



2006 Annual Report

The principal function of the Ombudsman 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. The Ombudsman 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.

ICANN Bylaws, Article V, Section 2



Creating Dialogue . . . Affirming Fairness

Letter from the Ombudsman

30 June 2006

To the Chairman and the Board of Directors of ICANN,

I have the great pleasure of submitting to you the second annual report of the Office of the Ombudsman.

This has been a year which has seen the Office of the Ombudsman continue to put forward an informal dispute resolution system for the ICANN community, and which has been embraced by both the community and the corporation. As the Office, and its work plan, has developed, I believe that my work, as the Ombudsman, can be differentiated in several pillars: the reception, referral and investigation of complaints; administration and case management; outreach activities; and research and evaluation.

I am pleased to report to the Board that the Office of the Ombudsman has developed a fair, flexible, responsive and prompt manner of dealing with dispute issues raised by the community. It is a unique model of dispute resolution, now recognized as a “Centre of Excellence”, and a professional, competent Ombudsman institution.

In this annual report, I will provide information on these key activities.

Finally, I would like to express my continued appreciation to you, the members of the ICANN community and supporting organizations, and the ICANN staff for the continued support it has received.

With best regards,

A handwritten signature in blue ink, appearing to read 'F. Fowlie', with a horizontal line underneath.

Frank Fowlie
Ombudsman

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DESIGN + EDITORIAL Tanzania S. King



ICANN Ombudsman Frank Fowle (right) and ICANN Adjunct Ombudsman Herb Waye (left) at the ICANN Wellington Meeting, March 2006.

in Review

Year

2005 – 2006 has been an active year for my Office. The Ombudsman was established in ICANN to act as an informal, independent mechanism to assist members of the community who feel that they have been treated in an unfair manner. My role should be to receive and evaluate those complaints, and to use any of a number of alternative dispute resolution techniques if I believe that there has been an unfairness. However, I have found that the demands placed on my Office exceed that simple expectation. During the past year my Office has been the recipient of a large number of complaints and contacts that are outside of the vision expressed in Bylaw V. In two circumstances, groups wishing to put forward opinions, rather than making cogent complaints about actions, decisions, or inactions by the board, staff or supporting organisations, have used my Office as the target of email campaigns. In both of these cases I declined to investigate any of the matters brought to my attention, as the contacts were simply the expression of disagreement with contemplated decisions of the Board, and adequate opportunities to communicate that disagreement existed with public comment forums.

My Office has received many complaints and contacts from members of the community who have had issues or concerns with other bodies, such as registrars. In this, I must underline the exceptional cooperation of the Chief Registrar Liaison and Registrar Liaison Manager. They have been able to provide assistance to this portion of the community after receiving a referral from my Office.

During the past year, I have updated the Ombudsman Framework to reflect the operational activities of the Office. This has been translated into several languages, and is available as a downloadable .PDF on the Ombudsman webpage. I have also reviewed and upgraded the complaint form, added a "Contact the Ombudsman" form, and provided more self help information on the webpage.

The SeeMore Case Management System is installed, and operational, and makes the tracking of complaints more automated and efficient. Since inception in November 2004, my Office has opened nearly 2000 files.

The ICANN IT staff has been able to secure and make operational the domain www.icannombudsman.org for my Office, which is a further demonstration of my independence. I thank them for their kind assistance.

My Office has used translation services on a number of files and correspondences during the year. We have established what I consider to be a win – win scenario with the Richmond Multicultural Concerns Society. It is a win for my Office, as I am able to obtain prompt and accurate translation service from an independent source, separate and apart from ICANN, thus maintaining confidentiality. It is a win for the service provider, as they are a community based group for immigrants, and are able to access a wide range of language speakers to do the translations, which helps to fund their programs.



Ombudsman Activities: Reception, Referral and Investigation of Complaints

The charts and graphs contained within this annual report provide information about the volume of contacts, the country of origin, the classification of the complaints, and resolutions.

The number of complaints within my jurisdiction (actions, decision, or inaction by the board, staff or supporting organisation) as a percentage of the whole is consistent with data I have been able to examine from other Ombudsman Offices.

Outreach, Consumer Education and Peer Activities

To my definition outreach includes: speaking to groups, hospitality, training events, and peer Ombudsman activity. My overall goal with Outreach is threefold: to inform the ICANN community about the existence and activities of the Office of the Ombudsman; to professionalise the Office through continual learning activities; and to enforce a constant message amongst ICANN and stakeholder communities, government officials, users and stakeholders, and my peer Ombudsman community that this Office of the Ombudsman is deserving of its reputation as a "Centre of Excellence" for online dispute resolution, and Ombudsmanship generally. My overriding goal is that all would see the office as a center of excellence where there was a preconceived idea of professionalism and good, fair service.

My focus in this fiscal year has been to do staff training and orientations so that they are better enabled to pass along information about the Office to the community they deal with, and to further enable them to provide information to the community on using my Office when disputes or conflicts arise.

I have generally tried to tie any overseas travel for Outreach in with travel to ICANN meetings. This greatly increases the scale of economy for travel expenses. Training courses each have been identified and budgeted for in advance and are budgeted for separately. In FY 06-07, I hope to be able to conduct training for all staff in the basics of interest based, mutual gains dispute resolution, giving one more tool to the organisation to reduce conflict at the lowest possible level.

During FY 05-06 I have either gained or maintained membership in the Forum of Canadian Ombudsman, the United States Ombudsman Association, the International Ombudsman Association, and the International Ombudsman Institute.

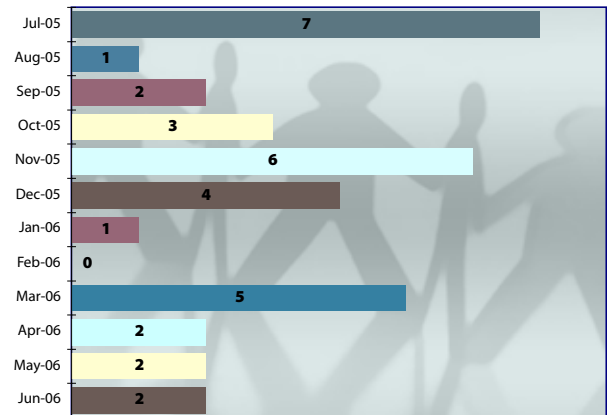
I have made presentations to individuals, organisations,

conferences, and academic institutions; ranging from the European Ombudsman, to the United Nations Conference on Online Dispute Resolution, to justice studies learners at my alma mater, Royal Roads University.

In April 2006, I was made a fellow at the Centre for Information Technology and Dispute Resolution at the University of Massachusetts – Amherst, and I am grateful to Dr. Ethan Katsh for that honour. My contribution in that area will be in the evaluation of ODR programs.

The following tables outline the Outreach Activities I have participated in.

Total Outreach Activities: 35 FY-06 (1 July 2005 - 30 June 2006)



File No.	Month	Activity	Location
05-14	July	3 rd Annual European Internet Domain Name Summit	Paris
05-15	July	Presentation, OECD	Paris
05-16	July	Executive Director, Forum sur les Droits sur l'Internet	Paris
05-17	July	Director General, Working Group on Internet Governance	Geneva
05-18	July	Presentation, World Intellectual Property Organization	Geneva
05-19	July	Presentation, DIPLO Foundation	Geneva
05-20	July	ICANN Meetings Luxembourg (9 days)	Luxembourg
05-21	Aug	New Staff Orientation	Marina del Rey
05-22	Sept	New Staff Orientation	Marina del Rey
05-23	Sept	United States Ombudsman Assoc Meetings (4 days)	Nashville
05-24	Oct	Program on Negotiation Professional Development (4 days)	Cambridge, Mass.
05-25	Oct	Adjunct Ombudsman Orientation (4 days)	Marina del Rey
05-26	Oct	New Staff Orientation (2 sessions)	Marina del Rey
05-27	Nov	Northwest Ombuds Association (by conference call)	Seattle
05-28	Nov	New Staff Orientation (5 sessions)	Vancouver
05-29	Dec	ICANN Meetings, 9 days	Vancouver
05-30	Dec	Media Interview, CanWest News Service	Vancouver
05-31	Dec	Media Interview, Canadian Technology News (2 interviews)	Vancouver
05-32	Dec	Technology Negotiation Program Setup	Marina del Rey
06-01	Jan	New Staff Orientation	Marina del Rey
06-02	Jan	Media Interview, Canadian Technology News (2 interviews)	Vancouver
06-03	Jan	Regional Liaison Briefing	Marina del Rey
06-04	Jan	Advanced Investigations Course	Toronto
06-05	Mar	Staff Negotiation and Ethics Training (Postponed)	Brussels
06-06	Mar	European Ombudsmen courtesy calls	Brussels
06-07	Mar	Regional Liaison Cairo	Cairo
06-08	Mar	UN Forum on Online Dispute Resolution (3 Days)	Cairo
06-09	Mar	ICANN Meeting (9 days)	Wellington
06-10	Apr	International Ombuds Assoc Annual Meeting (4 Days)	San Diego
06-11	Apr	Undergraduate Lecture, Royal Roads University	Victoria BC
06-12	May	Richmond Multicultural Concerns Society (translation)	Richmond BC
06-13	May	Briefing Session with Board of Directors	Marina del Rey
06-14	June	Lecture, Vancouver Scholars, Simon Fraser University	Vancouver
06-15	June	ICANN Meeting (9 days)	Marrakesh

Evaluation and Recommendations

During the fiscal year, the Office of the Ombudsman was reviewed by an evaluator from the International Standards Organisation. The Office was reviewed on comparison to the standards established in ISO Standard 10002, "Quality Management – Customer Satisfaction – Guidelines for handling complaints in organisations."

The text of the evaluator's report follows:

The Office of the Ombudsman meets the intent and general requirements of ISO 9001:2000 Provisions 4.2.4, 5.2, 7.2.3, 8.2.1, and 8.4. The Office of the Ombudsman meets the intent of the Provision based on Ombudsman record control, identification, confidentiality, maintenance, and storage. With respect to Provision 5.2, the establishment of the Office of the Ombudsman by the Board of Directors illustrates top management's commitment to the ICANN community in addressing customer complaints as one mechanism for enhancing customer relationships. In regards to Provision 7.2.3, the Office of the Ombudsman has established, documented, and implemented a customer feedback/compliant process that are communicated via the ICANN website, and outreach and education programs. In relation to Provision 8.2.1 and 8.4, the Office of the Ombudsman is one of the means that ICANN has to monitor and measure customer perception of company's ability to meet customer and service requirements through compliant closing metrics. The metrics data set provides a small sample base due to the infancy of the Office of the Ombudsman; however, there is significant potential over time for issue type identification to lend itself to detection of areas for process improvement.

The only observation regarding the Office of the Ombudsman with respect to Provision 5.2 and 8.2.1 is ICANN's ability to meet its own requirements as established by the Bylaws for independence, neutrality, and impartiality of the Office of the Ombudsman and customer requirements based on contract renewal terms and no current formal contract authorisation. The observation addresses the potential customer perception of the lack of objectivity of the Office of the Ombudsman due to apprehension of contractor termination or lack of confidence in contractor authority.

In FY 2006–2007, the Office of the Ombudsman will undergo further evaluation by an independent process which will compare the establishment of ICANN's Office of the Ombudsman with standards found in the literature.

The Office of the Ombudsman Results Based Management Accountability Framework requires that I look at five performance indicators concerning four evaluation questions, and report to the Board on these on an annual basis.



Ombudsman Frank Fowle speaking at an ICANN Meeting in Wellington, New Zealand, March 2006.

1. Relevance – Is there an ongoing need for the Office of the Ombudsman?

The trend analysis for my Office is best documented through the various charts and graphs within the body of this report.

There are a number of indicators for the relevance of my Office. First is the volume of the complaints received, and the variety of issues brought to my attention as the Ombudsman. This indicates to me that the community continues to see my Office as a credible resource in dealing with issues of dispute.

Secondly, the variety of sources of complaints: individual domain name holders; applicants for administrative benefits provided by ICANN; CCTLD managers; organisations; and board members, indicates to me that my Office is able to respond to a wide range of fairness based issues, and this wide acceptance of my Office is de facto recognition of its relevance.

Media analysis would continue to evidence a positive reception of the Office in the community.

2. Are resources sufficient for the Office of the Ombudsman to carry out its mandate?

During the year, I have been able to establish the post of Adjunct Ombudsman within my Office. Mr. Herb Waye, a fellow Canadian, assists my Office when I am either on vacation or sick leave by receiving and responding to correspondence from the community. Mr. Waye has also attended two ICANN meetings, as a volunteer, to assist me in the operation of a physical office location during these meetings.

As the workload for this Office, across all its key activities (Complaint handling, Outreach, and Administration) continues to rise, and is compounded by frequent travel, it will be natural that more staff will be required. I have raised a proposal to the Board that some time in the future my Office expands by a half person full time equivalent.

In FY 05-06 the budget resources provided by ICANN have been sufficient to meet the operational, administrative and outreach components of my mandate.

- 3. Cost effectiveness – Actual or potential improvements, efficiencies, or cost savings in ICANN program delivery or administration? Are there other models of Executive Ombudsmanship which ICANN could employ?

There are a number of ways of measuring systems improvements. First, I have made suggestions or recommendations for system improvements. These range from the development of policy where none previously existed, to establishing minimum participation standards for members of certain supporting organisations. All of these system improvements, at some level, impact ICANN operations to some degree.

Secondly, since the inception of my Office, the number of issues which have been brought to the Board Reconsideration Committee has dropped significantly.

Third, by using alternative dispute resolution techniques, including investigations, my Office has been able to assist parties at resolving issues at the lowest possible level of dispute, and thus has reduced antagonistic situations, and created time efficiencies for both the community members raising issues, and with ICANN.

As I review the operations of my Office and consider the possibilities of other models which serve both the community and the organisation in conflict resolution, I become more and more convinced that the Office of the Ombudsman is the most appropriate route. While it may be possible to have contracted Ombuds services, I believe that due to the volume of the complaints received by my Office that cost effectiveness, especially when it relates to associated activities such as Outreach, would be lost. I also believe that there are circumstances where the use of a contracted Ombudsman service could not handle matters with the requisite speed or flexibility one can muster when the Ombudsman is a part of the organisation. Finally, based on my environmental scanning, there exists no stand alone, contractor style Ombudsman service with the capacity to service ICANN's need and unique subject matter.

I think it is important to note the uniqueness of the ICANN Ombudsman model. Within the Ombudsman community, I find my Office to be a rarity, in that I am the only Ombudsman who conducts dispute resolution in an online environment. When I recently had an opportunity to meet with fellow on-line practitioners at the United Nations Conference on Online Dispute Resolution (ODR) in Cairo, I concluded that I was the sole Ombudsman in that community. Based on those parameters, I feel confident in stating that the ICANN Ombudsman is likely on the only online Ombudsman program in the world.

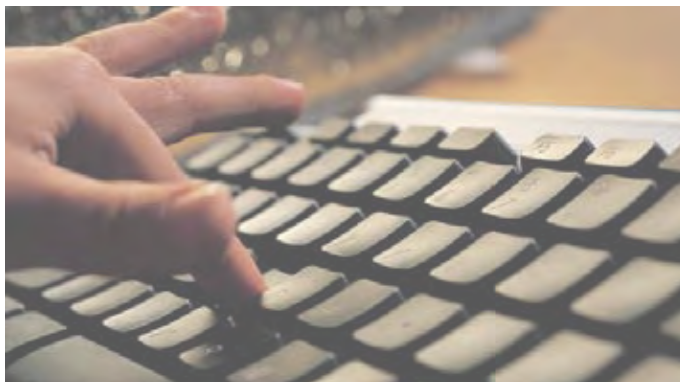
Recommendations

In FY 04-05, I made both formal and informal recommendations to the Board and senior staff. Both the formal and informal recommendations were reported on in last year's annual report, and as the formal recommendation has been acted upon, I have no further comment.

In FY 05-06 I notified the Board twice where I believed that there had been an unfairness or maladministration to a member or members of the ICANN community. These related to outcomes from investigations conducted by my Office. In one case, I recommended that ICANN apologise to a member of the community who had been ill-treated by a staff member. In the second case, I made a number of recommendations concerning a voting process used by one of ICANN's supporting organisations, and minimum participation standards for committee members. All of my formal recommendations have been accepted and acted upon by the Board.

I have made an informal recommendation to the Board to develop policies and procedures generally concerning Board Governance, and I will continue to monitor that policy development over time.





During the year, three issues have been brought to my attention regarding ICANN meetings:

First, I received a complaint regarding the use of ID badges. The complainant was concerned that by having to use an ID badge his or her ability to participate in an anonymous fashion would be compromised. My response, in part, follows:

First, I have considered the rationale for having name badges. I believe that there are bona fide reasons for having name badges. First, it permits meeting organisers to ensure that access to ICANN events; especially those which incur expenses to the local hosts (such as banquets, lunches, etc) are restricted to delegates. This is a critical element, as the conferences run on tight budgets, underlining that the events are offered to the community at no cost. Second, the wearing of name badges fosters a level of social engagement by giving delegates the opportunity to associate names with faces, and names with otherwise identities known only online.

While you have argued that security is not an issue, as the name badges are not related back to government issued identification, I am not satisfied that this is an overriding rationale in the necessity of requiring attendees to use the badges.

Second, you are not required to enter your company nor country on the registration form when you do the online registration. As you can see from my test registration below, I was able to register using my name only. Your argument that you are forced to identify your employer; therefore, jeopardising a relationship with them should you announce a contrary minded opinion therefore does not strike me as valid.

Third, I can find no relationship between your complaint and any privacy law paradigm. Your name and photograph are the only personal information requested, and you do have the ability to request that your name not be published on the list

of attendees. The only request made of you is to provide your name and photograph in order to allow you access to conference venues and social events. Therefore the use of the data is not inconsistent with the reason for which it was collected. The data is not used for any other purpose other than for which it is collected.

I am unaware of any religion based argument where the taking of a photograph would be a violation of any human rights principle. Should you have a concrete example of this, I would be most pleased to receive it.

Fourth, you have opined that the issuing of an identification badge countermines the ability of a person to fulfill a whistle blower role. The role and function of the conference is not to act as a public forum to report wrongdoings related to your employer. However, there is no bar to you, or any other person making "whistle blower" revelations at the conference. In my experience an open public conference is not a forum usually associated with an opportunity to act as a whistle blower without attribution. These activities are normally directed through more private offices, such as my own, should the protagonist wish anonymity. I underline that under United States jurisprudence that offices such as mine hold a latent role of permitting whistlers a safe haven for drawing attention to negative activities.

Fifth, should you feel that after reading my reply that you still prefer to remain anonymous in your participation with ICANN, I note that there are other forums within ICANN by which you can do so. These would include representation through the various committees and supporting organisations, or through communication through the various electronic fora available.

In the second complaint, a member of the community raised a concern about the handling of personal information requested during the meeting registration process. As the concern was raised during the Vancouver meeting, the federal and provincial privacy laws of Canada and British Columbia applied, and I could find no indication that the information requested was either collected or used for a purpose inconsistent for the reason for which it was collected, nor in contravention of any Canadian law.

A third matter has been raised to me dealing with the posting of board meeting agendas at the public meetings.

The Bylaws state:

Section 4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and, to the extent known, an agenda for the meeting shall be posted.

From my experience, members of the Board of Directors are often in travel status to reach the various locations of ICANN meetings seven days in advance of the Board meeting. This fact makes it difficult, and at times logistically impossible, to put forward an agenda for the Board meeting seven days in advance. It is also my opinion that the notice of the meeting is usually posted well ahead of time, in conjunction with the related information about the ICANN meeting. Finally, it is my opinion that the agenda is posted as soon as the Chairman and the Directors are satisfied that they have necessary topics for discussion; and that this takes place as far in advance as practicable.

What the complainants say about the Office of the Ombudsman:

"You did go above and beyond the call of duty and I do appreciate that."

"Thank you. I appreciate your efforts to understand and clarify the situation."

"I just wanted to say thank you very much for going above and beyond when I asked you about a website auctioning url's - and if it was legal or not. We got a pretty good name so we are happy. And you gave some great websites and ideas."

"Everything has been resolved now . . . I appreciate ICANN's quick response."

"I really appreciate the time you've taken to give me advice on this issue. "

"Your ability as a sounding board is incredibly invaluable."

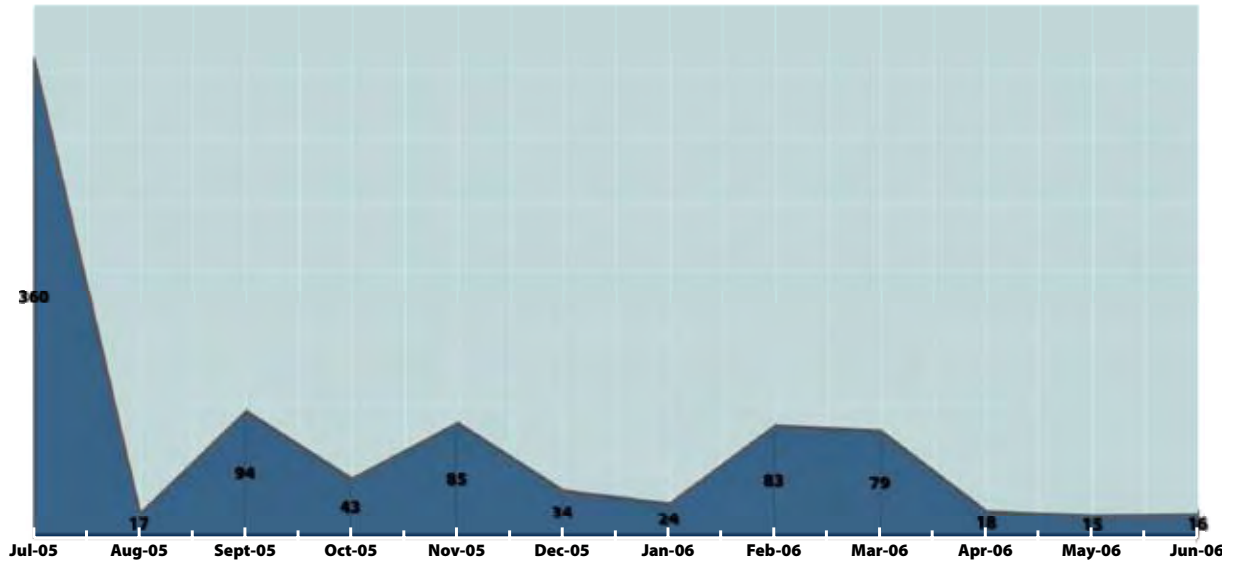
"As always, appreciate your help in driving impartiality and professionalism in this process."



ICANN Ombudsman Frank Fowlie with law student Reem Wael at the United Nations Forum on Online Dispute Resolution, Cairo, March 2006.

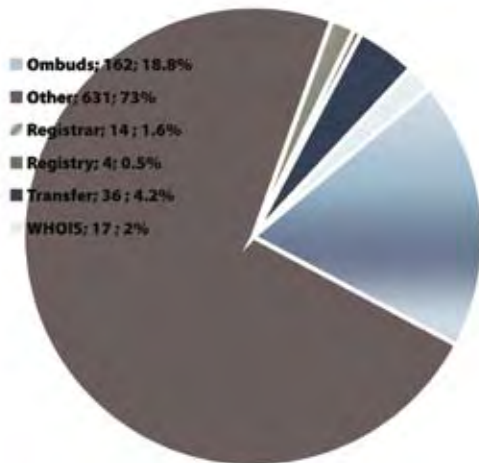
Overall Complaints Received by Month: 880

FY-06 (1 July 2005 - 30 June 2006)

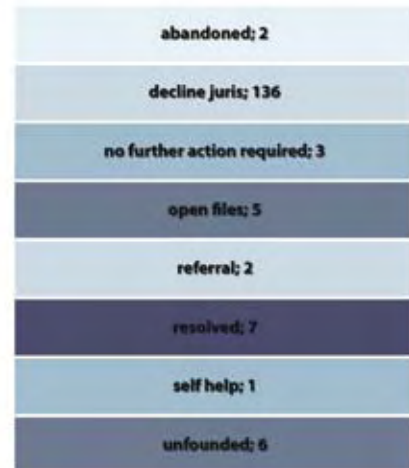


Type of Complaints Received @ Resolution of Complaints in the Ombudsman's Jurisdiction

FY-06 (1 July 2005 - 30 June 2006)

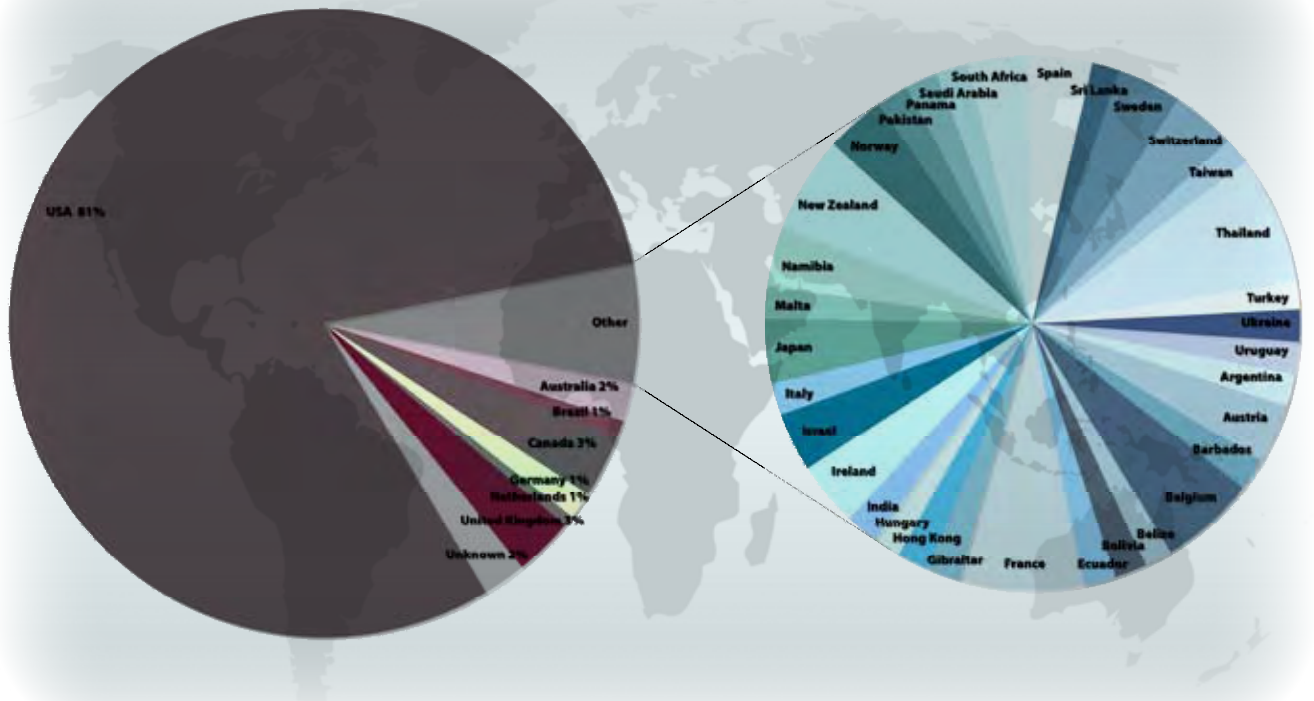


Ombudsman Jurisdiction ➤



Geographical Distribution of Complainants:

FY-06 (1 July 2005 - 30 June 2006)



Argentina; 1	Australia; 17	Austria; 2	Barbados; 1	Belgium; 3	Belize; 1	Bolivia; 1
Brazil; 6	Canada; 30	Ecuador; 1	France; 4	Germany; 11	Gibraltar; 1	Hong Kong; 1
Hungary; 1	India; 1	Ireland; 2	Israel; 2	Italy; 1	Japan; 2	Malta; 1
Namibia; 2	Netherlands; 6	New Zealand; 3	Norway; 2	Pakistan; 1	Panama; 1	Saudi Arabia; 1
South Africa; 2	Spain; 2	Sri Lanka; 1	Sweden; 2	Switzerland; 2	Taiwan; 1	Thailand
Turkey; 1	Ukraine; 1	United Kingdom; 27	Unknown; 19	Uruguay; 1	USA; 699	



The Values of this office are:

Respect for Diversity The Office of the Ombudsman recognises and honours the fact that members of the ICANN community come from across the face of the globe. This diversity means that the Office of the Ombudsman will respect that different cultures view disputes and conflict through different lenses. The Ombudsman will always be open to learning about cultural differences in responding to disputes and conflict.

Excellence in Ombudsmanship The Office of the Ombudsman will strive to be a leader for modeling and promoting fairness, equality, clarity, innovation, and by providing assistance to ICANN and the community in developing an awareness of the Ombudsman role. The Ombudsman will also strive to ensure that ICANN's Office of the Ombudsman is well regarded as an institution of excellence in the peer community, such as The Ombudsman Association, the United States Ombudsman Association, and the Forum of Canadian Ombudsmen. I wish to develop deeper relationships with Ombudsman in other regions of the world in the future to reflect the global nature of ICANN's constituency.

Professionalism The Ombudsman, in conducting his or her duties, will maintain and exemplify the highest standards of professional conduct, and respect for human dignity.

Confidentiality All parties, both within the community and ICANN, bringing information to the attention of the Ombudsman should feel assured that the information will be held in confidence, except when it is necessary to help resolve the complaint.

Impartiality In each and every situation, the Office of the Ombudsman will receive information from the community with no predisposed idea as to the outcome of the Alternative Dispute Resolution process, and without favouring any party in the process.

Independence The Office of the Ombudsman, in order to remain an impartial officer, will be independent of the normal ICANN structures.



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