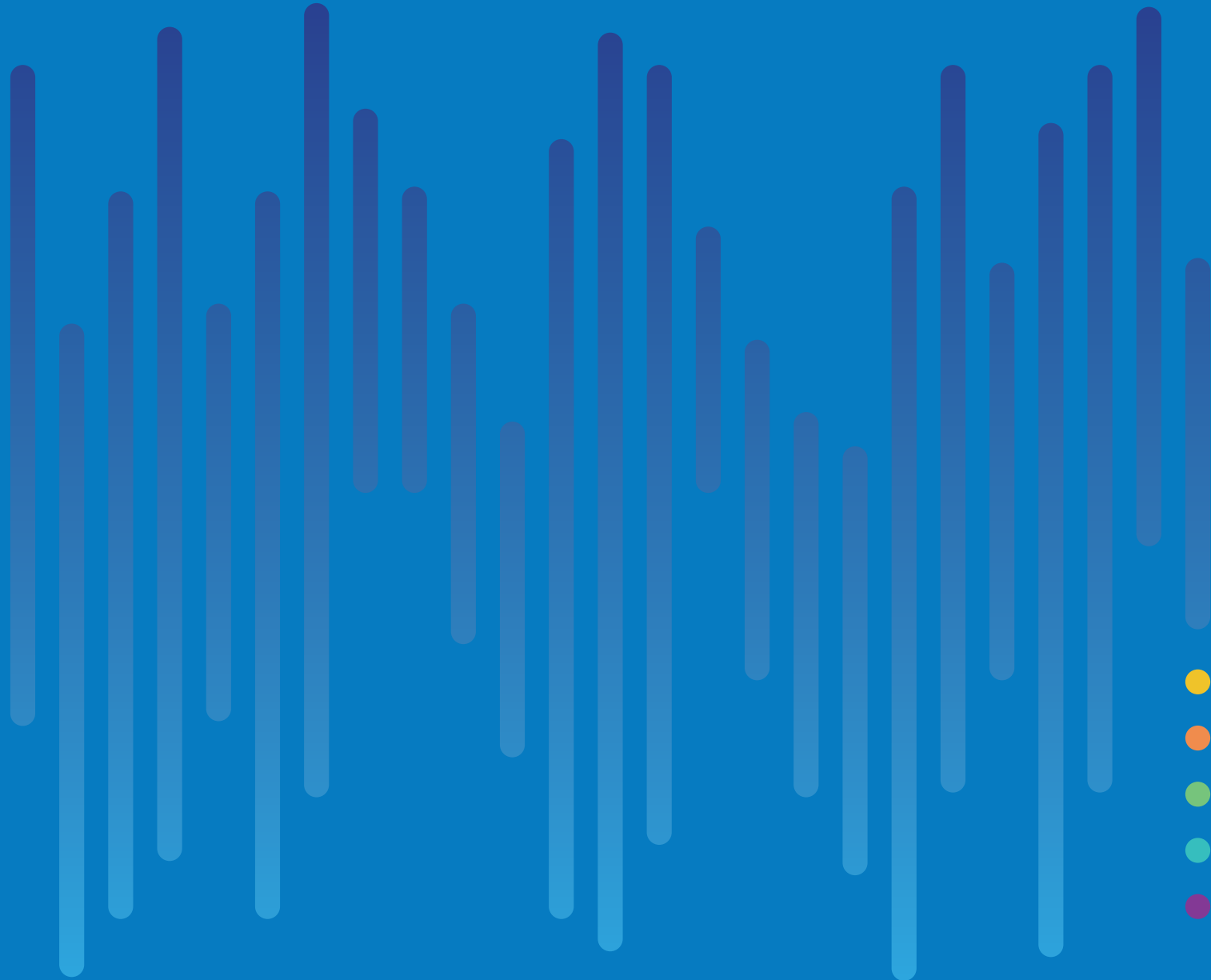




OFFICE OF THE OMBUDSMAN
ANNUAL REPORT
1 JULY 2018-30 JUNE 2019



ONE WORLD, ONE INTERNET



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PURPOSE OF THIS 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, crediting the continued support of the ICANN community, ICANN org, and the ICANN Board of Directors, is pleased to submit its Annual Report.


It has been a groundbreaking year for the Office of the Ombudsman (Office). Starting with the ICANN63 Annual General Meeting in Barcelona, and then at both ICANN64 in Kobe and ICANN65 in Marrakech, the Office responded directly to the ICANN community’s expressed concerns for more significant diversity and harassment intervention and prevention. This led to a trial initiative involving increased staffing at these three meetings. The Office of the Ombudsman supplemented the individual Ombudsman with an interim Adjunct Ombuds, Barbara Curwin. The addition of staff to the Office is both anticipated and authorized by Section 5.1. OFFICE OF OMBUDSMAN:

- 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 an Ombuds, but including “staff support” that is “appropriate and feasible.” (Further legal and “expert” support for the Office is authorized by the ICANN Bylaws Section 4.2 l. (i).)

In response to the ICANN community’s clearly expressed concerns, the “we” of the Office are pleased to continue participating in ongoing conversations regarding harassment, sexual harassment, inappropriate behavior, and disrespect of individuals that occurs both online and in person. The Ombuds team has now had the opportunity to work extensively with members of the ICANN community, organization, and Board to address harassment and sexual harassment (and other gender issues). With the participation of Barbara Curwin as interim Adjunct Ombuds, I am pleased to report that a gap in Ombuds services to the community has been filled. Our work on this front is just beginning, and it will continue.

As the Ombudsman, I personally continue to participate online in community working groups and policy development teams, sometimes as a passive observer and at others in a more preemptive official manner (usually at the request of leadership teams, under the Office’s charter under Section 5 of the ICANN Bylaws). I am pleased to report that I have had the privilege to observe the Accountability and Transparency Review Team III (ATRT3) (which is ongoing) from its conception. As my initial involvement with ATRT3 was the result of a complaint to the Office of the Ombudsman, and a subsequent [Report to the Board](#), the ability to follow this Review from start to finish has been an educational experience as well as an opportunity for further outreach.



I strived, throughout the year, to reinforce working relationships with ICANN staff, including a visit to the Brussels regional office and three visits to the Los Angeles office. Whenever I am visiting an ICANN office, I conduct an Ombudsman orientation session for new personnel.

During the past year I broadened my focus on promoting respect and diversity while upholding the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy. I fulfilled my commitment to the ICANN community and Board to engage an Adjunct Ombuds in a timely manner. A trial period covering the three ICANN Public meetings this year has now been completed and I am pleased to announce that Barbara Curwin will continue under contract for fiscal year 2020 as Adjunct Ombuds, assisting at upcoming ICANN meetings and offering her substantial experience in harassment investigation and prevention; she will also work closely with me on diversity issues, both based on complaints and discussions with the community and individuals about their interactions within the community, and looking preemptively toward the future.

Herb Waye

ICANN Ombudsman

www.icann.org/ombudsman

www.facebook.com/ICANNOmbudsman

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

REPORT ON ACTIVITIES

OMBUDSMAN FUNCTIONS

Conflict management is the Ombudsman's primary function:



Case Management

- Complaint intake
- Investigation
- Resolution



Monitoring the Environment



Outreach to Community, ICANN org, and Stakeholders



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



Professional Development

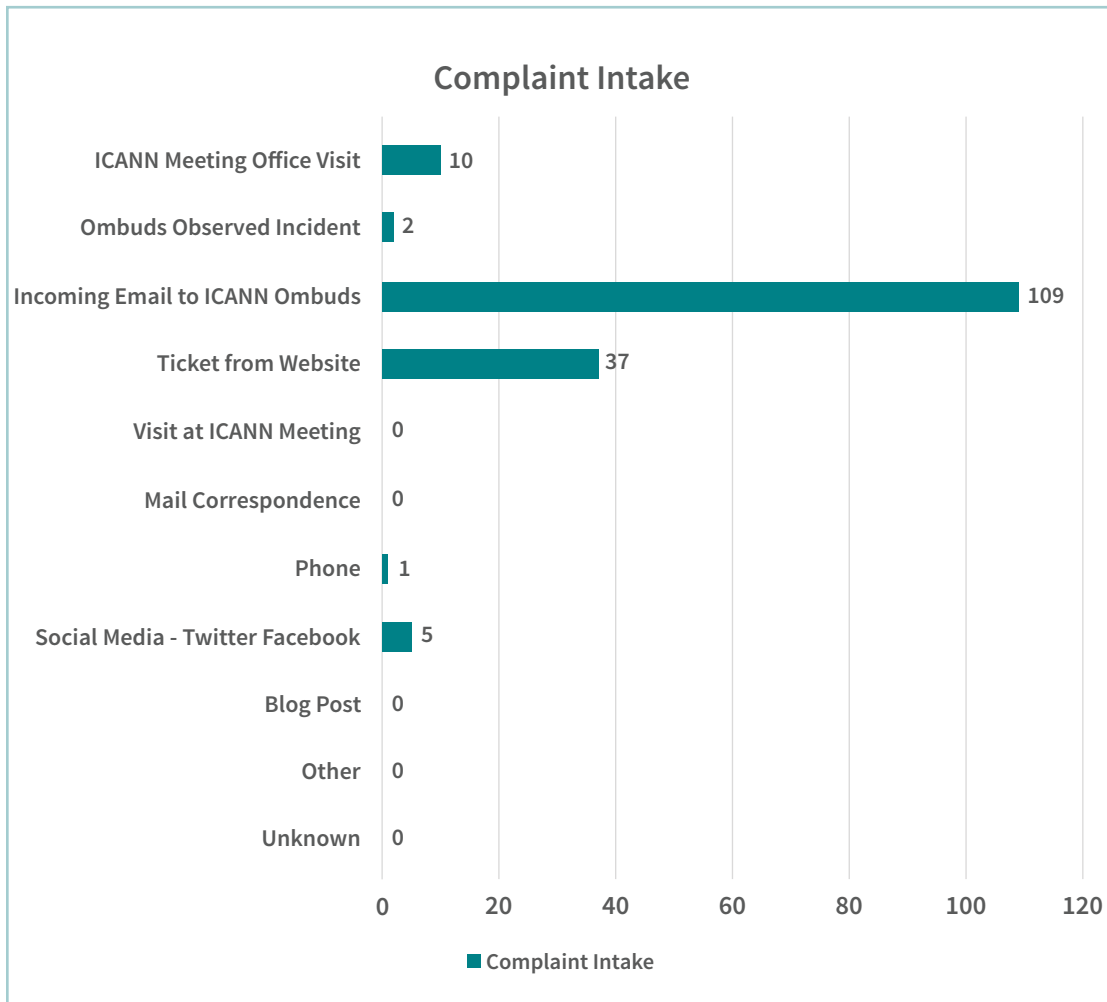
REPORT ON ACTIVITIES

Case Management



The Office of the Ombudsman received 164 complaints from July 2018 to June 2019; this reflects an increase of 24% from the preceding year-long period. 78% of these complaints 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 substantial drop in jurisdictional complaints from 49 (from July 2017 to June 2018) down to 35 (July 2018 to June 2019). A jurisdictional complaint requires intervention, investigation, or the active involvement of the Ombudsman. At the conclusion of June 2019, there were only two remaining open cases. One involving an incident of bullying/harassment from 2017 which remains open as the incident was not resolved following an investigation and subsequent intervention and hence is still being monitored to ensure the complained of behavior does not recur. The second open complaint of sexual harassment, from early 2019, resulted in a confidential interim report to the ICANN Board of Directors and subsequent intervention by ICANN org. This case is ongoing 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 my investigation).





REPORT ON ACTIVITIES

There were two complaints filed under the Community Anti-Harassment Policy for this reporting period, a decrease of 50%. There were eight complaints for abusive discourse, which is also almost a 50% drop. I believe ongoing initiatives by the Office of the Ombudsman, ICANN org, and ICANN Board have heightened community awareness of the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy and can be credited with this decrease in complaints about individual behavior.

Consumer issues about domain names (32) and registrar/registry issues (25) once again constitute the majority of the non-jurisdictional complaints. A more comprehensive and informative response to non-jurisdictional 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 or advisory committees (SOs/ACs), depending on the complaint. There is also an invitation to contact the Office of the Ombudsman with feedback on their experience.

REPORT ON ACTIVITIES

There are several constituency groups who are actively discussing issues like yours in the ICANN community and I would invite you to reach out to one you may find appropriate to your situation (commercial or non-commercial) 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 or, like you, to raise issues of abuse.

You can look through these links to ICANN constituencies and 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.

Dear Herb

Thank you for your response. I'm glad that we were able to speak with you and that something positive has come out of this. Your follow up is appreciated.

Thank you for taking the time to reply. I appreciate it. Sometimes we just need to let matters unravel. Thank you and God bless.

Hi Herb,

Many thanks for taking the time to write back to me. I will look at the links you sent and take it from there.

Kind regards

Name redacted

Hello Herb,

Thank you for your reply. I understand that my request doesn't fall under the jurisdiction of ICANN Ombudsman. I will look at the groups and links you have given me and will contact them regarding the new gTLDs. Many thanks for your help. I didn't quite know whom to contact in this matter, so this is very helpful.

Best regards,

Name redacted

Hi Herb Waye,

Thank you very much for the useful information.

Kind regards,

Name redacted

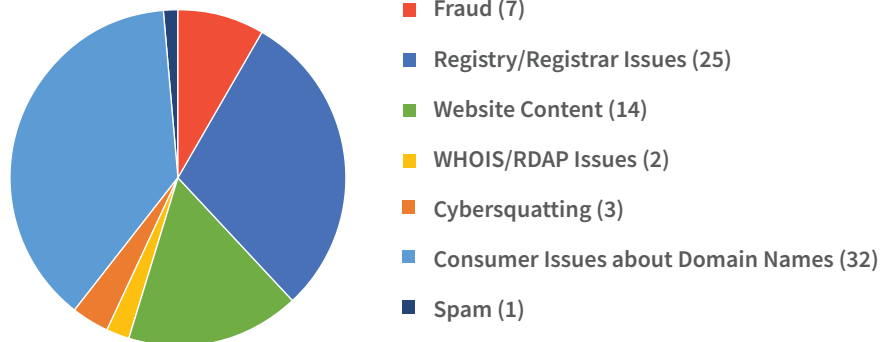
REPORT ON ACTIVITIES

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. There was one complaint addressed to the Office of the Ombudsman which, in my opinion, would be better addressed by the ICANN Complaints Officer and was appropriately referred out.

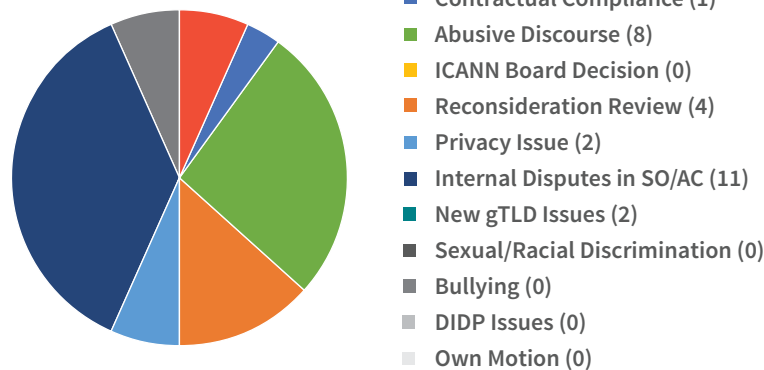
HOW THE OMBUDSMAN HANDLES NON-JURISDICTIONAL COMPLAINTS

- Response sent within two days
- Self-help information or referral
- New initiative provides links to ICANN community groups
- Invitation to participate in community policy development process, particularly if the complaint is about issues such as WHOIS privacy, registrar and registry contractual issues, public safety, and ALAC or GNSO working group topics

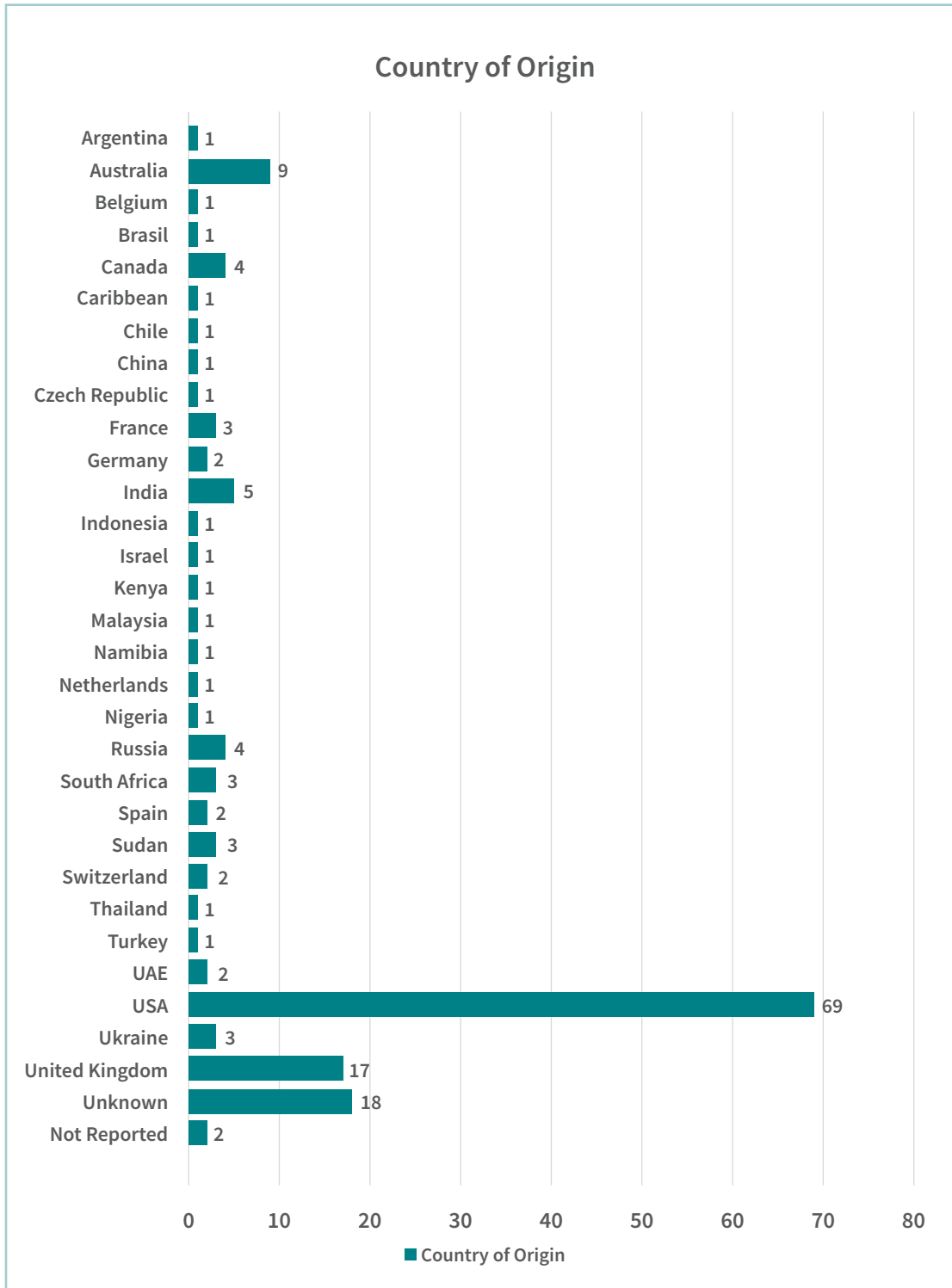
Non-Jurisdictional



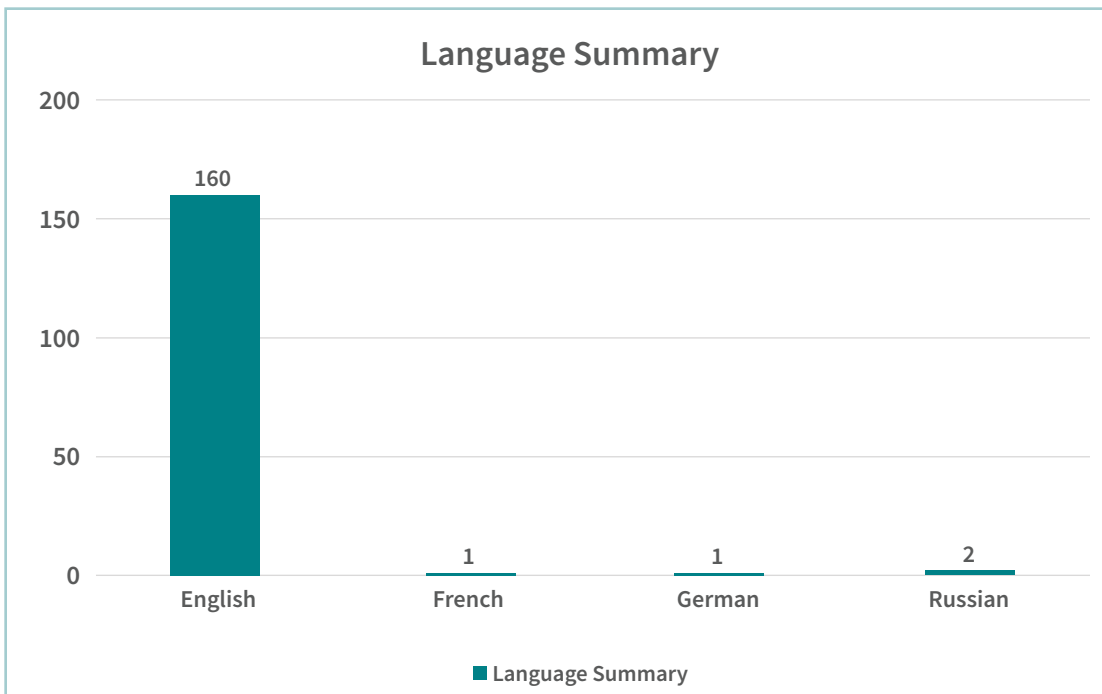
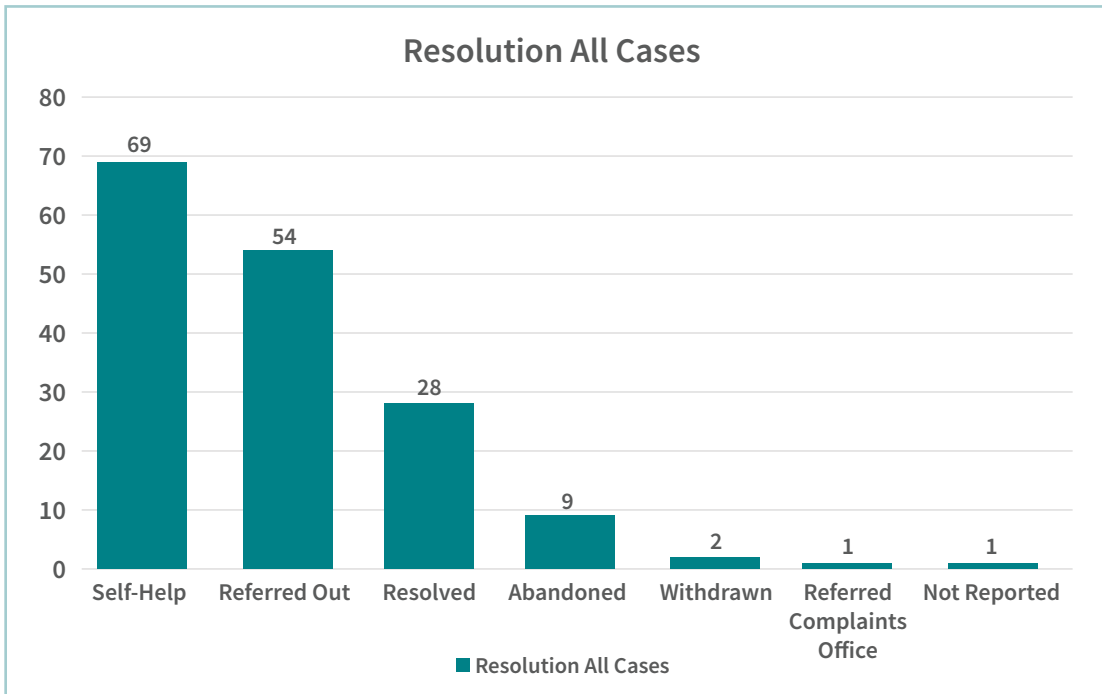
Jurisdictional



REPORT ON ACTIVITIES



REPORT ON ACTIVITIES



REPORT ON ACTIVITIES

Monitoring the Environment



Monitoring the ICANN environment online, in email list archives, on teleconferences, in-person at ICANN Public Meetings, and at ICANN-related events such as the Global Domains Division (GDD) Summit and the Internet Governance Forum (IGF), constitutes a significant portion of my time. As much as my physical presence online or in-person may mitigate abusive behavior in “real-time,” monitoring the extremely active SO/AC email lists remains an ongoing challenge. I am frequently contacted and informed of abusive, disrespectful, or bullying behavior in email exchanges that are posted to SO/AC email archives. It would be practically impossible to subscribe to and monitor all email lists in the ICANN community. I rely on community members to identify instances that violate the ICANN Expected Standards of Behavior so that I can, when appropriate, intervene, or otherwise assist the leadership of the respective group in dealing with an incident. I would like to once again thank the leadership teams and community members who have worked diligently with me to monitor and intervene when necessary with the goal of making ICANN a safe, harassment-free environment.

OMBUDSMAN ACTIVITIES AT ICANN63, ICANN64, AND ICANN65

- **Office staffed by a team: Ombudsman Herb Waye 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 remains a key focus for the Office of the Ombudsman. Education, Ombuds Orientation Sessions to staff, and physical presence at ICANN Public Meetings, other ICANN sponsored events such as the GDD Summit, and ICANN-related events such as the IGF, are fundamental activities to promote the role of the Office of the Ombudsman, the new role of the interim Adjunct Ombuds Barbara Curwin (gender diversity, anti-harassment), and the ongoing focus on enforcing the ICANN Expected Standards of Behavior and the Community Anti-Harassment Policy.

FY2019 OUTREACH ACTIVITIES

- Three Los Angeles ICANN office visits
- Brussels ICANN office visit (prior to IGF Paris)
- Opening Comments with interim Adjunct – Public Forum (ICANN63/64/65)
- Opening Comments – GDD Summit Bangkok
- Attendance IGF Paris

I have actively engaged throughout the year with the ICANN community and other communities through blog posts, Twitter, promoting 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. The standards have nonetheless been present for over 10 years. The Ombuds team continues to reinforce the Expected Standards of Behavior and the new Community Anti-Harassment Policy and everybody's right to a safe, respectful, and harassment-free environment when attending an ICANN meeting or sponsored events. Statistics from the case management system indicate a reduction in complaints which may be a result of this effort. I have undertaken, as a new initiative, to review the ICANN Expected Standards of Behavior on a yearly basis, and should the need arise, recommend necessary amendments or additions/subtractions to them.

ICANN EXPECTED STANDARDS OF BEHAVIOR

<p>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.</p>	<p>Adhere to ICANN's conflict of interest policies.</p>	<p>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.</p>	<p>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.</p>	
<p>Protect the organization's assets and ensure their efficient and effective use.</p>	<p>Act fairly and in good faith with other participants in the ICANN process.</p>	<p>Conduct themselves in accordance with ICANN policies.</p>	<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>Promote ethical and responsible behavior. Ethics and integrity are essential, and ICANN expects all stakeholders to behave in a responsible and principled way.</p>	<p>Facilitate transparency and openness when participating in policy development and decision-making processes.</p>	<p>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.</p>	

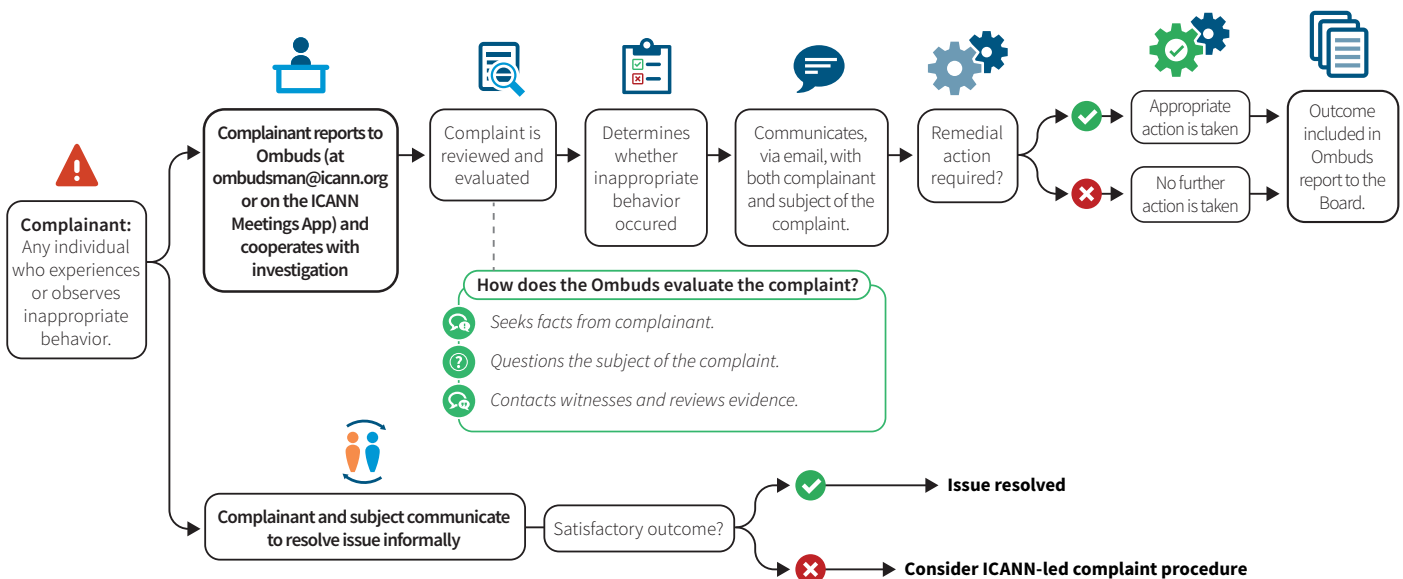
This has been translated into multiple languages for information only. The original and authoritative text (in English) may be found at: icann.org/en/system/files/files/expected-standards.

REPORT ON ACTIVITIES

ICANN Community Anti-Harassment Policy

Acknowledging that harassment, and in particular sexual harassment, is never tolerated by the ICANN community, or our society in general, the Office of the Ombudsman team, ICANN org, and the ICANN Board have been working hand in hand to promote a safe and harassment-free environment. The ICANN Board can be commended for going the extra mile by forming a Board working group specifically to address various forms of harassment. 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.

ICANN COMMUNITY ANTI-HARASSMENT REPORTING AND COMPLAINT PROCEDURE



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

Last year there was a clear message from the community for diversity in the Office of the Ombudsman. Barbara Curwin took on the role of interim Adjunct Ombuds with the Office and will now be under contract as a member of the Ombuds team. Barbara has extensive experience in a large Canadian federal agency of over 25,000 employees, both in investigating harassment and in training managers and supervisors in harassment prevention and intervention.



REPORT ON ACTIVITIES

Anybody 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: icann.org/en/system/files/files/community-anti-harassment-policy.

REPORT ON ACTIVITIES

Professional Development



I continue to maintain membership in three Ombuds organizations: (i) the International Ombudsman Association (IOA); (ii) the Forum of Canadian Ombudsman (FCO); and (iii) the International Ombudsman Institute (IOI). I attended the IOA conference and partook in its professional development courses in New Orleans in April, 2019. Also, in April 2019, I attended the FCO conference held in Toronto where I co-facilitated a session about online-complaint management. The IOI conference is held every four years and their next meeting will be in May 2020.

During my attendance at the IOA conference in New Orleans I benefited in particular from a course on Return on Investment (ROI Institute) which offered vast information on how to report Ombuds performance. Reporting Ombuds performance to an organization or to clients and communities has been an ongoing challenge for Ombuds globally, balancing the need for confidentiality with transparency. There were also professional development sessions touching on topics varying from bullying to racism.

The ICANN community and several members of the ICANN Board, in the past, have mentioned that the ICANN Ombudsman should have formal mediation training. Acknowledging that one can never have too many tools in one's toolbox, I am pleased to report that I have now completed the Canadian Institute of Conflict Resolution's Third Party Neutral program. The program consists of four one-week training sessions covering mediation, conflict resolution, facilitation, and other related learning. The fourth and final module in the Program was successfully completed in November 2018.



REQUESTS FOR RECONSIDERATION

In October 2016, per the new ICANN Bylaws, the Ombudsman role in ICANN expanded to include reviewing Reconsideration Requests, and in 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. All four of the requests involved incidents that had been previously addressed by the Office of the Ombudsman and therefore resulted in a recusal in all four cases.

A note on my standard for recusal: as Ombudsman, I will recuse myself when I, or the former Ombudsman, have previously taken a position on a matter, 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. So please, come see me about any and all such matters, but if they are likely to result in a Request for Reconsideration, be advised that engaging me informally will probably force me to bow out of providing a substantive evaluation of such Request under my formal Article 4 duties.



GOING FORWARD

In the coming year, the primary goal of the Office of the Ombudsman will be to offer the community a high standard of professionalism and service.

The Office of the Ombudsman, ICANN org, the ICANN Board, and the community are focused on maintaining a safe, professional, harassment-free environment, fully respecting diversity and cultural differences. Fiscal year 2019 saw the successful initiative of having Barbara Curwin as interim Adjunct Ombuds, and I am happy to announce her position as Adjunct Ombuds has now been formalized. She will now be available as an integral member of the Ombuds team and will be attending all ICANN Public meetings to assist the Ombudsman with service provision.

Fiscal responsibility will continue to be high priority for the Office of the Ombudsman. I will continue to schedule travel to regional offices in conjunction with ICANN meetings. I had hoped to visit the ICANN regional office in Singapore following ICANN64 in Kobe, Japan, but as I had been invited as a speaker at the IOA regional Asia Pacific meeting in October 2019 in Manila, Philippines, I postponed the Singapore visit to coincide with my trip to the Philippines. ICANN67 will be in Cancun Mexico and will thus not be near an ICANN regional office. Conversely ICANN68 is scheduled to be held in Kuala Lumpur, and may occasion another visit to the Singapore office—or possibly even the Beijing engagement center. The IGF is scheduled for Poland and thus may be paired with a visit to the Istanbul office, and the GDD conference is planned for Paris, France, which may offer a fiscally responsible way to visit the Brussels or Geneva offices.

In closing, I would like to once again thank the ICANN community, ICANN Board of Directors, and ICANN org for their support of the Office of the Ombudsman. In response to everyone's concern for diversity and to address a serious concern for harassment intervention and prevention, I am pleased to see the Office of the Ombudsman moving forward into the coming year as an established team. Together we can all make ICANN a safe, diverse, and harassment-free environment where everyone can enjoy participation to the fullest.

ICANN LOCATIONS

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