

Reconsideration Request Form

Version of 1 October 2016

ICANN's Board Governance Committee (BGC) is responsible for receiving requests for review or reconsideration (Reconsideration Request) from any person or entity that believes it has been materially and adversely affected by the following:

- (a) One or more Board or Staff actions or inactions that contradict ICANN's Mission, Commitments, Core Values and/or established ICANN policy(ies);
- (b) One or more actions or inactions of the Board or Staff that have been taken or refused to be taken without consideration of material information, except where the Requestor could have submitted, but did not submit, the information for the Board's or Staff's consideration at the time of action or refusal to act; or
- (c) **One or more actions or inactions of the Board or Staff that are taken as a result of the Board's or Staff's reliance on false or inaccurate relevant information.**

The person or entity submitting such a Reconsideration Request is referred to as the Requestor.

Note: This is a brief summary of the relevant Bylaws provisions. For more information about ICANN's reconsideration process, please visit <https://www.icann.org/resources/pages/governance-committee-2014-03-21-en>.

This form is provided to assist a Requestor in submitting a Reconsideration Request, and identifies all required information needed for a complete Reconsideration Request. This template includes terms and conditions that shall be signed prior to submission of the Reconsideration Request.

Requestors may submit all facts necessary to demonstrate why the action/inaction should be reconsidered. However, argument shall be limited to 25 pages, double-spaced and in 12-point font. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered, without limitation.

For all fields in this template calling for a narrative discussion, the text field will wrap and will not be limited.

Please submit completed form to reconsideration@icann.org.

1. Requestor Information

Name: Astutium Ltd

Address: Contact Information Redacted

Email: Contact Information Redacted

Phone Number (optional): Contact Information Redacted

2. Description of specific action you are seeking to have reconsidered.

Letter 21/March/2018

NOTICE OF TERMINATION OF REGISTRAR ACCREDITATION AGREEMENT

IANA 1471 (Astutium Ltd)

https://www.icann.org/uploads/compliance_notice/attachment/1013/serad-to-golding-21mar18.pdf

3. Date of action/inaction:

Action taken 21/March/2018 as delivered by Fedex 27/March and posted online

4. On what date did you become aware of the action or that action would not be taken?

22/March from a post on facebook about it. Followed by numerous telephone calls and the actual letter.

5. Describe how you believe you are materially and adversely affected by the action or inaction:

Astutium Ltd believe the decision to terminate our RAA is based on faulty data, misunderstandings and an overall failure of ICANN staff/policies/procedures.

The defamatory claims published on ICANN website impact the our reputation of our business and the action itself represents a risk to both Astutium Ltd and more importantly to our registrants

6. Describe how others may be adversely affected by the action or inaction, if you believe that this is a concern.

Registrants are already contacting us concerned about the potential impact on

their business and domain names should the action proceed.

7. Detail of the ICANN Action/Inaction – Required Information

Provide the Required Detailed Explanation here:

ICANN action in terminating the RAA with Astutium Ltd

Astutium Ltd believe proceeding with this action would have demonstrable harm to registrants, that the publishing of defamatory provably false claims of contract breach are damaging the reputation of Astutium Ltd, and that faults in the compliance processes applied should be urgently addressed

Astutium Ltd believe the action is unwarranted and based on faulty premises such that it is unreasonable and grounds for reconsideration

A total of six reasons are provided in the termination notice, and is the view of Astutium Ltd that each of those claimed breaches are patently false and primarily relate to the faults/failings of ICANN Compliance Staff and Processes.

8. What are you asking ICANN to do now?

(Describe the specific steps you are asking ICANN to take. For example, should the action be reversed, cancelled or modified? If modified, how should it be modified?)

Astutium Ltd would like to see

- the RAA termination cancelled
- the processes/staff which led to the termination letter reviewed
- the libelous claims now published on your website updated with an apology/retraction

9. Please state specifically the grounds under which you have the standing and the right to assert this Reconsideration Request, and the grounds or justifications that support your request.

Failure to reverse the action will result in loss of business reputation,

Financial loss incurred in replacing direct-accreditation registrations with reseller arrangements which will take a significant amount of time and the expense of legal action against ICANN and ICANN staff

Disruption to our and our clients' business due to uncertainty over their domains.

Specifics of the RAA termination breach claims being disputed are ...

Claim 1:

failure to take reasonable steps to investigate and correct claimed Whois inaccuracies regarding the domain name as required by Section 3.7.8 of the RAA

Response:

No breach has occurred, no such failure has taken place. All aspects of 3.7.8 have been complied with despite ICANN's clear faults/failings/falacies in ticket [~FVW-625-17043]

Details:

On 20/December ICANN Compliance Staff Nick Axelrod-McLeod forwarded a WHOIS complaint report which contained significant errors (errors in the report, not errors in the whois data) - a total of 9 items (although some duplicated) were reported as needed investigation.

As a registrar we are tasked to *"take reasonable steps to investigate that claimed inaccuracy"* - the report was read, the claimed inaccuracies were clearly and obviously faults in the ICANN reporting process and it was replied by email to that effect.

Rejecting incorrect reports is as per agreement between the Registrars and Maguy Serad who is on-record at ICANN Meetings stating that complaints forms will be manually vetted, and that the practice of just forwarding them onto registrars had ceased.

Despite Maguys' assurances (which have been given on multiple occasions), and instead of using this as an opportunity to review their processes/improve staff training as well as to comply with their primary stated aim of compliance through cooperation, ICANN staff decided to dismiss our concerns

Conclusion:

Astutum Ltd firmly believe this should have been handled by the "ICANN Issue" section as explained

<https://www.icann.org/en/system/files/files/presentation-compliance-registrar-outreach-13mar18-en.pdf>

Page 14 "the complaint should not have been sent to contracted party due to ICANN error; or internal ICANN process needs to be completed before the Compliance process can continue"

However, as a responsible registrar, we chose to contact the registrant and advise them that we had received a complaint. Subsequent to that contact, updates have been made by the registrant to their domain registration data, although we now expect to receive a complaint from them regarding the illegal use of their personal data as scraped from the public whois, as we regularly do in these circumstances.

Astutum Ltd therefore posit that no breach has occurred, that all contractual requirements have been met, that we have gone above-and-beyond in our duties regarding whois data, and that claim#1 is defamatory and libellous.

Additional:

ICANNs demands for copies of communications to "demonstrate compliance" are both unreasonable and unnecessary. Compliance is a *state* not an event, and is easily checked, it does not require "demonstration", and should be well within the capabilities for a "Compliance Department" to check - in this case doing something as simple as a WHOIS.

Further, the exporting of private communications is potentially illegal, plus when combined with ICANNs recent and historical security incidents/data-breaches should not be something regularly demanded or taken lightly.

Claim 2:

failure to validate and verify Whois contact information, as required by Whois Accuracy Program Specification

Response:

No breach has occurred, no such failure has taken place. All applicable parts of WAPS are handled automatically.

Details:

This is a misunderstanding of ICANN staff of responses to queries, of the technologies involved, and of the processes undertaken by (largely) automated systems as employed by the majority of registrars (and registries).

Validation of client submitted data is done prior to acceptance of that data, and manual "eyeballing" of the data not a general requirement. In the event of certain specific data being updated (and subject to it not already having been verified on other domains) automated processes are then invoked as needed in accordance with 1.f

Conclusion:

ICANN Compliance Staff demands that data is checked manually are beyond the WAPS requirements (excepting where necessary as part of WAPS 4 in the event of failure of other methods) and not applicable in this case, but are an attempt by ICANN staff to impose their own beyond-contract additions to policy

Astutum Ltd therefore posit that no breach has occurred, that all contractual requirements have been met, and that the actual requirements of the WAPS have been all been complied with, and therefore that claim#2 is a staff misinterpretation.

Additional:

Despite Astutum Ltd compliance with the WAPS, it should be made clear that sections of WAPS are clearly out-of-scope for ICANN and attempts to extend the remit to cover "*corresponding customer / account holder*" (rather than being limited to domain-name specific data) should be examined and challenged.

Further, the inclusion of implementation methodologies (WAPS 1f) in contract are not in accordance with normal ICANN policy which generally specifies the "what" but not the "how".

Claim 3:

failure to maintain and make available to ICANN registration data and records

Response:

No breach has occurred, no such failure has taken place. All appropriate records are maintained and ICANN staff are well aware that Astutium Ltd keep accurate records from previous interactions/tickets.

Details:

Astutium Ltd as a UK based company are subject to UK law and (currently at least) EU law regarding data retention, disclosure and export. Following the highly publicised dismissal of the SafeHarbour agreements and questions about the reliability and authenticity of its replacement, there are limitations on what personal data (and copies of emails, recordings of telephone calls and related items are all considered personal data or contain personal data) can be exported.

The EU Data Protection Directive 95/46/EC regulates the export of personal data outside of the EEA and states that there should be no transfers of personal data to countries outside the EEA unless the recipient country ensures 'adequate' protection for data subjects and their personal data.

The US is not currently listed as a territory that meets the requirements of adequate safeguards, although limited organisations within the US meet the Privacy Shield requirements

Conclusion:

ICANN are not currently listed as having implemented or become compliant/certified with Privacy Shield https://www.privacyshield.gov/participant_search

If ICANN wish to have copies of records, they can be provided once you achieve the Privacy Shield certification. If instead ICANN wish to examine our records, they are more than welcome to do so at our offices, so that no data-export needs to take place. If that is not acceptable or practical, then remote viewing from an acceptable location which meets EU safeguard requirements is also possible.

Astutium Ltd remain open to discussion about appropriate anonymisation and data access as per the RAA, however to-date we are not aware of anything other than ICANNs demands for data/records to which they are not entitled or to which we are not legally able to export to the US.

Astutium Ltd therefore posit that no breach has occurred, that all our legal requirements have been met, that the records are available, that they can be inspected (subject to appropriate safeguards), and therefore that claim#3 is an unwillingness on the part of ICANN staff to act in good faith as regards 3.4.3

Additional:

The EU are in the process of enacting additional legislation regarding data-export/sharing which when passed will mean that no records will be shareable with ICANN unless you open and staff offices within the EuroZone by any EU based registrar.

Claim 4:

failure to provide domain name data in the specified response format, as required the RDS (Whois) Specification

Response:

No breach has occurred, no such failure exists.

Details:

ICANN provided details of WHOIS output format errors in ticket [~EDF-547-7109].

These were investigated and it appeared to be a combination of: some templating errors; an earlier missed "advisory" which introduced new/additional requirements; conflict between the example data provided at <https://www.icann.org/resources/pages/registry-agreement-raa-rdds-2015-04-27-en> and the specifications of that data the same document refers to

A deadline for completion was given by ICANN of 2/March to update the output

Conclusion:

From the extensive details provided by ICANN in the ticket it was possible to examine the data, the specification and compare to various examples of thin and thin registries/registrar as well as the multiple conflicting advisories to determine that some mistakes had previously been made and that further work/investigation/testing was needed

Typing mistakes (Created rather than Creation for example) were clearly our fault and fixed accordingly.

Other examples required more in-depth analysis, for example RDS/WHOIS specification states that date/time should be in RFC 3339 format [that time should be local with offset (as we displayed it)] yet the ICANN ticket demanded that times be converted to Zulu/UTC which is not what the specification linked RFC says.

After careful consideration of the impact, development work and standards as published, determined that changes could and should be made, so development resources were dedicated to the task of updating the whois outputs.

Initial rollout of the fixes occurred and ICANN were informed of this through the ticket 26/February well in advance of the deadline, however the response was ...

"Although your registrar's Whois format continues to be out of compliance with the requirements of the Whois Format requirements of the Registration Data Directory Service (Whois) Specification (RDDS) of the 2013 Registrar Accreditation Agreement (RAA), this ticket

has been closed because the issue is now being addressed in the notice of breach issued to your registrar on 27 February 2018"

Astutium Ltd therefore posit that no breach has occurred, that all necessary changes to meet staff requirements (which go above and beyond the documented specification) were met in advance of the arbitrary deadline, that the statement of "continues to be out of compliance" indicates they did not check, and that claim#4 is thus invalid.

Additional:

The process of introducing through the "backdoor" new contractual requirements through "advisories" is one that Registrars and Registries are particularly concerned about. There is a very real difference between clarification of something which is ambiguous or uncertain, and imposing (potentially onerous) new requirements which have not been agreed but make their way into contracts and therefore "compliance" are an ongoing issue, and that changes to requirements/specifications/etc should remain the purview of PDPs not staff

Claim 5:

failure to include a link in its registration agreement to its renewal fees

Response:

No breach has occurred, no such failure has taken place.

Details:

Links to our domain registration, renewal, transfer, post-expiry, redemption and other fees are on EVERY PAGE of our website and are clearly on the domain availability/check page and have been available from the "legal" pages (such as registration agreements) for a number of years.

Conclusion:

Unlike the majority of domain registrars, Astutium Ltd have always been upfront and clear about our pricing, displaying such items clearly and obviously on our website, so that registrants can make informed choices.

Since inception it remains company policy to make pricing information available at the earliest possible opportunity (although due to potential customisation options, sometimes only a range is possible to show until later in the order process) and have no hidden or surprise fees.

The Astutium domain checker page which forms an integral part of the order flow clearly has the pricing displayed, and is not hidden in any way (for example behind a login/paywall) as is common within the industry. Although pricing is shown EX-VAT (tax) as is standard in EU B2B pricing, unlike many registrars we don't "add on" ICANN fees or other undisclosed items post-order

The link to the price list page(s) is at the bottom of the earliest waybackmachine version of the registration agreement page from 2013

<https://web.archive.org/web/20130920073852/https://www.astutium.com/legal/domain-registration-rules.php>

and continues to be there today

Astutium Ltd therefore posit that no breach has occurred, that the link along with all associated data/pricing is easily available to any/all who wish to see it, and therefore that claim#5 is malicious falsehood

Additional:

A "quick check" of the websites of the largest registrars show that we appear to be unique in showing all pricing information without signup/order (and in many cases it is not available even after signing up).

Claim 6:

failure to publish a correspondence address on Astutium's website

Response:

No breach has occurred, no such failure has taken place.

Details:

Astutium Ltd website at <https://www.astutium.com> complies fully with UK legislation (Companies Act, Distance Selling Regulations) and EU legislation (E-Commerce Directive) as well as following best practices for any business. These require us to publish our registered/trading address, which we have always done.

Astutium Ltd *want* current, previous and future registrants to contact us, this is why the website has a "Contact" link at the top of every page, has telephone numbers on every page, contains multiple methods of communication (email, telephone, ticket, fax, post) listed and clearly shows our address at the bottom of every page.

A quick check with a major search engine responds with 1382 pages of our website indexed and ***EVERY SINGLE ONE OF THOSE*** has our address on it.

Conclusion:

Astutium Ltd are very concerned about this claim as it appears to be a deliberate attempt to discredit the business rather than being anything remotely factual.

Further, ICANN are well aware of our address (having delivered this notice to us by Fedex) and that following your data-breach and closedown of RADAR, that ICANN staff were involved in the update of our details in radar appx June 2017

To claim that you do not know our address, or that we do not publish that information on our website, or that we do not make it as absolutely easy to find us as we possibly can utterly beggars the imagination

Astutium Ltd therefore posit that no breach has occurred, and that claim#6 is published by icann purely for defamation purposes

Additional:

Having moved offices a few times in the last 20-or-so years, we have had to update our contact information more than once, and still maintain postal redirects from some locations, such that even if a registrant had recently emerged from a cave with only a 5 year old hand written rolodex, no access to the internet to look at the website, and wrote to us to renew their domain, the letter would still arrive at our current location !

10. Are you bringing this Reconsideration Request on behalf of multiple persons or entities? (Check one)

Yes

No

10a. If yes, is the causal connection between the circumstances of the Reconsideration Request and the harm substantially the same for all of the Requestors? Explain.

Do you have any documents you want to provide to ICANN?

If you do, please attach those documents to the email forwarding this request. Note that all documents provided, including this Request, will be publicly posted at <https://www.icann.org/resources/pages/accountability/reconsideration-en> .

Terms and Conditions for Submission of Reconsideration Requests

A handwritten signature in black ink, appearing to be 'RSG' with a flourish.

28/March.2018

Signature

Date