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Office of the Ombudsman

Remarks at Sao Paulo Public Forum

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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 afternoon.

Mr. Chairman, I have a number of items that I would like to share with you this afternoon. First, as required by Section 5 of Bylaw V, I am pleased to present you with the Second Annual Report for the Office of the Ombudsman. The report will be online at the Ombudsman website, in a multilingual format.

As the report has the full range of statistics for the 2005 – 2006 fiscal year, I will not reiterate them with the usual presentation on file activity with the Office.

Suffice it to say that in the first five months of this fiscal year that the file volume and intakes are similar to last year's.

Secondly, in the months since we last met in Marrakesh, I have completed three evaluation studies for my Office. The first was a longitudinal comparison between the ICANN Office of the Ombudsman, and three other Ombudsman's Office. While it may be a matter of trying to compare similar but different operations, the common theme is that that ICANN Office of the Ombudsman in an efficient manner in terms of the volume of files handled, cost per file, and overall cost.

The second evaluation study was a literature based review. In this exercise I used three seminal documents in the Ombudsman literature, and was able to develop a list of 54 criteria. These criteria were applied in an evaluation of the structure, function, and operation of my Office.

The evaluation report on these criteria was then given to an independent, outside evaluator with expertise in Ombudsmanship. This arm's length review included fact checking, and comparison with standards in the field.

I would like to quote from Mr. Zinsser's report to ICANN: ...the ICANN Office of the Ombudsman has developed and initiated the single most complete,

deliberate, and meaningful assessment process deployed in the ombuds field to date. This process allows the Office to accurately declare it is structured to, and appears to function as, an ideal executive ombuds on behalf of the ICANN regulated community.

The third evaluation study involved conducting a client survey of people who have contacted the Office of the Ombudsman since its inception.

This survey revealed important information about the relationship between the Office and its clients, and has provided some guidance in areas where improvements may be made in the future.

One of these improvements is the re-launch of better organized and more user friendly Ombudsman website. This has been accomplished, and the site can be found at www.icannombudsman.org.

One trend which did surface, and which I have been able to illustrate with the following table, is the descending level of satisfaction that occurs when the complaint is least related to my jurisdiction, and when the outcome least favours the complainant.

This research is the first of its kind, and I have provided a paper on the matter to the Editorial Board of the International Ombudsman Institute for publication in its annual Yearbook.

What I can gather from these phenomena is that even if my Office provides appropriate referrals or self help information to a complainant, unless the activity undertaken in that subsequent step resolves the matter, the client will have a lower level of satisfaction than one would expect. For example, if someone contacted my Office about their inability to contact or elicit a response from their registrar, which is a common complaint, my tried and true response would be to write back to that person, and at the same time refer the matter to the Office of the Registrar Liaison Manager. He would, in turn, contact the Registrar, and inform them of the issue. If, at that point the registrar does not contact the consumer, or does not resolve the matter to the consumer's satisfaction, the

survey indicates that the consumer would feel dissatisfied with my Office.

Interestingly, the survey also indicates that consumers seem to understand that my Office has no jurisdiction over registrars.

On the other hand, the survey also shows high levels of client satisfaction when issue falls within my jurisdiction, and when there is a positive outcome.

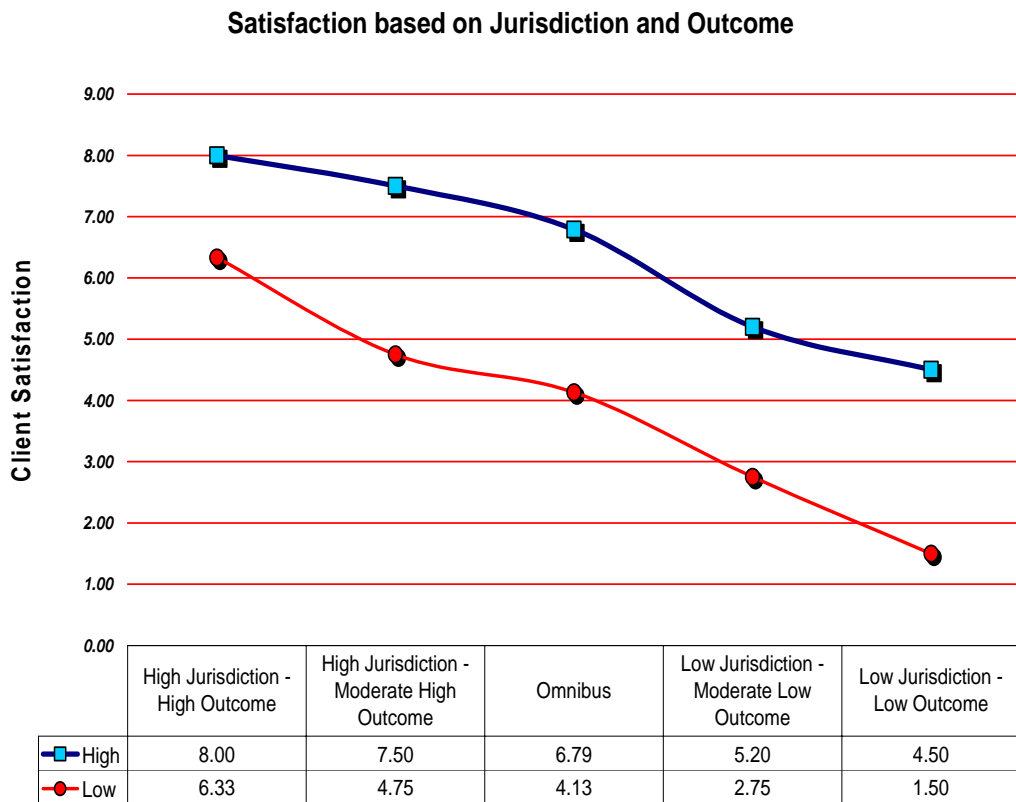


Figure 1

Figure 1 illustrates client satisfaction based on meeting expectations as per survey Question Five. The High Jurisdiction – High Outcome (ICANN act, decision, in action which was resolved) the satisfaction range is higher and tighter than the Low Jurisdiction – Low Outcome (registrar or domain name – complaint declined).

Mr. Chairman, reflecting on these three reports, I think that it is fair to say that a few observations apply.

First, I think that the ICANN community, board, and staff “got it right” with the model for the Office of the Ombudsman that was developed. The processes, structures and operations of the Office mean that the community is served by an effective and cost efficient alternative dispute resolution system. Second, the operations of this Office set ICANN as a leader in the field of Ombudsmanship. Finally, there remains work to be done to properly inform consumers about the function of the Office so that they have a reasonable expectation of its jurisdiction and the actions it can take.

All of three reports, and Mr. Zinsser's analysis can be found on the Ombudsman webpage, and I would encourage participants to read these whenever they are in need of something to help them sleep.

Mr. Chairman, the third item I would like to draw to your attention is the need for the organization to be responsive to recommendations made from my Office. Last November I made recommendations with respect to a complaint that had been received by me in September. These recommendations included the taking of several steps by the organization and one of the supporting structures.

In September of this year, having had no confirmation that my recommendations had been implemented,

refused, or improved upon, I made the decision to use my power of publication to place the report on the Ombudsman website for community access. Mr. Chairman, I must tell you that this was an unusual step for me to take. It is the first time that I have used this power. However, for an alternative dispute resolution system to be effective, the loop has to be closed, and in this case, it hadn't been.

I can report that there was movement on the recommendations I had made, and that substantive discussions did take place within the supporting organization. I am now satisfied that my recommendations have been implemented, and that the systemic issues have been resolved, if the

supporting organization administers these recommendations diligently.

Mr. Chairman, as is usual in my presentations, I would like to spend a couple of minutes talking about one of the principles of Ombudsmanship. Today, it would seem appropriate to talk about the Ombudsman's power to report and to publicize.

Section Four of Bylaw Five contains the following clause:

The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman, in his or her sole discretion, that it would be inappropriate, such reports shall be posted on the Website.

There seems to be two ways in which Ombudsmen approach this power of being able to publicize reports.

First is philosophy that Ombudsmen frequently conduct investigations in the public eye. These investigations often include seeking permission of the complainant to use their names in the public reporting to add a human face to the administrative malaise.

Some Ombudsmen make press releases when they decide make an investigation into a complaint. Here are some recent examples of media clippings which demonstrate an Ombudsman's power to publicize:

- Increased lottery security won't dispel fears of retailer fraud: ombudsman;
- Ombudsman issues scathing report on property taxes in Spring 2006 and recent poll finds 31 percent of voters see tax assessment as unfair;
- Ombudsman to investigate crime compensation board.

The other approach, and the one to which I subscribe, for this organization, and for this time, is to use the power of publication as a judicious means to create moral suasion to effect positive change in administrative policy or decision making. Lincoln, I believe, once said that government should be like your stomach, you should only hear from it when something is wrong. I think that one could say the same thing about the Ombudsman.

United States Supreme Court Justice Louis Brandeis has said “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”

Using the power of publication as I have recently done has allowed me to steward the implementation of a process improvement, and, importantly to demonstrate the value of my Office in resolving disputes. A matter that is resolved through these means might have just as easily have been the subject of protracted and expensive litigation for both ICANN and the consumer. Using ADR techniques, and where useful and appropriate the power to publicize, a matter may be resolved in a cost efficient, somewhat timely manner, and often while preserving the relationship between the parties.

That concludes my report. Thank you for the opportunity to address the Public Forum this afternoon.