

Filiz Yilmaz: So now our next speaker is Chris LaHatte and he's our ICANN Ombudsman, and he's not only interesting with his function but also he's a newcomer too, himself. He just started and he's joining us today with a short presentation. So Chris, if you can...

Chris LaHatte: Thank you, Filiz. My name is Chris LaHatte. I'm the ICANN Ombudsman. I expect a lot of you will want to know exactly what an ombudsman is and where I fit into ICANN. And I start off by welcoming you. I say "Haere mai kit e Kaitiaki Mana Tangata" and that is Maori, the indigenous language of my country New Zealand for "Welcome from the guardian of the people."

And the reason I use "guardian of the people," which is what "Kaitiaki Mana Tangata" means in Maori is because that is essentially what an ombudsman is.

Ombudsmen were invented many year ago by the Swedish people, and they discovered that the government was getting too difficult, too bureaucratic, too much red tape. And they invented the idea of having someone who's an official appointed usually by the Parliament of a country who can investigate instances where the government is interfering or suppressing the rights of the people in some way. And an ombudsman, in its modern use, is a person who investigates complaints often from government departments or state institutions.

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Of course for ICANN it is a little bit different. I am still a protector of the people, and that is of the ICANN community. I investigate complaints when they come in. What is important is that I am impartial. I don't take sides if people come to me with an issue. It doesn't matter whether you're working for ICANN or a supporting organization or somewhere else – I'm impartial. I don't care where you come from.

And of course as well as that I am neutral in what I do. I don't take a stance until I reach a position where I might have to make a determination. And perhaps also of considerable importance is that what I do is completely confidential. I keep it to the Office of the Ombudsman and nobody knows anything about what is happening. Specifically, the ICANN Ombudsman is there for all of these things – I am independent, I am impartial, I'm neutral, I review facts. I investigate complaints about unfairness and I am what's called an alternative dispute resolution practitioner.

What I should also tell you is that I'm also part of a more complex system for investigating complaints within ICANN. The first level is the Ombudsman. You can also have a Reconsideration Committee matter, and there's also an independent review panel; and for today's purposes I won't go into those in much detail but you can look at those in the bylaws if you wish.

But there are certain values to my office which underline the job that I do, and that's again this confidentiality, impartiality, independence and of course I must be professional about this. I must deal with your complaints properly. I must respect diversity,

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and today it's an excellent example because we have translators which mean that people are coming from all different parts of the world; and in doing my work I have to reach some understanding of the cultural differences between people and how sometimes that can result in a misunderstanding.

My jurisdiction, my power to do what I'm doing, comes from the bylaws, and it says that I can deal with actions and decisions or inactions – in other words, if someone is doing nothing when they're supposed to be doing something – by the ICANN, by the staff, by the Board or by supporting structures. And you'll be reaching an understanding over the next few days of how many supporting structures there are. So there's potential for all sorts of organizations to become involved with my office, and I have another role which flows from that: to provide a single place for all consumer issues.

And just something about the Office – it was opened in 2004. Dr. Frank Flowlie founded the Office and was the Ombudsman until earlier this year. I was appointed at the end of July so like all of you here, I am also a newbie to ICANN. And at the moment, there is just me. I have Herb [Wei] who is an understudy for me if I'm not available, so there is always someone available to take complaints.

There's a structure that I attend to. You've probably seen some of this. The Ombudsman sits to one side of the organization, and the reason for this is this need for independence and impartiality. And it's of considerable importance because it means that the only body

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that I report to is the Board. I don't report to any of the Directors, I don't report to the CEO or anybody else. And that is essential to maintain the independence of my Office.

The way it works, and you're welcome to look at this link when you've got time: if somebody wants to make a complaint there's a complaint form. You click on this, you lead into the form, you fill out the form and that complaint will come through to me. We have developed a case management system for dealing with complaints and a framework under which I operate. There's also a logic model which I'll take you through in a minute to explain exactly how all this works.

I do other work – I give speeches from time to time – and also on the website you'll notice that there are frequently asked questions. So there's some self-help available as well. I also have a blog that you can look at from time to time.

So let's look at what I can do. I should add while I'm talking, I know it's a large audience but if anybody has any questions about anything that I'm saying just ask me as I go through. I don't at all mind being interrupted. What I can do is I can investigate matters done or not done, because occasionally people will say "I went to ICANN, to this staff member and they didn't do as I wanted," and I can investigate that. Or if it's one of the constituent bodies – something has happened or something has not happened – then I can look at it.

Similarly, with the Board of Directors, if they do something which a member of the constituency or just any supporting organization considers is inconsistent with the Articles or the Bylaws, then I can also investigate that.

There's some things I can't do. I can't look at internal administrative matters. I can't investigate on behalf of an ICANN staff member that they haven't got enough computers or something like that. Those are outside of my jurisdiction. I also can't look at personnel issues. I can't look at matters relating to membership on the Board or look at vendor or supplier relationships – those are outside of my power.

So there's a logic model that I'll take you through, and this is the way that the complaints work. So you start off with the issue which is at the very beginning – the decision or act or omission – and that turns into a complaint. And there's a number of ways it can go through. If it is an identifiable complaint then I have to see if I have jurisdiction. I investigate it and if the complaint is founded, the first thing I try and do is to resolve it through a mediation process or some other shuttled diplomacy; or by some form of dispute resolution and see if it can be fixed that way, and a lot of complaints are.

If it is fixed then that's the end of the matter. If it's not then I can develop recommendations and consult with ICANN about the recommendations, and I can advise the Board of the complaint and what I've suggested. And that is the way in which eventually the

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complaints will get resolved. So that's the logic model. That's how it actually works.

We have an operating model as well, and this has been developed to explain exactly how it works. I'm not going to go into that in a great deal of detail, because being an operating model it has a logic of its own that you're better off just to read when you have time.

So that's the Office of the Ombudsman. It's a very quick overview but I'd welcome any questions that anybody has. It's a good concept.

Filiz Yilmaz:

So, yes... If you can also introduce your name.

Hamza Aboulfeth:

My name is Hamza Aboulfeth. I'm CEO of Genius Communications, the first ICANN-accredited registrar in North Africa. I would like to know if you also handle the complaints regarding the ccTLDs' sponsors? I mean if there is any problem with a ccTLD sponsor in our country, for example, is that something that you handle as well?

Chris LaHatte:

I can investigate a matter where there has been some unfairness. There's some sensitivity with the ccTLD people because they tend to regard that as a government issue, although in fact there have

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been very few complaints coming from there. But if there is an issue I can investigate.

Hamza Aboulfeth: Because the lady there said that the ccTLD should be supported by a country, not the government. So is it the country or the government? Or if it's the country it's obviously the government who handles all the ccTLD aspects.

Chris LaHatte: There would have to be some unfairness in the decision making which arose from that issue before I could investigate. There is a level of political decision making that would be outside of my jurisdiction. I could only step in where the supporting organization was doing something which was unfair. That may not answer your question, but my jurisdiction would be limited to those matters. If there is a dispute between the government of a country and the supporting organization, that's outside of my jurisdiction.

Hamza Aboulfeth: Let's say that the supporter of the ccTLD is actually the government, a part of the government so we can't just turn to someone in the government – we should look outside. You should be dealing with this.

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Chris LaHatte: I think I would have problems with jurisdiction there because again, it's an issue not between ICANN and the cc registry or owner. It's a dispute between individuals and their government, and that is outside of my power.

Hamza Aboulfeth: Okay, so who is in charge for this? Is it someone in ICANN or it should be?

Chris LaHatte: It perhaps may be but... The answer to that is that I think it has to be dealt with at GAC rather than...

Filiz Yilmaz: Right, if I can help a little, Chris. I think you are asking a very specific question about what kind of problems or jurisdictional problems may be arising depending on the constituencies, and some of them are related to maybe the ccNSO group or maybe GAC. So I can get my colleagues to answer those questions for you because I think Chris is more looking for a relational aspect in regards to how ICANN relates toward the community and vice versa. Is that correct, Chris?

Chris LaHatte: Yes, thank you.



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Hamza Aboulfeth:                    Alright, no problem. Thanks.

Filiz Yilmaz:                         One more question, Chris, here.

Cheikh Baye Cheikh:               My name is Cheikh Baye Cheikh and I'm a consultant in Mauritania with the government. Can you hear me? Can you hear the English interpretation? I am the Consultant and Advisor to the Regulation Authority of Telecommunications in Mauritania. And first of all I would like to thank you for your exposé and your speech, it was very interesting to follow you. And I'm very happy to be here in Dakar and be part of the community.

My question will be the following: this is a question for you as an Ombudsman. What are the mechanisms that guarantee the independence and impartiality of the Ombudsman? Are you nominated for a few years? You cannot be fired for instance? How can we make sure you are independent and impartial, Sir?

Chris LaHatte:                       Thank you. That's a very good question. I have an independent contract with the Board which is for a fixed term of years and which can be rolled over as I negotiate. I do not report as I said to anybody in the organization; I report to the Board as a whole. And I have my own budget allocated from ICANN, which means that I can make my own decisions about what I investigate and about what I do and where I travel. And I can't in the terms of my

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contract be interfered with in the decisions that I make. I have a clear contract with ICANN which is also set out in the bylaws, which protects my independence.

Filiz Yilmaz: Thank you, Chris.

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