

WEBTOP FAIR USE POLICY

Appendix H

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1 ABOUT THIS POLICY

- (a) The WebTop Internet Acceptable Use Policy applies to any of the *services* offered by WebTop
- (b) This policy is set out below - please read it carefully. *Your* use of the *service* is subject to the following rules and guidelines contained in this policy.
- (c) The meaning of the words printed *like this* is set out at the end of this policy, the *service description* for the relevant *service* or in the [consumer terms](#) or [SMB terms](#) (as applicable to *you*). If a definition in this policy is inconsistent with a definition in the *service description* for the relevant *service* or in the [consumer terms](#) or [SMB terms](#) (as applicable to *you*), the definition in this policy applies.

2 GENERAL

- (a) This policy is designed to ensure that *your* use of the *service* does not break any laws, hinder the efficient operation of *our network*, interfere with the rights of *WebTop customers*, or interfere more generally with the rights of Internet users.
- (b) *You* are responsible for ensuring that use of the *service* and *your WebTop account* (if any) complies with this policy. *You* are also responsible for any use of the *service* even if, for example, it was used, with or without *your* consent, by a friend, family member, guest or employee who gains access to the *service* or *your WebTop account* (if any).
- (c) If we amend this policy
 - (i) in some circumstances (see clause 2A of the *consumer terms* or *SMB terms* (as applicable to *you*), *we* may have to give *you* *notice in writing* of the change, as set out in clause 2A.4 of the *consumer terms* or *SMB terms* (as applicable to *you*)
 - (ii) in circumstances other than those referred to at (i) above, *we* may notify *you*, and *you* hereby consent to *us* sending *you* notices in such a way, by using one or more of the following methods:
 - (A) mail (to the last address *you* have given *us*), or
 - (B) email (to *your primary email address*).
- (d) *You* should consult this policy regularly to ensure that *your* activities conform to the most recent version.

- (e) If there is an inconsistency between any other part of *your agreement* and this policy, this policy will apply.
- (f) If *you* become aware of any violations of this policy by other WebTop Internet users you should contact *us*.

3 ILLEGAL ACTIVITY

You must not use the *service* for any activity that breaches any law or violates any local, state, federal or international law, order, regulation or industry code of practice.

Prohibited activities include (but are not limited to):

- (a) posting, disseminating, or in some cases accessing, *content* which is unlawful, including:
 - (i) *content* that is or would be classified by the *Classification Board* as *RC rated* or *X rated* and that is or would be classified by the *Classification Board* as *R rated* where a *restricted access system* is not in place,
 - (ii) *content* which violates the copyright or other *intellectual property rights* of others. *You* assume all risks regarding the determination of whether material is in the public domain, or
 - (iii) *content* that defames, harasses or abuses anyone or violates their privacy,
- (b) pyramid or other illegal soliciting schemes, or
- (c) any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature.

4 SECURITY

- (a) *You* are responsible for any misuse of the *service*, as set out in clause 2(b) above. *You* must take reasonable steps to ensure that others do not gain unauthorised access to the *service* and *your WebTop account* (if any).
- (b) The *service* must not be used to obtain or attempt to obtain unauthorised access to any computer, system or *network*. If *you* do not have authorisation, prohibited activities include (but are not limited to):
 - (i) accessing, monitoring or using any data, systems or *networks*,
 - (ii) probing, scanning or testing the vulnerability of a system or *network*,

- (iii) breaching any security or authentication measures for a system or *network*,
 - (iv) accessing the account or private information of any other person or entity,
 - (v) accessing any server in violation of any acceptable use policy of that server, including any attempt to do any of the things mentioned in paragraphs (i) to (iv) above.
- (c) *You must not:*
- (i) use (or attempt to use) or distribute tools designed for compromising security including, but not limited to, password guessing programs, cracking tools, packet sniffers or *network* probing tools,
 - (ii) knowingly transmit or disseminate any information or software, which contains a virus or other harmful feature,
 - (iii) use (or attempt to use) the *service* in a manner that may interfere with the technical operation of the *service* or any other computer, system, *network* or telecommunications services, including (but not limited to) denial of service attacks, flooding of a *network*, overloading a service, improper seizing and abuse of operator privileges and attempts to ‘crash’ a host, or
 - (iv) interfere (or attempt to interfere) with the regular workings of *our* systems or *network* connections.
- (d) *You are solely responsible for the security of any device you choose to connect to the service, including any data stored on that device.*
- (e) *We recommend against enabling file or printer sharing of any sort. We recommend that any files or services you do choose to make available for remote access be protected with a password or other appropriate measures to prevent unauthorised access.*
- (f) *You must notify us immediately of any unauthorised or attempted unauthorised use of your service and any other breach or attempted breach of security.*

5 RISKS OF THE INTERNET

- (a) Some activities that *you* can perform when accessing the Internet may be harmful or cause loss to *you*, other people that may access *your* service, or *your* equipment. Typical activities include (but are not limited to):

- (i) downloading *content* (including receiving emails) from the Internet which may introduce viruses or other harmful features to *your* computer,
 - (ii) purchasing goods or services using the Internet,
 - (iii) transmitting confidential information over the Internet (such as *your* credit card number or other personal information), or
 - (iv) accessing and viewing *content* on the Internet or otherwise available through the *service* that may be offensive to some individuals, or inappropriate for children (for example, it is possible to obtain access to *content* that is pornographic, offensive and/or unsuitable for children).
- (b) *You* bear all risk associated with the activities referred to in paragraph (a) above, and *we* do not have any liability for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relating to such activities.
 - (c) *You* may minimise the risk of accessing illegal or offensive *content* as well as managing use of the Internet by using a *filtering solution*. *We* will provide access to one or more of these *filtering solutions* at a reasonable cost to *you* as part of the *service*.
 - (d) *You* have the right to make complaints to the Australian Communications and Media Authority about Internet *content* which is or would be classified by the *Classification Board* as *X rated*, *RC rated*, or *R rated* and does not have a *restricted access system* in place.

6 CONTENT PUBLISHING

- (a) *You* are solely responsible for any *content* that *you* publish via websites, email, newsgroups, online forums or other publishing mediums accessed via the *service*.
- (b) *You* must not publish material that is or would be classified by the *Classification Board* as *RC rated* or *X rated* via websites, email, newsgroups or other publishing mediums accessible via the *service*.
- (c) *You* must take appropriate precautions to prevent minors from accessing or receiving any *content* *you* have published that may be inappropriate for them. This includes implementing a *restricted access system* on *content* that is or would be classified by the *Classification Board* as *R rated*. *We* also encourage *you* to use appropriate warnings and / or labelling systems in respect of content which is likely to be considered unsuitable for children.
- (d) *We* reserve the right to block access to, to remove, or to refuse to post any *content*, in whole or in part, that *we*, in our sole discretion, deem to

be offensive, indecent, or otherwise inappropriate regardless of whether such *content* or its dissemination is unlawful. This includes (but is not limited to) obscene material, fraudulent or deceptive statements, threatening, intimidating or harassing statements, or material which violates the privacy rights or *intellectual property rights* of others, or is likely to be defamatory of another person.

- (e) Commonwealth legislation allows the Australian Communications and Media Authority to direct *us* to remove certain prohibited or potentially prohibited *content* from our servers or to prevent users from accessing certain Internet *content*. *We* may take any steps necessary in order to ensure compliance with any relevant industry code of practice, or notification or direction from the Australian Communications and Media Authority, including removing any *content* (including part or all of a website) from our servers, blocking access to newsgroups, closing or suspending *your WebTop Internet account*, filtering the Internet *content* made available to *you* or restricting access to a particular website. *We* may take these steps at any time and without notice to *you*.
- (f) Commonwealth legislation allows copyright owners or their agents to direct *us* to remove copyright materials from our servers or to prevent users from accessing copyright materials. *We* may take any steps necessary in order to ensure compliance with a notification from a copyright owner or their agent, including removing any *content* (including part or all of a website) from our servers, closing or suspending *your WebTop account*, filtering the Internet *content* made available to *you* or restricting access to a particular website. *We* may take these steps at any time and without notice to *you*.
- (g) *We* are under no obligation to monitor transmissions or published *content* on the *service*. However, *we* (or *our* agents) have the right to monitor such transmissions or published *content* from time to time to ensure that *you* are complying with the terms of this policy, and to disclose that content as required.
- (h) By using the *service* to reproduce, publish, display, transmit or distribute *content*, *you* warrant that the *content* complies with this policy and authorises *us* (or *our* agents) to reproduce, publish, display, transmit and distribute such *content* as necessary for *us* to deliver the *content* in a timely manner.

7 ELECTRONIC MESSAGING AND SPAM

- (a) *You* must not use the *service* to *spam*, send bulk and/or unsolicited messages. This includes, but is not limited to commercial advertising, informational announcements, charity requests, petitions for signatures, chain letters and political or religious messages. *You* must only send such a message to those individuals who have explicitly requested it.

- (b) The *service* must not be used to:
- (i) send messages to any individual or entity who has indicated that he/she/it does not wish to receive messages from *you*,
 - (ii) collect or redirect responses from unsolicited messages sent from accounts on other Internet hosts or messaging services which violates this policy, or the equivalent policy or any other policy of any other Internet service provider or web site. Moreover, unsolicited messages sent from accounts on other Internet hosts or messaging services may not direct the recipient to any web site or other resource that uses *our network*.
- (c) *You* must not:
- (i) obscure, alter or delete the source of messages that *you* send or forge message headers,
 - (ii) send numerous copies of the same or substantially similar messages, or send very large messages or files, to a recipient with the intent to disrupt a server or account (for example, ‘mail bombing’),
 - (iii) send chain letters, whether or not the recipient wishes to receive such mailings.
- (d) *We* are not responsible for forwarding or storing messages sent to any *WebTop account* that has been suspended or cancelled. Such messages may be returned to sender, ignored, deleted, or stored temporarily at *our* sole discretion.
- (e) *We* have responsibilities under the *Spam Act 2003 (Cth)* and the Internet Industry Association (IIA) Spam Code to take steps which attempt to minimise the amount of spam both being originated in Australia and being delivered to Australian customers. To assist *us* with this, *we* may:
- (i) restrict *your* ability to forward emails;
 - (ii) limit *your* access to the *service* to a closed user group relevant to *your* use of the *service*;
 - (iii) scan *our* allocated IP address ranges for misconfigured mail and proxy servers and suspend *your service* if *you* fail to rectify any problem found within a reasonable period.

We may also require *you* to take actions to comply with, or which assist *us* to comply with, the *Spam Act 2003 (Cth)* or the IIA Spam Code.

8 ONLINE FORUMS

- (a) This clause applies to *online forums*, in addition to clause 6.
- (b) Messages posted to an *online forum* must comply with the written charters for that forum. *You* are responsible for determining the policies of a given forum before posting a message to it. Data files may only be posted to *online forums* that specifically permit this.
- (c) Posting or cross-posting the same or substantially similar messages to more than eight *online forums* is prohibited.
- (d) *You* must not disrupt or attempt to disrupt *online forums* by posting a large number of messages that contain no substantive *content*. Disruption occurs when normal discussion in the group is significantly hindered.
- (e) *You* must not use the *service* to connect to an *online forum* from which *you* have been previously banned.

9 AUTOMATED APPLICATIONS

The *service* is provided for interactive use. However, if automated programs or programs that maintain a persistent connection to a remote service are used, they must only be used when *you* are physically present at the computer. These activities include (but are not limited to) automated file *downloading*, IRC 'bots', continuous streaming media and peer-to-peer file sharing applications.

10 VIOLATION OF ACCEPTABLE USE POLICY

- (a) If *you*, or someone with access to the *service*, use the *service* in a way that *we* reasonably believe violates this policy, *we* may take any responsive action *we* deem appropriate.
- (b) Such actions may include (but are not limited to) temporary or permanent removal of *content* and content publishing capabilities, filtering of Internet transmissions and the immediate suspension or cancellation of all or any portion of the *service*.
- (c) We may take any other legal or technical action *we* deem appropriate, including taking action against offenders to recover the costs and expenses of identifying them. If *your* use of the service causes a loss to third parties and *we* are required to pay compensation, *we* may require *you* to reimburse *us*.
- (d) *We* are not obligated to regularly monitor *your* usage of the *service* (including any *content* posted, disseminated or accessed by *you*), however *we* reserve the right to monitor *your* use of the *service* to identify violations of this policy, and to protect *our network*, the other users of this *service*, and other Internet users.

- (e) We reserve the right to investigate any use of the *service* that we reasonably suspect violates this policy, including the gathering of information from the user(s) involved and the complaining party, if any, and examination of transmissions and material on *our* servers and *network*. During an investigation, we may suspend the *WebTop account(s)* involved, interrupt transmissions and/or remove material that we reasonably believe potentially violates this policy.
- (f) In order to enforce this policy, *you* authorise *us* (or *our* agents) to cooperate with:
 - (i) law enforcement authorities in the investigation of suspected criminal violations, and
 - (ii) system administrators at other Internet service providers or other *network* or computing facilities.

Such cooperation may include *us* providing, for example, the username, IP address or other identifying information about a user.
- (g) Upon cancellation of an *WebTop account*, we are authorised to delete any files, programs, data and email messages associated with the *WebTop* account.
- (h) Any failure by *us* to enforce this policy, for whatever reason, shall not necessarily be construed as a waiver of any right to do so at any time.
- (i) *You* agree that, if any portion of this policy is held invalid or unenforceable, that portion will be construed consistent with applicable law as nearly as possible, and the remaining portions will remain in full force and effect.
- (j) This policy is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which *you* normally reside. *You* and *we* submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

11 WHAT DO WORDS IN THIS POLICY MEAN?

Classification Board is the Classification Board established under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth).

electronic messaging includes all forms of electronic communications to other individuals including email, instant messaging, web to SMS, Internet chat and online forums.

filtering solutions means Internet filtering software or system approved for use under the Internet Industry Association Content Codes of Practice registered under the *Broadcasting Service Act 1992* (Cth). The Internet Industry Association provides a list of approved filtering solutions on its website – www.iaa.net.au

online forum mean a forum accessible on the Internet that is generally devoted to the discussion of a specific topic area and includes (but is not limited to) newsgroups, message boards, chat rooms or mailing lists.

WebTop account means the email account (if any) where you are billed (or you have prepaid) for one or more *services* and through which you can monitor and request changes to the *service*.

WebTop customers means customers who are connected to one of the *services*.

our network means the network(s) used to supply the *service* to you as set out in the relevant *service description* .

R rated includes (but is not limited to) material containing excessive and/ or sexual violence, implied or simulated sexual activity, or materials which deal with issues or contains depictions that requires an adult perspective.

RC rated includes (but is not limited to) material containing detailed instruction in crime, violence or drug use, child pornography, bestiality, excessive violence or sexual violence, real depictions of actual sexual activity or obscene material.

restricted access system means a ‘restricted access system’ as referred to on the Australian Communications and Media Authority website at www.acma.gov.au.

service(s) means any or all of WebTop’s Services, including Hosting and Application Hosting, as applicable to the individual user.

spam means unsolicited commercial electronic messages, or the sending of such messages, that do not include accurate sender information and do not contain an unsubscribe facility, as defined in the *Spam Act 2003* (Cth).

X rated includes (but is not limited to) material containing real depictions of actual sexual activity.

CONTACT DETAILS

Customer Service	By email – info@webtop.com.au By phone – +61 2 8006 2548
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