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MARRAKECH – The Role of the Ombudsman Post Transition

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ICANN55 | Marrakech, Morocco

UNIDENTIFIED MALE: It's explicit in my bylaw, and the practice of my office. If I start to generically discuss complaints, then how will anybody have confidence that confidentiality will be respected with regard to other cases? I'm happy to discuss that in the open, if the parties involved would like me to do so. But I want an expressed waiver of confidentiality before I do so.

UNIDENTIFIED MALE: Could that be got from the complainant? Is that enough? Or do you need both parties permission?

UNIDENTIFIED MALE: I would need both parties permission.

UNIDENTIFIED MALE: Now, that's a problem when the other party's ICANN.

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UNIDENTIFIED MALE: Well, it may or may not be, I don't know. I'm uncomfortable even discussing the possibilities until I have such waivers of confidentiality.

UNIDENTIFIED MALE: [inaudible] Center for Internet and Society again, for the record. I was thinking of two suggestions. One that the scope of the Ombudsman's function is clearly laid out in the ICANN website, but the ICANN website is a labyrinth even more complicated than this building in which we're having the conference. So it would be very helpful if maybe at the venue points, as well as inside that little bag that we get for when we enter the conference, if we have a small sheet with the four points or the five points saying, "These are grounds on which you can contact the Ombudsman. These are the contact points. The Ombudsman sits here." Because while there's this nice, big poster outside the room where you sit, to find that space alone is really difficult, therefore access is difficult. That was my first suggestion. Please make the information easily available and more accessible.

Second suggestion, the lack of geographic and gender diversity in the Ombudsman office is a little bit of concern to me. And I think I've raised this with you in

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private as well. Therefore, considering the vast scope of rather sensitive issues that the Ombudsman’s office deals with, it would be so fantastic if, perhaps, the size of the office could be expanded a little bit. It could include people from different geographic regions, and have more gender representation. Thank you.

UNIDENTIFIED MALE:

Those are both really valuable points that I’ve had people take most seriously.

UNIDENTIFIED FEMALE:

Sorry, just to clarify, the point that I first raised was make information easily accessible on the scope of [inaudible]. Thank you. Accessibility was the point, yeah.

UNIDENTIFIED MALE:

It’s something that we do try to work on. The Ombudsman is one of many people trying to get the attention of ICANN staff. And we do our best to try and get out there. I have a Twitter feed, a Facebook page, although they’re not terribly effective. I have a blog. I don’t know if you have been following the electronic notice boards, but they have flashed up advertisements about the Ombudsman. Any helpful suggestions about

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how people can contact are great. And I like your idea about the card with the points that may be directly helpful to people at the meeting. I don't need to go through a policy process to do that. I may well adopt that because I think that's a great idea.

As for the lack of diversity in the office, well, I'm from New Zealand, which distinguishes me from quite a lot of people at ICANN. But my other features, my sex and race are probably not as diverse. I think what you say is great. Increasing the size of the office is something that would be, probably, within my power to do so. Although, in the end, we have to have enough work for everybody to do. At the moment, I'm full time at it, and I have Herb with me on the [inaudible] basis. There's not so much extra work that we need somebody [inaudible]. So that does create a logistic problem of increasing the diversity. But I think the concept of, perhaps, having someone who's not an old white man in the office as a contact point, which could even be a volunteer from the community, or someone like that, is worth exploring.

UNIDENTIFIED FEMALE:

[inaudible] Center for Internet and Society. And I would like to put on record this point that we've been

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reiterating over and over. ICANNs mandate talks about diversity, and leaves out the question of how diversity and inclusion are connected. Therefore, to make this process more inclusive, it is absolutely essentially, I feel, and it should be an urgent priority for all the offices that ICANN institutes to have a more diverse body. And I thank you for recognizing that.

UNIDENTIFIED MALE:

Does anybody have any thoughts about areas which, perhaps, haven't been discussed that much, where the Ombudsman should be reaching out. One of the suggestions from the CCWG was that reconsiderations should automatically come to the Ombudsman for review before they go to the reconsideration process. I'm not sure what people think about that. I don't have a fully developed idea about that. John?

JOHN:

John [inaudible] University for the record. You mentioned whether those New gTLDs might [inaudible] dispute about that process, so those might go to your office. I suspect that if they do, they'll consume a lot of resources, so you would probably want to check that you scaled your resources up in advance, if that was to occur.

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UNIDENTIFIED MALE: I have a budget cycle. I mentioned on one of the slides that I set my own budget. If I knew that there was a large number of new and diverse complaints coming, then I have the ability to hire additional staff, and I don't need to ask anybody about that. I can just do that.

JOHN: I think that's useful because the complexity of those complaints might be – the level of contestation might be quite high.

UNIDENTIFIED MALE: I think people are arriving for the next session. What are we doing for time? Do people have any further thoughts about areas that need to be changed?

UNIDENTIFIED MALE: One more question about this same deal. Apparently NCSG is the complainant, and the defendant is ICANN. So those are basically the two opponents here. Why is that confidential?

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UNIDENTIFIED MALE: It's confidential because every complaint that comes to my office is confidential. It's in the bylaw. I don't have any choice about that, and I wouldn't want any choice about it. Are you from NCSG?

UNIDENTIFIED MALE: Yes.

UNIDENTIFIED MALE: Well, I'm not going to discuss an individual complaint unless I have expressed authorization from the parties to do so.

UNIDENTIFIED MALE: If I may [inaudible] NTSG chair, and there is no such authorization, even from NTSG. It will be interesting to see who would be ICANN in the [inaudible] authorization. But in this case, there is no such decision even from NTSC to ask for it here.

UNIDENTIFIED MALE: Thank you for that. I am not going to breach confidentiality. Any other issues?

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UNIDENTIFIED FEMALE:

Considering that the mandate of the Ombudsman’s office is quite broad. Do you think it would be useful to have, maybe, subcategories of the different issues that you deal with, and have different people who are specially trained in those areas in charge of those issues? So something related to gTLD and something related to sexual harassment are completely different areas of expertise. It would be useful to have staff that are sensitized and trained in these respective areas to deal with these sort of different problems. Thank you.

UNIDENTIFIED MALE:

I accept that’s a good insight into what I do. But, ultimately, when you look at the issue of [inaudible] and procedural issues, that doesn’t require a huge expertise on the technical areas especially. But in terms of the other issues, such as sexual harassment and so on, I do attend training on those issues because part of the objects of the Ombudsman office is to ensure that we’re up to date with appropriate issues. And so at the Ombudsman Association conferences, there are always sessions on issues such as bullying. I haven’t really talked about bullying, but that is one of the things I deal with. About sexual harassment, and other similar issues.



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And, in my other professional career of a mediator and arbitrator, we have conferences also, at which there is training. And I am obliged for my professional membership to maintain a level of training in diverse areas. And I try to concentrate on training in areas that are directly relevant to this sort of issue. We try and keep up to date, in other words. If I get a highly technical issue, than I would be inclined to get an expert on the issue to explain it to me. Because I'm not an engineer. My background is a lawyer. So I can understand complex legal issues, but I can't understand complex technical issues unless I have someone to help me through the hard parts. That's the way I would tend to deal with it.

We've got five minutes to go. What I'd like to say is this has been a great session. I'm glad that people have taken the trouble to come. It has illustrated some of the strengths and weaknesses of the office. We've got the start of some suggestions. My door is always open, both physically and electronically. If anybody wants to get in touch with me and talk about these things in more detail, you can Skype me, or phone me, or just meet me in a corner somewhere to talk about these things. I don't have a fixed view about most issues, with the possible

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exception of confidentiality. And I'm willing to talk about things. Thank you for coming. You have the helm.

[off mic speaking]

**[END OF TRANSCRIPTION]**