ombuds Office takes action.
- 1.4 “Collaborative Conflict Resolution” means any voluntary, cooperative Process to resolve a conflict or Dispute using problem-solving approaches that satisfy the interest and needs of the participants and develop mutually acceptable solutions.

Any third party, such as the Ombuds, supporting such a Process facilitates the outcome rather than determines it.

- 1.5 “Community Anti-Harassment Policy” means the Board-approved policy available [ICANN Community Anti-Harassment Policy](#).
- 1.6 “Community Member” means a member of the volunteer-based collection of global stakeholders that provide advice, develop policy recommendations, conduct reviews, propose implementation solutions for issues that relate to ICANN’s mission and scope and individuals who otherwise participate in the ICANN community. Together, these stakeholders, which include businesses, Internet engineers, technical experts, civil society, governments, end users, and many others, work throughout their respective Supporting Organizations and Advisory Committees to shape policies that guide the operation and evolution of the Domain Name System. (See <https://www.icann.org/en/icann-acronyms-and-terms>.)
- 1.7 “Complaint” means a formal expression of dissatisfaction or an allegation made to the Ombuds about a decision, action, or inaction that a Complainant perceives to have resulted in unfairness or harassment toward them and deviates from a relevant policy, standard, or process (or reasonably expected standard or process).
- 1.8 “Complainant” means any individual or party who submits a Complaint to the Ombuds Office on a Matter within the scope of the Ombuds Office.
- 1.9 “Conflict” means the process of expressing dissatisfaction, disagreement, or unmet expectations within an exchange or exchanges in the ICANN community.ⁱ
- 1.10 “Dispute(s)” means disagreement or dissatisfaction that arises from a Conflict or Complaint that has not been resolved and is submitted to the Ombuds Office for a resolution process on a Matter within the scope of the Ombuds Office.
- 1.11 “ICANN” refers to the Internet Corporation for Assigned Names and Numbers, a nonprofit, public-benefit organization with the mission of ensuring the stable and secure operation of the Internet’s unique identifier systems, as well as any ICANN affiliates and subsidiaries.
- 1.12 “Investigation” means a formal, documented fact-finding process initiated by the Ombuds Office to establish facts in relation to alleged or suspected noncompliance with relevant community policies.ⁱⁱ
- 1.13 “Matter” means any issue, concern, allegation, or request raised with the Ombuds Office.
- 1.14 “Mediation” means a confidential, flexible, and voluntary technique in which an impartial third party helps individuals or groups in Conflict or Dispute communicate and reach a consensual, nonbinding agreement.
- 1.15 “Negotiation” means a structured, voluntary, and facilitated communication process between two or more parties with conflicting and convergent interests, including at least one party who is seeking to reach an agreement. Negotiations generally fall into two types, Dispute negotiations (which one or more parties has

suffered a loss) or opportunity negotiations (one or more parties seek to improve their status quo).ⁱⁱⁱ

- 1.16 “Ombuds” means the individual appointed by the Board to serve in the function of Ombuds, reporting to the Board, who manages the Office of Ombuds.
- 1.17 “Ombuds Office” means the Office, managed by the Ombuds, including any support functions such as an adjunct ombuds, independent legal counsel, and other consultants and contractors working on behalf of the Office.
- 1.18 “Own Initiative Investigation” means an Ombuds Office Investigation that arises from an Ombuds request to investigate a Matter (within the scope of the Ombuds Office – as outlined in section 2.1 of this document) based on a pattern of facts that the Ombuds Office becomes aware of but without receiving a specific Complaint. In general, the pattern of facts will have a systemic component.
- 1.19 “Process” means a structured approach involving a series of steps that the Ombuds follows to handle a given Matter, for example a Complaint or request for Collaborative Conflict Resolution support such as a Mediation.
- 1.20 “Respondent” means an individual or party(s) whose actions or inactions are the subject of a Complaint submitted to the Ombuds Office.

2. OMBUDS ROLE, SCOPE, AND RESPONSIBILITIES

2.1 Ombuds Role and Scope

The key purpose of the Ombuds and the Ombuds Office is to ensure that all ICANN Community Members receive fair and respectful treatment when interacting with the ICANN Board, staff, and other Community Members.

The Ombuds’ primary function is to act as an independent, early collaborative resolution office for all ICANN Community Members who may wish to initiate a Collaborative Conflict Resolution or Dispute Resolution Process, raise a Complaint, or request an Investigation into whether an ICANN Community Member, staff, Board (including individual Directors) or any constituent body or group has treated them unfairly or in violation of the Expected Standards of Behavior. The ICANN Bylaws, Article 5, includes provisions to protect the Ombuds’ independence including budget and threshold for dismissal. The Ombuds also handles Complaints from ICANN Community Members about harassment under ICANN’s Community Anti-Harassment Policy. Bylaws Article 5, Section 2 states:

The principal function of the [Ombuds] 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.

In addition to the Ombuds’ primary authority (requiring and enabling the Ombuds to be an advocate for fairness, evaluator, investigator, and when possible, resolver of

Complaints and Disputes), the Bylaws require the Ombuds to use various Conflict and Dispute resolution techniques to facilitate the fair, independent, impartial, and timely resolution of Complaints and Conflict made to the Ombuds Office. Bylaws, Article 5, Section 5.2 states:

The [Ombuds] 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.

The [ICANN \[Ombuds\] Framework \(2009\)](#), clarifies that:

The [Ombuds] does not have the unilateral power to make, change or set aside a policy, administrative or Board decision, nor to reverse an act or omission. To the extent a complaint has been made relating to a policy, administrative or Board decision (or an act or omission), the [Ombuds Office] does have the power to investigate the [underlying] events, and to use [collaborative conflict and dispute resolution] techniques to attempt to resolve such complaint[s or disputes].

The Ombuds Office receives and has responsibility to address issues of unfairness claimed by Community Members including Matters that arise as a result of:

- Decisions, actions, or inactions by a member/members of ICANN staff;
- Decisions, actions, or inactions by the Board or its Directors that may be inconsistent with the Articles of Incorporation or the Bylaws;
- Decisions, actions, or inactions by ICANN constituent bodies.

The ICANN Ombuds Office also has responsibility for addressing harassment Complaints from Community Members raised under the Community Anti-Harassment Policy.

The Ombuds does not have authority to act over Complaints concerning:

- Internal administrative matters;
- Personnel issues;
- Issues relating to membership on the Board; or
- Issues relating to vendor/supplier relationships.

The Ombuds Office may decline to take action or initiate a Process in the following instances:

- The Complaint or Matter is not raised in a timely manner;
- The Complainant does not have sufficient personal interest;

- The Complainant has pursued an alternate available or adequate process or the Complaint is subject to another ICANN process (Reconsideration Request or Independent Review Process);
- The Complaint is repetitive, trivial, vexatious, frivolous, nonsubstantive, otherwise abusive, or not made in good faith;
- The Complaint lacks credibility;
- Having due regard for all the circumstances, further action by the Ombuds is not necessary or possible to resolve the Matter or the Complaint or Ombuds action would not benefit the individual or Complainant; or
- The Complainant either revokes the Ombuds Process by engaging in a formal review process under the Bylaws, Article 4, or they engage in an outside legal process. (See <http://www.icann.org/general/bylaws.htm#IV>.)

2.1.1 Access to Information

Under Bylaws, Article 5, Section 5.3, the Ombuds has the right to have access to (but not to publish if otherwise confidential) relevant and necessary information and records from the ICANN Board and staff and constituent bodies to enable an informed evaluation of the Complaint and to assist in Complaint and Collaborative Conflict and Dispute Resolution where feasible. Private and internal communications not distributed via public websites may be designated as confidential by the party providing such information and records. Nothing shall stop the Ombuds Office from designating information confidential if the Ombuds deems it appropriate to do so.

2.1.2 Recommendations

The Ombuds may make recommendations to the Board with respect to Matters arising from Complaints reviewed and investigated by the Ombuds Office. Where the Ombuds makes a recommendation to the Board and to the extent the Board deems it appropriate and feasible, the Board should endeavor to respond to the Ombuds within timescales set out in [Section 9](#) of this document.

Under Bylaws, Article 5, Section 5.5, the Ombuds may include recommendations in the Annual Report for steps that could be taken to minimize future Complaints. These recommendations may also identify learning and systemic improvement(s).

2.1.3 Own Initiative Investigation (relating to Matters within the scope of the Ombuds Office)

The [ICANN Ombudsman Framework \(2009\)](#), indicates that the Ombuds can request authority from the Board to start an Own Initiative Investigation.

If the Ombuds Office becomes aware of a pattern of facts supporting the initiation of an Own Initiative Investigation on a Matter clearly within the scope of the Ombuds Office, the Ombuds may request authority to open such an Investigation from the Board Leadership Team. Matters within scope for the Ombuds Office are described in sections 2.1 and 2.2 of this document (namely, unfairness or inappropriate treatment toward

Community Members) and excluding Matters where the Ombuds has no authority to act (including internal administrative matters, personnel issues, and issues relating to Board member conduct or membership). The Board Leadership Team shall then determine, based on the information provided by the Ombuds in the request and any information it obtains on its own, whether the requested Own Initiative Investigation is approved by the Board Leadership Team; if approved, the Ombuds Office is then authorized to proceed with its Own Initiative Investigation.

2.1.4 Requests for Reconsideration

Under the Bylaws, the Ombuds must provide a substantive evaluation of Requests for Reconsideration. (Bylaws, Article 4, Section 4.2(l).) When a Request for Reconsideration (Request) has been received, if it has not been summarily dismissed by the Board Accountability Mechanisms Committee (BAMC), then it goes to the Ombuds, who must either recuse themselves from evaluating the Request, or provide a timely, substantive evaluation of such Request to the BAMC.

2.2 Ombuds Responsibilities

2.2.1 Collaborative Conflict Resolution

The Ombuds may employ a wide range of Collaborative Conflict and Dispute Resolution methods in the efforts to resolve Conflict and Disputes in the ICANN community. These methods include, among others: Mediation, shuttle negotiation, conciliation, and dialogue.

2.2.2 Evaluation and Investigation of Complaints

Where warranted, as set out in the Bylaws, Article 5, as well as under the Community Anti-Harassment Policy and Expected Standards of Behavior (to which all Community Members must agree to adhere), the Ombuds Office, conducts evaluations and/or Investigations of Complaints with the relevant parties.

2.2.3 Reports

The Ombuds provides to the Board an Annual Report highlighting Cases, resolution, and trends, which is then posted on the ICANN website.

See Bylaws, Article 5, Section 5.5 states:

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.

Where appropriate, the Ombuds may post Complaints and their resolutions to ICANN's website (<https://www.icann.org/ombuds>). The reports will be anonymized and redacted to protect confidentiality of communications with the Ombuds Office.

See Bylaws, Article 5, Section 5.4(d) states:

The [Ombuds] shall be specifically authorized 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 [Ombuds], in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

In determining whether to publish a written report on a given Case, the Ombuds will consider the benefit to the community in publishing a report, including:

- promoting an understanding of the issues in the ICANN community;
- promoting learning and raising awareness about administrative fairness;
- allowing the community to see the results of similar previous Cases; and
- preventing and reducing future Conflicts.

During each fiscal year the Ombuds also provides at least one additional report to the Board on the Ombuds Office activities.

2.2.4 Notification to Board of Serious Breach of Administrative Fairness

Where, in the conduct of an Investigation of a Complaint or management of a Case, if the Ombuds forms an opinion that there has been a serious breach of administrative fairness, the Ombuds may notify the Board directly as to the circumstances thereof. Such a notification will be consistent with agreed confidentiality parameters with parties in the Case.

2.2.5 Applicable Review Procedures

Where there exists no further opportunity for collaborative Conflict or Dispute resolution to be applied, or there is no likelihood of a successful Ombuds resolution, the Ombuds shall advise the Complainant of the applicable review procedures.

3. OMBUDS OFFICE STANDARDS AND OVERARCHING PRINCIPLES

The Ombuds and the Ombuds Office will adhere to the standards of practice and ethics adopted by The International Ombuds Association (IOA), as they may be applicable to the Office.^{iv}

3.1 Confidentiality: All Matters brought before the Ombuds Office shall be treated as confidential, except where otherwise agreed by parties or required by law.

The Ombuds Office shall take all reasonable steps to protect people's privacy and to avoid harm. This commitment extends to all parties to a Case and to individuals who are not directly involved in a Case but who may be contacted by the Ombuds Office as part of the management of a Case, including the Investigation or evaluation of Complaints.

The Ombuds may be required to make inquiries with or to advise staff, the Board, or others about the identity of a party(s) or Complainant(s) as part of an evaluation, Investigation, or other resolution Process. In these Cases, the Ombuds will inform and, if appropriate, seek the consent of the party(s) before disclosing information that could reveal their identity. If the party(s) does not wish to have their identity disclosed, this may limit options for resolution but in all Cases the Ombuds will attempt to find a suitable resolution Process that allows for their identity to be protected. Additionally, if a harassment Complaint is raised by or about a staff member or Board member, the Ombuds is required to inform the appropriate party in ICANN. In these Cases, the Ombuds will inform the Complainant of the appropriate party that the Ombuds will refer to in advance of any such referral.

The Ombuds shall take all reasonable steps to ensure that, if staff and Board members are made aware of the existence of a Case or Complaint and the identity of the individual(s) involved, they agree to maintain the confidential nature of such information, except as necessary to further the resolution of a Case or a Complaint or as otherwise required by policy or law.

3.1.1 Exceptions to confidentiality: Confidentiality does not apply when there is an imminent threat to the individual or others, when criminal activity is threatened, or when legally required, such as through a court order.

3.2. Objectivity and impartiality: The Ombuds is a designated neutral and impartial resource who does not take sides or serve as an advocate for any person or party. The Ombuds avoids Conflicts of interest and conduct that could be perceived as a Conflict of interest. An Ombuds Process should not be influenced by personal feelings, interpretations, or prejudice. An Investigation or evaluation will be conducted objectively and based on factual evidence.

3.3 Fair and unbiased treatment: The Ombuds is an advocate for fairness and will be neutral, candid, and unbiased. All Complaints are assessed against established fairness criteria. The Ombuds commitment to fair and unbiased treatment includes:

- **Opportunity to be heard:** Participants in the Process will all be given equal opportunity to present information relevant to the matter to the Ombuds.
- **Notice of the planned or ongoing Process:** Participants in the Process will be given notice of the chosen Process as well as a description of how the Process

will proceed. The Ombuds will inform participants where a Process is voluntary (e.g., Mediation).

- **Reasoned determination:** Where the Process involves reaching a conclusion or determination by the Ombuds, the Ombuds will make fair and impartial findings and conclusions. An Ombuds' determination will not be capricious, unreasonable, or arbitrary.

3.4 Independence: The Ombuds is independent in structure, function, appearance, and decision-making. The Ombuds reports to the Board, not to any function or team within the organization that could affect or be perceived to affect the Ombuds' independence. When undertaking an Investigation or evaluation, the Ombuds will not be influenced or controlled by other people, events, or incentives in relation to the subject matter that is being investigated.

3.5 Role clarity: The Ombuds clarifies with participants the role the Ombuds plays in a Process at every step. Participants in any Process should understand fully (a) the role in which the Ombuds, and those acting on the Ombuds Office's behalf (such as an adjunct ombuds), is playing, and (b) the participants' responsibilities in such Process. Early in a Process, participants in the Process will be told if the Ombuds plays a role determining an outcome or if the Ombuds will be playing an informal, nondeterminative role, such as a mediator or facilitator.

3.6 Dignity and respect: The Ombuds Office commits to treat every person, including all Complainants and Respondents, with dignity and respect. Everyone who engages with the Ombuds Office can expect to have their concerns and experiences taken seriously and to be treated equitably. In putting dignity and respect at the heart of all its work, the Ombuds Office seeks to create a safe environment for Community Members to speak freely and openly, and to engage in constructive dialogue and Complaint and Conflict resolution.

Part B: PROCESSES

4. INTAKE AND INITIAL ASSESSMENT

4.1 Intake

At intake, the Office of Ombuds will:

- Provide participants information about options and Process.
- Where appropriate, refer individuals raising to another department or body when the Matter raised is outside the Ombuds scope.
- Help individuals identify and clarify cause for concern and issue(s) they want reviewed or resolved.

4.1.1 Matters Outside the Scope of the Ombuds' Remit

The Ombuds Office will respond to all submissions where the individual provides sufficient information that enables a response, whether the submission is in scope for the Ombuds or not. If the Ombuds Office receives a submission that is out of scope, the Ombuds Office will inform the individual that the issue is out of scope and endeavor to refer them to alternative avenues to have their issue addressed, if available and appropriate.

In most circumstances, the Ombuds Office will provide self-help links and resources or refer the individual to another responsible team, person, or body in ICANN (e.g., Global Support).

There are some Cases where the Ombuds Office may have a role to play but does not have the remit to address independently. These may include Complaints related to:

- [ICANN Community Participant Code of Conduct Concerning Statements of Interest](#);
- Behavior or conduct of a staff member; or
- Integrity of community election or selection processes.

In these cases, the Ombuds will, prior to referring, discuss with the individual the referral to the appropriate party or parties within ICANN, and may remain as an informal support or resource, where appropriate. In some cases, for example harassment Complaints involving staff or Board members, the Ombuds must provide all the necessary information to the appropriate party in the organization.

4.2 Initial Assessment of All Matters Brought to the Ombuds

In Matters brought to the Ombuds Office, the Office will take the following steps:

1. Gather sufficient information to make an initial assessment about whether or how the Matter should be pursued, and the scope of any process undertaken.
2. Clearly distinguish Conflicts and Complaints and identify what Process(es) the participant(s) are willing to participate in pursuit of the outcome (e.g., collaborative or Ombuds-led resolution).
3. Identify parties' interests in the Matter and outcome sought.
4. After completing a sufficient level of assessment, the Ombuds may make a recommendation about a resolution process to follow.
5. Where parties are not willing to undertake any of the recommended Processes, identify other avenues.

4.3 Timescale

The Ombuds Office recognizes the importance of dealing with all Cases promptly and in as short a timescale as feasible. The Ombuds Office also recognizes that some issues

are complex or require more time to handle fairly and effectively. The Ombuds Office has these guiding timescales. It should be noted that many, if not most, Matters can be dealt in a shorter timescale.

- The Ombuds Office will acknowledge receipt of a written request or Complaint within **two to five working days**.
- If a meeting is requested, either to provide information or address a request, the Ombuds Office aims to set a meeting within **five to seven working days**.
- The Ombuds Office aims to determine whether the Matter is within the scope of the Ombuds and agree the Process (e.g., Complaint or Collaborative Conflict Resolution Process), agree scope/parameters of the Process and undertake the Process (e.g. an evaluation or Investigation) within **25 working days** of receipt of the request or Complaint.
- The Ombuds Office acknowledges that Collaborative Conflict Resolution Processes require a more open-ended approach and that the Ombuds may keep Cases open allowing parties to request further support as needed.
- The Ombuds Office aims to conclude the evaluation or Investigation of most Complaints within **60–90 days of agreeing scope** with the Complainant.
- The Ombuds Office will communicate with relevant parties, such as Complainant and Respondent(s), and update them, including about any delays associated with the relevant Process.

5. CONFLICT RESOLUTION

5.1 Initiation of an Ombuds-Facilitated Conflict Resolution Process

An interested party can contact the Ombuds to request support with Collaborative Conflict or Dispute Resolution. The interested party should describe the situation and how they think the Ombuds can help and what, if any, steps have been taken to resolve the issue thus far.

5.2 Ombuds Role in an Ombuds-Facilitated Conflict Resolution Process

The Ombuds is an independent, impartial third party who supports and facilitates individuals and groups using Collaborative Conflict Resolution techniques such as Mediation and coaching appropriate to the situation and the participants. The Ombuds does not play a role in determining the outcome of the Process or who is “right” or “wrong.”

Participation in an Ombuds-facilitated Collaborative Conflict Resolution Process is strictly voluntary.

The Ombuds may contract an external Conflict or Dispute resolution facilitator, depending on the nature of the issue, for example if the parties would be better served

by a facilitator with regional expertise or language skills. This external person will be agreed in advance by the parties before contracting.

5.3 Ombuds Process and Approaches in Ombuds-Facilitated Conflict Resolution

- **Conflict situation assessment:** The Ombuds will undertake an assessment of the Conflict or Dispute to identify participants, the scope of issues to address, and one or more appropriate resolution methods.
- **Process and methods:** A facilitated Conflict/Dispute resolution Process will vary depending on the needs. It may be a one-off, (for example a two-hour Mediation between two people) or it may be multiple sessions involving different people. The Ombuds may use a range of Collaborative Conflict Resolution methods, including coaching, Mediation, and negotiation.

5.4 Outcomes of an Ombuds-Facilitated Conflict Resolution Process

The participants are responsible for determining the outcomes of the process. Some processes may result in an agreement or other working arrangement that is voluntary and informal (nonbinding).

6. COMPLAINTS OF UNFAIRNESS

6.1. Initiation of Unfairness Complaints

Complaints to the Office of the Ombuds must be made in writing or orally to the Ombuds. When making a Complaint, the Complainant should be explicit that they wish to make a Complaint. The Complainant should provide the following information:

- Date(s) of the incident/issue of concern;
- How they believe they have been treated unfairly by the Respondent(s);
- A description of the basis of the Complaint including relevant policy/process that may apply;
- A summary of contact between the Complainant and the Respondent(s) on the issue, if applicable, and any previous attempts to resolve the issue;
- How they have been adversely affected;
- What they are looking for to put the matter right;
- How they believe the Ombuds Office can help; and
- Any other information the Complainant wishes to provide.

6.2. Ombuds Role in an Unfairness Complaint

The Ombuds is an impartial, independent third party who assesses whether the Complainant has been treated unfairly. The Ombuds reviews facts and evidence and reaches some form of conclusion.

If appropriate, the Ombuds may propose corrective actions, make recommendations or suggest a Dispute resolution pathway such as a Negotiation or Mediation Process.

6.3 Ombuds Process in Handling an Unfairness Complaint

6.3.1 First Level Resolution

The relevant group, team, or individual has the opportunity to first resolve the Complainant's dissatisfaction about unfair treatment, if feasible. In the first instance, the Ombuds will try to focus on "solving the problem" (e.g., if a response has not been provided, getting a response). Upon receipt of the Complaint, the Ombuds will contact the relevant group, team, or individual and (i) make them aware of the Complaint and the desired outcome; and (ii) ask for their response.

6.3.2 Second Level Resolution: Ombuds Evaluation or Investigation

If the Complaint remains unresolved, the Complainant may request that Ombuds evaluate or investigate the Complaint for unfairness.

6.3.2.1 Preliminary Assessment

The purpose of a preliminary assessment is to assess the nature of the unfairness Complaint and determine if the Ombuds Office may offer a suitable pathway for resolution and, if so, identify what pathway. The Office will also determine whether there are sufficient grounds to proceed to an evaluation or Investigation.

6.3.2.2 Investigating and Evaluating Unfairness

The Ombuds Office will review relevant facts and evidence about the alleged unfairness. The Ombuds will ask both Complainant and Respondent(s) to furnish evidence and may also request access to relevant information as set out in Section 1.3 of this document.

The Ombuds Office routinely assesses two aspects of fair treatment, listed below. In most Cases, the Ombuds Office will not evaluate a decision itself but will focus on the process and how the person was treated.

(i) Procedural fairness: refers to whether an action/inaction or a process to reach a decision or conclusion are in line with relevant agreed-upon standards/rules/processes and whether these were applied consistently.

In Cases where the Complaint is about a penalty or sanction (such as exclusion from a community group), the Ombuds will also assess whether the process to determine the penalty or sanction meets fairness standards and will consider the following questions:

- Was the Complainant informed about the process?
- Was the Complainant able to participate in the process, for example to respond to allegations or present information that contradicts the allegations?
- Can the Ombuds confirm the decision was based on objective facts and evidence?

(ii) Interactional/relational fairness: refers to how parties are treated in the decision-making process, with dignity and respect and in line with the Expected Standards of Behavior.

6.3.2.3 Opportunity to Comment

A draft report of an Investigation or evaluation, with preliminary findings and without conclusion, will be shared with both the Complainant and Respondent(s) to comment on factual accuracy. The Ombuds will correct any incorrect factual statements.

Additionally, the Ombuds will consider all responses, including differences of beliefs, interpretations, and opinions, carefully before reaching a conclusion.

In the Case of a Complaint resulting in a written report to the Board, before transmittal of a final report, the Ombuds will provide the relevant parties an opportunity to review, respond, and offer feedback on the draft report. The Ombuds will consider the feedback in the preparation of a final report.

The relevant parties should endeavor to respond to the Ombuds, or request an extension to respond, within 15 calendar days from receipt of the relevant draft report.

6.4 Outcomes from an Evaluation or Investigation of an Unfairness Complaint

Once an evaluation or Investigation is complete, the Ombuds reaches a conclusion on the basis of the facts and evidence reviewed during the Process:

- The Complaint of unfairness is substantiated or
- The Complaint of unfairness is substantiated in part or
- The Complaint of unfairness is not substantiated

The Ombuds may propose resolution pathways or provide observations related to prevention, improvements, or resolving the issue.

Where a Complaint is substantiated or substantiated in part, the Ombuds will provide written feedback on steps to improve or resolve the issue, which may include recommendations. If a Complaint of unfairness is substantiated, the Ombuds may also provide a report to the Board that includes written feedback or recommendations.

7. COMPLAINTS OF HARASSMENT UNDER THE ICANN COMMUNITY ANTI-HARASSMENT POLICY (CAHP)

7.1 Initiation of a Complaint under the CAHP

Complaints under the Community Anti-Harassment Policy should be submitted to the Ombuds as soon as possible after the incident has occurred and preferably in writing.

7.2 Ombuds Role in a Complaint under the CAHP

The Ombuds acts as an impartial, independent third party who investigates Complaints under the Community Anti-Harassment Policy. The Ombuds will make a determination about whether the behavior constitutes harassment. If there has been harassment, the Ombuds may suggest remedial action under the Community Anti-Harassment Policy.

7.3 Ombuds Process for Handling Complaints under the CAHP Policy

7.3.1 Preliminary Assessment

The purpose is to determine whether the Matter is within the scope of the Ombuds Office under this Policy and assess the nature of the complaint, the conduct at issue, harm and potential harm, potential resolution options, and determine whether there is sufficient basis to proceed to an Investigation.

7.3.2 Investigation

The Respondent is informed and brought into the Process. The Ombuds will assess evidence supporting the allegations, including, as relevant, witness statements for the Complainant and Respondent.

Anyone who is comfortable reaching out to the Ombuds can do so. If, however, the Ombuds receives a Complaint from or about an ICANN staff or Board member, the Ombuds must provide all the necessary information with the appropriate party within ICANN, as needed, so that the organization's Complaint process provided for staff and Board members is properly followed. Depending on the circumstances, ICANN may file a Complaint with the Ombuds under this Policy as it relates to conduct toward a staff or Board member by a Community Member as part of the organization's process.

Interviews are documented and interviewees have the opportunity to review and correct facts in the interview notes.

The Ombuds will inform both the Complainant and the Respondent of the results of the Investigation and the outcome of the Complaint.

7.4 Outcomes from a Complaint Investigation under the CAHP Policy

Once an Investigation is complete, the Ombuds reaches a conclusion on the basis of the facts and evidence investigated:

- The Complaint is substantiated or
- The Complaint is substantiated in part or
- The Complaint is not substantiated

If the Complaint is substantiated or substantiated in part, the Ombuds may suggest remedial action as per the Community Anti-Harassment Policy. This will depend on the below-listed factors, among others:

- Severity, frequency, and pervasiveness of the conduct and impact on the Complainant and community;
- Prior Complaints relating to the Respondent and Complainant; and
- Acceptance/acknowledgement of behavior and willingness to correct and repair.

If a Respondent refuses to comply with the remedial action identified by the Ombuds, the Ombuds will refer the Matter to the ICANN Board with recommendations for consideration and action. The referral to the Board will include a discussion of the facts,

claims, findings, and efforts to resolve the Matter with the Ombuds, and recommendation(s) of remedial action. All Cases referred to the ICANN Board will be handled with the highest level of confidentiality, as feasible for all parties.

Upon a receipt of a referral from the Ombuds, the ICANN Board will evaluate the Ombuds' findings, request additional information if needed, and decide whether the Ombuds' recommended remedial action, or alternative remedial actions, are appropriate. If warranted, the Board will then impose such remedial action(s) it deems appropriate.

8. OMBUDS ROLE IN REQUESTS FOR RECONSIDERATION

8.1 Initiation of a Request for Reconsideration to the Ombuds

Under the Bylaws, Article 4, Section 4.2 (l), Reconsideration Requests that have not been summarily dismissed by the BAMC will be sent to the Ombuds for a substantive review.

8.2 Ombuds Role in a Request for Reconsideration

The Ombuds is an independent, impartial third party that is tasked with providing a substantive evaluation of Reconsideration Requests, unless the Ombuds has recused themselves from the Matter (as set forth in the Bylaws and per section 2.1.4 of this document).

8.3 Ombuds Process in Addressing a Request for Reconsideration

The Ombuds shall recuse themselves from those Reconsideration Requests involving Matters for which the Ombuds' impartiality might reasonably be questioned, such as a previous evaluation or Investigation related to the subject matter of the Request for Reconsideration or Matters involving the Ombuds Office conduct in any way. Among other situations, recusal is expected where the Ombuds holds or has expressed interests, beliefs or opinions that question their ability to make unbiased determinations. In such circumstances, the BAMC reviews the Reconsideration Request without substantive evaluation by the Ombuds.

When a Reconsideration Request is not summarily dismissed (and the Ombuds does not have reason to recuse), the Ombuds will promptly review the Request and provide a substantive evaluation of it to the BAMC. This substantive evaluation will then be made publicly available by ICANN.

All substantive evaluations of Reconsideration Requests will be done in an independent and impartial manner. As used herein, a substantive evaluation includes, where relevant,: (i) a review of all relevant and material documents (physical or electronic); (ii) interviews and communications necessary to learn the perspectives of persons reasonably connected to the Matter, and (iii) any outside research with assistance from outside sources as deemed necessary to ensure a fair and objective substantive evaluation has been made.

9. RESPONSIBILITY TO RESPOND TO THE OMBUDS OFFICE

Where the Ombuds Office has made a formal request for information, response to a report or recommendation to a group, team, or individual within the ICANN community or staff, the relevant group, team, or individual shall endeavor to respond within 60 days (or 90 days with a suitable reason for delay). A responding party should provide a substantive response to the Ombuds, along with rationale for that response. Should a responding party not be able to meet the 90-day limit due to exceptional circumstances, that party can seek from the Ombuds an additional extension as long as that request comes before the expiration of the original 60-day deadline. The extension request should be in writing, stating the nature of the exception and the expected time required to respond. The Ombuds Office will respond to such extension requests within one week.

In cases where a group, team, or individual has failed to reply or refused a formal request within the timeline above, the Ombuds Office may then notify the Board or, if the matter relates to ICANN staff, its President and CEO, of the noncompliance and proposed action to remedy the Matter.

10. CLOSING A CASE

When the Ombuds Office closes a Case, it will be in one or more of the categories below, if relevant, and the Office will promptly notify party(s), where possible, by email which category:

- **Ombuds Collaborative Conflict Resolution Process concluded:** The Ombuds Office Process has concluded and/or the Matter has been addressed and does not require further action.
- **Complaint substantiated:** Following an Ombuds Office evaluation or Investigation of a Complaint, the evidence establishes that, more likely than not (akin in civil law to the “balance of probabilities” or “preponderance of the evidence” standard), the action, inaction, decision, or behavior constitutes unfairness, harassment, or violates the Expected Standards of Behavior.
 - **With remediation agreed by parties:** When in the course of investigating or evaluating a Complaint, the parties agree to a course of remedial action to resolve the Matter.
 - **With notification to the Board:** When in the course of investigating or evaluating a Complaint, the Ombuds informs the Board, within the agreed level of confidentiality, of a Case and its resolution.
 - **With recommendation to the Board:** When in the course of investigating or evaluating a Complaint, the Ombuds makes recommendations to the Board with respect to Matters arising from Complaints evaluated or investigated by the Ombuds Office.

- **Complaint substantiated in part:** Following an Ombuds Office evaluation or Investigation of a Complaint, that on balance of probabilities, the evidence establishes that some of the allegations relating to the action, inaction, decision, or behavior constitute unfairness, harassment, or violate the Expected Standards of Behavior.
 - **With remediation agreed by parties:** When in the course of investigating or evaluating a Complaint, the parties agree to a course of remedial action to resolve the Matter.
- **Complaint not substantiated:** Following an Ombuds Office evaluation or Investigation of a Complaint, the evidence does not establish, on balance of probabilities, that the action, inaction, decision, or behavior constitutes unfairness, harassment, or violates the Expected Standards of Behavior.
 - **With remediation agreed by parties:** When in the course of investigating or evaluating a Complaint, the parties agree to a course of remedial action to resolve the Matter.
- **No further action:** There is no viable further action that the Ombuds can take, although the issue may not be concluded or resolved. For example, there are insufficient grounds for further action, or after initial review the requested action is deemed to be out of scope, or circumstances change so that the chosen resolution pathway is no longer appropriate and there is no viable alternative resolution pathway the Ombuds Office can offer.
- **Abandoned/Withdrawn:** The Complainant either ceases to pursue the Complaint (abandoned) or notifies the Office they do not wish to pursue the Matter (withdrawn).
- **Declined to take action:** The Ombuds has declined to take action in line with the Process and reason described in this Ombuds Framework and Process, for example for Matters such as the timeliness of a Complaint, lack of personal interest, trivial, vexatious, etc., or in a circumstance where the Complainant escalates the Complaint to a formal process pursuant to Article IV of the Bylaws.
- **System Improvement:** When, conducting an evaluation, Investigation or in any Case, the Ombuds makes a recommendation or improvement suggestion to ICANN (either informally or via a report to the Board), which the Ombuds believes may lead to a prevention of Conflict escalation or prevention of future Complaints.

11. FEEDBACK AND COMPLAINTS ABOUT THE OMBUDS OFFICE

The Ombuds Office welcomes feedback about its services and is committed to learning and improving as a result. Community Members and other parties working with the Ombuds are invited to give feedback to the Ombuds at any time, either while working with the Ombuds or the Ombuds Office, or as soon as possible thereafter.

Where a relevant party has a complaint about the Ombuds Office service quality or Process (rather than Case outcomes), they are encouraged to first discuss this with the Ombuds.

If the issue remains unresolved or the complaint involves Ombuds Office ethics or integrity, the Complainant can contact the Ombuds who will provide them with the relevant contact information for the Board member designated by the Board Chair to receive such feedback and complaints. The Board member delegated to act as a point of contact shall keep the full Board apprised on the substance and status of all such feedback and complaints.

12. OMBUDS ROLE IN PROMOTING FAIRNESS, LEARNING, AND CONTINUOUS IMPROVEMENT

The Ombuds Office is committed to promoting fairness and supporting learning and continuous improvement in the ICANN community. The Cases that the Ombuds Office handles are a rich source of data about the ICANN ecosystem. The Ombuds will use aggregated and anonymized data from these Cases to identify and suggest improvements.

The Ombuds will conduct periodic reviews of ICANN's Expected Standards of Behavior and the ICANN's Community Anti-Harassment Policy and, where required, provide input and recommendations (sometimes suggesting changes) to these Standards and Policies.

/ends

ⁱ Constantino, Cathy A and Merchant, Christina Sickles, *Defining Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations*. (Josey-Bass, 1996) p5

ⁱⁱ ISO/TS 37008:2023(E))

ⁱⁱⁱ <https://openpublishing.princeton.edu/read/negotiation/section/9dde2d4c-0bca-442a-9109-286f51de22ca>

^{iv} Standards and principles are adapted from the IOA Standard of Ethics and International Organization for Standardization (ISO) (ISO/TS/37008:2023(E)); Internal Investigation of Organizations