

Office of the Ombudsman
Report to the Board of Directors File 06-317

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Report to the Board of Directors

Ombudsman File 06-317

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From the ICANN Ombudsman Framework:

Confidentiality

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall only make enquiries or advise staff and Board members at ICANN of the existence and identity of a complainant in order to further the resolution of the complaint. ICANN staff and Board members are to hold the existence of a complaint and the identity of a complaint as confidential, except to further the resolution of a complaint.

This report shall not be further released by any party receiving the report without the consent of the Office of the Ombudsman.

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Mr. John Jeffrey
Corporate Secretary
ICANN

February 14, 2007

Dear John Jeffrey,

I am pleased to submit my report concerning Ombudsman File 06-317 to you for transmittal to the Board of Directors. In accordance with the Internal Fairness Policy found in the Ombudsman Framework, all parties affected by my investigation have had an opportunity to review a draft of the report, and to provide commentary or correct factual errors. I make twelve recommendations in this report. I have every confidence that the report is full, fair, and complete, and that the all of the recommendations reasonable and possible.

The Ombudsman Framework contains the following provision:

The Ombudsman shall have the power to make recommendations to the Board of Directors with respect to matters arising from complaints reviewed by the Ombudsman. Where a recommendation has been made to the Board of Directors, the Board of Directors shall respond to the Ombudsman within 60 days following their next Board meeting following a recommendation with a response.

As the next scheduled meeting of the Board is March 13, 2007, I will look forward to a response by May 13, 2007. The response from the Board has three possibilities (in whole or in part) : we agree with your recommendations and have implemented them; we agree with your recommendations, have implemented

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them, and have also taken further steps not recommended in your report; or, we are unable to implement your recommendations for the following reasons.

As the report in 06-317 contains a number of recommendations, I would appreciate action responses for each of the recommendations.

Should you have any questions or concerns, please do not hesitate to contact me.

Frank Fowlie, MACAM
Ombudsman

Introduction

ICANN Bylaw V, Article 2 states:

“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 a negotiation, facilitation, and “shuttle diplomacy” to achieve these results.”

The Ombudsman Framework contains the following provisions:

“Where, in the conduct of an investigation of a complaint, the Ombudsman forms an opinion that there has been a serious breach of administrative fairness, or maladministration, the Ombudsman shall notify the Board of Directors of the circumstances (see key principles regarding administrative fairness in the "Code of Administrative Justice 2003" Ombudsman British Columbia).”

“Should the Ombudsman begin an “own initiative” complaint, the Ombudsman will advise either the Chairman, Chief Executive Officer, or Corporate Secretary of the existence of the complaint.”

I have received information which has lead me to believe that a member of the community may have been treated in an unfair manner by an ICANN constituent body, and on December 12, 2006, I notified the Corporate Secretary that I had begun an “own motion” investigation into the matter. In the course of handling the complaint 06-317, I have formed the opinion that there has been unfairness,

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and I am advising the Board of this in accordance with the Ombudsman Framework. I am further writing to advise the Board of my recommendations for resolution.

The At-Large Advisory Committee is an ICANN constituent body. It is, like other supporting organizations, composed of both community volunteers and ICANN staff support. For the purposes of this report, ALAC is a holistic term referring to the ALAC and/or its staff.

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Scenario

(applicant).org was the proponent of the application for the establishment of an At-Large Structure, which was rejected by the At-Large Advisory Committee (ALAC). (applicant).org made the application on 08 February 2006, and the application was rejected by the ALAC in October, 2006. The applicant was informed of the decision by email on October 5, 2006.

The applicant has, through correspondence to the ALAC on October 7, requested a review by this Office. The applicant stated: "We demand a review to ICANN's Ombudsman, demanding you to reevaluate if you can include (applicant).org institute as an ALS member."

My investigation leads me to believe that that applicant was treated in an unfair manner on both an individual and systemic basis.

Unreasonable delay

My enquiries lead me to find that, except in unusual circumstances where due diligence cannot be performed, applications for certification should be ready for certification by ALAC ballot no later than three months after the completed application is received.

There is no reasonable indication why the consideration of this application took almost eight months to be brought to a vote before ALAC.

There is no indication why the ALAC has not acted since the applicant contacted the committee on October 5, 2006, either with information on the handling of the reconsideration requested, or with a positivist approach to resolving the matter.

On November 21, 2006, the Committee advised the applicant in an email that they would be in contact following the Sao Paulo meeting (December 2006).

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This correspondence leads to the expectation that the issue would be discussed, to some degree, by the committee at Sao Paulo.

I note the ALAC Agenda, set by the Chair on December 3, 2006, includes as Item 7, "(applicant).org issues and review of application". I further note that while the Chair and Committee intended to deal with the matter, it was not substantively discussed, and there is no resulting information to correspond to the applicant.

ALAC has policies and procedures in place to be able to deal with fresh applications in a 90 day time frame. The correspondence from the applicant to ALAC asking for a review of the original decision is now stale dated to the point where it would have been equally efficient to have simply withdrawn the existing application and to have made a new application for ALS status on October 5. Clearly, the goal of a review process is not to frustrate the administrative functions of the decision makers, nor to unreasonably delay the conclusion for the applicant.

I find that all of the above, bearing in mind that the application has now been in process for almost a year, is an unfairness by unreasonable delay.

Mistake of Fact

In this case the ALAC voted to reject the application for ALS status for (applicant).org as ALAC believed that it represented organizations rather than individuals. The record shows that the ICANN Regional Liaison for Europe had completed a due diligence review for ALAC with respect to the applicant on March 3, 2006. This due diligence report indicates that the members of (applicant).org are individual members, who govern the organization, and who are active. These are the requirements established for ALS certification. The (applicant).org website information was also reviewed by ALAC staff and my Office (The Ombudsman is fully bilingual, and the Adjunct Ombudsman is

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perfectly bilingual, thus there can be no argument about misunderstanding the French language (applicant).org website in the course of this investigation), and these reviews also support the Regional Liaison's due diligence report.

The October 7, 2006 ALAC letter to the applicant following his request for reasons for the decision states:

Please understand that the reason your application was rejected was not due to anything other than an application of the criteria for membership that we are obliged to apply, congruent with the Bylaws of ICANN. Certainly we did not intend any criticism of (applicant).org and we hope you understand that.

The ICANN Bylaws require that all ALSes must primarily be composed of individuals, and individual members must primarily control the governance of the organisation; however your organisation is primarily composed of other organisations.

It is evident from the timeline that the ALAC had adequate opportunity from the submission of the application for certification (Feb 06), to the due diligence exercise (Mar 06) to the actual vote (Oct 06) to correspond with the applicant to clarify any issue regarding the status of its membership prior to an unfavourable vote. This did not occur. It is generally considered a function of administrative fairness for a decision maker to have all evidence before them prior to making a decision.

The ALAC has not provided this Office with any substantive documentation or information to refute the findings of staff, or to support its position on the matter, and therefore, it is logical that there has been a mistake of fact.

I find that the ALAC acted unfairly towards the applicant by the misunderstanding of facts which were materially used as the basis for the decision.

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Negligent

In general, one is negligent when one is “inattentive to what ought to be done”.

Bylaw V states in part:

No ICANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the ICANN community (including employees of ICANN). ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

I believe that the intent of this Bylaw provision is not that ICANN structures have the duty to act as interveners to carry forward complaint issues to the Ombudsman, but rather that they have an obligation to direct community members to my Office. Implicit in this is providing relevant information on the Ombudsman website, which contains the complaint forms, and – or the appropriate email addresses. While not directly stated, this referral should take place in timely proximity to the matter being brought to the attention of the ICANN agent or structure.

The October 5, 2006 letter from the ALAC to the applicant contains the Ombudsman email address and webpage reference. In correspondence to the ALAC dated October 7, 2006, it is evident that the applicant wished to have a review by Office. I believe it would have been fair, at that point in time, to clarify for the applicant that the request for Ombudsman review had to be directed to the Ombudsman, and not the committee.

On November 21, 2006, six weeks after the applicant had requested an Ombudsman review, while adding her comments to a proposed reply to the applicant, ALAC member X wrote,

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“I just do not know about the mentioning of the Ombudsman. It seems to be a common procedure in the US, maybe in other countries too. What is meant to be nice (and democratic), looks a little strange to me. But maybe this possible procedure has to be mentioned.”

The At-Large Formation Framework, at Section IV, contains procedures for Board Review of ALAC certification decisions. (see Appendix)

On November 21, 2006, the ALAC responded to the October 7 letter from the applicant (a six week delay). In that reply, the ALAC provides the ICANN Ombudsman email contact, but not the website information, and does not provide any information on the ALAC Board certification reconsideration process.

I find the effect of not providing accessible information, on both of these appeal mechanisms, in a timely manner following the October 7 request, to be an unfairness by negligence.

Adequate and appropriate reasons

In its correspondence to the applicant dated October 5, 2006, the ALAC staff member informed (applicant).org that it did not meet the requirements for ALS Certification. The correspondence does not provide any reasons for the ALS refusal. It is not until after the applicant corresponded with the ALAC were reasons provided.

In my Report to the Board of Directors, dated November 2005, I made the following recommendation:

I recommend that in communicating a rejection of certification, that ALAC communicate the reasons for the denial, consistent with the Code of Administrative Justice (2003).

In subsequent correspondence, ALAC had committed to implementing this recommendation.

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I find that the ALAC or its staff has acted unfairly towards the applicant by failing to provide timely, clear, and understandable reasons for its decision.

Systemic Issues

There is a reconsideration process found in the At-Large Framework Formation. On a systemic level I find issues with this framework which may inhibit administrative fairness.

First, the ALAC process is essentially similar to the Board Reconsideration Committee, and is therefore, redundant. Bylaw IV states, "ICANN shall have in place a process by which any person or entity materially affected by an action of ICANN may request review or reconsideration of that action by the Board." ALAC certification decisions would fall into this mandate.

Secondly, the At-Large Framework Formation describes all things relevant to the Committee, except to define what its powers are. After reading the ALAC Board Review policy, it is unclear what the review group is actually empowered to do. It is not indicated whether the powers of the group are to hear evidence and develop a decision (i.e. to overturn a decision by the ALAC) or to make recommendations for the ALAC to reconsider its own decision. If it is the latter, there is no process established for the committee to re-vote.

Thirdly, this process would have been developed for those circumstances where an outside reviewer would be necessary to make a finding. It seems unfair, unwieldy, and time consuming in those circumstances where there is agreement that there had been a simple, correctable error, or where subsequent, clarifying information could easily be considered, that the ALAC is not somehow empowered to reconsider the application without having to either start the process anew, or send the applicant to the review process. As ALAC expands its membership into the hundreds of ALS structures, it is likely that these cautious approaches to dealing with simple matters should be considered.

Fourth, I am concerned that the ALAC does not fully understand its powers as defined in the Bylaws and in policy. From my review of the correspondence, it

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would appear that that the Committee had discussed taking steps to create a quick fix which it was not authorized to do either by policy or by bylaw. While the intent is laudable, the committee should only take steps which it is authorized to do. A fulsome policy and procedure for dealing with errors, or correctable actions, and attention to this issue in the ALAC review will be helpful.

Finally, it is very clear that the ALAC is either unaware of or ignores its own policies. The correspondence demonstrates that during the material time the ALAC lacked an understanding that it has requested that the Board of Directors approve a reconsideration policy and procedure for ALS certification decisions, and that this was approved some four years ago.

In draft correspondence from January 2007, an ALAC member while writing on behalf of the committee Chair states: (highlights mine)

The bylaws also state that decisions to certify or decertify "shall be subject to review according to procedures established by the Board."
As far as we know, the Board has never established these procedures, which is not surprising since until this point, there has never been a significant disagreement about a certification vote.

The Appendix to this report contains the "**Procedures for Board review of ALAC certification decisions**" which have been in place since June 2003.

I find that the present review process is unfair, as it is an unreasonable process.

Analysis

My colleague, Arlene Brock, the Ombudsman for Bermuda, while recently speaking at Harvard Law School made the following observation¹:

The flexibility of the Ombudsman in contrast to judicial review is illustrated by an example from Quebec. Upon obtaining a hunting permit, a person is automatically insured against accidents whilst hunting. Victims who require amputation are entitled to compensation. A milkman whose leg was paralyzed but not amputated was refused compensation. The recommendation of the Quebec Ombudsman was that the legislature would have included paralysis had they foreseen this situation. As a result of this recommendation, the hunter received both an indemnity and an amount for pain and suffering.

The parallel is not lost on this case. If the Board of Directors and the At-large Advisory Committee had foreseen a circumstance where a simple matter of fact could be clarified to resolve an issue and thereby avoid invoking intensive administrative processes, would they have? In all likelihood, and in consideration of the principles of administrative fairness, the answer would be in the affirmative.

The development of RALOs across the globe will impact the work of the ALAC in its work of approving ALSs. It will be necessary and important to have appropriate review and reconsideration mechanisms in place, especially as the certification process becomes de-centralized.

¹International Human Rights: Championing The Cause: Arlene Brock LLM '91, National Ombudsman of Bermuda

Appendix

IV. Procedures for Board review of ALAC certification decisions:

ALAC decisions to certify or de-certify an At-Large Structure are subject to review according to procedures to be established by the Board. The ALAC proposes that review procedures be established, as proposed below:

1. A request for review of an ALAC decision to certify or de-certify an ALS would be required to be filed within 60 days after the ALAC posts notice of the action on its web site. Requests for review would be submitted by email to xxxxxx. No particular form is required, but requesting parties would include at least the following information:
2. name, address, and contact information for the requesting party (including postal and email addresses);
3. the specific action for which review is sought;
4. the date of the action;
5. the facts supporting the request for review;
6. the grounds on which the Board should conduct its review; and
7. any documents the requesting party wishes to submit in support of its request.

The ICANN Board will appoint three of its Directors to consider such requests and conduct the reviews. The Board appointed review group will notify the ALAC of the request for review. The review group may request additional information from all parties involved in the review, as well as other sources. Requests for review and the Board review group's activities and decisions will be made public on the ICANN website. The review group may, in its discretion, grant a party's request to keep certain information confidential. For any matters that the review group determines not to disclose, the review group's decision will describe in general terms the nature of the information and the reason for nondisclosure.

The review group will endeavor to complete its work and issue its final decision within 30 days of the filing of the request; its decision will be made public on the ICANN web site.

To protect against abuse of the review process, a request for review may be dismissed by the review group where it is frivolous, non-substantive, or otherwise abusive.

Applications and instructions for "At-Large Structure" designation are available at <http://alac.icann.org/correspondence/structures-app.htm>

Definitions

The Code of Administrative Justice (2003)² defines the following:

Unreasonable Delay:

To delay is to postpone, put off or slow down³³. Delay may be part of the exigencies of the modern state. While sometimes it may be unavoidable, it should not be burdensome, infringe on rights or entitlements or unduly affect public services.

***Principle:* Delay is unreasonable whenever service to the public is postponed improperly, unnecessarily or for some irrelevant reason.**

Example: A tribunal takes three years on a case for which it would normally take six weeks. The tribunal is unable to provide an explanation for the delay. Such delay is unreasonable on its face.

³³ e.g. see Black's Law Dictionary [1999] at 437; The Dictionary of Canadian Law [1995] at 310

Black's Law Dictionary defines delay as:

To retard; obstruct; put off; postpone; defer; prolong the time of or before; hinder; interpose obstacles; as, when it is said that a conveyance was made to "hinder and delay creditors." The term does not necessarily, though it may, imply dishonesty or imply moral wrong.

MISTAKE OF FACT

...a mistake is an error, misconception or erroneous belief. It can be seen also as a wrong or incorrect view and/or erroneous supposition. Mistake of fact then is a misapprehension or misunderstanding of the facts, circumstances or evidentiary base of a case or situation. A mistake of fact

² Ombudsman of British Columbia, Public Report 42, March 2003

is “a mistake about a fact that is material to a transaction or matter or issue”.

***Principle:* A mistake of fact occurs when an authority is mistaken as to the existence of a certain fact or facts. A mistake of fact is a question of perception or knowledge on the part of the authority.**

A mistake of fact may occur when a wrong inference or conclusion of fact results from the authority’s lack of knowledge of evidence which, if known, would have resulted in a different conclusion of fact.

Example: An agency fails to determine that a person meets the criteria for entitlement to a benefit because it misinterprets the information provided about that person. This is a mistake of fact.

UNREASONABLE PROCEDURE

To be reasonable is to exercise sound judgment, to be sensible or to act with reason. Unreasonable activity by institutions will be those actions taken, decisions made or standards adopted which no sensible authority or institution would do, make or adopt.

***Principle:* An unreasonable procedure is one which fails to achieve the purpose for which it was established.** This test focuses on the rationale for a procedure and the results it produces or is likely to produce. The term may be seen as a synonym for an incompetent procedure on the basis that such a procedure is an absurdity and thus contrary to reason.

NEGLIGENT

In general, one is negligent when one is “inattentive to what ought to be done” . In law, one is negligent when one fails “to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance”. Negligence is conduct which “falls below the standard required by society” and it is also a cause of action in law.

ADEQUATE AND APPROPRIATE REASONS

Reasons are the basis for judgments. Formally, “reasons” provide the rationale behind and justification for decisions or actions. They provide a summary of analysis and are a means to facilitate understanding as well as a means to allow meaningful appeal of such decisions and actions. Adequate reasons will be those which are sufficient to allow an understanding of the issues considered and the decisions reached. Appropriate reasons will be logically linked to the questions with which the decision-maker dealt.

Principle: In assessing the adequacy and appropriateness of reasons, three major factors are important:

- a) whether the person’s concerns are addressed directly and completely;**
- b) whether the reasons plainly state the rule upon which the decision proceeds and whether the rule as applied to the facts logically produces the decision reached; and**
- c) whether the reasons are comprehensible to the recipient.**

Example: A public body denies a person a license but initially does not explain why the license is not forthcoming. There is an appeal process but the person has no basis on which to appeal in the absence of any reason. When he presses the public body for information he is told he is denied because “that is the way things work.” There is in such a situation a lack of appropriate, adequate and comprehensible reasons.

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General Comments

The operations of the Office of the Ombudsman are generally mandated by Bylaw V and the Ombudsman Framework. Two relevant provisions in these documents are confidentiality and the power of the Ombudsman to obtain information or documents held by the organization. These are common obligations and powers in Ombudsman schemes, and in statutory frameworks the Ombudsman is given the power of subpoena or sanctioning those who are resistant to either. It is a fair statement to say that Ombudsman enquiries should be conducted in private to protect confidentiality, and that the Ombudsman should have access to all relevant information held by the organization in order to be able to make accurate determinations of the fact pattern, and thus to determine if there has been an unfairness.

The Ombudsman Framework states:

All matters brought before the Ombudsman shall be treated as confidential. The Ombudsman shall only make enquiries or advise staff, Board members, at ICANN of the existence and identity of a complainant in order to further the resolution of the complaint. ICANN staff, and Board members are to hold the existence of a complaint and the identity of a complaint as confidential, except to further the resolution of a complaint.

In the conduct of this case, I have formed the opinion that copies of emails from my Office relating to the substance of the investigation have been forwarded from the addressee to third parties not for the purpose of resolving the complaint, and without my express consent.

Bylaw V states in part that the Ombudsman has "...the right to have access to (but not to publish if otherwise confidential) all necessary information and records from ICANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible..." I have also formed the opinion that this right to access information was not well understood by affected parties during the course of this investigation.

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In this case, the ALAC Chair had written to the ICANN Chair complaining that I had requested a response to three follow up questions in ten business days. This timeline is the norm used by my Office when making formal enquiries under authority of Bylaw V. It is evident to me that the ALAC Chair had supplied the ICANN Chair with copies of my correspondence on the substantive matter of the investigation, and that this was a breach of the intent, if not the expressed confidentiality requirements of the Bylaws.

As the ICANN Chair had requested that I consider delaying the reception of the ALAC responses, I did agree to attempt to find the answers to the questions from other sources so that I could conclude the investigation into the matter in a timely fashion, as opposed to keeping the investigation open for an unknown period of time, which, in my opinion compounds the unfairness. However, the ALAC Chair has characterized this agreement as, "I received an answer to our report by Frank asking for a couple of follow up questions which he then withdrew as he felt he did not want to put too much work load on us."

In general terms an Ombudsman is an independent, neutral, third party reviewer of facts to determine if administrative unfairness has occurred. In developing an Ombudsman structure the state, public service, corporation, or entity will empower the Ombudsman with authority to conduct his work through a statute, or, as with ICANN, a bylaw. In creating a statutory provision for an Ombudsman, the incumbent agrees to use those powers fairly and as an advocate for fairness. The entity also agrees that by having an Ombudsman that it will abide its independent operations, as it has empowered him to do under the legislative instrument it has enacted.

I categorically refute the notion that I have withdrawn a request for information from the ALAC as I "did not want to put too much work load on" the ALAC.

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I believe that it is vital that any organization, or state, which an Ombudsman serves, regards complying with requests for information as important, as failure to participate fully in the Ombudsman's task of determining truthful fact patterns concerning fairness impugns the credibility of the respondent, the entity, and the Ombudsman. In fact, many statutory regimes provide the Ombudsman with the power to compel evidence through the use of subpoenas, and demand truthful compliance with the threat of sanctions for failure to provide information or for perjury.

Thus, the paraphrased argument that "we are too busy to cooperate with the Ombudsman and to ensure that we are acting fairly" is hollow to me.

A second matter of general commentary which I wish to address is notion that the ALAC is responsible for discharging its functions, and that this responsibility does not rest with the ICANN staff members which support the committee's work. The correspondence from the ALAC to my Office supports an argument that the committee failed to meet its administrative and governance responsibilities because of staff changes. I find this is not an accurate representation of the facts. At all material times there was a staff person in place to provide administrative support and advice. I find that the ALAC, and especially ALAC member X, have been resistant to the fair administration advice given to them by staff members.

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Conclusion

Pursuant to the powers given to the Ombudsman in the Ombudsman Framework, I am advising the Board of Directors that there has been an administrative unfairness with respect to the application of (applicant).org for At – Large Structure Status with the At-Large Advisory Committee.

Redress and Recommendations

- 1) In light of the above, I recommend that the (applicant).org, immediately be given provisional ALS status by the ALAC.

- 2) I recommend that due to a lack of clarity in the rules concerning reconsideration, and unfairness in implementing them; that unless there is a substantive objection by the ALAC, the Board of Directors declare (applicant).org to be an ALS at its next scheduled Board meeting following submission of this report.

- 3) I recommend ALAC take steps to ensure that applications for certification be treated in a more expeditious fashion, both for the benefit of the applicant, and ALAC. I recommend that ALAC, in consultation with the ICANN At-Large staff member, monitor and report on the set of milestones previously implemented to deal with these applications in the noted three month time frame. Should these established milestones be exceeded the staff member should formally advise the ALAC of the default.

- 4) I recommend that any existing applications, exceeding three months past the application date, be dealt with in the shortest possible delay. As of January 25, 2007, there are a total of five applications exceeding the 90 time frame (including the (applicant).org application).

- 5) I recommend that the ALS certification review process, noted earlier in this report, be a priority item for evaluation and reform during the scheduled ALAC review. In light of expected exponential growth of ALS certification applications, I recommend that the review consider the streamlining or decentralizing of the process, and as much as possible to make certifications a product of administration rather than committee governance. I recommend that the reviewers give particular heed to suggestions of past and present ALAC staff

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members. I recommend that the review formalize administrative milestones and the requisite communications process.

6) I recommend that the ALAC develop policies and procedures which empower it to remedy errors and oversights without having to revert to formalized complaint processes.

7) I recommend that in communicating a rejection of certification, that ALAC communicate the reasons for the denial, consistent with the Code of Administrative Justice (2003) which states:

Reasons are the basis for judgments. Formally, “reasons” provide the rationale behind and justification for decisions or actions. They provide a summary of analysis and are a means to facilitate understanding as well as a means to allow meaningful appeal of such decisions and actions. Adequate reasons will be those which are sufficient to allow an understanding of the issues considered and the decisions reached. Appropriate reasons will be logically linked to the questions with which the decision-maker dealt.

***Principle:* In assessing the adequacy and appropriateness or reasons, three major factors are important:**

- a) Whether the person’s concerns are addressed directly and completely;**
- b) whether the reasons plainly state the rule upon which the decision proceeds and whether the rule as applied to the facts logically produces the decision reached; and**
- c) whether the reasons are comprehensible to the recipient.**

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- 8) I recommend that the ALAC Chair and ALAC Board Liaison speak with the (applicant).org applicant and tender an apology on behalf of ALAC for delay in processing the application.
- 9) While this may be a matter best implemented following the ALAC review in 2007, I recommend that all members of ALAC be given an orientation on the impact of administrative fairness on those processes which they administer on behalf of ICANN.
- 10) I recommend that members of supporting organizations be provided with an orientation to the Office of the Ombudsman by their ICANN staff member with a view to ensure that they understand the powers of the Ombudsman, and their responsibilities in Ombudsman investigations. I also recommend that the staff member orient new and existing ALAC members to all of the relevant Bylaw and policy provisions which govern the committee's work and activities.
- 11) I recommend that Bylaw V be amended to state:

ICANN employees, *committees, supporting organizations*, or Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

The Bylaw presently states:

ICANN employees and Board members shall direct members of the ICANN community who voice problems, concerns, or complaints about ICANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.

- 12) I recommend that the Office of the General Counsel and ALAC examine and make recommendations concerning the continuation of the ALAC reconsideration policy. In my view this policy is redundant in consideration of the Board Reconsideration Committee (Bylaw IV).

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