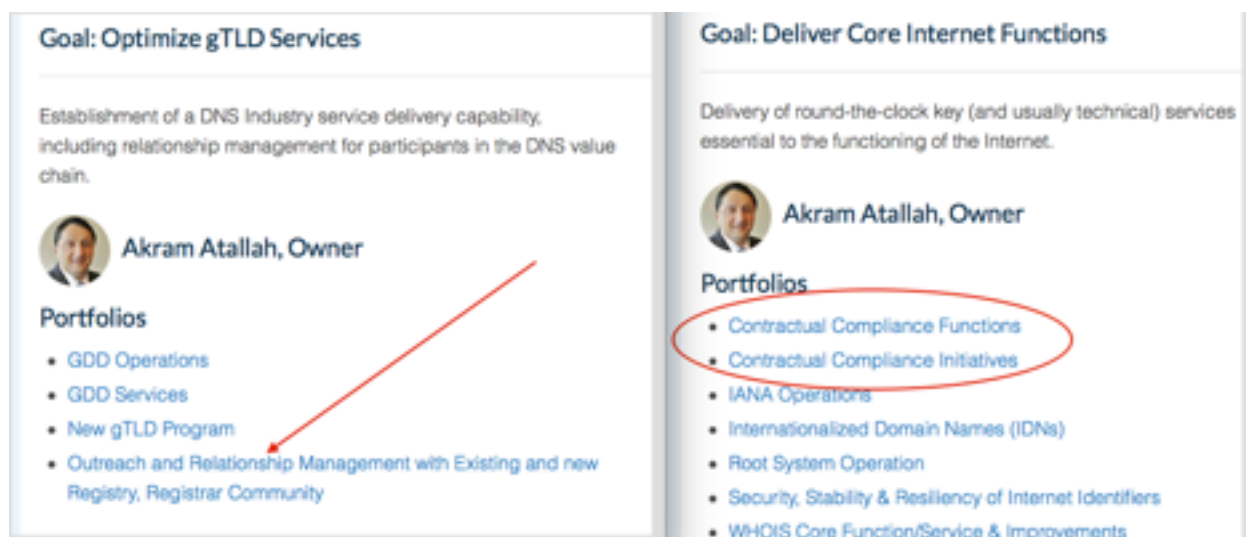


From: Garth Bruen
To: The At-Large Advisory Committee (ALAC), At-Large Leadership
Date: June 26, 2015
Subject: Structural Problem of Accountability in ICANN

Dear Colleagues,

The following is an item for consideration and discussion with more details to follow within an At-Large workspace.

As we consider IANA Transition work in the context of accountability and transparency to the stakeholder community I would encourage all to review the current structure of ICANN's compliance functions. What ICANN has at the moment is an inherent conflict of interest in the management of compliance. Early in his arrival, CEO Fadi Chehade moved the compliance department out from under ICANN legal and had it report directly to the CEO¹. This was done following various concerns from the community about the independence of the compliance department. However, now there is a curious situation of the compliance department actually reporting to the business division. See the screen captures below from ICANN's portfolio management page²:



Akram Atallah is ICANN's Global Domain Division President³. His core function is in overseeing the commercial aspects of ICANN and specifically in "Relationship Management" for the contracted parties. This is in complete contradiction to his additional portfolio role which includes Contractual Compliance Functions and Initiatives. Even on an optical level, this presents a poor image. In fact, there is no

¹ <https://www.icann.org/news/announcement-2014-10-12-en>

² <https://features.icann.org/plan>

³ <https://www.icann.org/profiles/akram-atallah>

firewall inside of ICANN that ensures compliance truly serves the public interest. Additionally, the domain business president functions appear far-reaching in comparison to other top-level ICANN officers.

This structure is also in contradiction to the ICANN staff organizational chart which shows the head of compliance reporting directly to the CEO. However, ICANN's FY2016 budget proposals specify that the compliance budget is part of the Global Domains budget and even a portion of the compliance budget is still controlled by ICANN legal. This is not what the CEO promised the community.

To be direct, this structure where the head of commercial business is also head of the compliance function represents an inherent conflict of interest for the organization. Multi-stakeholder accountability cannot be realized in this scheme. The business of ICANN is too close to, in essence on top of, compliance. In a structure where compliance reported to legal, the spirit of compliance is guided purely by protection of the organization and not in the public interest. Now, the spirit of compliance is overshadowed by domain business decisions. This is also not in the public interest and may be less preferable to the previous model.

The best model, one which serves the multi-stakeholder community and the public interest, would be one in which compliance is completely divorced from ICANN's business. ICANN's core function is in managing contracts with registries and registrars. The compliance function is the ultimate protective force for the organization and the greater Internet community. Without an effective compliance function, ICANN is merely a pass-through for domain industry money. My recommendation is to place compliance outside the ICANN structure, possibly reporting directly to the board. Obviously, the functions should remain in ICANN's offices to ensure continuity, but true structural independence is required for ICANN to deliver its mandate of public interest accountability and transparency.

Sincerely, Garth Bruen, At-Large officer