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Remarks at Wellington Public Forum

March 30, 2006

Check against delivery

Mr. Chairman, Vint Cerf, 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 this afternoon.

I have a number of issues which I would like to bring to your attention this morning.

First of all, I would like to provide you with a brief update on the activities of my Office by running through a small number of slides. These slides will represent the work conducted in the calendar year 2006.

This slide shows the distribution of complaints and enquiries by country location. The list on the right shows the frequency of contact in relative order of preponderance. As with previous reports, English

speaking countries, with common law based, democratic political systems provide the most frequent contacts. To the middle of March, my Office has received almost 150 contacts and enquiries.

I am hopeful that the recent recruitment of geographically dispersed Regional Liaisons will be helpful in providing local area information about the existence and function of my Office.

This slide shows the distribution of contacts by issue type. It is worthwhile to remind you that, as defined in Bylaw V, my jurisdiction is described as being related to an action, decision, or inaction by the Board, staff, or supporting organization. You will note that, as opposed to the information I provided in Vancouver, issues which have been coming to my Office have become more focused on jurisdictional issues. I believe that this is due to the leading process which was implemented on the website, which provides greater clarity of self-help information to the

community. This enables the community to find appropriate routes for non-jurisdictional issue resolution without having to make complaints to my office.

This slide illustrates the closing of files. Many of the recent contacts which I have had, although jurisdictional by definition, have not dealt with complaints about issues of fairness concerning actions, decisions, or inactions by ICANN, but rather have simply been critical commentary on ICANN. I have acknowledged this set of correspondence, and provided the complainants with information on how to more fully participate in the ICANN processes to raise their concerns.

This slide documents the Outreach activities of my Office in 2006, to date.

Last week I had the great pleasure of attending the United Nations Conference on Online Dispute

Resolution, sponsored by the Cairo International Arbitration Centre, and the Arab League, and which hosted ODR practitioners and academics from across the globe. I had the opportunity to do two presentations, one entitled, “Culture, Identity and the Skilled Practitioner” and the other an orientation to my Office.

Mr. Chairman, I think it is worthwhile to underline to you the uniqueness of the ICANN Office of the Ombudsman. In the Ombudsman community, my Office is a rare sort for two reasons. First, I am an executive Ombudsman, which means that I am an Alternative Dispute Resolution Officer within an organization who receives complaints from the outside, unlike governmental or organizational Ombuds schemes. Secondly, unlike the vast majority of my colleagues who deal with their communities usually on a face to face basis, or by telephone, 99 % of my work is done online.

It was interesting to do an environmental scan of my ODR colleagues in Cairo, and to see the uniqueness of my Office amongst them, as I was the only Ombudsman in a group of mediators, arbitrators, and self participatory platform directors. I was also very pleased that my Office was mentioned in other presentations, and I am happy to report that the reputation of my Office with ODR colleagues is very positive.

Mr. Chairman, as with my previous presentations in the Public Forum, I would like to provide a couple of minutes of Alternative Dispute Resolution or Ombudsmanship education.

In past forums I have spoken about the importance of independence for the Ombudsman; frameworks for the delivery of Ombuds services; barriers in online communication for complaint resolution; and the role of the Ombudsman in an organization. Today I would like to speak to you briefly about some undercurrents

that I noticed as being important in both the creation of disputes, and in their resolution. These undercurrents are civility and a barrier to successful and meaningful conflict resolution, which for want of a better name, I describe as a culture of criticism.

I would like to discuss those issues, and then provide some context from my work as the Ombudsman to show how these can factors can be detrimental to the resolution of disputes.

Civility, or rather the absence of civility, is a compounding factor in the escalation of disputes. Incivility is a barrier to the ability of the other party in a dispute to develop an understanding of your position. It is contrary to the mutual gains theory of dispute resolution on an academic level, and is simply counterproductive to the idea of being able to resolve disputes by Athenian debate.

A leading academic at John Hopkins University has written on this subject:¹

“...life is a relational experience. We do not live in a vacuum. We live among others, we depend on others, and we seek comfort and life-meaning in others. Our very individual identities, sanity, and health are shaped by others’ presence in our lives. The quality of our lives depends, to a large extent, on the quality of our relationships.

...If we agree that life is relational, if we agree that by bettering our relationships we better the quality of our lives, then it makes sense to acquire relational competence. ...The rules of civility and good manners give us a basic, time-proven, and effective code of relational competence.

Manners and civility are not trivial matters...

Having good manners means handling others with care.

¹ <http://www.jhu.edu/civility/webarticles.html>

Civility is linked to the latin word *civitas*, which meant 'city' and 'community.' Thus, civility implies a larger social concern. When we are civil we are members in good standing of a community, we are good neighbors and good citizens. Whether we look at the core of manners or at that of civility we discern not only pleasant form but ethical substance as well.

...The quality of our own lives improves together with the quality of the lives we improve. Self-interest and altruism find a way to converge in the practice of civility...

We are not born civil. Civility is a code of behavior acquired by learning it from others and by constant practicing. For the sake of our communities and ourselves, let us teach, let us learn, and let us practice.”

In January of this year, St. Mary's University announced that it was undertaking a major research study to look at the effects of rudeness and incivility in the workplace.² The study -- for the first time in the academic world, the researchers say -- will examine how people react to incivility from fellow workers, and whether people return bad manners with more rudeness of their own. The researchers believe people on the receiving end of rude behaviour may up the ante by escalating the incivility, in the belief that the rudeness they felt was deliberate and personal.³

I find it interesting that the topic of civility has become the focus of researchers at two disparate universities.

I don't believe that there is a universal definition of the culture of criticism. From my experiences, I would say that it could be defined as a preponderance of issues raised in a negative, harmful, or critical

² <http://www.jhu.edu/civility/webarticles.html>

³ <http://www.jhu.edu/civility/webarticles.html>

manner, but in that declaration of a negative sentiment, there is no alternative, or option, proposed for a mutually satisfactory resolution of the issue.

The culture of criticism is the culture that continually says, “Look, what you did was wrong.”, and then offers no way of making the wrong a right. The culture of criticism usually demonstrates the sense of angered bias towards another party or position.

In my work as your Ombudsman, I have seen cases where the lack of civility or the culture of criticism has been the nascent problem of the complaint. I have had complaints made to me where the core issue is simply that emails sent have never been responded to. The simple civil act of responding to another’s communication would have alleviated the need for the involvement of my Office in a complaint.

I have had to deal with other issues where the root of the problem was that one party felt that they had been treated in a disrespectful or disparaging manner by another, and this was an unfairness.

I have seen other complaints where the basis is simply that the person wants to be critical and state a position, or to overwhelm my Office with biased opinions. Last year, my office went through an interesting experience when a group made a decision to post my direct email address on its website, along with a pro forma letter that the group's member could send to me. There are several interesting things about this. First, rather than communicating with me as a group, and making a cogent complaint; a complaint being different than criticism, in that a complaint contains a description of the problem, of the unfairness, and of a desired outcome; this group

chose instead to use a mass mail criticism response. In the end, the group fell short of being able to gain any resolve, as it completely fragmented and criticism based tactics only resulted in my being forced to decline jurisdiction as no issues of fairness were articulated.

I found this group interesting in its civility practices and in its transparency. While its leaders found it appropriate to put my direct email address on its website, the same site offered no similar ability to send emails to its leadership. Perhaps they have been scared by their own uncivil and critical tactics. The ability of the community to contact me directly and confidentially; and then to be responded to quickly remains a hallmark of my Office.

In conclusion Mr. Chairman, I would simply encourage parties to look to the resolution of disputes

by constructive complaining, rather than by criticism;
and to consider civility as a key factor in their
correspondence before hitting the send button.

Mr. Chairman that concludes my report. Thank you
for the opportunity to address the Public Forum this
afternoon.