

Subject: Re: [Reconsideration Request] Reconsideration Request 18-3
Date: Wednesday, June 20, 2018 at 7:41:06 PM Pacific Daylight Time
From: Rob Golding (sent by reconsider <reconsider-bounces@icann.org>)
To: reconsideration@icann.org

https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_pages_reconsideration-2D18-2D3-2Dastutium-2D&d=DwlCAG&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=Yq8kkKRfvwbzb5S6uc7Zd0P6CrV6n6oSQVrGL5EQebA&m=CXN7Te8-coUOQ8MzjS9KH9_k08WFNDSRSaBqMhDMEgQ&s=8Fy54xBsyiU-HNqNwsPeGpkY1j7wPG54qZIRuARWPrU&e=request-2018-03-30-en

Hi

Thank you to all involved in the time to evaluate and reply to the reconsideration request.

Whilst I cannot say I agree with the report (details below) and it's not the final outcome I would have expected, I am appreciative of the time and effort expended, as well as the opportunity to go through the process(es) and see how they work.

I'd also like to say a specific thank-you to Krista Papac who was highly informative about the complaints process and willing to listen to my concerns about the accountability mechanisms during our meeting in Vancouver.

Ultimately my aim has always been to have the 'final decision' questioned as completely disproportionate to the issue raised (and as far as we remain concerned no such breaches occurred so there are no grounds for termination), and the process that led to the decisions looked into so that improvements can be made, and should there still be unresolved issues, opportunity to work in a collaborative method to solve them, without the need to involve courts, lawyers, further complaints/challenge processes and so on.

Those are still my goals.

That said I have to also say I am still completely shocked that ICANN can have a department able to escalate to de-accreditation without any obvious board member oversight, stemming from a complaint about a missing fax number, which according to your own documentation is not a required field, that is very clearly present and is also the number you faxed the complaint to !

I firmly believe if someone could take a step back and look at this objectively, or even simply organised a sit-down-round-a-table with all concerned, then this could be easily solved to everyone's satisfaction in a reasonable time.

I detail my response over specific items as a rebuttal below for your consideration...

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Page #1, "I. Brief Summary. - Consistent with its approach and process,2"
from the links at note 2 [

[The documented and expected process \(putting aside the minutiae of the complaint detail for a moment\) is that ICANN Compliance _talk_ to a registrar as part of the "3 step process"
- indeed this has been explained to registrars at numerous presentations by compliance, that action is not taken until that has been done.](https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_pages_approach-2Dprocesses-2D2012-2D02-2D25-2Den&d=DwICAg&c=FmY1u3PjP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=Yq8kkKRfwbzb5S6uc7Zd0P6CrV6n6oSQVrGL5EQebA&m=CXN7Te8-coUOQ8MzjS9KH9_k08WFNDSRSaBqMhDMEgQ&s=Dix39QUUApSIxLpIEMqLcAXL2s01TGjQe68Lwa6BV54&e=]</p></div><div data-bbox=)

At no point during this process did ICANN Compliance speak to me at Astutium Ltd as part of this process (and they actively refused to speak to me at the recent GDD meeting)

From their own documented timeline, it shows they made calls to an invalid and incorrect number.

I find it difficult to understand how multiple staff from ICANN including ICANN Registrar Liaison Mukesh Chulani can call the correct number for me during the time-period this ticket relates to (and ICANN compliance staff have previously regarding different issues called the correct number) and got through without issue, yet over this "nuclear option" Compliance can consistently dial a non-existent/invalid number. I also note that ICANN Compliance were themselves in communication with your own staff Mukesh who had been in telephone communication with me, so exchange of my contact details should not have been onerous.

Whilst I am always incredibly busy, I am certainly not difficult to find, my number is widely circulated within ICANN and on my card(s) given to numerous ICANN staff, I am active on a number of PDPs, a member of the RRSg and an attendee at most of your meetings !

Additionally the correct number is known to ICANN compliance, and is in the "InfoSpec" document Jennifer Scott sent by email "Tue 13/03/2018 13:54"

I would consider this a major failure of the claimed and documented "consistent approach" and had the documented approach been followed I expect a very different outcome would have ensued.

From

https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_en_system_files_files_reconsideration-2D18-2D3-2Dastutium-2Dba&d=DwICAg&c=FmY1u3PjP6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=Yq8kkKRfwbzb5S6uc7Zd0P6CrV6n6oSQVrGL5EQebA&m=CXN7Te8-coUOQ8MzjS9KH9_k08WFNDSRSaBqMhDMEgQ&s=mNHtwetP9s02EM4teS001n8ao6QbQTLvMmHk6JWspk&e=mc-recommendation-attachment-1-05jun18-en.pdf

"Then, called Rob's mobile number, however it says "This number is not recognizable""

quote from your own documentation:

"8. Primary phone number where the Registrar can be reached for contractual purposes. ^{Contact n ormation Redacted} (office) or ^{Contact nformation Redacted} (management mobile)"

which is *NOT* the number they tried dialling

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Page #2, "Following unsuccessful informal resolution of the Complaint, on 27 February 2018, Contractual Compliance escalated the matter to the Formal Resolution Process³ by sending the Requestor a Breach Notice resulting from the Requestor's failure to: (i) take reasonable steps to investigate and correct claimed WHOIS inaccuracies"

This is in regards to

"As required under Section 3.7.8 of the 2013 Registrar Accreditation Agreement (RAA) please take reasonable steps to investigate this Whois Inaccuracy claim"

In order to determine what could be considered _reasonable_ we would need to get into the detail of the inaccuracy claim ...

From the emails from ICANN staff ^{Contact nformation Redacted}

The problem summary:

Problem in whois block: Technical Contact

--- Error in phone number: Phone is missing

--- Error in name: No such person or entity

--- Error in fax number: Fax is missing

--- Comment: A made-up name is entered. No phone or fax numbers.

With the evidence as provided by ICANN in the report for those claims being

...

Domain Name: tomzink.com

Tech Name: Domain Admin

Tech Organisation: Astutium Limited

Personal Data Redacted

Taking these in turn

taking these in turn ...

icanns' claim #1 "--- Error in phone number: Phone is missing"
icanns' evidence #1 Redacted

The claim is from a simply visual investigation, exactly as I described it previously, clearly nonsense - the phone number is NOT missing
Further also from a simple visual investigation, the number is in exactly the right format (as required by the contract / WAPS)
Further from my own knowledge, the number is absolutely correct, as it is one of OUR TELEPHONE NUMBERS which gets called multiple times per day and is "attached" to our central switchboard system

icanns' claim #2 "--- Error in name: No such person or entity"
icanns' evidence #2 "Tech Name: Domain Admin"

The claim is from a simply visual investigation, not missing and is a common/standard "role" description

For example from the whois of ICANN.ORG ...
Tech Name: Domain Administrator
Tech Organization: ICANN
Personal Data Redacted

I fail to see any significant difference.

icanns' claim #3 "--- Error in fax number: Fax is missing"
icanns' evidence #3 Personal Data Redacted

The claim is from a simply visual investigation, exactly as I described it previously, clearly nonsense - the fax number is NOT missing
Further also from a simple visual investigation, the number is in exactly the right format (as required by the contract / WAPS)
Further from my own knowledge (and as the BAMC report specifically notes), the number is absolutely correct, as it is OUR FAX NUMBER
Further ICANN compliance know the number is correct and working as they faxed the complaint to it, logged that the fax had gone through and show it in your attachment1 (page14)
Further I took the original of the fax showing your sending number and headers to the GDD meeting in Vancouver and showed it to the ICANN complaints officer
Further the fax number is an optional field (I cannot link to your specification which shows this as the page is not a robot/404 since your recent reorganisation) - so the presence or lack of a fax number is essentially irrelevant, and outside the scope of compliance action

icanns' claim #4 "--- Comment: A made-up name is entered. No phone or fax numbers."

relates to #1, #2, #3 above

I could go on through all the other claims as they're largely a repeat of the same but for the Admin contact, but getting bogged down in the detail again rather than looking at the overall issue will not solve anything.

I would request that the ICANN board explain, document and publish what would be considered "reasonable" in the light of the above

Although being pedantic (as ICANN recently lost the court action against EPAG) that collection of the Technical Contact data etc as regards the GDPR [which has been law since May 2016 and so predates this whois complaint by 18 months] is unnecessary and illegal, and therefore should be outside the scope of compliance action.

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Page #9, "One week before the 20 March 2018 cure deadline, on 13 March 2018, Contractual

Compliance sent a reminder email to the Requestor.⁵⁰ The Requestor did not respond.⁵¹"

Specifically the claim "The Requestor did not respond" - this is not correct.

The notice of (claimed) breach provided until 20th March to cure "breaches" which had mostly already been answered, or for which no cure was necessary as no breach had occurred, or (like below) had required action which had been taken.

Regarding ICANN ticket [~EDF-547-71092] for which you summarise the breach claim at the bottom of Page 8 - yes, there were previously identified questions about and errors with the WHOIS template we had used - for example ICANNs' requirements for a less-accurate timezone style than we had used.

Despite there being a defined set of time formats

(https://urldefense.proofpoint.com/v2/url?u=https-3A__tools.ietf.org_html_rfc5732-23ref-2DW3C.REC-2DxmIschema-2D2-2D20041028&d=DwlCAg&c=FmY1u3Pjp6wrcrwlI3mSVzgfkbPSS6sJms7xcl4I5cM&r=Yq8kkKRfvwbzb5S6uc7Zd0P6CrV6n6oSQVrGL5EQebA&m=CXN7Te8-coUOQ8MzjS9KH9_k08WFNDSRSaBqMhDMEgQ&s=p6ZZZodXOzYtibFzQqkO4Ca1sShpJu_ubIP7I58Vj0I&e=)

which ICANNs notice included the link to, compliance wanted it in a different

format citing a "Clarifications" document.

And we fully admit that we do appear to have missed an "advisory" at some point historically, and there had been an English vs US-English style typing error on the output.

This had been given a deadline to fix of 2nd March and was completed in advance of that date and advised to ICANN who replied with "this ticket has been closed because the issue is now being addressed in the notice of breach issued to your registrar"

There was no (remaining) breach, all of the items had been fixed or required further details from compliance [so those had been fixed as per the request but over which we expected more information]

Yes, I received the "reminder" on 13th March, and then spoke with ICANN staff Mukesh Chulani (my apologies if I have inadvertently spelled his name incorrectly) regarding our reply that was pending - that reply was sent by email on the 15th March (UK time, 14th March your time) - a significant amount of that email reply was cut-and-pasted into the reconsideration request and then expanded upon for that document.

So I dispute the claim of "no-response", indeed it was icann who we saw no response from, although that is not at all unusual - despite there being "deadlines" attached to demands from the compliance department, registrars are not afforded any such courtesy or regular communications (as can be seen from the compliance provided timeline)

- there are no autoreponders
- there is no registrar access to the ticket system (despite it being a standard part of the kayako software you implemented and had been promised multiple times for several years)
- this is a recurring issue as raised by the compliance sub-team of the RRSG
- as yet the community has not defined for enforcement SLAs on ICANN for such communications

I was therefore unaware ICANN were going to claim no-response and was expecting the dialog to continue, especially over the newly invented claims of breach we'd not seen prior to the letters, as they did not appear in the tickets and previous correspondence (and could prove were incorrect) until the termination notice came through the fax machine.

For example your notification of report publishing has come in marked as "SPAM" in the subject (and was therefore not visible to me prior to 10am this morning when I was advised to go hunt for it as the deadline to respond was approaching) - emails can and do go missing

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Page #17 "other deficiencies remained, including that information in the Administrative and Technical fields (such as street names) appeared to belong to the Requestor rather than the registrant"

This is why we believe although _a_ process has been followed it is either the wrong process, or not fit for purpose, or perhaps just that the replies sent to ICANN have not been understood.

None of those cited would be considered "deficiencies" in any way, shape or form.

Firstly it is very possible and not at all unexpected that the Administrative and Technical contacts are those of 'Requestor' - that is because we are regularly the Administrative contacts for a clients' domain, and are by default the Technical contacts for all domains under our managed

services.

This returns to the contractual requirement to take "reasonable steps" to investigate/validate/update - what steps could be considered reasonable in regards to checking our own address ?

I was sitting there when I typed the reply to compliance - in the UK, buildings tend to be somewhat permanent rather than mobile, and the location is not subject to US extreme conditions like hurricane/earthquake/etc - offices simply do not (as a general rule) move about.

So No, no such "other deficiencies remained".

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Page #18 "The Requestor also did not provide Contractual Compliance with evidence of the required registrant verification under WAPS Sections 1, 2 and 4 or validation under WAPS Sections 1 and 2"

https://urldefense.proofpoint.com/v2/url?u=https-3A__www.icann.org_resources_pages_approved-2Dwith-2Dspecs-2D2013-2D09-2D17-2Den-23whoi&d=DwlCAG&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=Yq8kkKRfvwbzb5S6uc7Zd0P6CrV6n6oSQVrGL5EQebA&m=CXN7Te8-coUOQ8MzjS9KH9_k08WFNDSRSaBqMhDMEgQ&s=qJ-oWlLO3raLaVtjkw28-xUqectAVgazxoVdK15aAiU&e=s-accuracy

s-accuracy

This continues to be ICANN staff misunderstanding the processes and systems used by most registrars, who validate data at time of entry, and do not (in very many instances) "eyeball" the data afterwards (or need to) - automation has been the industry standard for many years.

For example - Although our customer had originally entered their telephone number as "56298*****" (where ***** is me redacting the last 5 character for this reply)

what we stored (and displayed when it was legal to do so) on the WHOIS, and what we auto-dialled as part of our fraud prevention systems was +1.56298***** and having already confirmed that was indeed their telephone number, the contact had been updated to show
Registrant Phone: +1.56298*****

As already advised to both compliance and in the reconsideration request, all applicable aspects of the WAPS have been adhered to, and the checking is (in almost all cases) entirely automatic.

As per the claim on page#20 "If the Requestor does not receive an affirmative response, it "shall either verify the applicable contact information manually or suspend the registration"

Email sent:

20/12/2017 18:16 WHOIS Details Update Required -- Act Now

Affirmative response:

Date: 20/12/2017 20:01

IP Address: 75.134.**.* (where *.*.* is me redacting the last 5 character for this reply)

They confirmed (and checked/updated their data) within a more than acceptable time frame from being contacted - no manual checking/work by us as Registrar was therefore necessary

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Page #21, "Yet, during correspondence with Contractual Compliance, the Requestor never raised EU privacy law as a basis for withholding the requested information"

ICANN are well aware of their failure regarding Privacy Shield, it has been raised by a number of registrars on several occasions, and of course of the GDPR which has monopolised ICANN meetings since Copenhagen (58 ?) - your CEO formed a task-force 6 months before this WHOIS complaint to specifically deal with the issue of your contract/compliance requirements being non-compliant and illegal. Akram even blogged about it in June 2017 !

So whilst I did not specifically quote the specific details of the legislative issues, I did not think within the context of everything happening at ICANN, that it was explicitly necessary but (incorrectly) assumed it was understood.

It had been specifically raised in relation to this type of request and with the audits, with your BE office when there was registrar liaison stationed there.

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Page #24, "The Requestor claims that it complied with Section 4.1 of the ERRP because its fees are displayed on every page of its website.112 However, Contractual Compliance was unable to locate a link to the Requestor's renewal fees on its website and post-expiration renewal fees in the Requestor's registration agreement.113 "

I am not sure which part of "EVERY PAGE" is not being understood - if ICANN compliance were unable to locate the link which says "Price List" at the bottom of the page, which reads:

[quote]

Domain Name Pricing for:

Registration

Renewal

Transfer In

Transfer Out (where chargeable)

Recovery (post expiry renewal)

Redemption (post cancellation renewal)

Can all be found on the Domain Checker page

<https://urldefense.proofpoint.com/v2/url?u=https->

[3A www.astutium.com domainchecker.php&d=DwICAg&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r](https://www.astutium.com/domainchecker.php&d=DwICAg&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r)

[=Yq8kkKRfvwbzb5S6uc7Zd0P6CrV6n6oSQVrGL5EQebA&m=CXN7Te8-](https://www.astutium.com/domainchecker.php&d=DwICAg&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r)

[coUOQ8MzjS9KH9_k08WFNDSRSaBqMhDMEgQ&s=M8CN5IBFDU4s2eEvLfefaWGoELh6ek6tio7Polkj0o&e=](https://www.astutium.com/domainchecker.php&d=DwICAg&c=FmY1u3Pjp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r)

[/quote]

then it raises the very important question (for this and several of their

other wild accusations) what website they have been looking at?

Unfortunately they do not supply any "evidence" of their breach claims - no URL, no s/shots, no information at all beyond claiming we are non-compliant when 2 minutes with a web browser on our site would prove otherwise.

Parts of the BAMC report references "not provide sufficient information as to why" - yes, there were no embedded screenshots or photographs added to the document, if additional exhibits are required or expected, please let me know and I will be happy to produce them for you or provide URLs of independent 3rd parties who have the details archived

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Page #25, "failure to publish a correspondence address on Requestor's website."

Failure to publish *A* correspondence address is the (false) claim I addressed in the reconsideration reply

Not as per page 25 "correspondence address on its website must be the same as the address provided in its RIS".

So, despite an attempt to claim something new now, rather than resolve what we consider an outright lie (of not having an address on our website) which is published on ICANN's site in various PDFs now ...

The RIS form (as sent by ICANN staff to me on 13 March 2018) and _presumably_ is the one being referred to in this now adapted claim is not the current RIS form/data - I went through the convoluted procedure of updating ICANN with new details and forms when access to RADAR was restored following ICANN's extended shutdown of the system after your security breaches, and had to involve your staff at various stages due to issues with your systems

This then (as sadly updates in RADAR tend to do) triggered weeks of having to submit new "RRA Forms" with every Registrar once ICANN notified them of updates to an address.

That you have (it would seem) failed to update/store/file the correct and updated information at your end, is (I imagine) simply another failure within ICANN or some problem with RADAR

This is especially notable as you not only send your bills (which we get) to the address on our website, and send your official communications (which is the point of the RIS data) to that address (I even took an unopened delivered one and showed it intact with the address matching the website address to your complaints officer last month)

Further it is also the address you sent the courier copy of the termination notice to, the original which I have on my other desk, which has also been shown to your staff with the address label intact - and which Fedex have confirmed you tracked the delivery of !

Claims therefore that you somehow have an old version of a form on file, and are referencing that now in the claim of breach don't hold up to any level of scrutiny.

So whilst an old RIS form you provided has a different address [which does still work for us - indeed we have multiple working addresses], that is not our current "registered office" as we have to have on-file with the UK company regulator, and which we by law have to put on our website, and according to all recent correspondence from you, is the address ICANN have for us.

Despite what feels like an attempt to alter the claim from the libellous one as published to something else, I am more than prepared to work with ICANN to ensure you correctly update your forms/systems/details/etc, although would prefer not to have several more weeks of business disruption updating forms again with registries - so will have some preconditions on how you notify other parties this time.

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For the sake of brevity and wanting to see this moved forward to a mutually satisfying conclusion rather than continuing on circular arguments , I have not gone into further details, although I can provide much more detail if requested.

I would much rather discuss with the board directly (or a representative they appoint), with a view to resolving / clarifying / answering / whatever these claims of breach and for the proposed de-accreditation to be ended and thus normal service resumed.

The offer to sit down around a table (physical or virtual) is still there and I was extremely disappointed having flown half-way across the world for the GDD and meetings that something could not have been done at that time

Regards
Rob Golding
Astutium Ltd

This email has been checked for viruses by Avast antivirus software.

https://urldefense.proofpoint.com/v2/url?u=https-3A__www.avast.com_antivirus&d=DwICAg&c=FmY1u3PJp6wrcrwl3mSVzgfkbPSS6sJms7xcl4I5cM&r=Yq8kkKRfwbzb5S6uc7Zd0P6CrV6n6oSQVrGL5EQebA&m=CXN7Te8-coUOQ8MzjS9KH9_k08WFNDSRSaBqMhDMEgQ&s=WJgcPpv60J8IN_gXBqzGE6MI dvKdoUayK916CPvP4tU&e=

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