
CR – Ombudsman 101

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ICANN - San Jose, Costa Rica

Chris LaHatte:

Hi, my name's Chris LaHatte and I'm the ICANN Ombudsman. I've got a presentation which again will be available on the website and it's going to come up and explain to you exactly what I am.

A lot of you will have heard the term "ombudsman" and I guess a lot of you will also be wondering why does ICANN have an ombudsman? I'll start off by saying "Haere mai kit e Kaitiaki Mana Tangata," and that's because I come from New Zealand, and that is Māori which is the second official language of New Zealand. And I think some of us might recognize those words.

But if I explain what that means I hope that'll help you understand what an ombudsman is. Kaitiaki is a guardian, and Mana Tangata is looking after the rights of the people; and it's more than the rights of the people – it's looking after the people in a wider sense. And that is who an ombudsman is.

Who am I? Probably more important – in basic terms I'm a protector of the people but I do that in several different ways. I'm an investigator, I'm impartial, I'm neutral and I'm confidential. Everything you say to me is kept entirely confidential. And what I do is I'm a reviewer of facts. I investigate complaints about unfairness. I'm an ADR practitioner – alternative dispute resolution – which means that I use tools such as mediation, shuttle diplomacy and such things to bring parties together to reach agreement.

And I'm one of three dispute resolution systems within ICANN: the Ombudsman, the Reconsideration Committee and the Independent Review Panel. The Reconsideration Committee doesn't meet all that often and neither does the Independent Review Panel, but the ICANN office is reasonably busy. We have values in the office that we look at: confidentiality, because often when people come to see me it's an issue of considerable sensitivity and you must

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know that when you come in and see me I'm the only person who knows about it apart from you. And I have to be impartial because when I investigate an issue then I'm not necessarily going to take your side or the other party's side; I'm going to have a look at that from a different perspective altogether.

But I'm also independent, so that doesn't matter who you're complaining about. It could be that you've decided that the Board has done something which upset you. I'm independent; it doesn't matter to me who it is that I'm going to look at.

We have respect for diversity, because one of the brilliant things about ICANN is that people come from everywhere and they've got all sorts of different ideas, different cultures, different beliefs. And I have to respect that when you come and see me because from time to time we do get misunderstandings caused by the fact that you come from different cultures. Something which is acceptable in one place is unacceptable somewhere else, and we have to be constantly aware of that – and we try to be pretty good at it.

Now, just because it's a technical matter: in my previous life I was a lawyer, so I'm going to give you a little bit of the law that's the basis for what I do. And you may be aware that ICANN operates under bylaws, and my particular structure is in Bylaw #5, and it says that my jurisdiction is defined to actions, decisions or inactions – that's delay, in other words – by ICANN staff, Board or supporting structures. Now, you'll recall the diagram that you saw before of the overall structure of ICANN, and you may have noticed that the Ombudsman fits on the top to one side, and I'll come to that and explain it a bit more.

But my role is different from anything else in the organization. I also have a role of providing a single place for all consumer issues, and often if people have got a problem I might not have jurisdiction but I can certainly try very hard to tell you where to go to try and solve your problem.

So just a little bit of the history: ICANN has had an Ombudsman since 2004. Dr. Frank Fowlie was the first Ombudsman and I came onboard in July last year. And I'm from New Zealand, and that in some respects makes me more independent because I'm at the edge of the world to some extent and so I'm not

involved in some of the other problems which might be more important to someone from somewhere closer to home.

It's just me although I have a support person , Herb Wade who's based in Canada, so if I am ill or on holiday there's always someone there to consult. Now I'll just come back to the structure. Actually, the structure that we showed in the other diagram was much better and had prettier colors, too, but you can see where I fit in at the top as the Ombudsman. And that's actually, you can't see it terribly well in this diagram but that's a dotted line, and that's because I'm not a member of the staff of ICANN; I have a contract to the Board of Directors. And that's important in establishing my independence and impartiality, and it's important to reassure you that that's a very important role in that I'm not bound to listen to any directions by anybody.

If Rod Beckstrom tells me to do something I can look him in the eye and say "No, I'm not going to do that" and there are no consequences for me. He won't do that, of course, but that just illustrates the degree of independence. Similarly, other people within the staff might want me to do something; again, I'm independent of them. I have my own budget and I do what I want to do.

The key elements of how it works is we've got a website of course. I'm included on the ICANN website and you'll see the reference there. There's a complaint form. I'm going to take you through the framework of how I work, the logic model because there is a system and structure behind this and some other matters. On my website you'll see some self-help, frequently asked questions. You'll also see some reference to my blog and you'll also see a reference to my Facebook page, which is a new invention. And I'd encourage you to have a look at that because I don't have enough friends on it yet.

Now, what do I actually do? That's probably the next question that you're wondering about. I've got jurisdiction over things which are done or not done, and delay is always an issue, by members of ICANN, the staff, the Board, or an ICANN constituent body. So you'll recall in that structure there are all of those constituent bodies which have a role in ICANN. If there is an issue in relation

to one of those that you're unhappy about – you've been treated unfairly, there's a delay in something happening, you think something is wrong – then the Ombudsman is the person to see about it. And I encourage you to do so. And I've also got power over things which are done or not done by the Board which are inconsistent with the articles and the bylaws, although it's normally the first category which is my usual work.

Some things I can't do. I can't look at internal administrative matters; I don't have power to look at internal personnel matters within ICANN and I can't look at issues relating to membership of the Board – in other words, if someone is upset about the fact that a Board member has done something or the way they've been appointed, I can't look at that. And I also can't look at vendor and supplier relationships with ICANN because they're contractual and there's a perfectly good Legal Department to deal with those.

So how do you make a complaint? Well, there's a number of different ways. Most of my complaints come in using the website, and if you have a look at that you can fill it out, fill in all the details and I'll get back to you generally within between 24 and 48 hours. You can email me direct or you can even write a letter, although I guess being a plugged-in community we've had one letter I think in the nine years of operation of the Ombudsman office. But the other way you can make a complaint is to come and see me at an ICANN meeting, and I've got an office at every ICANN meeting. This time I'm in the foyer of the hotel and you'll see a banner there, and you might recognize some of the artwork from this presentation on that banner.

So I've also included in this, and because this is a PDF of a PowerPoint it's not all that clear but you can just get an idea of what the complaint form looks like. We'll skip past that.

So there is a structure to how we look at complaints. The first thing going through the diagram: something happens and there's a complaint made, and then I can initiate an investigation and see whether I've got jurisdiction, and commence work. I also have the power to start off something myself. I tell the

Board that I'm concerned about this particular issue, and that's what's called a known motion investigation. So on occasion that's the way we start something and we go down that path. If I don't have jurisdiction then I very quickly advise the complainant "No, I can't help," and if I know where they should go to deal with this problem then I'll tell them.

Then I have a process for going through the investigation. I will always try and mediate the issue – that's a great deal of my background. If I can bring the parties together and sort the issues out that's always preferable to having a full-on investigation and dealing with it that way where somebody may perhaps not like the result. So if I go down that path, if I can't get the parties to agree by one method or another then eventually I'll write a report. The report is circulated to the parties; you've got the ability to comment on it – and plenty do – and the report is then published. And I should emphasize that the report is published as an anonymous complaint. I take out as much of the structure as I can to ensure that you don't know who's made the complaint but that "Here is the issue and this is what I reported."

I have an operating model and that's probably something you want to look at a little bit later on if you wish. This is a model developed by Frank Fowlie who actually got awarded his PhD degree based on the evaluation of the Office, and so I bow to his superior knowledge of these matters. But I look at what is my objective, and that's to ensure that members of the ICANN community receive fair and equitable treatment.

One of the funny things about a large, democratic organization like ICANN and like many other institutions is that people debate issues, and sometimes people's feelings get hurt or they feel they've been treated badly; and so it's regarded as good governance practice to have somebody like an ombudsman who can sort out those problems.

And one of my key functions is to independently review the facts, and I'm not always going to agree with the complaint of course. Sometimes I might say "No, you're wrong," but what I primarily try to do is to sort the problem rather

than investigate it. And how do I do it? I receive and investigate complaints, I do referrals, I use best practices, I use outreach – and this is an example of what I’m doing. I try to meet as many people as possible so that they know that I’m here and what I can do. And what are my outputs? I have my website, we have the Framework and in addition we have a blog and the new version of Facebook.

What are the immediate outcomes? Well, you can make complaints; you’ve got somewhere if you’re unhappy to go. And what are the intermediate outcomes? Well, we hope that this will help in raising standards of fairness in expectations, but perhaps more importantly an increased level of trust. And the final outcome – it’s all part of the contribution to the safe, secure, and universal internet.

So there we are, the Office of the Ombudsman and if you have any questions... Thank you.

Male:

Can you give an example of your activity just to understand what was done, just an example?

Chris LaHatte:

Alright. I had a complaint just last year from someone who was involved with a Regional At-Large Organization, and they were going through a process of selecting people to put forward to the NomCom to be members of the Board. This particular person regrettably had a misunderstanding about how the NomCom worked and said that although his organization had put him forward as their preferred candidate the NomCom didn’t select him and he said that that was unfair.

But unfortunately that was based on a misunderstanding of how NomCom works because they’re not dependent on elections from the At-Large organizations. In fact, they reach out and appoint through a process that you’ll probably... I think there’s another session on it at some stage, isn’t there – a presentation on how the NomCom works? Yes, so in that case I wasn’t able to help him but that’s an example.

More recently someone has complained about the way some of the advertising for the New gTLD Program operated, saying that the result was unfair to his particular city and country because they considered that the campaign, the publicity campaign was inadequate and therefore unfair to them. And if you look at my website there'll be a report on that which I'm going to publish at the end of this week, but I haven't quite heard all of the submissions yet. That's an example where I wasn't able to resolve it by mediation.

Another example, I'll just give you one more – at the last meeting there were two constituency groups who were having really big difficulties with each other, and the way I dealt with that was that we convened a mediation. And each party then stated their position and I was able to reach agreement on regrettably not all the issues, because we ran out of time, but we were able to bring them together in some areas and hopefully it's resolved some of those problems permanently.

Filiz Yilmaz:

Thank you. Any other questions? No. And I don't have any on the remote participation, Chris. Thank you so much for being here. If you want to talk to Chris further on he will be around the whole day in his room so please get his attention.

Now we will have a short coffee break, like ten minutes – actually eight minutes. So we will be back at 2:20 if possible. I know it sounds funny but we ran over a little and we don't want to delay the further presentations; otherwise you will be late to social. Thank you, Chris.

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