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Remarks at Delhi Public Forum

February, 2008

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Mr. Chairman, Peter Degnate-Thrush, 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 welcome here today.

Mr. Chairman, I have a number of items that I would like to share with you this afternoon. First, I can report that in the 2007 calendar year, my Office has received 241 complaints and contacts from 38 countries. At year's end less than a handful of these complaints had not been resolved or referred to another, more appropriate body or agency for resolution, the remainder are still under review by my Office.

Outreach and peer Ombudsman activities remain an important role for my Office, and since we last met in Los Angeles, I have had the opportunity to attend the 6<sup>th</sup> International Forum on Online Dispute Resolution, organized by Christopher To, of ICANN's nominating committee, where I presented a talk on dispute resolution and internet governance. Christopher must be commended on the contribution he made to the furthering of Online Dispute Resolution in Asia. While in Hong Kong, I accepted Dr. Hong Xue's invitation to speak at the Hong Kong University Faculty of Law.

Mr. Chairman, I have previously reported that I am chairing the next International Forum on Online Dispute Resolution in June, at Victoria, Canada. It is with great sadness that I report that one of our

keynote speakers, President Jose Ramos Horta of East Timor was the victim of an assassination attempt yesterday. He is in critical condition in hospital in Australia. Mr. Chairman, knowing your own connection with the establishment of the Timorese ccTLD in the early days of independence, I know that you will join me in wishing the President a full recovery.

Mr. Chairman, as is usual in my public forum comments, I would like to spend a couple of minutes talking about the principles of Ombudsmanship. Today, I want to discuss the role and function of the Ombudsman.

It is said that an Ombudsman is:

... an independent, objective investigator of people's complaints against government agencies and other organisations, both public and private sectors. After a fair, thorough review, the ombudsman decides if the complaint is justified and makes recommendations to the organisation in order to resolve the problem.<sup>1</sup>

Ombudsman came into being in 1809, when the Swedish Parliament appointed the first ombudsman to protect citizens from the excesses of bureaucracy.<sup>2</sup>

The word ombudsman consists of two parts: *ombuds*, meaning representative; and *man*, a gender-non-specific term meaning the people. Historically, an ombudsman has been the representative of the

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<sup>1</sup> Forum of Canadian Ombudsman, 2006, **What is an Ombudsman?** [http://www.ombudsmanforum.ca/whatis\\_e.asp](http://www.ombudsmanforum.ca/whatis_e.asp) (accessed January 28, 2007)

<sup>2</sup> United States Ombudsman Association, 2006, **History of the Public Sector Ombudsman**, [http://usoa.non-profitsites.biz/en/About\\_Us/history.cfm](http://usoa.non-profitsites.biz/en/About_Us/history.cfm) (accessed October 15, 2006)

people in dealings with bureaucracy. In Quebec the ombudsman is referred to as “The Protector of the Citizens”; while in France the ombudsman is called “The State Mediator”.<sup>3</sup>

Ombudsmen are generally concerned with the fair treatment of members of their constituency by the bureaucracy or agency they oversee. Ombudsmen are generally characterized as being independent, impartial, and neutral advocates neither for the agency nor the complainant, but rather for the principles of administrative fairness. It is worthwhile to consider the distinction between substantive fairness, which can be defined as a fair outcome of an administrative process, and procedural or

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<sup>3</sup> Protecteur de la Citoyenne; Mediateur de L'Etat

administrative fairness, which is defined in the following paragraphs.

Ombudsmen are generally concerned with administrative fairness, as opposed to results in regulatory or criminal processes. Ombudsmen deal with the redress of unfair situations rather than the administration of compliance frameworks. The Code of Administrative Justice by the British Columbia Ombudsman lists at least 16 criteria for administrative fairness. These include issues such as unreasonable delay and unfair procedures.<sup>4</sup>

This Office relies primarily on that Code of Administrative Justice to provide a working definition of administrative fairness that can be applied

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<sup>4</sup> British Columbia Ombudsman, 2003, **Special Report 42, Code of Administrative Justice**, [http://www.ombud.gov.bc.ca/reports/Public\\_Reports/Public%20Report%2042.pdf](http://www.ombud.gov.bc.ca/reports/Public_Reports/Public%20Report%2042.pdf)(accessed October 30, 2006)

consistently and universally for ombudsman purposes. Fairness can have different meanings across context, culture, language, and tradition. The Code of Administrative Fairness provides an excellent example of describing “being fair” in neutral and explicit terms.

Administrative fairness has been defined in the following manner:

“... our judges have had an historic association with the concept which we call “due process of law”. The phrase, which has its roots in the Magna Carta, sums up our attachment to civility no less than to legality. In popular terms, it means fair play: assuring a hearing on the pros and cons of an issue to those affected; apprising

them of what they have to meet or, in a criminal case, of the charges against them; giving them an opportunity to produce witnesses and to counter evidence adduced against them; allowing them to present argument on the facts and legal issues raised in the litigation; and assuring them finally of a considered decision by an impartial judge. What is important about due process is the fact that its rationale has taken hold beyond the courtroom and has been applied in administrative proceedings and to public affairs generally. It has, in short, become a social norm, implying both a right of individuals and groups in our society, who have grievances to air, or demands to press, or claims to litigate, to make themselves heard; and correlative, an

obligation to advance their causes through rational procedures which, after painful experience, have displaced naked force as the means through which the case is made for change and the redress of wrongs.<sup>5</sup>

Ombudsmen can be important actors in the overall operation of the civil justice system. They provide alternative dispute resolution<sup>6</sup> services, which may reduce the propensity for costly and time-consuming grievances and litigation. Their existence and presence ensures that administrative fairness is held in a wide variety of civil and business institutions.

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<sup>5</sup> Justice Bora Laskin, SCC, quoted at Zacks, Micheal, 1999, **Administrative Fairness in the Investigative Process**, in Reif, Linda, Editor, **The International Ombudsman Anthology**, Kluwer Law International, The Hague, pp 555-556

<sup>6</sup> "ADR is any method of dispute resolution other than formal adjudication such as court litigation or administrative proceedings. ADR is not a fancy, new approach but rather an alternative – characterized by common sense and flexibility." Costantino, Cathy, et al., 1996, **Designing Conflict Management Systems**, Jossey Bass, San Francisco p33

Mr. Chairman, as this is the first opportunity I have to speak with you in your role as Chairman, please accept my congratulations on your election, and I look forward to working with you over the coming years.

That concludes my report. Thank you for the opportunity to address the Public Forum this afternoon.