

Office of the
ICANN Ombudsman

On-line Dispute Resolution, e-Governance, and the ICANN Ombudsman

**Hong Kong University
February 2008**

Frank Fowlie, ICANN Ombudsman

What we will cover today

- Overview of the Internet and e-Governance
- Online Dispute Resolution
 - examples of use
- ICANN Ombudsman program
- Please ask questions

E-Governance:

e-Government: the use of ICT to support the administration of government:

Is not

e-Governance: the governance of the Internet

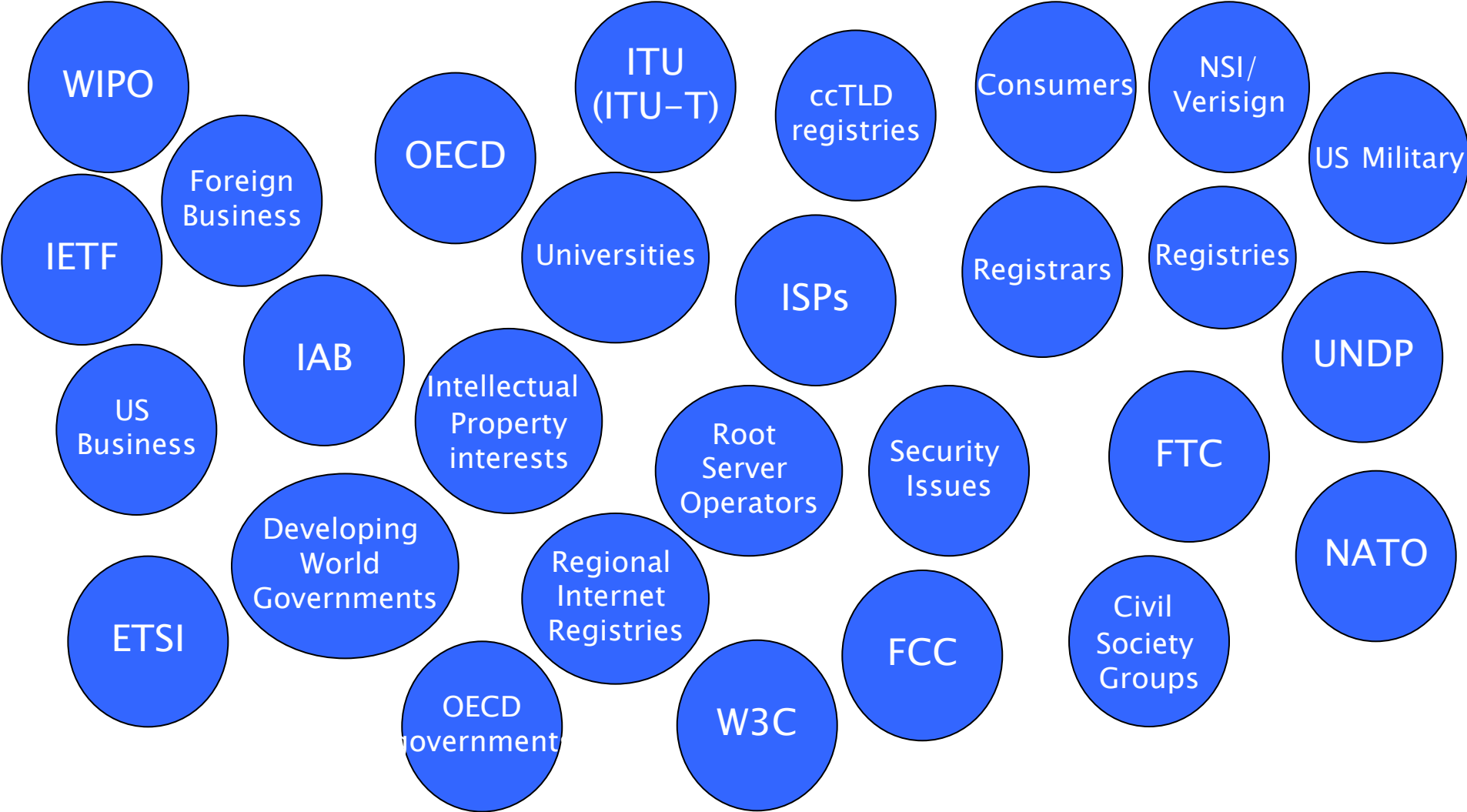
From the past ...to the future

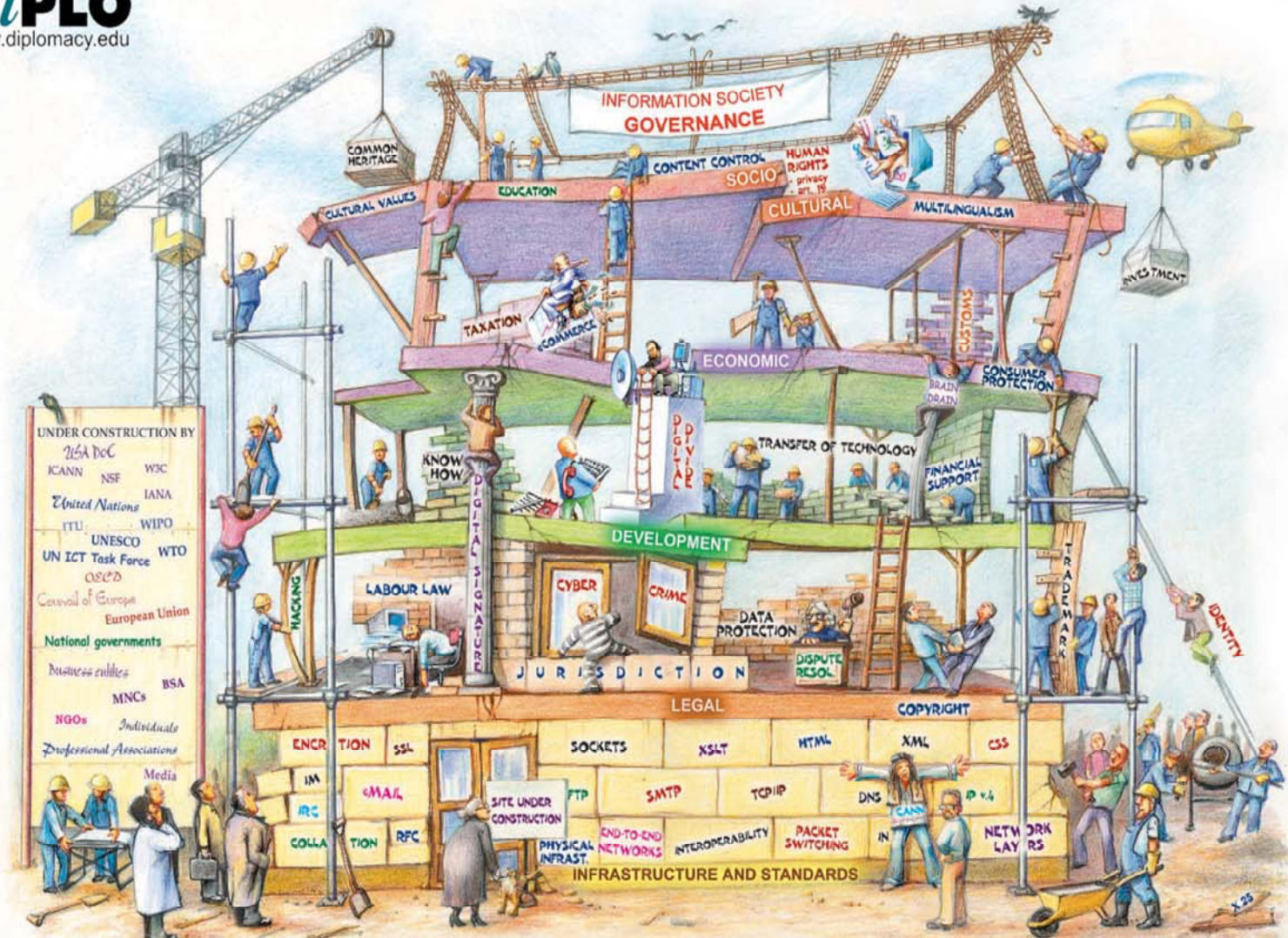
Small (4 university networks, 100's users)	➤	Huge (today over 200,000 networks, 1 billion users)
Scientific purpose	➤	Multi-stakeholder purpose
US based	➤	Global
Scientific backbone	➤	Global economy backbone
Single jurisdiction	➤	Multiple jurisdictions
Regulated relations	➤	Contractual relations
A few scientific issues	➤	Multi-layered stack of issues
Industrialised countries interest	➤	Industrialised and developing countries interest

Internet is different

- Over 200,000 separate networks which agree through private agreement or contract approach to allow packets to cross networks
- From engineering perspective, do not recognise boundaries
- DNS and Unique Identifiers is the 'glue' which allows seamless outcome across these various networks (a 'resolution')
- About 1 billion users
- About 20 billion resolutions per day (nearly 7 times the number of telephone calls in North America)
- The backbone of the digital economy

Before ICANN, these stakeholders competed for influence over the Domain Name and IP Addressing systems





Concept: BALDI • GELBSTEIN • KURBALIJA Illustration: ZORAN MARČEVIĆ • MARČA
More information is available in the Information Society Library at <http://www.diplomacy.edu/isl>

E-Governance developments

- WGIG
- WSIS Tunis 2005
- IGF Athens 2006, Rio 2007,
 - New Delhi 2008
 - ODR has not been an issue raised in any substantive manner

Existing e-Governance ODR schemes

- **UDRP** - Technology assisted
 - arbitration of domain name ownership disputes
- **ICANN Ombudsman** – technology assisted
 - Oversight office for fair treatment of ICANN stakeholders and system users

What is ICANN responsible for?

- ICANN is responsible for the global technical self-management of the Internet's unique identifiers.
- ICANN is dedicated to:
 - Preserving the operational stability of the Internet;
 - To promoting competition;
 - To achieving broad representation of global Internet communities;
 - And to developing policy appropriate to its mission through bottom-up, consensus-based processes.

International model of self-governance and self-management, and unique value system

- ICANN is a unique organisation designed to operate in the new global environment.
- Accomplishments
 - 20 billion DNS resolutions per day.
 - A US\$1 billion annual reduction in domain registration fees.
 - Internationalised Domain Names (IDN).
 - The Uniform Domain Name Dispute Resolution Policy (UDRP).
 - Streamlined inter-registrar domain name transfers.

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

- \$40 million budget based on registrations
- Less than 100 staff and a team of consultants
- Head office in Marina del Rey, California
- Office in Brussels and Sydney
- Staff in Canada, Mexico, Italy, Egypt, Bulgaria, Niger, Netherlands, France, Australia
- Staff represent about 20 countries and 29 languages

UDRP

- Three tests:
 - identical or confusingly similar to a trademark
 - no rights or legitimate interests
 - being used in bad faith

- Must meet all three tests

UDRP

- Three providers:
 - HKIAC
 - NAF
 - WIPO

- Finality of process

ICANN's Office of the Ombudsman

- Product of reform movement
- Inaugural Ombudsman appointed Nov 1, 2004
- Executive Ombudsman scheme
 - In organization – outside complaints
 - Investigates
 - Reports
 - Recommends

Purpose of the Ombudsman

In working towards that goal, the Office of the Ombudsman will assist ICANN by:

- Ensuring members of the community receive fair and equitable treatment
- Helping raise service and administrative standards;
- Improving communication between ICANN and the community; and,
- Issuing reports, and maintaining a website that informs consumers and the ICANN community about issues of interest.

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

Environmental Factors

- Access to Justice



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

Environmental Factors

- Access to Justice
- eCommerce



- 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

Environmental Factors

- Access to Justice
- eCommerce
- OECD – UN

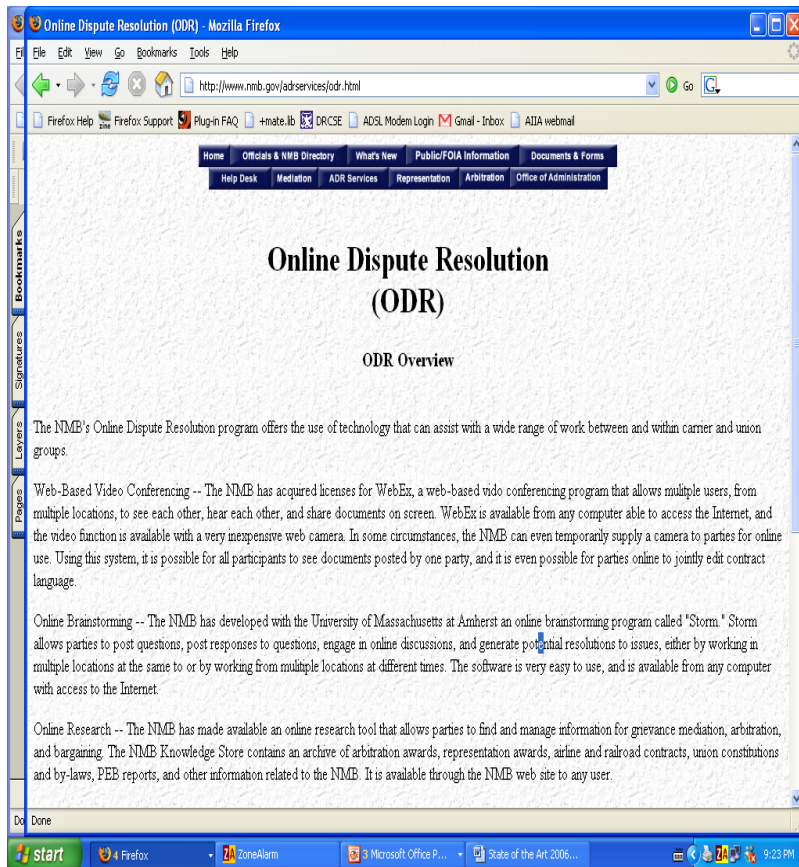
OECD July 2007

- “...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.

Environmental Factors

- Access to Justice
- eCommerce
- OECD – UN
- Improved technology

Improved Technology



National Mediation Board

- Videoconferencing
- Online brainstorming
- Research database

Conflictlab

- Visual elements
- Real time and delayed communication

Environmental Factors

- Access to Justice
- eCommerce
- OECD – UN
- Improved technology
- Private ordering of affairs – extra-national
 - Uniform Domain Name Resolution Policy

Environmental Factors

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

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

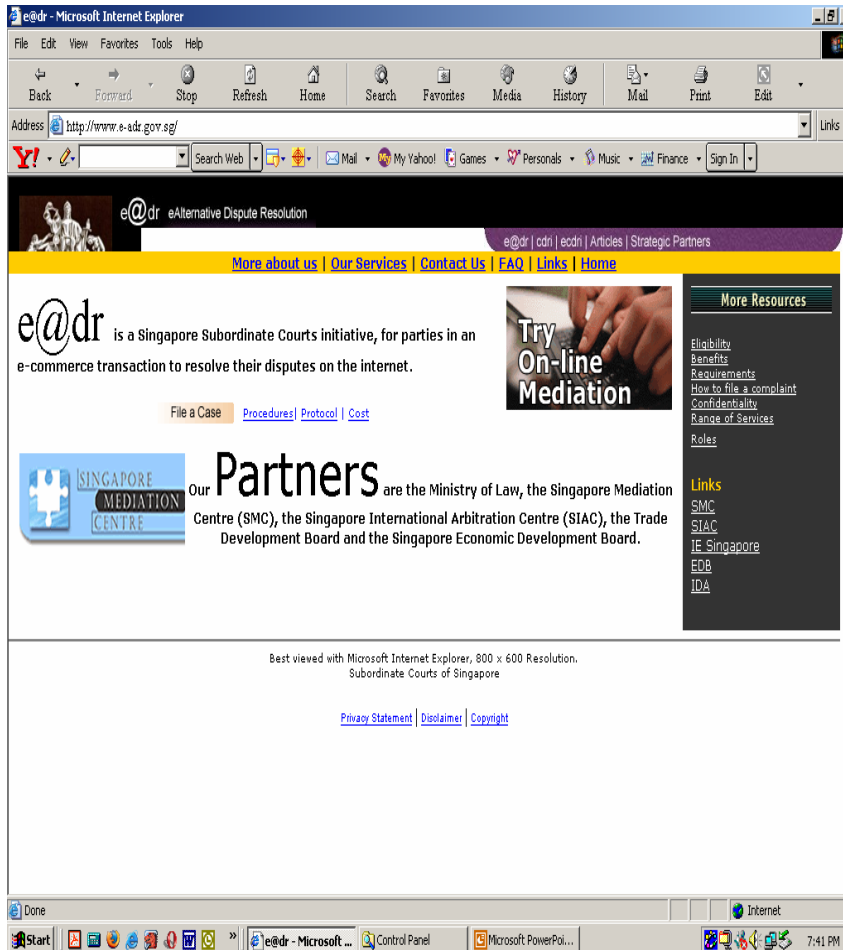
Reasons for Non-Adoption

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

Environmental Factors

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

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 Risk

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

Office of the Ombudsman

- The ICANN Ombudsman is:
 - Independent, impartial, neutral;
 - A reviewer of facts;
 - An investigator of complaints about unfairness;
 - An ADR practitioner.

Ombudsman Value Statement

The Values of this Office are:

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

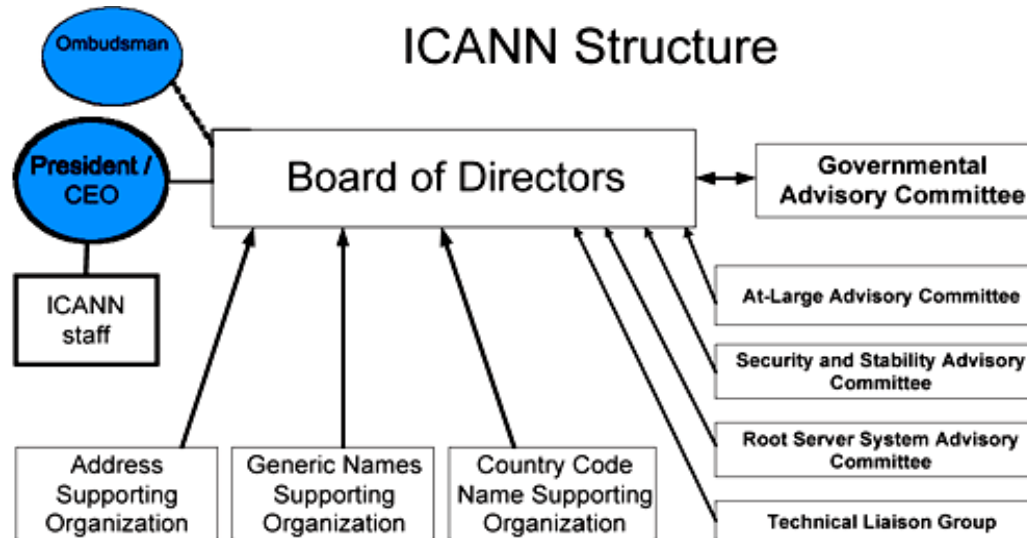
ICANN Office of the Ombudsman

- Ombudsman's jurisdiction as defined by Bylaw V relates to actions, decisions, or inactions by ICANN staff, board, or supporting structures.
- Ombudsman's latent role is to provide a single portal for all consumer issues brought to his attention.

ICANN Office of the Ombudsman

- ICANN Ombudsman
 - Appointed as of November 1, 2004;
 - Frank Fowlie, of Canada;
 - Takes authority from Bylaw V;
 - Sole practitioner office.

ICANN Office of the Ombudsman

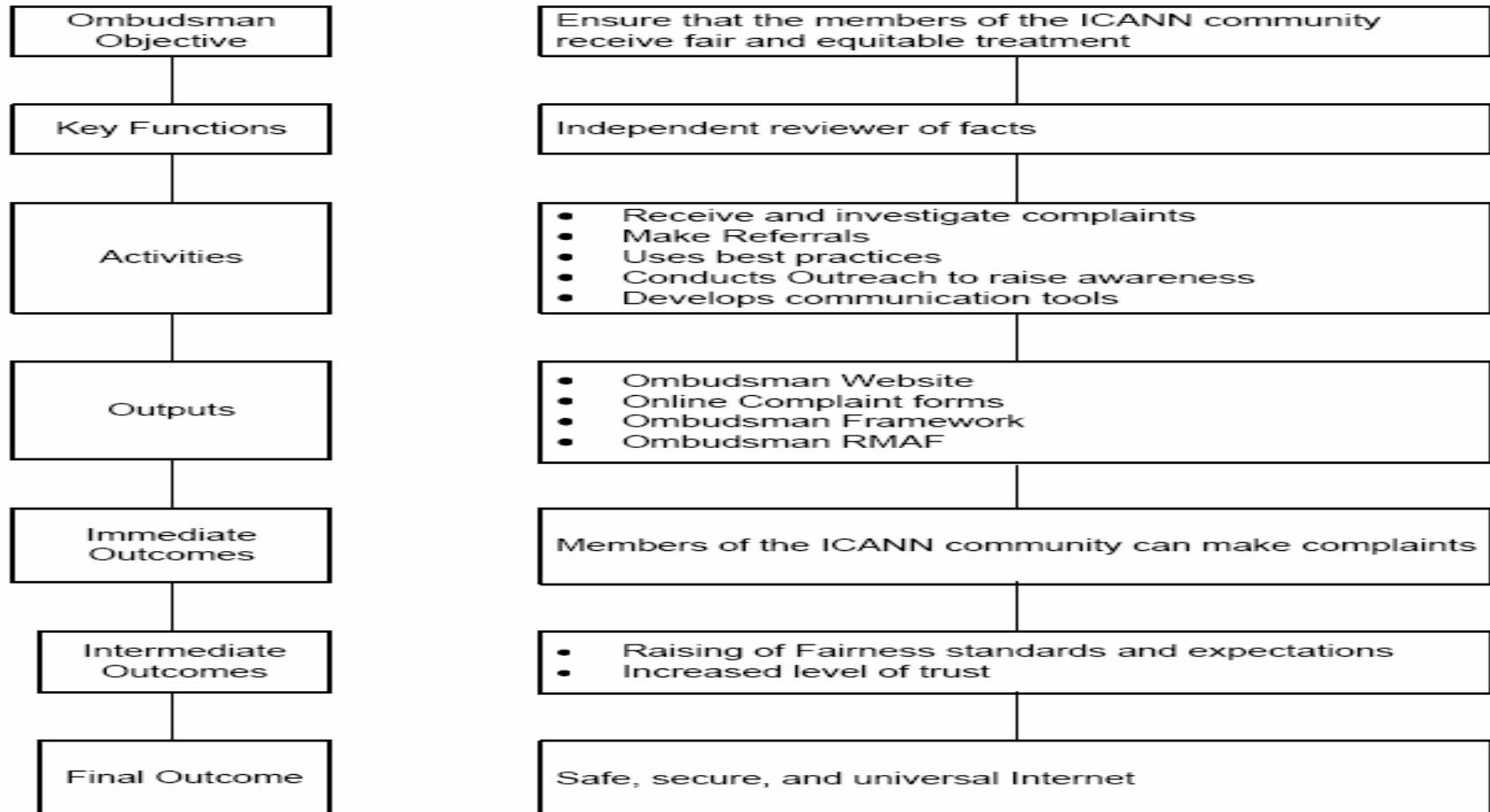


ICANN Office of the Ombudsman

Logic Model

- Activities, outputs and outcomes
- Relationship between the Office of the Ombudsman activities and ICANN final outcomes.

Logic Model



Office of the Ombudsman Website

- <http://www.icannombudsman.org>
- Key elements:
 - Complaint form
 - Ombudsman Framework
 - RMAF
 - News – Speeches
 - Self help FAQs
 - Direct Mail contact

Ombudsman Framework

- Introduction
- Jurisdiction
- Powers
- Confidentiality
- Receiving a complaint
- Procedure after review

Office of the Ombudsman

- Questions?

Office of the Ombudsman

- Thank you
- Merci Beaucoup

How to contact the Ombudsman

Frank Fowlie, MACAM
Ombudsman

The Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey
California, USA, 90292

tel: +1-310-823-9358

fax: +1-310-823-8649

ombudsman@icann.org

www.icann.org/ombudsman/

Acknowledgements:

- Melissa Conley Tyler
Senior Fellow, Faculty
of Law, University of
Melbourne
- Colin Rule
Director, Online
Dispute Resolution
eBay/PayPal

Thank you

- Questions?
- Links:
- www.icannombudsman.org
- <http://igf2008.in/>
- <http://www.wgig.org/>
- <http://www.itu.int/wsis/basic/about.html>
- <http://www.intgovforum.org/>
- <http://www.diplomacy.edu>
- <http://www.icann.org/dndr/udrp/policy.htm>