

Fourth Annual European Internet
Domain Name Summit

Remarks by:
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Mr. Chairman, fellow panellists, colleagues all. It is a great pleasure for me to be here this afternoon in my capacity as the ICANN Ombudsman to speak with you about this very interesting subject of conflict resolution on the internet, as it is not only my vocation, it is something that I have become quite interested in from an academic standpoint as well.

But, before I begin, I would like to say that if you have any questions I would be more than happy to take them in French or English. As an Anglophone who learned Montreal style French as a police officer, I do speak French, but just not with the linguistic beauty required in the home of Moliere.

In this discussion this afternoon I see five themes, or roles emerging for the good offices of an independent neutral party in dealing with conflicts between other parties. I propose to go through them briefly.

First, as this session is entitled, there may be judges on the net. Their work may be described as having two parties who present their mutual cases in a conflict; and the judge makes a decision, based on the evidence presented, of who is right, and who is wrong. While this is the most decisive and formal role, it is also the least flexible in its approach.

Second, and also as this session is entitled, there may be mediators on the net. People in conflict with another party may come to them and say, “Can you help me to negotiate with the person I am in conflict with?” The mediator is somewhat passive in the process, in that they are uniquely a conduit for the flow of communication between the parties, and not at all a protagonist.

Third there is the role of conflict manager. This role kicks in when one party says that there is a problem, and requests the neutral third to assist in keeping issue from escalating. The question posed might be,

“Look, we have a relationship, and there is a problem, we want you to help us manage before it gets worse.”

Fourth, there is the thematic of conflict resolver. The conflict resolver takes on his role when the parties say, “We were not able to manage the conflicts between us, or did not come to you in time to manage those conflicts, and there has now been a meaningful change to our relationship which we need the help of a third party to resolve.” This optic may not be held by both parties simultaneously. For example, my bank may think it is managing an issue when it overdraws my account because it is a big institution, and this is a frequent occurrence that they hear about, but to me it is a conflict that needs to be resolved, rather than be managed because there has been a fundamental change in our relationship.

Finally, there is the role of the internet based Ombudsman, not the Ombudsman for the Internet, but Ombuds who are practitioners on the net. In this

final scenario the parties would come to the Ombudsman and say, “We have a conflict between us because one party feels unfairly treated by the other. Can you work with us, evaluate this situation, and if one of us was treated unfairly, can you help us work out a solution that we all can work with and that is fair?”

In my role as the ICANN Ombudsman, I work in these latter three areas: those of conflict manager, conflict resolver, and Ombudsman.

Consumers contact me to preserve a relationship with ICANN; to fix problems; and to ensure that they have been fairly treated by the organization.

This is a powerful, and I must say, very interesting environment to conduct the work of Ombudsmanship in. In well over 1000 contacts from the community, virtually all contacts have been managed by email. In dealing with my Ombudsman colleagues, I am

presently unaware of any other Ombudsman whose main point of contact is electronic, as opposed to in person or by telephone.

In order to facilitate this contact, my Office has put up a webpage with an online complaint form, which can be completed in the complainant's language of choice. My Ombudsman framework, which is the operational document for my Office, is available on the same site in 6 languages. There is also an email contact, which provides a direct email link to me.

There are some obvious advantages to dealing with conflict, and conducting Ombudsmanship in this manner, especially as a sole practitioner. First, consumers have universal access. Any one, from any time zone can make a complaint or correspond with me at any time of the day or night. Second, I am able to have permanent record of the complaint or correspondence, and this makes it easy to either

reflect upon that information later on, or use it in my investigations within ICANN.

Third, and very importantly, as a sole practitioner, who travels frequently, my client group and I are always able to be in touch. Thus, I am not limited to the traditional definitions of office hours or location.

There are, however, some drawbacks from conducting Ombudsmanship over the Internet, but none of these drawbacks are insurmountable.

The three drawbacks that I see are all related to communication, and the practitioner's ability to use his or her own personality, skill, and intuition to work with these.

The first disadvantage is that most communication, as we know, is non verbal. Dealing with a complainant in a completely email driven environment, with no face to face contact eliminates this important element.

With body language we can intuit anger, fear, truth, deception, humour, etc. Of course, the advantage is that as a neutral party, we cannot be influenced by these in the negative sense either by over-relying on the implicit, rather than the explicit messaging.

The second drawback is the use of language and its interpretation. People have a tendency to speak much more about a subject than they do to write about it. There is a whole science around written statement analysis. The use of language and its meaning changes in context with use and in cultural context. Does the skilled practitioner know if the writer is being funny, sarcastic, overly familiar, or expressing anger? The same set of words from different writers could have different contexts and meanings, as could the same words from the same writer in different times, and under different circumstances.

Finally, in the most inclusive sense, an Internet based Ombudsman faces a disadvantage if he or she lacks the insight to realize that different cultures approach dispute resolution in different ways. I have seen some very in your face approaches to issues that, by any reasonable standards, were minimal in nature. On the other hand, because of cultural mores, I have also seen other conflicts where there have been much more serious issues to deal with, but where the complainant did not push the substantive issue, and was more interested in developing a relationship of trust with me as a practitioner first.

In different cultures from different complainants, these same issues would likely have been brought to me in different manners. The challenge for the skilled practitioner in respecting a diverse, multicultural world is to understand that those differences exist, and not to impose any “self” related resolution paradigms as a starting point.

My belief is that using an online neutral third party is a type of conflict resolution which will provide good service to a wide range of consumer centric organizations in years to come. It is practical, fluid, responsive, and cost-effective.

Mr. Chairman, with your permission, I would like to spend a few minutes talking about the ICANN Ombudsman's Office.

I was appointed Ombudsman in November 2004, and my key function is to ensure that members of the ICANN community have an independent, neutral, and confidential source to turn to if they feel they have been treated unfairly.

My approach in establishing the Office has been to try to get the fundamentals right, so that, over time, the emphasis can be spent on doing what I see are the core functions of this job: to receive and investigate

complaints; to make referrals; to use best practices in Ombudsmanship; to conduct Outreach in order to raise awareness of the Ombudsman function in the ICANN community; and to develop and use appropriate communications tools.

Behind me you can see the value statement of the Office of the Ombudsman. These are the core values of my Office. They are on the webpage, and on every email that sent from my Office, and are a public and transparent pronouncement of how I intend to conduct the business of Ombudsmanship. The Ombudsman is committed to recognizing and respecting the diversity of the ICANN community; to achieving excellence in Ombudsmanship, not simply in the standards of service provided to the community, but in

comparison to the Ombudsman universe; to exhibit the highest standards of professionalism, towards individuals contacting the Ombudsman, ICANN, the board, and the community at large; to conduct ADR processes privately and confidentially; to be seen as having no bias to any party nor any predisposition to any outcome of a complaint; and finally, to be regarded by all parties, the community, staff, the board, and myself, as an independent officer, remote from the day to day activities of ICANN.

Mr. Chairman, at the ICANN meetings in Luxembourg, I will present the Board of Directors and the community with my first annual report, which will also be available on the website in several languages, for those of you not attending the meetings. I hope

that you will take the time to read this interesting and important document.

Thank you very much for the opportunity to be with you this afternoon.

In closing may I wish you all a Happy Canada Day!!!

Bonne Fete Canada!!