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Office of the Ombudsman

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Mr. Chairman, Vint Cerf, 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 morning. Bonjour, et merci beaucoup pour votre chaleureuse accueil.

It is a very great pleasure for me to be here this morning to bring you this update on the Office of the Ombudsman and its activities.

Mr. Chairman, as is required by Section 5 of Bylaw V, I am pleased to present to you, and through you to the members of the board and liaisons, and finally to the ICANN community as a whole, the inaugural Annual Report of the Office of the Ombudsman.

Here, at the Public Forum in Luxembourg, the report is available in print in English, French and German. A Spanish translation will be completed shortly, and the annual report will be available at the Ombudsman website as a .pdf in four languages.

Mr. Chairman, without having to revert to a large number of power point slides, as everyone in the room should have a hard copy of the report in the language of their choice, and these contain all of the relevant tables, I would like to take just a moment or two to go over a few pertinent numbers.

As one of my favourite writers, Mark Twain once said, “There are lies, damned lies, and statistics”. Thus, I thought I would include a few statistics in my presentation today.

The Office of the Ombudsman received and responded to a total of 979 contacts from December 2004 to June 30, 2005. The astute observers in the crowd will have already noticed that this is not quite an annual report based on a full year’s work, but rather, this year, it is tied from the opening of the office to the close of the fiscal year. Henceforth all annual reports from this Office will follow the fiscal year of July 1 to June 30.

Of these contacts, 850 were related to a recent letter writing campaign that dealt more with content on the web than any action taken by ICANN. However, each required individual complaint handling, and a separate reply.

Concerning the 129 contacts truly generated by, and within the ICANN community you will find a number of charts within the annual report which breaks them down by geographic origin, month, issue type, and resolution.

There were 22 complaints which fell into my jurisdiction during this period. That is to say that they dealt with an act, decision, or inaction by the ICANN staff, board, or supporting organizations.

Of these jurisdictional issues there was a successful resolution in six cases; systems improvement recommended in two; in two matters a referral was made to other areas of the organization; in a single case the contact was managed by providing the caller with self help information; there were four contacts where after an initial investigation, no further action was required; in three cases I declined jurisdiction after a preliminary review, two cases were unfounded; two were withdrawn; and one was abandoned.

Mr. Chairman, I am pleased to report that this Office has received contacts from all parts of the world, although there is a density of contacts from the United States.

In order to help raise the awareness of the Office of the Ombudsman across the ICANN community, I have included Outreach as a key element in the Office's activities. It is also important to me that the ICANN Office of the Ombudsman be seen not only as a peer in the Ombudsman community, but also a centre of excellence in the delivery of online Ombudsman services. As a centre of excellence, I am happy to report to you that the Ombudsman Framework is now available on the Ombudsman website in six languages.

In the annual report you will find my update on Outreach and Peer Activities.

Mr. Chairman, if you will permit me a moment of two, I would like to give you a bit of an overview of Online ADR in the ICANN context.

In dealing with my Ombudsman colleagues, I am presently unaware of any other Ombudsman whose main point of contact is email, as opposed to in person or by telephone.

There are some obvious advantages to dealing with conflict, and conducting Ombudsmanship primarily through email, 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 four 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, I 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.

Third, there is the question of general literacy levels. While dealing with the wider community, the skilled practitioner must be ever cognizant of the fact that the written language and explanations used have to be understandable and meaningful to the reader.

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 Ombudsman as an online neutral third party is a type of conflict resolution which will provide good service to a wide range of community based or consumer centric organizations in years to come. It is practical, fluid, responsive, and cost-effective.

Mr. Chairman, that concludes my report. Thank you for the opportunity to address the Public Forum this morning.

Thank you, merci beaucoup pour votre attention.