



The Internet Corporation for Assigned Names and Numbers

TRANSMITTED VIA FACSIMILE, ELECTRONIC MAIL, AND COURIER

4 October 2013

Kacy Manning  
Dynamic Dolphin, Inc. (IANA ID# 941)  
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[kmanning@mediabreakaway.com](mailto:kmanning@mediabreakaway.com)

**RE: NOTICE OF BREACH OF REGISTRAR ACCREDITATION AGREEMENT**

Dear Ms. Manning:

Please be advised that as of 4 October 2013, Dynamic Dolphin, Inc. ("Dynamic Dolphin") is in breach of its Registrar Accreditation Agreement ("RAA") with the Internet Corporation for Assigned Names and Numbers ("ICANN") dated 9 June 2010. These breaches result from:

1. Dynamic Dolphin's failure to disclose and remove an officer and director that was convicted of a felony related to financial activities, as required by Section 5.3.3 of the RAA;
2. Dynamic Dolphin's failure to enter into registration agreements with Registered Name Holders of domain names, as required by Section 3.7.7 of the RAA; and
3. Dynamic Dolphin's failure to update its registration agreement to comply with the Inter-Registrar Transfer Policy ("IRTP").

Please refer to the attachment for details regarding this breach.

ICANN requests that Dynamic Dolphin cure the breaches by 25 October 2013, fifteen (15) working days from the date of this letter, by taking the following actions:

1. Bring Dynamic Dolphin into compliance with Section 5.3.3 of the RAA;

Los Angeles  
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2. Enter into registration agreements with Registered Name Holders other than Dynamic Dolphin for 13,280 domain names, as required by Section 3.7.7 of the RAA; and
3. Revise Dynamic Dolphin's registration agreement to conform with the IRTP.

If Dynamic Dolphin fails to timely cure these breaches and provide the information requested by 25 October 2013, ICANN may commence the RAA termination process.

If you have questions or require assistance, please contact Owen Smigelski at [owen.smigelski@icann.org](mailto:owen.smigelski@icann.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "M Serad".

Maguy Serad  
Vice President  
Contractual Compliance

Cc: John O. Jeffrey, General Counsel and Secretary



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## ATTACHMENT

### Failure to Notify ICANN and Remove an Officer or Director Convicted of a Felony Related to Financial Activities

Section 5.3.3 of the RAA requires Dynamic Dolphin to notify ICANN if any officer or director of the registrar is convicted of a felony or of a misdemeanor related to financial activities, or was judged by a court to have committed fraud or breach of fiduciary duty. Failure to remove the officer or director is a breach of the RAA. Upon the execution of the RAA, Dynamic Dolphin must provide ICANN with a list of the names of the registrar's directors and officers. Further, Dynamic Dolphin also must notify ICANN within thirty (30) days of any changes to its list of directors and officers.

On 25 April 2011, Dynamic Dolphin informed ICANN that its officers and directors were Jenny Johnson, Steven Richter, and Chris Cantzler. Dynamic Dolphin did not provide ICANN with any updated or modified information and ICANN had no notice that Scott Richter was associated with Dynamic Dolphin.

In May 2013, ICANN reviewed copies of corporate records of Dynamic Dolphin from the State of Delaware Division of Corporations, which stated, that since 2012, Scott Richter was an officer and director of Dynamic Dolphin. Scott Richter was not listed as an officer within ICANN records.

In May 2013, ICANN also reviewed a copy of the court record for *People of the State of Colorado vs. Richter, Scott Allen (case number 2002CR1095 District)*, indicating that Scott Richter plead guilty and was convicted of a class four felony by the State of Colorado in January 2003 for theft and receipt of funds. Prior to review of the court records, ICANN had no notice of Scott Richter's felony conviction. Refer to the chronology below for additional details.

Dynamic Dolphin's appointment and retention of an officer and director with a felony conviction related to financial activities constitutes a breach of Section 5.3.3 of the RAA, and its failure to notify ICANN of Scott Richter's appointment is a violation of Section 5.3.3 of the RAA.



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### Failure to Enter into Registration Agreements with Registered Name Holders

Section 3.7.7 of the RAA requires Dynamic Dolphin to enter into a registration agreement with all Registered Name Holders for domains under Dynamic Dolphin's management.

As detailed in the chronology below, ICANN sent multiple notices to Dynamic Dolphin for failure to enter into registration agreements for 13,280 domain names registered to Dynamic Dolphin (either as "Dynamic Dolphin Privacy Protect" or "Privacy Protection"). Dynamic Dolphin provided ICANN with records that payment for these domain names was made by The Parking Place (a division of the registrar's parent company, Media Breakaway, LLC), Intercontinental Domain, Inc. (parent company of Dynamic Dolphin's affiliated registrar New Great Domains, Inc.), and Media Breakaway, LLC, Dynamic Dolphin's parent company.

In response to an ICANN inquiry, Dynamic Dolphin indicated its privacy service is not a legal entity separate from Dynamic Dolphin. To date, Dynamic Dolphin has not provided any information indicating that its privacy service is a separate entity or that it has registration agreements with individuals or entities other than Dynamic Dolphin for the 13,280 domains.

ICANN has concern regarding Dynamic Dolphin's affiliation with these entities that Scott Richter controls or manages, some of which paid settlements or were found liable for cybersquatting, sending unsolicited commercial email, trademark infringement and unauthorized mobile content charges.

### Failure to Abide by an ICANN Consensus Policy (IRTP)

The IRTP gives a Registered Name Holder of a domain the right to be able to transfer a domain name registration between registrars.

Section Nine of Dynamic Dolphin's registration agreement gives Dynamic Dolphin the right, in its sole discretion, to transfer a domain away to another registrar, approve or reject a transfer without contacting the Registered Name Holder or any contact, in violation of the IRTP. Dynamic Dolphin did not modify its registration agreement to comply with the terms of the IRTP.



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**Chronology:**

<b>Date of Notice</b>	<b>Deadline for Response</b>	<b>Details</b>
21 February 2013	28 February 2013	ICANN sent first compliance notice to Dynamic Dolphin via email to admin@dynamicdolphin.com, requesting information and records. Registrar did not respond.
1 March 2013	8 March 2013	ICANN sent second compliance notice to Dynamic Dolphin via email to admin@dynamicdolphin.com and kmanning@mediabreakaway.com.
8 March 2013	N/A	Registrar responded to the second compliance notice via email.
11 March 2013	N/A	ICANN acknowledged receipt of registrar's response to the second compliance notice. Subsequent detailed review by ICANN determined that registrar's response was insufficient and contained inconsistent records and information.
1 April 2013	N/A	ICANN attempted to call registrar's primary contact listed in RADAR at 1-720-872-3477. The call was not answered and a voice message was left, indicating the insufficiency of the information sent in Dynamic Dolphin's reply. Registrar did not respond.



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Date of Notice	Deadline for Response	Details
2 April 2013	N/A	ICANN again attempted to call registrar's primary contact listed in RADAR at 1-720-872-3477. The call was not answered and a voice message was left, indicating the insufficiency of the information sent in Dynamic Dolphin's reply. Registrar did not respond.
17 April 2013	24 Apr 2013	ICANN sent a third compliance notice to Dynamic Dolphin via email to support@dynamicdolphin.com, admin@dynamicdolphin.com, and kmanning@mediabreakaway.com (with copy to the primary contact's fax at 1-303-496-1710). ICANN added additional inquiries based upon review of Dynamic Dolphin's data and information, and asked clarifying questions regarding insufficient and inconsistent data and information provided by the registrar on 8 March 2013.
24 April 2013	N/A	Registrar replied via email that its privacy service is not a legal entity separate from the registrar itself, requested clarification regarding the non-compliant registration agreement and provided insufficient and inconsistent records and information regarding the domain names.
25 April 2013	N/A	ICANN made several attempts to call the registrar primary contact at 1-720-872-3477 and all calls were answered with an automated voice message. A voicemail was left informing registrar that ICANN wanted to discuss the identified compliance issues and would schedule a conference call to discuss.



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Date of Notice	Deadline for Response	Details
26 Apr 2013	N/A	ICANN scheduled conference call with registrar to discuss outstanding compliance issues.
30 April 2013	6 May 2013	Conference call between ICANN and registrar to discuss compliance issues. ICANN explained deficiencies found in registrar's registration agreement. Registrar agreed to send revised agreement by 6 May 2013.
7 May 2013	N/A	Registrar sent ICANN a revised version of its registration agreement.
May 2013	N/A	ICANN reviewed corporate and court records from the State of Delaware Division of Corporations, the Registrar of Corporations from the Government of Anguilla, and from the State of Colorado.
17 June 2013	25 June 2013	ICANN sent registrar a follow up to third compliance notice via email to admin@dynamicdolphin.com and kmanning@mediabreakaway.com (with copy to the primary contact's fax at 1-303-496-1710) requesting proof that Dynamic Dolphin received payment from its customers for the registration of the domain names identified in the first compliance notice. ICANN requested registrar to provide further information regarding the domain names registered by the three customers using the registrar's privacy service and



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Date of Notice	Deadline for Response	Details
		addressed still existing deficiencies in the new version of the registrar's registration agreement. ICANN requested that the registrar provide information regarding any civil litigation, arbitration or mediation, or criminal prosecution in any jurisdiction against Dynamic Dolphin, its parent company Media Breakaway, LLC, their affiliated registrar New Great Domains, Inc. and its parent company, Intercontinental Domain, Inc., as well as for its officers and directors.
24 June 2013	N/A	Registrar asked for an extension to respond to the follow up to third compliance notice.
25 June 2013	1 July 2013	ICANN granted the registrar's request for an extension.
1 July 2013	N/A	Registrar replied to the follow up to third compliance notice and stated that it had 13,280 domain names registered behind its privacy service, of which 9,933 were with the three named beneficial users. Registrar did not provide details regarding the felony conviction of its CEO or a recent default judgment against Intercontinental Domain, Inc., parent company of its affiliated registrar, New Great Domains, Inc. Registrar subsequently updated RADAR.



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Date of Notice	Deadline for Response	Details
30 August 2013	9 September 2013	ICANN sent a follow up to third compliance notice to registrar via courier, email to admin@dynamicdolphin.com, kmanning@mediabreakaway.com, and support@dynamicdolphin.com, and fax to +1 303-496-1710, inquiring about (1) inconsistencies in payment information provided by the registrar in its reply and in Dynamic Dolphin's registration agreement, (2) the registrar's failure to disclose that Scott Richter was the CEO, director, and Secretary of the registrar since 2012, (3) the registrar's failure to disclose Scott Richter's felony conviction and (4) other inconsistencies in the registrar's reply to ICANN's follow up notice.
3 September 2013	N/A	Registrar replied asking for a one-week extension to reply to ICANN's follow up to third compliance notice.
4 September 2013	16 September 2013	ICANN granted the registrar's request for an extension.
16 September 2013	N/A	The registrar replied to ICANN's follow up to third compliance notice. The information provided was insufficient.