

ICANN Contractual Compliance

At-Large participants at this meeting have been extremely disappointed with the flippant response we have received to our concerns about ICANN contractual breaches despite three meetings this week.

We have submitted numerous well-documented examples of identified breaches that have either been closed prematurely or improperly handled. The answers we received to these and other matters were incomplete, contradictory, and in some cases evasive. To call the engagement unsatisfactory would be an understatement.

Our concern is enhanced by the introduction of many hundreds of new gTLDs as candidates for oversight. On the evidence, it is extremely difficult to have confidence in ICANN's ability to enforce its new gTLD contracts, when it is unable to adequately enforce the less than two-dozen gTLDs that already exist. This is not just about contract enforcement; it is a core matter of ICANN's accountability, transparency, and public trust.

Clause 3.7.8 of the RAA, even in its proposed new form, does not and cannot enable sufficient contract enforcement to serve the public interest. To this end, the ALAC shall propose new wording for 3.7.8. We hasten to caution that simply throwing more bodies at compliance will not bridge gaps in public trust, especially if ICANN continues to be seen as allowing bad actors to conduct business as usual even after being called out.

Although ICANN is not formally a regulator, it needs to exercise control over its contracts comparable to that of a first class effective regulator. There needs to be an explicit separation between ICANN's compliance and legal departments.

ICANN's current posture does no service to its public image and raises the issue of what the organization's function and identity is, most specifically in the area of contract management. More to the point, it undermines the value of the Compliance Department. This is a critical corporate governance and AOC issue and must be addressed.