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ICANN Ombudsman

Remarks at Capetown Formal Introduction by Board

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Check against delivery

Mr. Chairman Vint Cerf, Mr. President Paul Twomey, members of the Board of Directors and Liaisons, esteemed members of the ICANN community, ICANN staff, ladies, and gentlemen, thank you for your warm welcome here this afternoon.

Before I begin my remarks, I would like to thank Alejandro for his kind introduction, gracias.

It is a very great pleasure for me to be at the public forum to address the ICANN community, and I cannot think of a more appropriate venue for the Office of the Ombudsman to be introduced to you.

I would like to preface my remarks by taking a moment to thank the board for the confidence that they have placed in me by making me the first ICANN Ombudsman. I will do my level best to discharge my duties with independence, and fairness. Certainly my successor, and hopefully that will be many years from now, will have a much different set of challenges, as systems, protocols, relationships, procedures, and most importantly, the expectations for the Office of the Ombudsman will have been established, but for me, the next several months, and years will be a time of creativity, consultation, testing, action, and adaptation.

My challenge will be to take a set of fundamental principles, as described in the ICANN Bylaws, and bring them into a vibrant working framework which

serves and reacts to the needs of the community; the interests of the parties; the authorities set out by the bylaws; and which takes into account the capacities of a sole Ombudsman to meet the volumes and complexities of the issues.

So, just how will a single practitioner office meet these challenges?

First, a little bit of information about me, and my skill set to be able to do the job. Not to take the wind out of the sails of the bloggers who have already been researching me on the internet, but it is fair to give the community some transparent view of who I am.

Firstly, I am Canadian, and presently live in Ottawa. I grew up and was educated in central Canada where I obtained my first undergrad degree in Political Science, before joining the Royal Canadian Mounted Police, where I served on the Montreal Drug Squad and as an investigator in Western Canada.

I went into government service in the late 80's, and completed a second undergrad degree in Human Justice. I spent several years working for a provincial Ombudsman in Canada, before my wife and I went to East Timor as part of the United Nations Mission Staff. This is where I first learned about ICANN as my wife attended the Melbourne conference in her capacity as the head of the East Timor Transitional

Administration's IT Unit, along with a Timorese colleague.

On our return to Canada, I was appointed as the Senior Advisor to the Commissioner of a small federal agency that concerned itself with consumer protection. In that role I helped to implement a new set of reforms to federal banking laws designed to improved the balance of power between consumers and oligarptic financial institutions. These especially included laws relating to disclosure, corporate social responsibility, and access to basic banking services. Along the way I finished a Master of Arts in Conflict Analysis and Management.

In each of these roles I have had the opportunity to work with and develop skills in conflict management, alternative dispute resolution techniques, negotiation, mediation, etc.

The Office of the Ombudsman

The ICANN Ombudsman is an Executive Ombudsman, which is to say that the Ombudsman is an independent officer who receives powers from the bylaws. It most closely resembles a classical Ombudsman, which one would find in a governmental setting.

I am responsible for a mandate which is established for me in the Bylaws. I have no direct

reporting relationships with ICANN staff, and I must produce an annual report of my activities to the Board of Directors. These are all analogous with a classical Ombudsman. I have been hired on a fixed term, and cannot be removed from office except by a resolution of the board, and one would assume that a non-renewal or dismissal other than for non-performance of duties or incompetence would attract criticism from the ICANN community. Again, this is similar to a classical Ombudsman and this public check and balance helps to ensure the independence of the ICANN Ombudsman in the performance of his duties.

By Bylaw, my budget is self determined, and is sanctioned by the Board of Directors, ensuring that there are adequate resources available for me, so that

I, as an independent officer, can meet the operational and structural goals necessary to discharge my obligations under Bylaw 5. Once again, this budgeting process, separate and apart from the ICANN administration, provides the independence required by my office.

My primary work site will not be located with ICANN's, although there will be frequent contact with both the Marina Del Rey and Brussels offices to access staff and files relating to issues under my jurisdiction. This will also apply to all other ICANN offices as they open across the globe. This physical separation further demonstrates my independence.

While I have been on the job for exactly a month, and a week of that time has been devoted to travel to this lovely place, my office has made headway in several key areas, including:

- completing a draft budget with considerable research into the factors;
- writing a draft “Ombudsman Framework” which has been posted to the ICANN website for public comment;
- actively searching for case management software;
- Planning for an Ombudsman website, which will be a key component of reaching and interacting the Community; and,
- Planning for a web-based complaint taking system.

My perceptions of an effective Ombudsman's Office

In my view, the role of the Ombudsman is to act as a professional, neutral, independent fact-finder, and, if possible, to attempt to draw parties to reasonable, mutual resolution of complaints. From time to time, in the finding of those facts, the Ombudsman may discover that there have been errors, omissions, or activities which require further work by both the Ombudsman and ICANN.

The Ombudsman is not a judicial authority. The Ombudsman, by himself, cannot reverse, change, or set aside a decision, or action of the ICANN staff or Board. But, the Ombudsman does practice ADR to

resolve complaints, and where in the course of my investigations I feel that there is an issue of administrative unfairness; or a procedure, policy, or decision of ICANN which cannot be resolved by the normal ADR process, I have the power to make recommendations to the Board of Directors. This power of making recommendations is the same power given to classical Ombudsmen in governmental settings.

It is a traditional view of Ombudsmanship, and I agree with it, that the role of Ombudsman is to deal with issues when all other normal administrative avenues have been exhausted. In my mind managers have the responsibility to manage, and committees and supporting organizations have the

responsibility of recognizing varying points of view in the conduct of their work. Once issues have come to an end process and a party still feels aggrieved, this is the appropriate time for the Ombudsman to become involved.

Alternative Dispute Resolution, as practiced by the Office of the Ombudsman, is the use of any number of techniques, outside of formal review processes found in the Bylaws, or the courts, which attempt to resolve a matter between a member of the community and ICANN.

ADR requires the participation of two willing parties. I believe that ICANN has taken a firm and

positive step by developing and staffing the Office of the Ombudsman.

ADR will fail if:

- the issue being discussed is trivial, vexatious, or made in bad faith;
- it is not used as a serious alternative to the courts or other mechanisms; or
- The disputes between the parties and ICANN or their positions are intractable.

Ombudsmanship will work if:

- the complaint has meaning;
- there is a potential solution to the issue;
- the parties have a genuine interest in an informal process; and

- The parties are willing to be open, flexible, and respectful towards each other and the process.

Based on my observations over the past month, I have the impression that the ICANN staff are more than willing to participate in these last two points, that is, they have an interest and are willing to engage in informal dispute resolution processes.

As a result, Ombudsmanship, in the ICANN setting, can produce timely, appropriate, creative, cost-effective, and lasting solutions to problems.

To come back to my earlier question of how a single practitioner office shall meet the challenges and expectations of the duties required by the ICANN

Bylaws, I as the Ombudsman will look forward to doing the following in the short and medium term:

- relying on my past experience to give me guidance in establishing the office;
- setting standards of independence, impartiality, and fairness;
- developing transparent tools early on, such as a website and an operational framework;
- employing appropriate case management and complaint taking systems;
- setting standards of practice equal to my peers in the Ombudsman field; and
- by being accessible to the ICANN community, Board, Liaisons, and staff as a resource for preventative Ombudsmanship and Outreach.

A wise gentleman once told me that when it comes to public speaking there are three things to remember: stand up to be seen, speak up to be heard, and sit down to be appreciated. Mr. Chairman, I think it's time for the ICANN community to start appreciating me.

Thank you very much for your attention. I look forward to serving ICANN and the ICANN community as your Ombudsman. I wish you well with the remainder of conference. Merci beaucoup.