

# EVALUATION OF INTERNET CORPORATION OF ASSIGNED NAMES AND NUMBERS (ICANN) COMPLIANCE PROCESSES

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## ABSTRACT

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This document is a detailed study of the Compliance process at the Internet Corporation of Assigned Names and Numbers (ICANN), specifically the way it handles and tracks complaints of inaccurate WHOIS records for registered Generic Top Level Domains (gTLDs). ICANN issues accreditations to companies called Registrars which in turn are authorized to sponsor domain names (e.g., amazon.com) for companies and consumers. The domain owners, called registrants, must comply with agreements with the sponsoring Registrar and with ICANN including the maintenance of accurate WHOIS data. Registrars are obligated follow certain procedures, in the event of a complaint about WHOIS inaccuracy. ICANN is required to track those complaints to ensure proper handling. The results of this examination reveal a number of failures and inconsistencies within the ICANN Compliance process as well as apparent confusion over actual policy. Compliance staff also issued contradictory answers to questions at different times. Specific non-compliant events were not followed by enforcement for unexplained reasons. Compliance staff appeared to be unable to account for their decision-making process. At the end of this review Compliance appeared to abandon the investigations and refused to answer further questions.

## INTRODUCTION

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While there have been multiple studies concerning the accuracy of the gTLD WHOIS record set and problems presented by this issue, there are no known studies of the effectiveness of ICANN's process for dealing with WHOIS inaccuracy. Given what we understand the problem is, our question is: can ICANN actually handle complaints as expected?

The Internet Corporation for Assigned Names and Numbers (ICANN) coordinates the Domain Name System (DNS)<sup>1</sup>; it does this in particular by accrediting domain name Registrars who sponsor domain names<sup>2</sup>. The Affirmation of Commitments is a document in which ICANN pledges that coordination of the DNS is made in the public interest and is accountable and transparent<sup>3</sup>. In short ICANN administers agreements with the companies who sell domain names and their procedures in this core function must be open for public viewing and documented in such a way that responsibility is clearly defined.

All domain owners and operators must supply accurate contact information for each domain they register<sup>4</sup>. Failure to supply truthful and accurate data in domain WHOIS records is a material breach of the Registrar-registrant agreement<sup>5</sup>. A WHOIS record is a publicly available domain name database entry which can be accessed through a Registrar or registry supplied service<sup>6</sup>. For its part the sponsoring Registrar is obligated to take reasonable steps to investigate and correct WHOIS inaccuracies<sup>7</sup>. These obligations are stipulated in the standard ICANN-Registrar contract called the Registrar Accreditation Agreement<sup>8</sup> (RAA). False WHOIS is considered to be a widespread and serious problem. A recent cross-constituency review of the issue found that ICANN had failed to meet its expectations for managing this portion of the DNS and specifically to regulate or be effective in dealing with Registrars on this issue<sup>9</sup>.

The WHOIS Data Problem Reporting System (WDPRS) is ICANN's system for accepting and tracking complaints of WHOIS inaccuracies<sup>10</sup>. All of the domains cited in this report had complaints filed via the WDPRS. The reports are forwarded to the sponsoring registrar, who is responsible for investigating and correcting the data<sup>11</sup>. The full cycle for the complaint is 45 days inclusive of a 15-day response period for registrants<sup>12</sup>.

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<sup>1</sup> <http://www.icann.org/en/about/welcome>

<sup>2</sup> <http://www.icann.org/en/resources/registrars>

<sup>3</sup> <http://www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm>

<sup>4</sup> <http://www.icann.org/en/resources/registrars/raa/ra-agreement-21may09-en.htm#3.7.7.1>

<sup>5</sup> <http://www.icann.org/en/resources/registrars/raa/ra-agreement-21may09-en.htm#3.7.7.2>

<sup>6</sup> <http://tools.ietf.org/html/rfc3912>

<sup>7</sup> <http://www.icann.org/en/resources/registrars/raa/ra-agreement-21may09-en.htm#3.7.8>

<sup>8</sup> <http://www.icann.org/en/resources/registrars/raa/ra-agreement-21may09-en.htm>

<sup>9</sup> <http://www.icann.org/en/about/aoc-review/whois/final-report-11may12-en.pdf>

<sup>10</sup> <http://wdprs.internic.net/>

<sup>11</sup> <http://www.icann.org/en/news/announcements/advisory-10may02-en.htm>

<sup>12</sup> <http://www.icann.org/en/news/announcements/advisory-03apr03-en.htm>

It is the function of ICANN's Compliance department to process WDPRS complaints and enforce contractual breaches against Registrars. In theory, ICANN Compliance is supposed to accept complaints, investigate them thoroughly and if needed enforce the RAA contract. Since ICANN's core function is in accrediting Registrars, the oversight of these entities is critical for preserving the security, stability and resiliency of the Domain Name System. By adhering to this practice ICANN Compliance can promote consumer trust. In short, what we want to know is: does this ICANN Compliance process work as documented and is it effective? And how does the performance impact the organization as a whole?

## METHODS

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Starting in May 2011 a number of gTLD domain records were identified with false WHOIS. The set was drawn from domains advertised in SPAM or flagged for illicit or abusive use. The invalid or inaccurate WHOIS fields used in these cases were the administrator emails which are required by the RAA to be accurate. These email addresses were contacted with inquires and deemed inaccurate if the contact was rejected as undeliverable. The rejection notices were captured and documented. These details are provided in the Discussion and Appendix.

In documenting the process and results we followed ICANN's published procedures for submitting inaccurate WHOIS complaints through the WHOIS Data Problem Reporting System (WDPRS) and tracked stated deadlines. After the lifecycle of each complaint ended the results were analyzed. In cases where it appeared procedure was not followed, a letter was issued to ICANN Compliance requesting additional information. When answers were received from Compliance the response was analyzed and if needed, further follow-up questions were sent. As various cases of apparent non-compliance became identified through this analysis the questions put to Compliance became more specific. More specific questions revealed previously unknown details which also had to be analyzed and readdressed to Compliance staff. The correspondence mostly involved letters with detailed attached reports but, the overall analysis also included telephone interviews and transcribed meetings at three official ICANN meetings in 2011 and 2012. The analysis here pertains specifically to the exchange of documented questions and answers in the letters, but public discussion about these letters may also be referenced in the Discussion portion of this paper. Unfortunately, this research is technically incomplete because Compliance ceased responding to questions about specific cases in June 2012. When these questions were posed to ICANN Compliance in the 2012 Prague sessions, staff declined to address them. So, this analysis contains as many details as could be documented but many questions are unanswered.

Thousands of complaints were submitted during this period and hundreds were flagged for apparent non-action by ICANN Compliance, but for the sake of brevity nine specific cases were selected at nine different Registrars. The nine Registrars were of various sizes and in multiple countries. The point of this diversity is to show that potential problems exist across the board and that processing issues are not restricted to a single company, region, culture or market share.

Complaints submitted to ICANN's WDPRS are assigned a ticket number and a notice is sent to the sponsoring Registrar. After 45 days ICANN issues a follow-up notice to the complainant and to the Registrar. The complainant can select from one of four follow-up conditions: (1) WHOIS Inaccuracy Corrected, (2) Domain Deleted, (3) WHOIS Still Inaccurate, and (4) Other. In all the cases reviewed for this document the follow up selection was (3) as the WHOIS data was still inaccurate.

## RESULTS

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The nine cases are mapped below individually in a chronological order detailing the correspondence with ICANN Compliance for each.

### **Case 1: approvedonlinepharmacy[DOT]net at Bizcn.com, Inc. (#471)**

5 June 2011: In attempting to contact the administrator of approvedonlinepharmacy[DOT]net at the address indicated in the WHOIS record: contact@privacy-protect.cn, a rejection notice was received stating “I couldn't find any host named privacy-protect.cn.” This issue was confirmed again on 6 Jun 2011, 21 Jun 2011, and 27 Jun 2011.

10 June 2011: A WDPRS complaint was filed and given the ticket number c6e6d0835bdb4112636fceb7d8c5c1a27744cabe.

25 July 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

22 November 2011: ICANN Compliance was issued a detailed letter about this issue.

25 March 2012: Compliance responded stating “*Registrar provided steps taken to investigate alleged inaccuracies.NO ACTION required. RESOLVED.*”

3 May 2012: Due to the fact that it would be impossible for the Registrar to validate the inaccurate email address (the domain in the email “privacy-protect.cn” does not exist) More details were requested.

21 May 2012: ICANN Compliance responded stating “*Registrar verified that the data was correct in response to initial W-Ticket notice. Ticket Closed*” and “*Registrar did not respond to the following tickets between 10 June 2011 and 25 July 2011... Domain names suspended. Tickets Closed*”

1 June 2012: Compliance was specifically asked: Why has BizCn not been issued a breach notice for failing to comply with RAA 3.7.8? Compliance did not respond to this question.

## Case 2: finasterid-1mg[DOT]com at CORE Internet Council of Registrars (#15)

10 May 2011: In attempting to contact the administrator of finasterid-1mg[DOT]com at the address indicated in the WHOIS record: rt@pharmacy2000.vg, a rejection notice was received stating “Insufficient disk space; try again later.” Attempts to contact this address again on 28 May 2011 and 29 May 2011 revealed the same results.

3 June 2011: A WDPRS complaint was filed and given the ticket number de1dce636e3ead51beaca43b328425c4e6dc12ff.

17 July 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

22 November 2011: ICANN Compliance was issued a detailed letter about this issue.

25 March 2012: Compliance responded stating “*Registrar provided steps taken to investigate alleged inaccuracies. After investigation, the WHOIS data for the three domain names had been updated. NO ACTION required. RESOLVED.*”

3 May 2012: Because the cited updates occurred five months after the closure of the complaint period additional details on this issue were requested.

21 May 2012: ICANN Compliance responded stating “*Registrar did not take steps between 10 June 2011 and 25 July 2011.*” AND “*WHOIS e-mail addresses updated*”

1 June 2012: Compliance was specifically asked: Why has Core not been issued a breach notice for failing to comply with RAA 3.7.8? Compliance did not respond to this question.

### **Case 3: yoursupportmed[DOT]com at Internet.BS (#814)**

11 May 2011: In attempting to contact the administrator of yoursupportmed[DOT]com at the address indicated in the WHOIS record: admin@fortexltd.com, we received a rejection notice stating “it isn't in my control/locals file, so I don't treat it as local”

11 May 2011: A WDPRS complaint was filed and given the ticket number 6fa41d93452f769d933df57864000047fbadbfc

25 June 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

15 February 2012: ICANN Compliance was issued a detailed letter about this issue.

25 March 2012: ICANN Compliance responded stating the issue was “*In compliance process*”

3 May 2012: An update on this issue was requested.

21 May 2012: ICANN Compliance responded that “*Registrar verified data was correct on 16 June 2011. W-Ticket closed pursuant to compliance process, as registrar suspended domain name after previously verifying that the data was correct. Ticket Closed*”

1 June 2012: Compliance was specifically asked to supply detailed evidence of RAA 3.7.8 compliance. Compliance did not respond to this request.

#### **Case 4: antiimpotencedrugs[DOT] at Moniker Online Services (#228)**

5 May 2011: In attempting to contact the administrator of antiimpotencedrugs[DOT]com at the address indicated in the WHOIS record: info@antiimpotencedrugs.com, we received a rejection notice stating “No Such User Here”

10 May 2011: A WDPRS complaint was filed and given the ticket number 153e760e8896aa4dc0ae90a25ed4d0f186a0f790

24 June 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

21 November 2011: ICANN Compliance was issued a detailed letter about this issue.

25 March 2012: ICANN Compliance responded stating “*Registrar provided steps taken to investigate alleged inaccuracies. The domain transferred out of their registration. NO ACTION required. RESOLVED.*”

3 May 2012: Clarification was requested on this issue as the transfer occurred long after the complaint period and available DNS records do not show any changes to the WHOIS during the complaint period. We specifically requested to know if the investigation occurred during the 45-day complaint period.

21 May 2012: Compliance responded: “*Registrar did not take steps between 10 May 2011 and 24 June 2011, as Moniker claimed that they did not receive the initial report.*” AND “*W-Tickets are closed when registrars transfer domain names, as once the domain name is transferred the previous registrar no longer sponsors the domain name.*”

1 June 2012: Compliance was specifically asked: Why has Moniker not been issued a breach notice for failing to comply with 3.7.8? Compliance did not respond to this question.

### **Case 5: cheaprxsale[DOT]com at Net 4 India (#1007)**

25 May 2011: In attempting to contact the administrator of cheaprxsale[DOT]com at the address indicated in the WHOIS record: dmasta@reggaefan.com, we received a rejection notice stating “User is unknown.”

3 June 2011: A WDPRS complaint was filed and given the ticket number cd18afedade64ec115ef8c545d4b0f10e9a2ee1f.

19 July 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

26 December 2011: ICANN Compliance was issued a detailed letter about this issue.

25 March 2012: ICANN Compliance responded stating the issue was “*In compliance process*”

3 May 2012: An update on this issue was requested.

21 May 2012: ICANN Compliance responded that “*W-Tickets are closed when registrars transfer domain names, as once the domain name is transferred the previous registrar no longer sponsors the domain name. Registrars only have a duty to take reasonable steps to investigate claimed inaccuracies for names that they sponsor. In addition, W-Tickets do not transfer with domain names. Ticket Closed.*”

1 June 2012: Compliance was specifically asked: Did Net4India provide steps taken to investigate and did they occur between 3 June 2011 and 18 July 2011? Compliance did not respond to the question.

## Case 6: trustedtab[DOT]com at OnlineNIC (#82)

11 May 2011: In attempting to contact the administrator of trustedtab[DOT]com at the address indicated in the WHOIS record: tr4188306586701@domainidshield.com, we received a rejection notice stating “Recipient address rejected: Invalid user.”

10 June 2011: A WDPRS complaint was filed for trustedtab[DOT]com and given the ticket number da43a5cc2868638e19de3f1b731c9f683d2b702c.

25 July 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

22 November 2011: ICANN Compliance was issued a detailed letter about this issue.

25 March 2012: ICANN Compliance responded stating the issue was “*In compliance process*”

3 May 2012: An update on these issues was requested.

21 May 2012: ICANN Compliance responded that “*The registrar responded to the 2<sup>nd</sup> ICANN notice and verified the Privacy service data as correct. Also, ICANN sent a test email on 30 March 2012 to the e-mail address complained about and did not receive a bounce or e-mail failure notice in response. Ticket Closed*”

1 June 2012: Compliance was asked specifically: Did the steps provided by OnlineNIC occur between 10 June 2011 and 25 July 2011? Compliance did not respond to this question.

### **Case 7: kndoctor[DOT]com at PT Ardh (#1503)**

10 May 2011: In attempting to contact the administrator of kndoctor[DOT]com at the address indicated in the WHOIS record: MazurPolina@mail.com, we received a rejection notice stating “User is unknown.” The issue was reconfirmed on 5 June 2011, 6 June 2011, 21 June 2011, and 24 June 2011. A WDPRS complaint was filed the same day and given the ticket number 8e6ba78e65c5c4081e52c7b4b6bdb6b6a062fe31.

24 June 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

25 June 2011: A second WDPRS was filed for the same issue and given the ticket number 653e0d4cbbf6c59ffa4d1ec0661119401902ec77.

9 August 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

13 December 2011: ICANN Compliance was issued a detailed letter about this issue.

25 March 2012: ICANN Compliance responded stating the issue was “*In compliance process*”

3 May 2012: An update on this issues was requested.

21 May 2012: ICANN Compliance responded that “*W-Tickets were closed per the process, as the domains were deleted/expired when staff followed-up on the complaints.*”

1 June 2012: Compliance was specifically asked: Did the steps provided by PT Ardh occur between 10 May 2011 and 24 June 2011? Compliance did not respond to the question.

## Case 8: bigpharmacy[DOT]net at Center of Ukrainian Names (#1436)

5 May 2011: In attempting to contact the administrator of bigpharmacy[DOT]net at the address indicated in the WHOIS record: Hyauiri@angolaburzua.ao, we received a rejection notice stating “I couldn't find any host named angolaburzua.ao”

10 May 2011: A WDPRS complaint was filed and given the ticket number 1d9b83b3bf2dc71539d919c073337a0c6edddf3e.

24 June 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

22 November 2011: ICANN Compliance was issued a detailed letter about this issue.

25 March 2012: Compliance responded stating “*Ukrainian Names had clearly fulfilled their contractual obligations upon receiving the initial report. Furthermore, the domain is no longer under their registration, so follow-up was not sent. NO ACTION required. RESOLVED.*”

3 May 2012: Due to problems with the response, clarification was requested. First, there is no observable record of the inaccurate WHOIS being corrected, second the transfer is irrelevant.

21 May 2012: ICANN Compliance responded stating “*W-Tickets closed when registrars suspend domain names. Registrar suspended domain name within 14 days of receiving initial W-Ticket from ICANN. Ticket Closed. See above Re: Transfers*”

1 June 2012: Compliance was specifically asked to provide evidence the domain was in fact placed on HOLD in the registry during the complaint cycle as the response lacked verifiable details. Compliance did not respond to this request.

### **Case 9: hepillsw[DOT]com at URL Solutions (#1449)**

10 June 2011: In attempting to contact the administrator of hepillsw[DOT]com at the address indicated in the WHOIS record: osvyanikovadarya@mail.com, we received a rejection notice stating “User is unknown.”

10 June 2011: A WDPRS complaint was filed and given the ticket number 610ffd30816d0da7dccbd4eaf3f14549e27fcff2.

25 July 2011: The 45-day complaint cycle closes without the inaccurate WHOIS data being updated. The follow-up report was filed as “unchanged.” The domain was still active with the same content.

6 January 2012: ICANN Compliance was issued a detailed letter about this issue.

25 March 2012: ICANN Compliance responded stating the issue was “*In compliance process*”

3 May 2012: An update on this issues was requested.

21 May 2012: ICANN Compliance responded that “*Tickets closed per the process, as the registrar suspended the domain names in response to manual prevention notice. Tickets Closed.*”

1 June 2012: Compliance was specifically asked: Did UrlSolutions provide steps taken to investigate and did they occur between 10 June 2011 and 24 July 2011? Compliance did not respond to this question.

On 4 June 2012 Compliance declined to continue discussing these issues on a “ticket level” basis. In an attempt to continue the discussion a summary of issues with general questions was submitted to Compliance which was not responded to. The cases cited in this document show an actual compliance cycle of anywhere from 164 days to more than one year.

## DISCUSSION

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First, this discussion details the issues presented by the Compliance handling of each of the nine cases. Second, we review a number of related problems that occurred while conducting this investigation including: (a) general problems with procedure, (b) concerns about routine obfuscation, and (c) the unusual shutdown of the Bulk WDPRS Submission Process. All of this is viewed through the ICANN Compliance mission statement in which they pledge to: “*Demonstrate the openness and transparency of ICANN's operations*” and “*be a trusted Contractual Compliance service provider*” which provides is the basis for our conclusions. Our evaluation is also based on the three professed tools: (1) prevention through collaboration, (2) transparency through communication, and (3) enforcement.

This table summarizes the issues for each of the nine cases.

<b>ICANN Registrar</b>	<b>Domain Name</b>	<b>Compliance Issue</b>
BizCN	approvedonlinepharmacy[DOT]net	No enforcement
Core	finasterid-1mg[DOT]com	No enforcement
Internet.BS	yoursupportmed[DOT]com	Incomplete investigation
Moniker	antiimpotencedrugs[DOT]com	No enforcement
Net 4 India	cheaprxsale[DOT]com	Incomplete investigation
OnlineNIC	trustedtab[DOT]com	Incomplete investigation
PT Ardh	kndoctor[DOT]com	Incomplete investigation
Ukrnames	bigpharmacy[DOT]net	Incomplete investigation

What follows is a detailed issue list for each of the nine cases.

**Case 1: approvedonlinepharmacy[DOT]net at Bizcn.com, Inc. (#471)**

1. The domain “privacy-protect.cn”, the email contact for this WHOIS record, did not exist or was not in the DNS and therefore could not receive email at any address. It would impossible for BizCn to “verify that the data was correct.” The Registrar has supplied false information to ICANN Compliance. We have re-verified on 31 May 2012 that the domain “privacy-protect.cn” does not resolve, does not have an IP address and does not receive email.

2. ICANN and/or the Registrar have not produced any evidence of compliance with RAA 3.7.8 within the 45-day period which requires a Registrar to “*take reasonable steps to investigate that claimed inaccuracy...*” and “*...take reasonable steps to correct that inaccuracy.*”

**Case 2: finasterid-1mg[DOT]com at CORE Internet Council of Registrars (#15)**

1. Registrar has failed to comply with RAA 3.7.8 and should be issued a breach notice.

2. The Compliance answer from 21 May 2012 of “*Registrar did not take steps between 10 June 2011 and 25 July 2011*” contradicts the Compliance answer from 25 March 2012 of “*Registrar provided steps taken to investigate alleged inaccuracies.*”

3. The update of the WHOIS record occurred six months after the closure of the complaint period.

**Case 3: yoursupportmed[DOT]com at Internet.BS (#814)**

1. The suspension occurred eight months after the closure of the complaint period.

2. The suspension action taken by the Registrar appears to contradict the claim that the WHOIS data was correct.

3. There is a serious issue with the Registrar’s claim that the administrator email address was correct. The problem concerns the domain in the email address: *fortextld.com*. While the WHOIS records indicate proper nameservers, the authoritative DNS records do not. The authoritative records are set to “notinzoneexample.net” which is a non-existent domain, the IP address is set to 127.0.0.1, and there are no MX records. If this was the same situation on 16 June 2011 Internet.BS likely would have received the same rejection notice we did.

4. ICANN and/or the Registrar have not produced any evidence of compliance with RAA

3.7.8 within the 45-day period which requires a Registrar to "take reasonable steps to investigate that claimed inaccuracy..." and "...take reasonable steps to correct that inaccuracy." The Registrar has only claimed the data was correct.

#### **Case 4: antiimpotencedrugs[DOT] at Moniker Online Services (#228)**

1. The Compliance response from 21 May 2012 of "*Registrar did not take steps between 10 May 2011 and 24 June 2011*" contradicts the Compliance response from 25 March 2012 of "*Registrar provided steps taken to investigate alleged inaccuracies.*"
2. If the "*Registrar did not take steps between 10 May 2011 and 24 June 2011*" they are in breach of their contract and should be issued a breach notice.
3. The transfer of this domain occurred five months after the closure of the complaint period so it is irrelevant to the issue.
4. It is unclear how the transfer of a domain absolves a Registrar of responsibility when their obligations are specific to the time period when they sponsored the domain.
5. It is unclear how a registrant with an open issue can transfer a domain name without resolving the issue first.
6. It is unclear how "*Moniker claimed that they did not receive the initial report*" is an acceptable response to an inquiry.
7. ICANN and/or the Registrar have not produced any evidence of compliance with RAA 3.7.8 within the 45-day period which requires a Registrar to "take reasonable steps to investigate that claimed inaccuracy..." and "...take reasonable steps to correct that inaccuracy."

#### **Case 5: cheaprxsale[DOT]com at Net 4 India (#1007)**

1. The domain was transferred ten months after the closure of the complaint period. This is an irrelevant detail.
2. The fact that the domain was transferred has no bearing on the registrant's obligation to provide accurate information.
3. ICANN and/or the Registrar have not produced any evidence of compliance with RAA 3.7.8 within the 45-day period which requires a Registrar to "*take reasonable steps to investigate that claimed inaccuracy...*" and "*...take reasonable steps to correct that inaccuracy.*"

### **Case 6: trustedtab[DOT]com at OnlineNIC (#82)**

1. The Compliance testing of the administrator address occurred eight months outside of the compliance period so is therefore not relevant.
2. ICANN and/or the Registrar have not produced any evidence of compliance with RAA 3.7.8 within the 45-day period which requires a Registrar to *"take reasonable steps to investigate that claimed inaccuracy..."* and *"...take reasonable steps to correct that inaccuracy."*
3. It is clear the Registrar had to be contacted multiple times for this issue in a timespan well beyond the 15 day informal contact period cited previously by Compliance.

### **Case 7: kndoctor[DOT]com at PT Ardh (#1503)**

1. The domain kndoctor[DOT]com expired 24 January 2012. Expiration of a domain is a prescheduled, automatic action which does not indicate compliance. It is unclear how expiry is relevant to a Registrar's obligations or how an expiry can be initiated by staff. Regardless, this activity occurred approximately five months after the 45-day deadline stipulated in the RAA.
2. ICANN and/or the Registrar have not produced any evidence of compliance with RAA 3.7.8 within the 45-day period which requires a Registrar to *"take reasonable steps to investigate that claimed inaccuracy..."* and *"...take reasonable steps to correct that inaccuracy."*

### **Case 8: bigpharmacy[DOT]net at Center of Ukrainian Names (#1436)**

1. The transfer of this domain occurred five months after the closure of the complaint period so it is irrelevant to the issue.
2. According to available DNS records the status of this domain was updated on 6 June 2011 and the status was "Ok." The previous update date was 24 December 2010. There is no record we can find showing this domain was placed on HOLD during the complaint period. "14 Days" after receiving the initial W-Ticket would have been 24 May 2011 and all available WHOIS records show the inaccurate information was still present during this period. Archives of the domain show the website was active with the same content at the end of the complaint period<sup>13</sup>.
3. A detailed analysis of the inaccurate address Hyauiri@angolaburzua.ao shows a number of problems. The domain name "angolaburzua.ao" does not appear to exist, and has no name server or IP address. It is unlikely that the domain name "angolaburzua.ao"

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<sup>13</sup> <http://web.archive.org/web/20110625000030/http://bigpharmacy.net/>

existed because the dotAO registry only issues third-level domains<sup>14</sup> as in *domain.it.ao* and *domain.co.ao*. If Ukrainian Names had followed procedure they would have received the same rejection as we did.

4. ICANN and/or the Registrar have not produced any evidence of compliance with RAA 3.7.8 within the 45-day period which requires a Registrar to "take reasonable steps to investigate that claimed inaccuracy..." and "...take reasonable steps to correct that inaccuracy."

**Case 9: hepillsw[DOT]com at URL Solutions (#1449)**

1. The suspension occurred nine months after the closure of the complaint period.
2. ICANN and/or the Registrar have not produced any evidence of compliance with RAA 3.7.8 within the 45-day period which requires a Registrar to "take reasonable steps to investigate that claimed inaccuracy..." and "...take reasonable steps to correct that inaccuracy."

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<sup>14</sup> <http://www.dns.ao/REGISTR.DOC>

## General Problems with Procedure

In evaluating these cases we found a general problem of equating “Ticket Closure” with “Issue Closure”. This is far from being the case. Just as the map is not the territory, merely marking an item as being closed without any real documentation that it is resolved, questions the validity of all tickets in this system. Tickets were also apparently closed by actions that have nothing to do with compliance, i.e. expiry, transfer, and WHOIS updates outside the compliance period. Some Registrar claims contradict available documented facts and some details provided by Compliance contradict earlier claims by Compliance. The result is an apparent lack of coordination and due diligence.

There is also a persistent issue of not adhering to stated timelines. The time periods for following up with these Registrars are well beyond the 15 day informal period cited previously by Compliance.

## Concerns about Routine Obfuscation

In advance of the Prague 2012 meeting between Compliance and At-Large, ALAC issued a series of specific questions as requested by Compliance. During the presentation Compliance re-worded the some ALAC questions and omitted other critical questions completely. The table below compares the ALAC questions<sup>15</sup> with the questions as written in the Compliance presentation<sup>16</sup>.

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<sup>15</sup> [community.icann.org/display/atlarge/At-Large+Compliance+Questions+for+Prague+Workspace?focusedCommentId=34605706#comment-34605706](http://community.icann.org/display/atlarge/At-Large+Compliance+Questions+for+Prague+Workspace?focusedCommentId=34605706#comment-34605706)

<sup>16</sup> [community.icann.org/download/attachments/34606099/ICANN+44+-+Contractual+Compliance+-+ALAC.pptx](http://community.icann.org/download/attachments/34606099/ICANN+44+-+Contractual+Compliance+-+ALAC.pptx)

<b>ALAC Question</b>	<b>Compliance Version</b>	<b>Comments</b>
ALAC requests to be informed of the decision-making process which led to the conclusion that registrars Moniker, Core, and BizCn had failed in their obligations to properly investigate reports of (or provide evidence they investigated) WHOIS inaccuracies, in violation of RAA 3.7.8, and yet to which ICANN did not issue breach notices. Specifically, ALAC requests to be informed: of the level at which the decision not to issue breach notices was made (Compliance or elsewhere in ICANN?) AND of the criteria for such a decision?	ALAC requests to be informed: (i) of the level at which the decision not to issue breach notices [to particular registrars] was made (Compliance or elsewhere in ICANN?); and (ii) of the criteria for such a decision?	<i>Compliance omitted the names of the Registrars concerned and the specific issues involved. This transformed the specificity of the question in one of general procedure. In response Compliance issued an answer which did not resolve the issue and included irrelevant details.</i>
ALAC requests engagement in a comprehensive discussion of the handling of WDPRS complaints relating to Registrars Ukrainian Names, Internet.BS, Urlsolutions, Net4India, PT Ardh, OnlineNIC and BizCn, as the results reported by Staff appear to be lacking completeness or detail.	--Question completely omitted by Compliance staff--	<i>By omitting this question Compliance removed critical discussion and discovery from the session.</i>

On The Actual Enforceability of the RAA, since the release of the WHOIS Review Team Report<sup>17</sup> there have been open questions about the technical enforceability of the RAA on WHOIS inaccuracy. It would appear, as written that RAA 3.7.8<sup>18</sup> cannot be enforced because the Registrar cannot be held in breach for failing to delete a domain with inaccurate WHOIS. Without the ability to breach, the requirement is in fact nullified. Clarification on this issue was requested of Compliance as their own documentation<sup>19</sup> seems to suggest the lack of authority. In the table below we compare a Compliance advisory, a Compliance quote in the WHOIS Review Team Report and the statement from their Prague presentation which appears drastically different from the previously stated policies.

<sup>17</sup> <http://www.icann.org/en/about/aoc-review/whois/final-report-11may12-en.pdf>

<sup>18</sup> <http://www.icann.org/en/resources/registrars/raa/ra-agreement-21may09-en.htm#3.7.8>

<sup>19</sup> <http://www.icann.org/en/news/announcements/advisory-03apr03-en.htm>

<b>2003 Compliance Advisory</b>	<b>Compliance Quoted in WIRT</b>	<b>Compliance in Prague Session</b>
"Registrar Accreditation Agreement does not require a registrar to cancel a registration...the registrar has the ability to cancel after 15 days of no response in very serious cases...registrars also have flexibility to decide when to use that right..."	"there is no requirement in the RAA for registrars to ensure that WHOIS data is accurate <sup>20</sup> "	"ICANN is authorized to breach a registrar for failure to delete or failure to correct inaccurate whois"

Compliance was also asked to present a current count of Registrars who were out-of-compliance with the RAA for this meeting. Compliance could not produce an actual number.

### **Unusual Shutdown of Bulk WDPRS Submission Process**

Shortly after ICANN Compliance ceased responding to our questions, Compliance announced that the Bulk WDPRS process would be suspended for five months for maintenance. This critical process allows the submission of more than one WHOIS inaccuracy complaint. Since domains are registered in bulk with false information, a scalable complaint process is required which can match the deployment volume. Compliance has not supplied an explanation as to why the maintenance will take five months which seems technically unreasonable.

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<sup>20</sup> <http://www.icann.org/en/about/aoc-review/whois/final-report-11may12-en.pdf>

## Conclusion

ICANN accredited Registrars have apparently failed to fulfill their obligations under RAA 3.7.8<sup>21</sup>. The registrants failed to update the WHOIS record during the 45-day complaint period and the individual Registrars and/or ICANN have not provided evidence that the Registrar fulfilled its obligation to investigate or correct the inaccuracy. At first, it was encouraging to see quick response from Compliance to our questions but this interaction deteriorated rapidly once apparent flaws were discovered. Compliance in essence went dark when issues became serious. As a result Compliance has not demonstrated openness and transparency. Unfortunately, because of this change in communication and because of the apparent lack of efficient process, staff commitment, and actual enforcement ICANN Compliance cannot be considered a trusted Contractual Compliance service provider. On the effectiveness of the three Compliance tools, we also have a troubling evaluation.

The first tool of Compliance is *prevention through collaboration*<sup>22</sup> but in the BizCN case cited here Compliance failed to prevent 1,782 domains with blatantly false WHOIS from staying online.

In terms of the second tool: *transparency through communication*<sup>23</sup>, we also have a problem. In preparing for the Prague meeting with ICANN Compliance<sup>24</sup> the actual program for Registries and Registrars was reviewed<sup>25</sup>. An analysis of the Compliance Flowchart<sup>26</sup> seemed to show something curious: there is no "enforcement" end to the loop; the only terminating points in the ICANN Compliance Program for Registries and Registrars are dismissal or closure of the complaint. The issuing of breach notices is not part of the process and contracted parties are only mentioned in passing. The process, as stated, only provides a potentially endless cycle of a complainant submitting additional information. If this flowchart is a true representation of the duties of Compliance, it exists only to shuffle paper.

After discussion of the Compliance Flowchart appeared online<sup>27</sup>, the flowchart was deleted from ICANN's website without explanation and replaced with "coming soon"<sup>28</sup>. Analysis of the Compliance Flowchart leads to a problem with the third leg of Compliance: *Enforcement*<sup>29</sup>. Entry into the compliance cycle yields two choices: (A) The complaint is dismissed and not investigated or (B) The complaint is investigated:

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<sup>21</sup> <http://www.icann.org/en/resources/registrars/raa/ra-agreement-21may09-en.htm#3.7.8>

<sup>22</sup> <http://www.icann.org/en/resources/compliance>

<sup>23</sup> Ibid.

<sup>24</sup> <http://prague44.icann.org/node/31569>

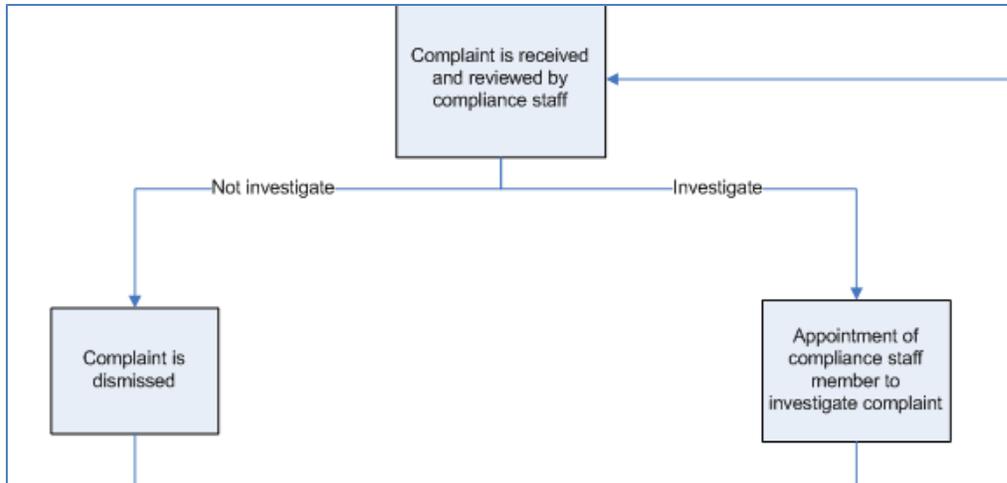
<sup>25</sup> <http://www.icann.org/en/resources/compliance/flowchart>

<sup>26</sup> <http://www.knujon.com/compliance-flowchart.gif>

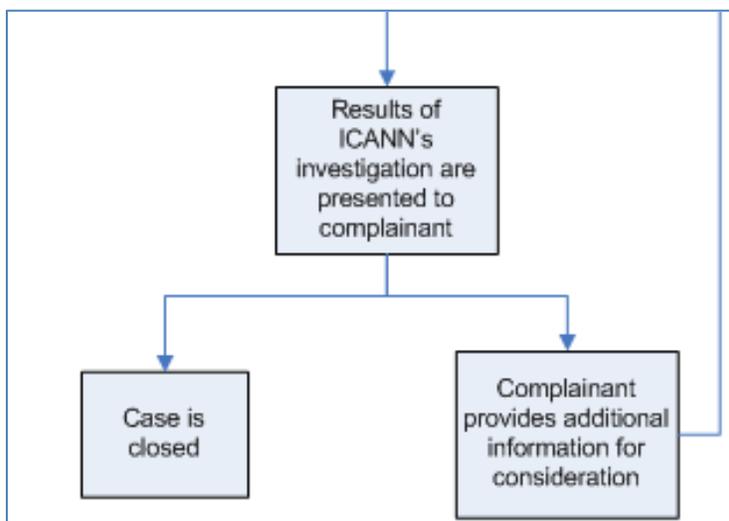
<sup>27</sup> [http://www.circleid.com/posts/20120618\\_whois\\_review\\_and\\_beyond\\_378/](http://www.circleid.com/posts/20120618_whois_review_and_beyond_378/)

<sup>28</sup> [http://www.circleid.com/posts/20120618\\_whois\\_review\\_and\\_beyond\\_378/#8960](http://www.circleid.com/posts/20120618_whois_review_and_beyond_378/#8960)

<sup>29</sup> <http://www.icann.org/en/resources/compliance>



After the investigation there are two possible choices: A) The case is closed or B) The complainant submits more information. If a case is not closed, it is simply resubmitted to the beginning of the process for further investigation. This precludes the third tool of Compliance.



There is no path for ICANN Compliance in this process to enforce the contract with Registrars. There is no resolution to an investigation other than closure or dismissal. If this is in fact a true representation of the ICANN Compliance function, the results of the nine case studies above are quite rational. This function is not actually designed to enforce the contract but only drop complaints or endlessly investigate them.

This detailed analysis of the failure of ICANN's internal Compliance system is technically irrelevant to Registrar responsibility since the contract requires that the Registrar address complaints from "any" person<sup>30</sup>. Just because the Compliance system failed, the Registrars are not excused from their obligations.

<sup>30</sup> <http://www.icann.org/en/resources/registrars/raa/ra-agreement-21may09-en.htm#3.7.8>

The result is that ICANN Compliance fails in its professed mission and seemingly on basic functional levels as well. This must be fixed immediately if ICANN is going to be considered as adhering to the Affirmation of Commitments. This evaluation does not preclude the need to answer the unaddressed factual issues outlined above.

## APPENDIX - Supporting Data

### Case 1: approvedonlinepharmacy[DOT]net at BizCN

Non-existent contact domain:

```
<contact@privacy-protect.cn>:
Sorry, I couldn't find any host named privacy-protect.cn. (#5.1.2)

--- Below this line is a copy of the message.

Return-Path: <wir@knujon.com>
Received: (qmail 22145 invoked from network); 31 May 2012 18:45:52 -0000
Received: from unknown (71.235.69.21)
```

WHOIS Record as of 18 June 2012:

```
Administrative Contact:
Henry Nguyen Gong contact@privacy-protect.cn
+33.0466583875 fax: +33.0466583875
26 Rue Jean Reboul
Nimes Languedoc-Roussillon 30900
fr
```

### Case 2: finasterid-1mg[DOT]com at Core

WHOIS record

```
Admin Name: Roger Thornquist
Admin Organization: Pharmacy 2000 S.A.
Admin Street: Wickham Cay
Admin Street: P.O. Box 146
Admin City: Road Town - Tortola
Admin State/Province:
Admin Postal Code: 0000
Admin Country: VG
Admin Phone: +1.2844942434
Admin Phone Ext:
Admin Fax:
Admin Fax Ext:
Admin Email: rt@pharmacy2000.vg
```

Original Rejection notice

```
<rt@pharmacy2000.vg>:  
Connected to 213.198.73.8 but sender was rejected.  
Remote host said: 452 4.4.5 Insufficient disk space; try again later  
I'm not going to try again; this message has been in the queue too long.
```

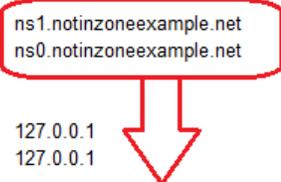
### Case 3: yoursupportmed[DOT]com at Internet.BS

#### Rejection Message:

```
I'm afraid I wasn't able to deliver your message to the following addresses.  
This is a permanent error; I've given up. Sorry it didn't work out.  
  
<admin@fortextld.com>:  
Sorry. Although I'm listed as a best-preference MX or A for that host, it isn't in my control/locals file, so I don't treat it as local. (#5.4.6)
```

#### Email domain has invalid DNS records

```
Retrieving DNS records for fortextld.com...  
Answer records  
fortextld.com           A    127.0.0.1  
  
Authority records  
                        NS    ns1.notinzoneexample.net  
                        NS    ns0.notinzoneexample.net  
  
Additional records  
ns0.notinzoneexample.net  A    127.0.0.1  
ns1.notinzoneexample.net  A    127.0.0.1
```



```
Whois Server Version 2.0  
  
Domain names in the .com and .net domains can now be registered  
with many different competing registrars. Go to http://www.internic.net  
for detailed information.  
  
No match for domain "NOTINZONEEXAMPLE.NET".  
>>> Last update of whois database: Mon, 18 Jun 2012 16:27:35 UTC <<<
```

## Case 4: antiimpotencedrugs[DOT]com at Moniker

### WHOIS record

```
Administrative Contact [1628059]:  
    James D. Seiler info@antiimpotencedrugs.com  
  
    1778 Goff Avenue  
    Saint Joseph  
    MN  
    49085  
    US  
    Phone: +1.2695560916
```

### Original Rejection notice

```
I'm afraid I wasn't able to deliver your message to the following addresses.  
This is a permanent error; I've given up. Sorry it didn't work out.  
  
<info@antiimpotencedrugs.com>:  
208.43.165.48 does not like recipient.  
Remote host said: 550 No Such User Here  
Giving up on 208.43.165.48.
```

## Case 5: cheaprxsale[DOT]com at Net 4 India

### Rejection

```
<dmasta@reggaefan.com>:  
74.208.5.90 does not like recipient.  
Remote host said: 550 5.1.1 <dmasta@reggaefan.com>... User is unknown {mx-us010}  
Giving up on 74.208.5.90.
```

## Case 6: trustedtab[DOT]com at OnlineNIC

### WHOIS Record

```
Administrat:  
name-- Domain ID Shield Service  
org-- Domain ID Shield Service CO., Limited  
country-- CN  
province-- Hong Kong  
city-- Hong Kong  
address-- 1102-1103,11/F,Kowloon Bldg.,555 Nathan Rd.,Mongkok,Kowloon  
postalcode-- 999077  
telephone-- +852.22060092  
fax-- +852.30030133  
E-mail-- tr4188306586701@domainidshield.com
```

### Failure message

```
<tr4188306586701@domainidshield.com>:  
209.62.85.74 does not like recipient.  
Remote host said: 550 5.7.1 <tr4188306586701@domainidshield.com>: Recipient address rejected: Invalid user  
Giving up on 209.62.85.74.
```

## Case 7: kndoctor[DOT]com at PT Ardh

### Rejection

```
<MazurPolina@mail.com>:  
74.208.5.90 does not like recipient.  
Remote host said: 550 5.1.1 <MazurPolina@mail.com>... User is unknown {mx-us017}  
Giving up on 74.208.5.90.
```

## Case 8: bigpharmacy[DOT]net at UKRnames

### WHOIS record

```
Administrative Contact:  
Stam Hyauiri hyauiri@angolaburzua.ao  
  
Marks street , 666  
Luanda, 548555  
ANGOLA  
+244.285265445
```

### Original Rejection notice

```
I'm afraid I wasn't able to deliver your message to the following addresses.  
This is a permanent error; I've given up. sorry it didn't work out.  
  
<Hyauiri@angolaburzua.ao>:  
Sorry, I couldn't find any host named angolaburzua.ao. (#5.1.2)
```

## Case 9: hepillsw[DOT]com at URL Solutions

### Rejection Message:

```
<osvyanikovadarya@mail.com>:  
74.208.5.90 does not like recipient.  
Remote host said: 550 5.1.1 <osvyanikovadarya@mail.com>... User is unknown {mx-us009}  
Giving up on 74.208.5.90.
```