

## PDP 3.0 Improvement #15: ICANN Org Resources for Conflict Resolution and Mediation

Improvement #15 of the PDP 3.0 initiative provides guidance for the implementation of the following objective in the PDP 3.0 Implementation Plan:

*In those cases where conflict in WGs is preventing progress and/or existing conflict mechanisms have been exhausted, the Council should have access to independent conflict resolution and/or mediation experts.*

Originally, the following were the implementation steps identified in the draft Implementation Plan:

- *Council liaison to be proactive in identifying potential issues / challenges at an early stage that may need mitigation and Council attention.*
- *Council should consider the establishment of panel of volunteer mediators that can be called upon when appropriate.*

After some consideration, the PDP 3.0 Small Team determined that the first step -- Council liaison proactively identifying potential issues -- would appear to be addressed via the many improvement guidelines developed with respect to the roles and responsibilities of the GNSO leadership and liaison, particularly the implementation of [PDP 3.0 Improvements #5 & #6](#).

Furthermore, as noted in one of the implementation documents of [PDP 3.0 Improvement #9](#), several PDP 3.0 improvements seek to clarify the role and responsibilities of WG leaders, members, the GNSO Council liaisons, complementing the criteria outlined in Section 2.2 of the GNSO Working Group Guidelines. With these clarifications, WG leaders and members, as well as GNSO Council liaisons should have a clearer understanding of what is expected of them to perform their respective roles in a WG. They also help the WG and the GNSO Council hold the leaders, members, and liaisons accountable and mitigate issues early on. These include improvements relating to Statements of Participation, participation in the Working Group (WG) model, skills guide, liaison handover briefing, expectations for WG leaders, regular review process of WG leadership, and the newly created comprehensive guidelines addressing complaints made via the 3.7 complaint process of the Working Group Guidelines.

With respect to the second implementation step -- considering the establishment of a panel of volunteer mediators -- the PDP 3.0 Small Team considered this step and determined that it is unlikely to be feasible due to the difficulty in finding qualified and willing volunteer mediators. In addition, the Small Team noted it may not be necessary as ICANN org already has several in-house resources that the GNSO Council may access for conflict resolution and mediation. These include the Ombudsman, the Complaints Officer, the new Conflict Resolution Specialist, and ICANN Legal. In particular, the new

position of the Conflict Resolution Specialist was specifically created to address the need for access to a neutral mediator for conflict resolution.

Consequently, the Small Team suggests not to proceed with the establishment of a panel of mediators. Accordingly, the next step for implementation would be:

*Develop brief guidance on how the GNSO Council can access existing resources for the purpose of conflict resolution and mediation and briefly describe them, including the Ombudsman, Complaints Officer, Conflict Resolution Specialist, and ICANN Legal.*

The following document provides guidance concerning the existing ICANN org resources the GNSO Council may access for conflict resolution and mediation.

## Guidelines Concerning ICANN org Resources for Conflict Resolution and Mediation

### **Introduction**

The GNSO Council leadership may consider using the following ICANN org resources for conflict resolution and mediation. The selected resource(s) will depend on the nature of the conflict.

### **ICANN Legal Staff**

As ICANN Legal represents the ICANN org, they have no authority to (and without limiting the foregoing) represent any community volunteer in a GNSO working group dispute, offer interpretation on any internal GNSO rules/procedures/guidelines, or be a mediator to facilitate conflict resolution.

However, on a case-by-case basis, ICANN Legal may be able to provide advice within their mandate that may facilitate the resolution of the disagreement. For example, ICANN Legal offered [advice](#) regarding the enforceability of ICANN's Expected Standards of Behaviors and [suggested ways](#) to address perceived violations (links provided here are examples).

### **ICANN Complaints Officer**

The Complaints Officer handles complaints regarding the ICANN org that do not fall into existing complaints mechanisms, such as Contractual Compliance, Request for Reconsideration, and the Ombudsman. This may include complaints about how a request has been handled, the ICANN org providing an inadequate level of staff support, a process that appears to be broken, insufficient handling of an issue, or something that may be an indication of a systemic issue, among other things.

For example, if a conflict concerns the performance of an ICANN org staff member, in such circumstances the Complaints Officer may be brought into the process to help research, review, and

analyze facts related to the conflict involving the staff member, assisting the GNSO Council in resolving the matter.

### **ICANN Conflict Resolution Staff**

ICANN org recently hired a Conflict Resolution Specialist, who will act as a neutral party, utilizing structured communication techniques to share problem-solving responsibility. The Conflict Resolution Specialist will assist the community within the policy/advice development process by facilitating dialogues where a consensus view may have slowed, while also providing conflict resolution guidance for the entire ICANN community.

The GNSO Council should discuss with ICANN org regarding the appropriateness of this ICANN staff's involvement in conflict resolution and mediation, and if deemed appropriate, when can this staff person be called upon (e.g., as a further escalation point if any party in the conflict resolution process recommends).

### **ICANN Ombudsman**

According to the ICANN Bylaws, the Ombudsman is an informal dispute resolution office for any member of the ICANN community who may wish to lodge a complaint about ICANN org Staff, Board, or problems in constituent bodies. The purpose of the Ombudsman's office is to ensure that members of the ICANN community are treated fairly. The Ombudsman is impartial and will attempt to resolve complaints about unfair treatment, using techniques such as mediation, shuttle diplomacy and, if needed, formal investigation. The Ombudsman cannot advocate for any party involved in a dispute, but will investigate without taking sides in an informal but flexible process. Elements of confidentiality may be invoked when the Ombudsman is involved in a proceeding

With his/her expertise and experience, the Ombudsman is a valuable resource if the GNSO Council cannot resolve the matter to the satisfaction of the parties involved in the conflict. Especially when the discussion with the GNSO Council leadership does not resolve the conflict, it seems appropriate to suggest that the parties in conflict should engage with the Ombudsman as a further escalation step.

If the GNSO Council leadership should determine the appropriate time, if any, to lodge the issue and engage with the Ombudsman, all necessary information and records should be relayed to the ICANN Ombudsman to enable his/her informed evaluation of the conflict and effective assistance. The Ombudsman can then attempt to resolve the conflict in a manner of his/her own choosing. The outcome of the Ombudsman's review should be shared with the GNSO Council.