

Frank Fowlie

Office of the Ombudsman

Remarks at Vancouver Public Forum

December 3, 2005

Check against delivery

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
reception here this morning.

Welcome to Vancouver, welcome to Canada,
welcome to my home!

Bienvenue a Vancouver, Bienvenue au Canada,
bienvenue chez nous!

Before I begin with my comments Mr. Chairman, I
would like to take just a moment or two to address a
few words to our hosts; Leading Edge BC and Circle
ID. As a British Columbian, I want to express the
thanks of your local and Canadian colleagues for

putting together such a fantastic conference for ICANN. You have done us all proud, and we are grateful to you for your leadership.

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

I want to begin by letting you know that since we last met in Luxembourg in the summer, this Office has been very busy. I view the work of the Office of the Ombudsman as having three main pillars: the reception and handling of complaints; Outreach; and peers activities. This could be summarized as doing the work, talking to people about the work, and

touching base with colleagues to make sure I'm doing the work in the best possible way.

With respect to doing the work, in this calendar year, I have reviewed 1648 files. Of these, a large number concerned an email campaign which was unrelated to ICANN's activity, and which were all closed as non-jurisdictional. Apart from this number there have been, to November 30, 2005, 307 contacts. The slide shows the complaint intakes over the first 11 months of 2005.

You will note that over the last two months there has been a marked growth in the number of complaints.

My analysis would be that this growth can be directly attributed to placing a link to the Ombudsman page

on the ICANN main page in mid-October. This growth has not, however, lead to an increase in complaints over which I have jurisdiction, which is to attempt to resolve complaints relating to fairness of actions, decisions, or inactions by the Board, staff, or supporting organizations. Last month, I received 85 complaints, of which three were within my mandate.

Reviewing these non-jurisdictional intakes, there are some themes which can be found. Some correspondents have reached out to the Office of the Ombudsman looking for some general assistance on an issue; second, others had a specific problem, and only stumbled into the Ombudsman site because it seemed to be the most logical place for them to complain; still others had a specific internet related

problem, but had been unable to resolve it elsewhere, or find someone to listen to them, and believed that this then became part of my jurisdiction.

My goal in handling these non jurisdictional intakes is to reduce the consumer's frustration by providing adequate self help information, or by a referral. I must underline the assistance of the Registrar Liaison Team of Tim Cole and Mike Zupke, who have handled a large number of registrant and registrar issues.

In order to provide these consumers with more accessible and relevant information, we have recently updated the Ombudsman web site to more accurately reflect the nature of the questions posed, and to help

them determine more options before filling out a complaint form.

I must also note that with the tens of thousands of domain name transactions that occur on a daily basis, I am impressed that so few registrants actually end up coming to my Office, even if it does not have jurisdiction, and I am also very pleased by the level of cooperation demonstrated by registrars in dealing with issues referred by them.

Mr. Chairman, of course, the more visible and accessible the dispute resolution systems or customer service contacts, the less often consumers will find it necessary to bring questions to my Office. In this light, I am pleased to note that the sTLD application

from ICM Registry contains a provision for an Ombudsman.

This second chart shows the distribution of intakes by country. In 2005, I have received intakes from 35 countries, with the majority coming from the United States, followed by the United Kingdom, Canada, and Australia. I am not overly confident that I can explain why the major complaining nations are English speaking, common-law states, but it does speak to me of the continued necessity to conduct outreach activities to raise awareness of the Office of the Ombudsman. For the members of the community in the forum, please always bear in mind that Office of the Ombudsman is an available resource, and please convey that message in your homelands.

This chart shows the distribution of intakes by subject matter, and the large number of files classed as “Other” reflects my earlier comments. You will note that there also a high volume of contacts concerning transfer issue. Finally, there are 34 jurisdictional files, or about 11% of the total.

This chart shows the closing categories for files. You will obviously note the volume of files closed through a referral or by providing self help information relating to general service issues.. The category, “No further action required”, indicates that after an initial fact finding review that the services of the Ombudsman were no longer required.

This final chart show the complaint closing for files relating to actions, decisions, or inactions by ICANN staff, the Board, or supporting organizations. I am pleased that the most populated category is that of having resolved the issue. This could have only been accomplished because both the complainant and ICANN were willing participants in the process. I remain confident that ICANN recognizes the value of, and is committed to the use of Alternative Dispute Resolution.

Mr. Chairman, I would also like to inform you that over the past several months I have conducted a number of orientations for staff, my goal being that all staff members have a good understanding of the Ombuds function, so that they can recognize when it is

appropriate to provide information to a community member who may be in dispute with ICANN.

In the early fall I participated in United States Ombudsman Association annual meeting.

The Office has also made application for membership and certification with the International Ombudsman Institute, an organization normally restricted to governmental Ombudsman. Following discussions with its President at the USOA meeting, we were extended an invitation to apply, based on the principle that the Ombudsman is governed by a statutory-like instrument in the form of the Bylaws, and provides service to the general population. If our application is

accepted, it would make ICANN, I believe, the first corporately based Ombudsman to be so admitted.

As part of continued self evaluation for the Office, I have recently reviewed the Ombudsman Framework, after its first year in operation. I have made a small number of changes to the framework to more accurately reflect the operational aspects of the work. These have been recommended to the Board Governance Committee, and I await their approbation of the changes.

Mr. Chairman, over the course of my presentation I have explained what this Office of the Ombudsman is, and does. I would now like to take a few minutes to describe what an Ombudsman is not. This is as a

result of a small number of communications which indicates that there are some in the community who have expectations for my Office which are not in synch with the Bylaws.

To summarize, the role of the Ombudsman is to use informal processes to resolve complaints concerning ICANN related activities. To quote from the Forum of Canadian Ombudsman:

An ombudsman is an independent, objective investigator of people's complaints against government agencies and other organizations, both public and private sectors. After a fair, thorough review, the ombudsman decides if the complaint is

justified and makes recommendations to the organization in order to resolve the problem.

The Office of the Ombudsman is not that of an Inspector-General, nor of an Auditor General. In this environment, with an engaged, literate, and thoughtful community, the Ombudsman acts upon on the request of the community, about what it feels are important issues, and which need investigation or redress. The Ombudsman, as a sole practitioner, does not engage in routine self generated audits or inspections, but seeks the guidance of the community to know what it thinks are the pressing issues.

I disagree strongly with the following suggestion which one correspondent recently sent to me:

“I think of the job of ICANN's ombudsman like that of a woodsman in the great forests of yore - one could approach the job by cutting the small, easy timber and only when asked to do so in the most precise of terms.

Or one could approach the job like a Paul Bunyon and use self-initiative to find the big trees and deal with them... based on a desire to avoid cutting large, old trees rather than on a desire to avoid using initiative to identify, define, and remedy large, entrenched problems in an organization such as ICANN....”

Mr. Chairman, if you would permit me to continue with this horticulture analogy, I prefer to think of Office of the Ombudsman not as an axe wielding giant, but more as a skilled caretaker in a community orchard.

The Ombuds, unlike the figure portrayed by my correspondent, does not slay trees, but rather, on the advice of the members of the orchard, helps to find the trees which are important to the group, but which require help to grow. By growing with the assistance and advice of the caretaker, the tree creates better value for the community as a whole.

Mr. Chairman, that concludes my report. Thank you for the opportunity to address the Public Forum this morning. May I wish the board, staff, and community nothing but the best of visits while you are in Vancouver.

Thank you, merci beaucoup pour votre attention.