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TORONTO – Ombudsman 101  
Sunday, October 14, 2012 – 11:45 to 12:00  
ICANN - Toronto, Canada

FILIZ YILMAZ: All right. Remember we had to shift in our schedule. We switched Janice to Chris' place and now Chris is back in the room. He resolved his conflict. He's our ombudsman.

He's going to talk about his role within this whole sphere. And how he functions, what he does, and what he doesn't do as well. Please you introduce yourself, Chris, and then I will change your slides, yes.

CHRIS LAHATTE: Is that a PDF or is it a?

FILIZ YILMAZ: It's a PDF. So, you can flip with this.

CHRIS LAHATTE: Yeah, wait, that button there?

FILIZ YILMAZ: Yeah.

CHRIS LAHATTE: Sorry about that.

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*



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And I'll first about me and then about what the ICANN ombudsman does. It's an office that's been around not quite as long as ICANN. It's been around since 2004. I was appointed last year.

And I have a one tenth adjunct who supports me when I'm on holiday or unavailable, Herb Way. I mention him specifically because he's going to be here at the meeting a little bit later today and for a few more days. Thank you.

I need to explain to you what an ombudsman is. An ombudsman is a protector of the people. He's an investigator. And what's important is that he is impartial and neutral and confidential. You'll see as I develop through the slides why you need to have those qualities. And it's important to remember at all times, probably of those the three last features: impartiality, neutrality, and confidentiality are most important.

But it's all summed up in the concept of being a protector of the people. And how do I do that? I investigate complaints. If someone says something is happening within the ICANN community which is unfair, then you can come to me. I'm the reviewer of facts.

What that means is someone says, "This thing has happened to me." And I will look at that and go through the facts, listen to both sides, and try to reach some sort of solution. I do that because I'm what's called an alternative dispute resolution practitioner.

What that means is I am a mediator. A lot of the work which I do is to try and draw parties together to restore communication and to do that



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sort of restorative process that enables us to work better as a community.

I want both parties to leave a process, not necessarily loving each other, but certainly being able to look each other in the eye and be happy with the result.

I'm part of one of three ICANN dispute resolution systems. As well as the ombudsman, we've also a reconsideration committee and an independent review panel. They're more formal processes and not as often used.

To do my work, I have some values. What I do is confidential. And that's incredibly important to the people who come and see me because they often have quite difficult issues. And when they're issues of imbalance of power in particular, you might be scared of the other person. You might be concerned about the impact on you. You might be concerned if you complained your company might get treated badly.

When you come and see me, no one knows anything about the complaint except me and the complainant. When I look at the problem, I'm impartial. I'm not an advocate. It's important to distinguish me from a lawyer.

If you go and see a lawyer, you expect the lawyer to go out there fighting for you and reach a result. You'll be unhappy if the lawyer doesn't approach the problem that way. But that's not what an ombudsman does.



I'm impartial, I don't take sides. I look at the issue. Is this unfair? Has there been some poor behavior? Has someone not been respected appropriately? Is there a diversity issue which needs to be looked at?

And to enable me to do my job, I'm independent. And I'll explain in a slide shortly how that independence is secured within the ICANN community.

Professionalism, I often got o ombudsman training courses to make sure that I'm doing the job according to best international practices. But there are other features. You have to have respect for diversity.

As ICANN is developing into a truly multi-national organization, we have to recognize that there are many, many people with all sorts of different backgrounds and ideas. And we need to learn to respect those and ensure that everybody is communicating correctly and understanding each other.

To do that, one of the core tenants is to have excellence in what we do. There's some boring legal stuff behind this of course. There's a bylaw as part of the ICANN bylaws which says what my powers are.

My jurisdiction is on actions, decisions, or inactions by ICANN staff, board, or supporting structures which is a fairly bland statement. But in fact it encompasses the whole of the ICANN community. And you'd be surprised how wide that is.

When you take it out, you'll recall Rob Hogart's diagram which ultimately went out to all Internet users. And conceivably, that's as far as my jurisdiction may go as well.



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I have some other functions, to provide a place for consumer issues as well within ICANN. And that's often because people don't know where to go to complain. While I might not be able to help, I can certainly tell you where to go.

The other function of an ombudsman within a multi-stakeholder organization is as a symbol of good governance. We've got this amazing and complex structure and community.

We say to the supporters in the community, "And by the way, not only have we got this structure, but we've got someone seated within it who makes sure that you're treated fairly." A symbol of good governance, it's most important.

You've seen this diagram too many times, I think, this morning. But the reason I've got it as a slide is because you can see where the ombudsman fits in at the top. It's on my top left. Because I'm challenged in left/right direction, you might not be able to. It's on my right.

The ombudsman reports directly to the board of directors. I'm not within the staff structure. I'm not within the community. The board can only remove me if I behave extremely badly and then only by a vote of 75%. There's a reason for that.

Because the ombudsman occasionally has to take on some difficult choices and if required, I will criticize the board for something they've done. I'll say, "Hey, this is not done fairly."

If I were within the staff structure, I might be concerned about the effect of such a complaint on my future within the company. But



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because I am independent, that enables me to have that freedom to look at anything without any fear of any reprisal on me. That's also very important.

I want to give you an example of complaints because so far I've just been talking about theory and law and structure. But I've given quite a few examples here. I just want to go through them. The first one, "I was at a meeting and comments were made that were disrespectful and sexist." That could be almost any form of disrespect.

That might sound trivial but to an organization that's dependent on volunteers, we must respect each other. And we must respect the work that each of us does as a volunteer. The last thing we need is to have something happening which is inappropriate.

And so in those circumstances, I can investigate, perhaps draw the parties together, and suggest that there's a better way of doing these things. I can secure an apology, perhaps. There're many things which can be done.

Another example, joining one of the supporting organizations, sometimes they might not want you in their club and occasionally I get asked to investigate how to resolve that problem.

Again, I would start by trying to establish communication between the parties, get them talking. You'll often find that sometimes they've been talked completely at cross purposes. Once you start to draw them together you find that they're not in fact talking about different things at all.



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So that's another example where I can help where there has been unfairness. You might want to say that a policy that has been adopted is unfair to a group or to your country or to your gender, or something like this.

Again, I can be asked to investigate that sort of issue. A delay in refunding money, that's one that's happened a little bit. Again, that's the sort of issue I can look at. Has someone not been performing as well as they might? That's actually a pretty rare situation.

The other thing that I can do is what's called own motion investigations. That is, if I decide myself there is something which needs to be looked at. I can go to the board and say, "There is a problem which I need to investigate."

They would normally agree and I would conduct my own investigation without necessarily having a complainant. That's to give me that additional power to look at any systemic problems which might emerge.

Some things I can't do, I can't look at internal administrative matters. If someone is complaining that they haven't had their laptop replaced recently, I can't look at that sort of issue.

I can't look at personnel issues. If someone feels that they're being treated badly within the ICANN staff, I'm not allowed to look at that. I can't look at issues relating to membership on the board or look at vendor and supplier relationships, and the last one of course because that's a legal matter anyway.

So how does it work? A complaint comes in. I decide if I've got jurisdiction to deal with it. Sometimes no and I'll advise the parties and



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say, “I’m sorry. I don’t have the power to deal with this. But here’s where you could go. Maybe you should go and see your lawyer. Maybe you should refer this to contractual compliance.”

But if I do have jurisdiction, I open a file. I start an investigation. The first step, of course, is to say, “Does this complaint have any foundation?” if it does, I’ll explore mediation and other forms of dispute resolution.

Hopefully, I’ll get down to the “problems resolved with parties” box, which is my aim. But sometimes you can’t. And then I’ll write a report. Those reports are lodged with the board and published on my website, usually on my blog.

So that’s the way in which it works. I’ve got some links to show how it actually has worked. My home page is the page to lodge a complaint. And my blog is where I write about various issues in relation to ombudsman, where I will write my reports, and generally other articles.

So just to sum up, I’ve told you a little bit about the theory in practice of being an ombudsman. I should also explain why you need to know me. That is I like to think I’m very approachable.

I have an office at every ICANN meeting. It’s in dockside four, which is on the lower level. So if any of you want to call in and visit me, just even to say hello you’re most welcome.

But at every ICANN meeting, I’m available for someone if they just want to make a complaint and don’t want to lodge it through the case management system. And I’m happy to see you.



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But it's important, as I said before, that you realize that the ombudsman is a symbol of good governance for ICANN. So I might not look particularly decorative.

But in fact there is a certain decorative function, but an important function, for an ombudsman to show the world that while we have this complex structure, we also have mechanisms in it to make sure that it's run fairly.

To some extent therefore my job is partly to act as the conscience of ICANN. Those are my contact details and a squashed looking photo of me. In fact, that shows me at the Las Angeles address. In fact, I work out of an office in Wellington in New Zealand.

If you're ever down that way, you're welcome to come and see me in that office as well. Although I don't expect to see too many of you visit in person. But thank you for listening to me and I'll say, "Kia ora." which is Maori for thank you and goodbye. And I'll open for any questions.

FILIZ YILMAZ: I have one question coming up, great.

MALE: Chris, can you tell us how many own motion investigations have you actually instigated and what roughly is the result outcome of them?

CHRIS LAHATTE: That's a good question. I've been the ombudsman for just a little over one year. So far I haven't started any. I have on several occasions been



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on the verge of doing so and the problems have resolved themselves. But it's a power that I need to have in the back of my mind if I see something systemic going on. It's not often used though.

MALE: Second question, how many cases are resolved without reference to the board. And how many have you had to write a report to the board about?

CHRIS LAHATTE: Virtually all are resolved without having to write a report to the board. I would have written in my year of operation about four reports. In fact, as it happens, in none of those reports have I upheld the complaint.

I'm sure that's just a statistical blip rather than necessarily meaning that people are complaining unnecessarily. It's just that those complaints didn't raise any issues that the board needed to act on.

FILIZ YILMAZ: Yes, if you have a question, can you please go to the microphone and ask the question over the microphone. So full camera we will see you and we will hear you.

If you can walk to the microphone and just a point of reference now if you go to the microphone if you can, identify yourselves. Then your names will also appear correctly on the transcripts because these things are all minute-ed, thank you.



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VICOTR NDONNANG: Thank you, my name is Victor Ndonnang. I'm an ICANN fellow so thank you to the ombudsman for your presentation. My question is simple. I just want to understand who pays for the ombudsman's work because it's difficult. If I can pay ombudsman, it can be a conflict that the ombudsman cannot criticize what really happened.

CHRIS LAHATTE: That's a very good question. I have an independent contract with the board. The accounts of my office are in fact open and are on the website. I have an annual budget.

The process is that I calculate what my operational requirements are, which includes my contracted income, salary, and my other expenses. That is presented to the board who approve it. But the draft budget and the final budget are posted on the website for people to comment.

In terms of my contract, I have a contract with the board which sets up my salary and the terms and conditions of my appointment. That is again like the other issues of conduct decided by at least a three quarters majority of the board.

In fact, there's only one salary application going in so I would hope it gets passed unanimously.

ANDREAS DIAMINI: My name is Andreas Diamini. I've got two questions. One is how much does it cost to make a complaint with you? The second one is how are you different from the dispute resolution service providers? Thank you.



CHRIS LAHATTE:

It costs nothing. I should have said so I think in my introduction. It's a very valuable point. It's an entirely free service provided by ICANN so that even if it's a large scale investigation it doesn't cost the complainant anything.

The second issue was in terms of dispute resolution providers, I am a trained arbitrator and mediator. And it says so on my website but I have a fellowship in the New Zealand Arbitrators and Mediators Institute and I have a Master's degree in dispute resolution from Massey University.

If I need to tap into other dispute resolution providers, I have contacts both within the New Zealand Dispute Resolution circles and I am a member also of the International Ombudsman Association which is based in the United States and the International Ombudsman Institute which is based in Vienna. Both are international institutions and provide dispute resolution back-up for me if I need it.

Does that answer the question?

ANDREAS DIAMINI:

No, sorry. The question is where does the difference come in, in terms of bringing disputes from Internet users or domain name dispute resolutions? Can I bring a problem to you instead of a dispute resolution service provider? That is terms of domain name registrations.

CHRIS LAHATTE:

I'm sorry I didn't properly understand your question. Again, that's a valuable question. In fact if it is an issue between a customer and a registrar, I don't in fact have jurisdiction to deal with that because that



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is not a complaint between ICANN and a supporting body, or within a supporting body. That is a commercial and contractual relationship.

People are sometimes treated unfairly by the registrars and sometimes the customers treat the registrars unfairly as well. But I don't have the jurisdiction under my bylaw or framework to intervene in those disputes.

Occasionally, however, I will attempt to resolve the disputes by mediation processes. The reason I do that is that's a voluntary process. If the parties are both willing for me to intervene in that way and help resolve the issue, then that fixes it for them. But unless they agree for me to look at it, I can't do so on my own.

JOAN KERR:

I just wanted to make sure that it was answered, Joan Kerr, Foundation for Building Sustainable Communities. In that you haven't had any issues or disputes to resolve, in terms of the office, do you have access to previous issues? And were there any issues where a policy came out of that?

CHRIS LAHATTE:

Yes, I operate a case management system which records everything that the office has done. There are annual reports published each year which discuss what has been done and the areas where some changes need to be made.



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From time to time policies have been changed by the board as a result of those investigations. Not by my, but by predecessor Frank Fowlie. So I do have the ability to influence the board if necessary.

JOAN KERR: Oh, that's good. Thank you.

FILIZ YILMAZ: Okay, any other questions? Please.

CHEIKH BAYE: Excuse me. I'm going to speak in French. I'm going to ask to translate. It'll be a very short talk but I think it'll be useful. When we talk about the role of the mediator, the ombudsman, you'll have to repeat it because he needs to put his, oh...

CHRIS LAHATTE: I apologize, my French is very inadequate.

FILIZ YILMAZ: Can you repeat it in English after hearing it?

CHEIKH BAYE: Thank you. My name is Cheikh Baye. I am a fellowship. I am from Mauritania. I want to clarify your role.

I would like to clarify your role. First, yes the mediator, the ombudsman, is paid by ICANN. But it does not stop the fact that he is independent.



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It is very important to know that once you're nominated it cannot be changed unless you have a very grave, you do something really wrong.

And it has to be by three quarters of the majority by votes from the board. You are, judges for example, it's the same. You are supposed to be independent.

So the independence of the mediator is not linked to the fact that he is paid by ICANN. Second of all, the fact that there has not been any conflict doesn't mean that it would be good, for example, that people didn't have any problem.

For example, it would be possible that people were not sick but it wouldn't mean that we wouldn't have any hospital because people were not sick. So the position of the mediator is more like in prevention to conflict.

Also, if there is a conflict and people want some arbitrary position, it would be very expensive to bring somebody from the outside. Thank you.

CHRIS LAHATTE:

Valuable observations. I think you're emphasizing the value of the ombudsman as a symbol of good governance. As you say, even if I'm not getting much work, then the fact that I'm here assures people that there are methods of solving problems. Regrettably, I am getting a lot of work, but that's the way it is. So, thank you.



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FILIZ YILMAZ:

Thank you, Chris. This was very valuable. Now we end the morning part of this group of presentations. We will have a break now until 2:00.

So at 2:00pm, in the same room here, we will continue with Engagement Tools where we're going to explain to you what kind of online tools you can use for engagements.

Even between meetings, because it continues. It's not only three times we see each other and forget about each other between meetings. It continues the engagement.

We will talk about registries and registrars. The new gTLDs and the new trends that are coming in and then the contractual compliance. So please be back hopefully here after having some lunch and coffee. And we will resume here at 2:00pm. Thank you.

[End of Transcript]

