



OFFICE OF THE ICANN
OMBUDSMAN
Creating Dialogue. Affirming Fairness.

Annual Report Fiscal Year 2014

Presented by:

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ICANN
Ombudsman

Introduction

I am pleased to present my third annual report as the ICANN Ombudsman for 1st July 2013 through to 30th June 2014.

The purpose of this report is described 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.

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 multistakeholder 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. In general, I have taken a liberal approach when people come to me with issues, rather than exclude those on a strict interpretation of jurisdiction.

My Third Year as Ombudsman

This year, the Accountability and Transparency Review Team 2 performed its review of how the recommendations of its predecessor were implemented. The ATRT2 found that with regard to the Office of the Ombudsman (ATRT1 Recommendation #24), the recommendations from the 2010 report were completed. In its Final Report and Recommendations submitted to the ICANN Board in December 2013, the ATRT2 recommended that the Board reconsider the Ombudsman's charter and the Office's role as a symbol of good governance to be further incorporated in transparency processes.

An excerpt of the ATRT2 recommendation is below:

9.3. Review Ombudsman Role

The Board should review the Ombudsman role as defined in the bylaws to determine whether it is still appropriate as defined, or whether it needs to be expanded or otherwise revised to help deal with the issues such as:

- a. A role in the continued process of review and reporting on Board and staff transparency.
- b. A role in helping employees deal with issues related to the public policy functions of ICANN, including policy, implementation and administration related to policy and operational matters.
- c. A role in fair treatment of ICANN Anonymous Hotline users and other whistleblowers, and the protection of employees who decide there is a need to raise an issue that might be problematic for their continued employment.

Last year, I reported on my efforts to modernize the case management system. With the significant and steady increase in work as seen in Chart 1, a better tool is necessary. This endeavor continued in 2014 as the tool selected last year was assessed for security before implementation. At the latter part of the year, Herb Wayne met with the selected provider, I-Sight, in Ottawa.

Complaints and Resolutions Overview

The number of complaints increased seven percent from 372 to 467 this year. Virtually all complaints have a reply within 24 to 48 hours.

The majority of complaints are outside of the Ombudsman's jurisdiction. Of 467 complaints, only 75 were within the jurisdiction of the office as it is structured

now. The 16 percent of complaints within jurisdiction increased by two percent from the year prior.

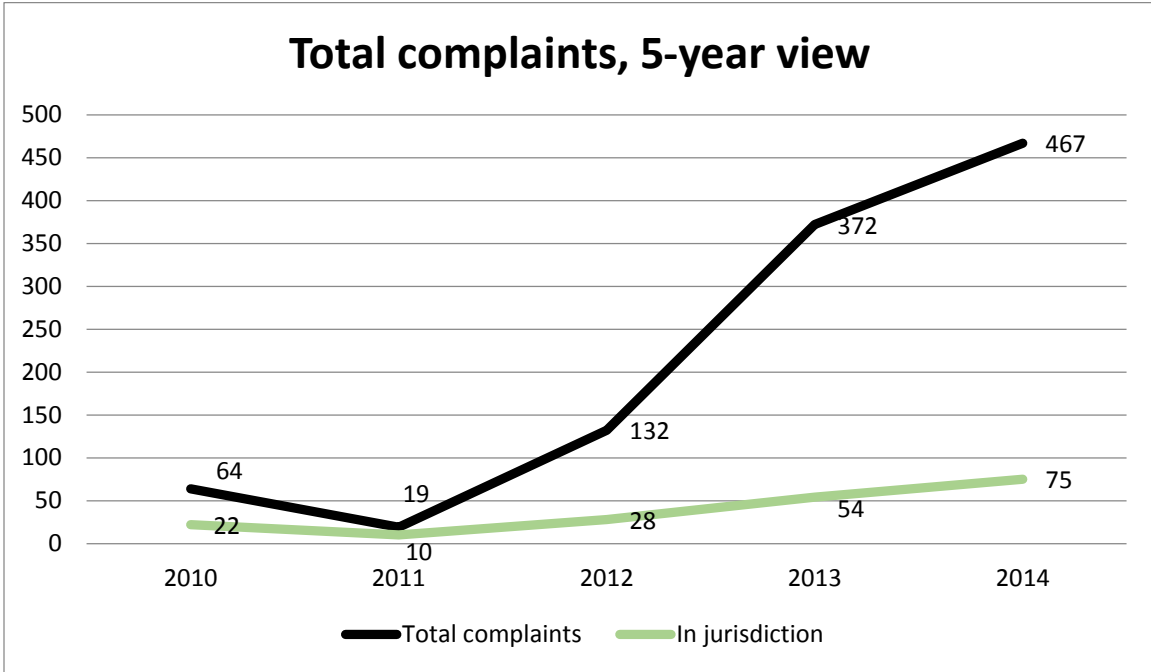


Chart 1 - Total complaints over five years

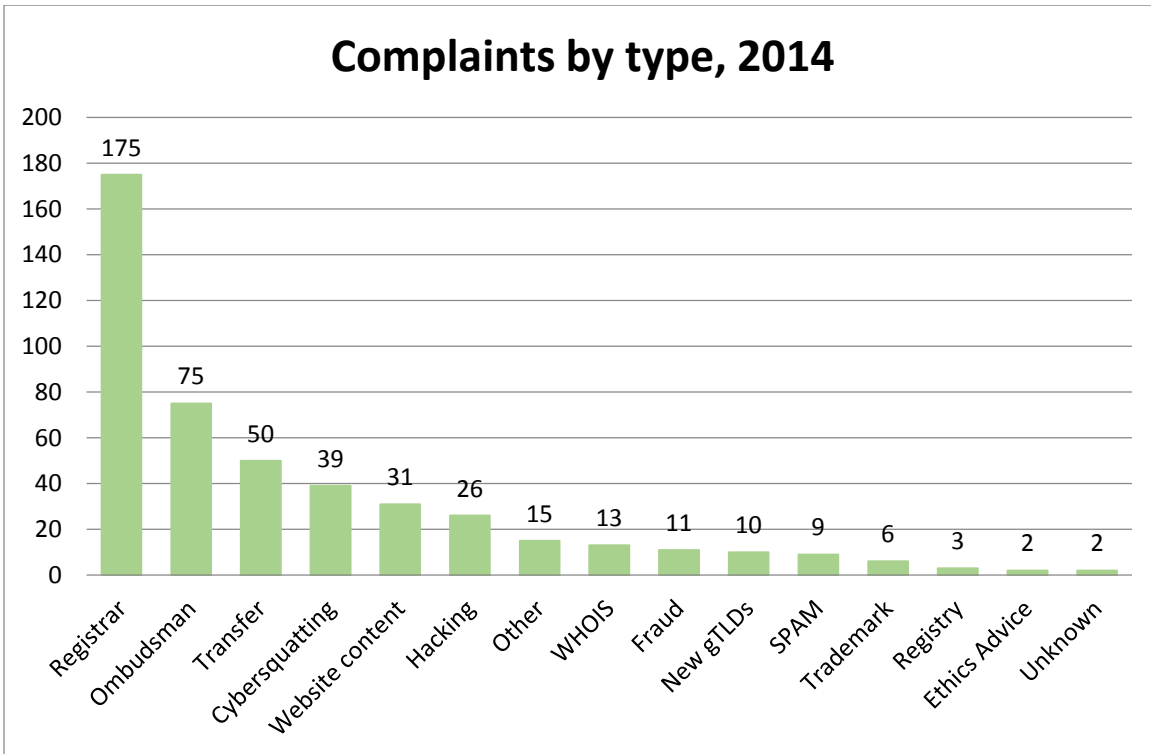


Chart 2 - Complaints by type, 2014

In Chart 2, I added a new category this year about ethics advice, based on conversations I had regarding relationships between registrars and registrants. I was greatly assisted by the InternetNZ community that has spent some time developing such codes.

This year, I noted an increase in complaints from countries outside the United States, particularly in the Asia-Pacific region. A list of the complaints by country can be seen below. Complaints came from 47 different countries.

| Country | Number of complaints in FY 2014 |
|---|--|
| Argentina, Argentine Republic | 2 |
| Australia, Commonwealth of | 25 |
| Austria, Republic of | 2 |
| Belgium, Kingdom of | 2 |
| Brazil, Federative Republic of | 9 |
| Bulgaria, People's Republic of | 1 |
| Canada | 34 |
| China, People's Republic of | 30 |
| Colombia, People's Republic of | 1 |
| Cyprus, Republic of | 1 |
| Denmark, Kingdom of | 1 |
| Estonia | 1 |
| Finland, Republic of | 1 |
| France, French Republic | 4 |
| Germany | 11 |
| Gibraltar | 2 |
| Greece, Hellenic Republic | 1 |
| Guinea-Bissau, Republic of | 1 |
| Hong Kong, Special Administrative Region of China | 2 |
| Hungary, Hungarian People's Republic | 1 |
| India, Republic of | 21 |
| Iran, Islamic Republic of | 1 |
| Ireland | 5 |
| Israel, State of | 2 |
| Italy, Italian Republic | 2 |
| Jersey | 1 |
| Kenya, Republic of | 1 |
| Mexico, United Mexican States | 1 |
| Netherlands Antilles | 1 |
| Netherlands, Kingdom of the | 4 |
| New Zealand | 4 |
| Nigeria, Federal Republic of | 2 |
| Niue, Republic of | 1 |

| Country | Number of complaints in FY 2014 |
|--|--|
| Oman, Sultanate of | 1 |
| Pakistan, Islamic Republic of | 6 |
| Russian Federation | 3 |
| Serbia and Montenegro | 1 |
| Somalia, Somali Republic | 2 |
| South Africa, Republic of | 3 |
| Spain, Spanish State | 12 |
| Switzerland, Swiss Confederation | 2 |
| Thailand, Kingdom of | 1 |
| Turkey, Republic of | 7 |
| Ukraine | 1 |
| United Arab Emirates | 3 |
| United Kingdom of Great Britain and N. Ireland | 52 |
| United States of America | 195 |

Jurisdictional Complaints

The New gTLD Program was the principal theme of complaints that fell into the Ombudsman's jurisdiction. As I've noted in my quarterly reports, there were issues about inconsistent results in determinations made through the New gTLD Program Dispute Resolution Procedure. In the first six months of this year, I investigated complaints about determinations made by the International Chamber of Commerce's Centre for International Expertise and the World Intellectual Property Organization Arbitration and Mediation Center. Ultimately, this office does not have jurisdiction over determinations of these independent panels, though I have heard some very ingenious arguments as to why it should have. During the development of the Applicant Guidebook for the New gTLD Program, the issue of panel decision appeals was discussed at an early stage. At that time, it was the position that the applicants wanted to have a fast system unencumbered by levels of appeal. So while some applicants now think an appeal process would be attractive, there is no ability to do so, and certainly no ability for the Office of the Ombudsman to proceed.

These complaints were often accompanied by very substantial amounts of reading material, and some impressive arguments by lawyers acting for the parties. However, the issues all fell outside of this office's jurisdiction. The only occasion where I would have been able to intervene was where there was some failure in procedure, and to date I have not seen any such failure. I believe that most of these issues have been resolved, but there are still some complaints under my investigation.

Another issue that occupied considerable time in the earlier part of the year was a complaint about the alleged failure of ICANN's Contractual Compliance Department to enforce properly the terms of the Registrar Accreditation Agreement. The complainant, who orchestrated the formation of a group of about 175 other complainants, asserted that the lack of enforcement was a major factor in new websites being set up to undertake SPAM, phishing and other dubious activities. I issued a report in October summarizing my investigation and findings. In my view, the complaint was misconceived and did not take into account changes made in the way the Contractual Compliance Department handles complaints, nor in the changes which the new version of the Registrar Accreditation Agreement have brought.

Other community complaints included a substantial complaint about sexism and the use of sexist language, as well as complaints about decision-making and voting within Supporting Organizations and Advisory Committees.

Non-jurisdictional Complaints

The majority of non-jurisdictional complaints I received were consumer issues rather than ICANN or ICANN community-related problems. Most typically, these were about registrars and transfer of domain names. There were also regular complaints about cybersquatting. Some were referred to the Uniform Dispute Resolution Procedure, but others needed an explanation of how this market can be robust and commercial at times.

There continued to be regular complaints about the content of websites, illustrating a lack of understanding about what ICANN does. I generally tried to identify the correct place to make a complaint and passed this information onto the individual.

Outreach

ICANN 47 – Durban, South Africa, ICANN 48 – Buenos Aires, Argentina, and ICANN 49 – Singapore

The importance of having a private meeting space for the Office of the Ombudsman at ICANN meetings was underscored at this year's gatherings. Herb Wayne and I rotated shifts in the private office where we received visitors for confidential conversations. Many chose to visit to discuss issues, though these did not always end in an investigation. Sometimes they visited to discuss a potential problem. I am pleased that the office's profile has reached a point where our community feels that the Ombudsman is accessible.

In addition to providing open office hours, I also tried to attend as many of the Supporting Organization, Advisory Committee and constituency meetings as I could, to reinforce the knowledge of my availability should they have any issues.

At ICANN 48, I introduced the Ombudsman's Reception and we continued the practice at ICANN 49. This was conceived as an informal opportunity to get to know members of the community and build awareness of the Office of the Ombudsman. Among those in attendance were many ICANN Fellows, and we were able to meet new people that we may not have otherwise come across.

Trainings and non-ICANN Meetings

- Met with members of the Australian, New Zealand and Pacific Islands' Internet community through New Zealand Net Hui in July 2013. Attending this event was useful to raise awareness of my role and to work with local Internet communities outside of regular ICANN meetings.
- Attended the Arbitrators and Mediators Conference in New Zealand in July 2013. This was valuable for the shared experience of mediation theory and practice, and also of the investigators who also have a function similar to some parts of my work.
- Attended the Australian Internet Governance Forum in Melbourne in October 2013 and the Internet Governance Forum in Bali that same month.
- Joined the Review Panel for the *Journal of the International Ombudsmans' Association*.
- Presented my paper on "What Is This Thing Called Fairness?" at the International Ombudsman Association Conference in April 2014. The paper offered an examination of the European Law concept of proportionality in the application of fairness principles.
- Attended the ANZOA Conference, a meeting of ombudsman from Australia, New Zealand and the Pacific Islands, in April-May 2014.
- Attended the International Ombudsman Association conference in Denver in April 2014.
- As part of my efforts to meet with those in the domain industry in settings other than ICANN meetings, I attended the Asia-Pacific Digital Marketing and gTLD Strategy Congress in Hong Kong in May 2014. During this trip I had the opportunity to speak, along with ICANN's Vice President for Asia-Pacific, and have two important meetings with complainants in person.
- Arranged and conducted Ombudsman orientations for new ICANN staff in Los Angeles and Washington DC. It is a term of employment for ICANN employees that they attend an orientation with the Ombudsman to learn more about this function.

Website, Social Media and Blogging

I continue to use my Twitter account, and this has been effective in bringing in information and keeping in contact. As we become more adept at the use of social media, the strengths of each form are becoming more apparent. The Ombudsman Facebook site, while useful, has not been nearly as effective as Twitter.

During this fiscal year, I wrote 11 blog posts on topics varying from ICANN's Contractual Compliance Department to dispute resolution providers to my findings in a complex investigation about civil discourse. I maintained an active Twitter account with more than 300 followers, and launched a Facebook page.

For more information about the ICANN Office of the Ombudsman, please visit <https://www.icann.org/resources/pages/ombudsman-2012-02-25-en>.