
PRAGUE – Ombudsman 101

Sunday, June 24, 2012 – 13:30 to 13:45

ICANN - Prague, Czech Republic

Janice Douma Lange:

...I said this morning to my Fellows and then in the beginning, but just as a reminder: as a global organization and trying to be as inclusive as possible and make this as easy as possible for everyone to be included, if you're an in-room participant at the back of the designated session rooms that have in-room interpretation you can pick up the tools to provide you with certain languages. Mind you that not all rooms have this. I believe we have the At-Large rooms and the GAC rooms, and the Mezzanine Level and this Congress Rooms 1 and 2 that do provide you with interpretation so do take advantage of it.

Chris LaHatte:

Thank you, Janice. My name is Chris LaHatte and I'm the ICANN Ombudsman. I always like to explain to the newcomers that ICANN has an Ombudsman and also tell you a little about what I do because some of you will know about "ombudsman" but you won't know what I do, and some of you won't even know what an ombudsman is at all.

ICANN, being a very complex organization, needs someone who can keep the peace and that is at least part of my role. And so I welcome you, and I welcome you in the language of my own country, New Zealand: "Haere mai kit e Kaitiaki Mana Tangata," which is "Welcome

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from the Guardian of the People” in Maori, and that is what an ombudsman is. And that is who I am.

So what is an ombudsman? He is a protector of the people. He’s an advocate for fairness. He’s a consumer protector and a symbol of good governance. The fact that we have someone here to undertake that role is a message to anybody who interacts with ICANN that we take governance seriously. And I’m also something of a referee and a mediator whenever there are disputes.

So just to sum up what I do: I’m independent, impartial, I’m neutral; I’m a review of facts. I investigate complaints about unfairness. I’m an alternative dispute resolution practitioner and a mediator, but I’m also one of three different dispute resolution systems that we have in ICANN and the first one is me. The second one is the Reconsideration Committee and the third is an independent review panel. But I don’t have time to tell you about those and there’s material on the website if you want to see about them.

It’s important that people know what I stand for. Confidentiality – anyone who comes to me knows that the only two people who will know about the complaint is the person making the complaint and me; nobody else has to know about it. And that’s very important because if you feel that you’re being bullied or treated unfairly you might be concerned that somebody in the organization will somehow get you afterwards for daring to make a complaint. Your complaint is confidential and no one ever needs to know that it was you making the complaint.

I'm also impartial. I don't take sides. I look at it completely objectively. I'm independent and I'll explain a little bit more about my independence shortly, and of course other things go with it – professionalism, respect for diversity, and that means that we celebrate diversity in the full range of ways that we can at ICANN; and it doesn't just of course mean race and culture. It also means people with disabilities. We protect people so that everybody can be treated fairly, and we respect the fact that people are different and that sometimes you need different approaches to fix things.

Just the legal bit: my powers come from the ICANN Bylaws, and if you look on the website there's a lot more bylaws but mine specifically is Bylaw 5 and it relates to "actions, decisions, or inactions by ICANN staff, Board or supporting structures." And as you get to know ICANN you'll know that there are an enormous number of supporting structures and the possibilities of things which happen are very wide indeed. But I also have another subsidiary role, which is to provide a single place for consumer issues. And I get a lot of people coming in to complain to me about matters that I can't strictly help them with, but I always try and say "This is what you do," or "This is the person you should complain to."

Just a bit about the office: it's been around for a while now. Frank Fowlie from Canada was the first appointment; I was appointed last year. It's just me and I have Herb Waye as an adjunct who supports me when I go on holiday or I'm otherwise not available. So there is always someone available to take a complaint.

I you'll see this diagram, I suspect the numbers on this are slightly out of date by now, but if you look at the top of it you'll see where I fit in. As the Ombudsman, there's an arrow right at the top reporting to the Board of Directors. Before I mentioned that I was independent and impartial, and one of the reasons that I am is I have no (inaudible) at ICANN at all. I have my own budget. If you look at the budget papers you can see my budget as well and my comments on it if you wish, but my budget is approved by the Board; it's not approved by the CEO, and so I'm different from every other part of ICANN. And the reason for that is that I need to have the independence.

And unless I do something appallingly stupid I can only be removed by a 75% vote of the Board so that protects my independence and ensures that if I get a difficult case where I might be criticizing people right at the very top or well-known people then I can do so without fear of any reprisal for me personally. And it's a very important part of the job of Ombudsman. So how does it work? We've got a website; everybody has a website. That's the reference to mine; you'll be able to get a copy of this presentation later. And the key elements are a complain form which acts as the complaints system, and that's through a case management system.

I also have an Ombudsman Framework which is available on the site, and that sets out in a little bit more detail what I do. I have a logic model to explain how I carry out my work, and you'll see also on the website there is some news and speeches and some frequently asked questions. There's also a blog which has various things on it from time to time and a Facebook page, and you can look up those and if you want to become a subscriber you're welcome.

And what could I do? Again, I've referred to this briefly before: I can help with things done or not done by any one or more members of ICANN staff, the Board or an ICANN constituent body; and when you think about that, that's actually very, very wide because when you think about it, anybody who uses the internet and then interacts with ICANN or a supporting body can in fact access my office. So sometimes people ask me "How many people are there who can use the ICANN Ombudsman?" and I say "How many internet users are there?" So potentially there could be a very large number; fortunately for my work/life balance there aren't so many that we can't deal with them.

The other aspect is things done or not done by the Board of Directors which may be inconsistent with the articles or bylaws. So if you think the Board has done something that you think is wrong then you can come to me and then explain why I can impartially investigate that. And if I think that the Board has done something wrong I'll tell them because I don't have any fear of any reprisal or criticism.

Some things I can't do: I can't look at administrative matters; I can't look at personnel matters within ICANN. I can't look into issues relating to membership on the Board or vendor and supplier agreements because they're generally dealt with by Legal. So how do you make a complaint? I've already given you a link to the complaint form. People also email me fairly frequently with complaints, and during the eight to nine years that the Ombudsman has been active we've had one letter. People don't use letters much in this community.

The other way to access the Ombudsman is to come and see me at an ICANN meeting. I have an office which is upstairs, and you're welcome

to call in even just to say hello. I've just got a picture there of the complaint form so you can see how it works. So you just basically fill out the form and it comes through to me as an email. I try to answer all of the complaints within 24 hours but because I'm human and need sleep from time to time, and also because I'm based in New Zealand on the other side of the world sometimes you might not get a reply for as long as twelve hours over. And occasionally when I'm travelling of course it might be 48 hours, but the first acknowledgment of the complaint will come through very quickly.

This is how it actually works and I think it's important to understand it. So the first thing if you look at the top of the diagram it's not terribly easy to see because there's a lot of information squeezed onto a rather small slide. But you start off with the act or thing which is troubling you and you make a complaint, and then there's a logic trail for tracing through how it works. For example, I have to say "Is it a complaint?" I have to say "Is there a complainant? Do I have power to deal with it? Is there a personal impact? Can I try and deal with it by mediation or just simply by talking to people?" Sometimes I say "No" and I tell the complainant "Look, I'm sorry, I'm not able to deal with this," usually because I don't have the power to help, but I will again always try and tell them where they should go.

And if there is a proper complaint then I start an investigation, and I can either find no, there isn't any unfairness and report accordingly; but if there is I can then go to the Board and say "Hey, there's something wrong going on here." And I would expect a response from the Board if I do make such a complaint. I also have the power to investigate matters off my own motion. If I suspect there is something systemic

and wrong I can begin an investigation, tell the Board what I'm going to do and I can write a report which may be critical of someone.

There's an operating model and again, I apologize for having a lot of information on a small slide but it's something that you can look at if you want to later on. It just says "This is the structure, this is how it works." So here I am, and at this point have we got time for questions? Thank you.

Mona Al-achkar:

I'm Mona Al-achkar; I'm from Lebanon and I an instigator of the Pan Arab Observatory for Cyber Security. So my question is did you have any case where government security was involved? I mean the complaint was about something that doesn't fit with the security or even the safety maybe?

Chris LaHatte:

Do you mean to do with a government and a complainant?

Mona Al-achkar:

Maybe the government; maybe a Department who is responsible for safety, social maybe. You know, sometimes some organizations are implicitly involved in defending some interests – social, cultural, whatever. So they consider that sometimes they can maybe talk to you or be a party who will take the defense of...

Chris LaHatte: Yes, that's a really good question and it's something I've been considering quite a bit recently. We haven't had a complaint come in quite like that although someone recently did start to make a complaint about the cc registry in their country; but that wasn't so much about security – it was more about the way it was run. But it is a matter that I have been thinking about, and if someone wanted to make a complaint about that sort of issue then I believe I do have the power to look into it and the confidentiality with which I investigate the complaints would ensure that that person was protected and it would of course have to be dealt with even more carefully than a standard complaint. But if there is an issue like that out there then now you know how to contact me.

Mona Al-achkar: Thank you.

Chris LaHatte: I should add you'll know how to contact me when you look at the next slide.

Clive Grace: Hi, I'm Clive Grace, Senior Independent Director at Nominet. Can you put a bit of flesh on the bones? How many complaints do you have? What are the trickiest ones you've dealt with, and do you publish your reports? That's a fairly common practice amongst many ombudsmen – do you do that in your own practice?

Chris LaHatte:

The answer is yes, I prepare an annual report. I've only done one which was in fact a report about what the previous Ombudsman had done. Number of complaints – that is growing immensely at the moment. By way of comparison, in the period from 1 January to the 15th of June last year there were ten complaints. And this year to compare it, I looked at the same period of time – there have been 134 complaints. So there's a number of reasons for that: there was a hiatus in the office between the previous Ombudsman and me being appointed. And I'm not quite sure of why the numbers have increased on top of that, but there are a number of difficult issues in relation for example to the new gTLDs.

A lot of the issues I can't tell you about because of course they're confidential, but occasionally I do write reports which you'll find on my blog. And one of those was someone claimed that there was unfairness in the publicity about the New gTLD Program which meant that he didn't have an opportunity to get his application in on time. And I considered that his complaint was not founded. One of the other reports that you'll see on the website is a complaint about the election process in one of the Regional At-Large Organizations and again, I didn't uphold that complaint because in fact the person who made the complaint didn't properly understand how the election process ran. And so there was no unfairness. So those are just some examples.

When I do write a report for the Board I do like to publish it, but one of the reasons that you won't see that many reports is that I have a very strong emphasis on mediation. So that means you have a complaint which is confidential which I deal with, and a process of mediation which is also confidential. So you don't find out what I'm doing a lot of the time, although I hope that the people who have been using my

office have understood what I've done and have spread the word that there is someone who can help with these problems.

Filiz Yilmaz:

Alright, thank you. Well, can I just make a suggestion? I see two more hands but we have to move. We have three more presentations to come, so can I suggest that Chris takes your questions in his room? He is here and he has a specific area to talk to people in person as well, so would you like to describe where you are at this meeting and then take those questions in your room?

Chris LaHatte:

I'm up on the Mezzanine floor and you'll find me – I've got a big banner outside where the offices are, and it's also on the maps which you'll have, and it says "Office of the Ombudsman." So I'll be there or if you want specifically to spend a little bit of time with me it's probably best to send me an email because I'll be in and out of here. So thank you all for listening, and I have had it translated quickly to Czech and also in Maori- "Kia ora."

Filiz Yilmaz:

Thank you, Chris.

[End of Transcript]