

# International Ombudsman Association Conference 2010

**Frank Fowlie**

**ICANN Ombudsman**

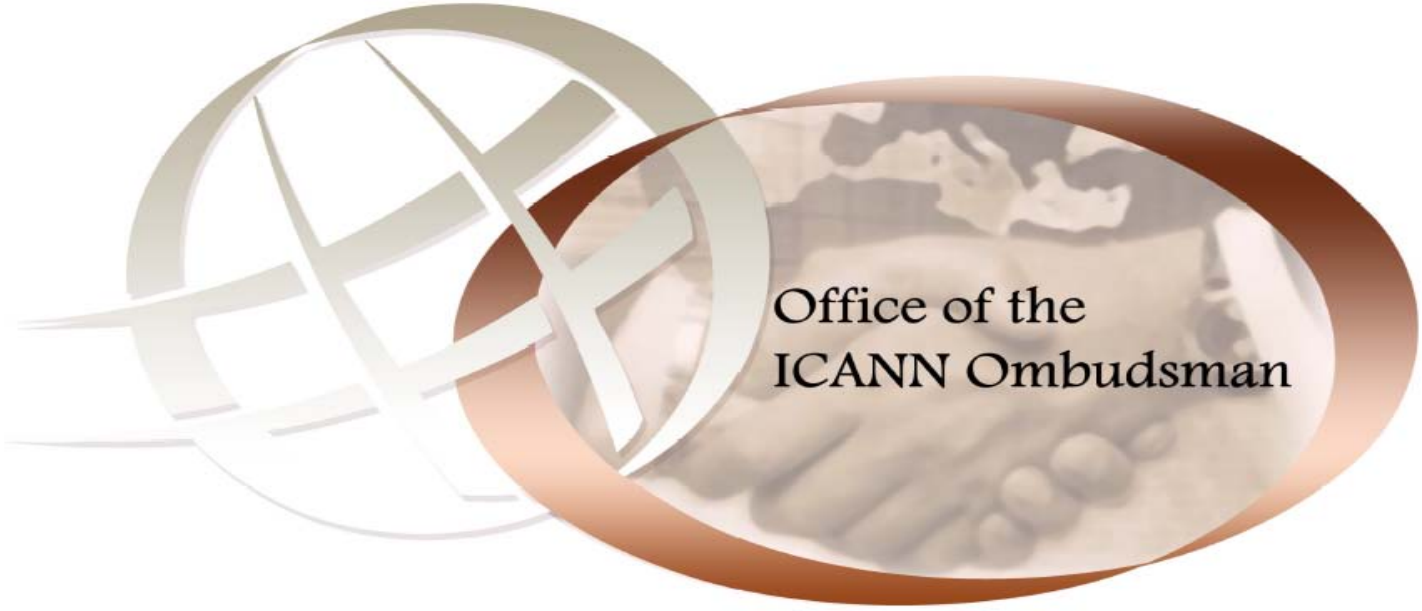
**New Orleans, April 2010**



# Distance Dispute Resolution

Or

Online Dispute Resolution for  
Ombudsman Offices



Office of the  
ICANN Ombudsman

# What we will cover

- What is ODR?
- Who thinks ODR is a good idea?
- Where is ODR being used now?
- What are the benefits of ODR to Ombudsman practices?
- Are there barriers to ODR?

# About ICANN

- Internet Corporation for Assigned Names and Numbers
- Co-ordinates the Domain Name System DNS
- .com. net. .org etc (Generic Top Level domains)
- .biz .travel .aero etc (sponsored tld)
- .ca .uk .tv etc (country code tld)

# More ICANN Info

- \$54 million budget based on registrations
- around 100 staff and a team of consultants
- Head office in Marina del Rey, California
- Office in Brussels, Washington and Sydney
- Staff in Canada, Mexico, Italy, Egypt, Bulgaria, Niger, Netherlands, France, Australia
- Staff represent about 20 countries and 29 languages
- On the verge of “opening the top level”



# What is ODR?

- Dispute resolution processes:
  - facilitative processes such as conciliation, mediation, and facilitated negotiation
  - advisory processes such as case appraisal, mock trial, and neutral evaluation
  - determinative process such as arbitration and adjudication
- Assisted by technology, especially the internet
- Can be used for online or offline disputes

# Two Basic forms of ODR

- **Technology Based**
- Blind Bidding systems
- Over some form of tangible
- Quantum \$
- Benefits
- Apology
- **Technology assisted**
- Uses technology to assist a person based activity
- Most reasonable for Ombudsman work
- Case management system
- E-communication
- Trend reporting



# ODR is Coming of Age

- ODR is not conjecture: as of March 2006
  - 149 ODR sites/services
  - More than 3 million disputes handled
- However ODR remains in its infancy:
  - Consumers have a low awareness of ODR
  - Lack of a clear business model
  - No standards have yet emerged
  - No trade association has formed

# ODR Roles

- Mediator
- Conflict Manager
- Conflict Resolver
- Ombudsman



## SmartSettle

- Private Canadian company (BC)
- Provides negotiation support
- Parties identify their preferences and trade-off for optimum results

# Family Disputes



## Family Winner

- Achieve best agreement

## Split Up

- Assess strategies

## Up to Parents

- Negotiate separation

## Family Wizard

- Discuss co-parenting

# Health Disputes

## MeDispute

- Patient complaints and comments online
- Provides complaints handling, arbitration
- Being tested in UK hospitals 2006





- 2 Billion transactions in 2007
- Average of \$75 per transaction
- 1% of transactions – dispute
- 1% of disputes – litigation
- less than one transaction in a million results in litigation

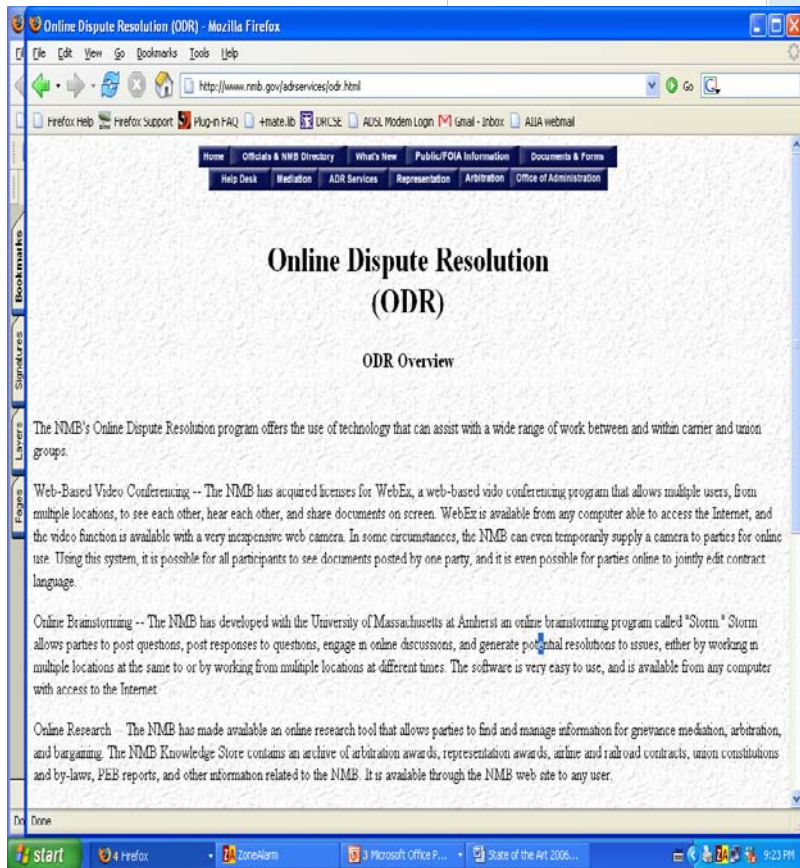
# Improved Technology

## National Mediation Board

- Videoconferencing
- Online brainstorming
- Research database

## Conflictlab

- Visual elements
- Real time and delayed communication



# Courts and Justice

e@dr

- Launched in 2000
- Part of Singapore's Small Claims Tribunal
- Provides mediation and arbitration by Court Mediators and Judge Mediators
- English language

The screenshot shows the e@dr website in a Microsoft Internet Explorer browser window. The address bar displays <http://www.e-sdc.gov.sg/>. The website header includes the e@dr logo and navigation links: [More about us](#), [Our Services](#), [Contact Us](#), [FAQ](#), [Links](#), and [Home](#). The main content area features the e@dr logo and the text: "e@dr is a Singapore Subordinate Courts initiative, for parties in an e-commerce transaction to resolve their disputes on the internet." Below this, there are links for [File a Case](#), [Procedures](#), [Protocol](#), and [Cost](#). A prominent button says "Try On-line Mediation". To the right, a "More Resources" section lists: [Eligibility](#), [Benefits](#), [Requirements](#), [How to file a complaint](#), [Confidentiality](#), [Range of Services](#), and [Roles](#). A "Links" section lists: [SMC](#), [SIAC](#), [IE Singapore](#), [EDB](#), and [IDA](#). Below the main content, it states: "Best viewed with Microsoft Internet Explorer, 800 x 600 Resolution. Subordinate Courts of Singapore." At the bottom, there are links for [Privacy Statement](#), [Disclaimer](#), and [Copyright](#). The Windows taskbar at the bottom shows the Start button, several application icons, and the system tray with the time 7:41 PM.



# Environmental Factors

- Access to Justice
- eCommerce
- OECD – UN
- Improved technology – reduced costs
- Private ordering of affairs – extra-national
- Sector growth of ODR (The opportunity)
- Paper
- Legal systems

# OECD July 2007

- “...enable consumers to ...conduct the procedure without the need for legal representation or assistance as far as possible”
- Encouraging the greater use of technology to facilitate the management of consumer disputes, in particular cross-border disputes.

# Reasons for Non-Adoption

1. ODR doesn't work or perception it doesn't work
2. Disputants don't want ODR
3. Providers don't want ODR
4. Problems with marketing/awareness
5. Problems with enforcement

# Concerns

- Approaches to conflict
- Language
- Literacy
- Cultural gaps

# Challenges

- Modifying practice to use ODR as a tool:
  - Varying types of Ombudsman operations
    - Classical or Governmental
    - Executive
    - Organizational

# Challenges

- Geography
  - Country
  - Many countries - Global
  - Province or state
  - City
  - Organization
    - Same location
    - Multiple locations

# Challenges

- Communication
  - Language
    - Idioms, dialects, local terms
  - Literacy
    - In writing
    - Computer

# Challenges

- Connectivity
- Time Zone
- Activities
  - Work
  - Family responsibility



# Challenges

- Asynchronous
- Synchronous

# Challenges

- Social – cultural contexts

# Challenges

- Data security
  - Record keeping for varying types of Ombudsman practice

# Solutions

- Use of native language translators
- Well designed case management systems
  - Self help information
- Secure servers
- Be a reflective practitioner
  - Understand that you are not an expert in all cultures, value your own culture
  - Allow correspondents to become comfortable

# Suggestions

- Understand your own dispute style and identity, allow others to express theirs
- Understand others, practice active “listening” techniques in your correspondence
- Let people trust you
- Assist low literacy levels
- Focus on core issues and process

# The Risk

- Not engaging the technology
- Not recognizing the changes in the environment
- Being left behind.

# Did we?

- Define ODR
- See where ODR is being used and who sees a future in it
- Talk about the benefits of ODR
- Talk about the risks and strategies

# Thank you

- Questions?
- Links:
- [www.icannombudsman.org](http://www.icannombudsman.org)
- [www.odr.info](http://www.odr.info)
- [www.internetbar.org](http://www.internetbar.org)
- [www.smartsettle.com](http://www.smartsettle.com)
- [www.themediationroom.com](http://www.themediationroom.com)
- [www.bileta.ac.uk/02papers/hoyle.html](http://www.bileta.ac.uk/02papers/hoyle.html)



*The Values of this Office are:*

- Respect for Diversity;*
- Excellence in Ombudsmanship;*
- Professionalism;*
- Confidentiality;*
- Impartiality;*
- and Independence.*