

# Acceptable Use Policy

Catchya

Effective September, 2011

## 1. Purpose

- 1.1. The purpose of the Policy is to provide a set of principles, rules and guidelines for the use of Catchya services. The Internet provides a means of acquiring and disseminating a wealth of public, private, commercial, and non-commercial information. Catchya respects that the Internet provides a forum for free and open discussion and dissemination of information. However, when there are competing interests at issue, Catchya reserves the right to take certain preventative or corrective actions as set out in this Policy.
- 1.2 Catchya services are not to be used for inappropriate activities for example, pornography, fraud, defamation, breach of copyright, unlawful discrimination or vilification, harassment, including sexual harassment, stalking, privacy violations and illegal activity, including illegal peer-to-peer file sharing.

## 2. Definitions & Scope

- 2.1 In this Policy –
  - (i) “AUP” means Acceptable Use Policy
  - (ii) “Authorised Person(s)” means the person(s) nominated by a Club or other Organisation to access Catchya account management or secretarial services
  - (iii) “Catchya” means the full suite of services including ClubMail, ClubSec and ClubSMS as marketed under the Catchya brand.
  - (iv) “electronic communications” means email, instant messaging and any other material sent electronically;
  - (v) “malware” is an abbreviation of “malicious software” and means software programs designed to cause damage and other unwanted actions on a computer system. Common examples include computer viruses, worms, spyware and trojans;
  - (vi) “peer-to-peer file sharing” means the sharing of files between systems on a P2P network. The “peers” of a P2P network are computer systems connected to each other by the Internet. Files can be shared directly between computer systems on the network without the requirement of a central server. An example of *illegal* P2P file sharing is the sharing of copyrighted files without the authorisation of the copyright owner, for example copyrighted film and music files;
  - (vii) “Services” means services , as further specified in the terms and conditions for the relevant service (collectively referred to as the "Services")
  - (viii) “Supplier” means any third party service provider of Catchya supplying Services to you on behalf of Catchya.
  - (ix) “you” means you if you use Catchya services. Please read the following carefully as it is a condition of the supply of the Services to you that you agree to this AUP.

### 3. Amendment Procedure

- 3.1 We may vary this AUP at any time by general notice on a page of the internet referred to on our websites at <http://www.catchya.com.au/policies>. Changes to the AUP will become effective upon publication of the notice.
- 3.2 If you use any Service after publication of any change to the AUP accordance with clause 3.1, your use will constitute acceptance of the amended AUP.

### 4. Responsibility

- 4.1 Catchya is responsible for ensuring that the persons to whom this Policy applies are aware of the Policy. This Policy is published on the Catchya website. It is the responsibility of all users to abide by this Policy.
- 4.2 You agree that you are at all times responsible for the use of your account. You also agree that you are at all times responsible for ensuring that anyone who accesses your account (for whatever reason, and regardless of how your account is accessed) is aware of this AUP and complies with this AUP.
- 4.3 If you are an authorised person providing our services to your membership or customer base, you agree to comply fully with all applicable laws concerning the privacy of on-line communications and the provision of Internet services. Any failure by you to comply with those laws will constitute a breach of this AUP.
- 4.4 If you are an authorised providing our services to your membership or customer base, Catchya does not require you to monitor or censor transmissions or websites created by same. Notwithstanding the preceding, you acknowledge that information reaching the facilities of Catchya or any of its Suppliers may have originated from a customer of yours, or from another third-party. As a consequence, you agree that Catchya or any of its Suppliers, respectively, has the right to directly take action against a customer of yours, or, against you because of any activity of a customer of yours, even though the action may affect other customers of yours.
- 4.5 If you are an authorised providing our services to your membership or customer base, you agree to co-operate with Catchya and/or any of its Suppliers in any corrective or preventive action that either Catchya or any of its Suppliers, respectively, deems necessary. Failure to cooperate with such corrective or preventive measures is a breach of this AUP.

### 5. Monitoring of Information

- 5.1 You agree that Catchya cannot, nor does it monitor, verify, warrant, or vouch for the accuracy and quality of the information that you may acquire over the Internet, or, review, edit, censor, or take responsibility for any information you may create.

- 5.2 As a result of clause 5.1, you agree that:
- 5.2.1 you must exercise your own best judgement in relying on information obtained from the Internet.
  - 5.2.2 when you place information on the Internet, you have the same liability as other authors for copyright infringement, defamation, and other harmful speech; and
  - 5.2.3 neither Catchya or any of its Suppliers accept any responsibility and shall not be liable to you for any loss or damage.
- 5.3 Notwithstanding clauses 5.1 you acknowledge that Catchya or any of its Suppliers may:
- 5.3.1 monitor private electronic mail messages sent or received by you if required to do so by law, governmental authority, or when public safety is at stake; or
  - 5.3.2 monitor its service electronically to determine that its facilities are operating satisfactorily;
  - 5.3.3 monitor the conduct of your account with Catchya as a means of determining whether you are complying with this AUP subject to the terms of this AUP and the Privacy Policy of Catchya.

## 6. Non-Acceptable Use of Services – Prohibited Activities

- 6.1 You agree that you shall be responsible for ensuring that neither you, nor any other person or party whom you permit to use the Services either undertakes, or attempts to undertake, any of the following prohibited activities ("Prohibited Activities"):

**Spamming** - This means sending unsolicited bulk and/or commercial electronic messages over the Internet ("spam" or "spamming"), providing a capability on a websites (which may include, without limitation, for the avoidance of doubt, parked pages and online cards) hosted by Catchya or any of its Suppliers (as the context requires) that permits third parties to spam from the server of Catchya or any of its Suppliers (as the context requires), or, maintaining an open SMTP relay. These activities are not only harmful because of their negative impact on consumer attitudes toward Catchya and/or any of its Suppliers, but they can also overload the network of Catchya or any of its Suppliers (as the context requires) and disrupt service to other users of the Services. Accordingly, you agree that when a complaint is received by either Catchya or any of its Suppliers (as the context requires), Catchya or any of its Suppliers (as the context requires), each respectively, have the discretion to determine from all of the evidence whether the email constitutes spam or spamming and/or take any other action permitted by this AUP.

**Intellectual Property and Privacy Violations** - This means engaging in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy, and patents held by individuals, corporations, or other entities. It may also mean engaging in any activity that violates privacy, publicity, or other personal rights of others. You agree that where required by law, Catchya or any of its Suppliers may remove or block access to your content. You also agree that Catchya or any of its Suppliers may terminate your privileges for repeat violations of copyright laws.

**Obscene Speech or Materials** - This means using the network of Catchya or any of its Suppliers (as the context requires) to advertise, transmit, store, post, display, or otherwise make available child pornography, other offensive sexual content or materials, or, any other obscene speech or material. You agree that, where required to by law, Catchya or any of its Suppliers may notify law enforcement agencies when it becomes aware of the presence of child pornography on or being transmitted through the network of Catchya or any of its Suppliers (as the context requires) and/or take any other action permitted by this AUP.

**Defamatory or Abusive Language** - This means using the network of Catchya or any of its Suppliers (as the context requires) as a means of transmitting or posting defamatory, harassing, abusive, or threatening language, or, engaging in any form of electronic "stalking". This also means illegally storing, or using or distributing software in order to do any of the preceding things.

**Forging of Headers, Return Addresses and Internet Protocol Addresses** - This means any forging, deleting or misrepresenting message headers, return addresses or Internet protocol addresses, whether in whole or in part, to mask the originator of the message.

**Illegal or Unauthorized Access to Other Computers or Networks** - This means accessing illegally or without authorisation computers, accounts, information or communication devices or resources or networks belonging to Catchya, any of its Suppliers or any other party, or, attempting to penetrate security measures of another individual's system (often known as "hacking"). This also includes any activity that might be used as a precursor to an attempted system penetration (for example, port scan, stealth scan, or other information gathering activity).

**Distribution of Internet Viruses, Worms, Trojan Horses, or Other Destructive Activities** - This means distributing information regarding the creation of and sending Internet viruses, worms, Trojan horses, pinging, flooding, mail-bombing, or denial of service attacks. This also includes any activities that disrupt the use of or interfere with the ability of others to effectively use the network or any connected network, system, service, or equipment.

**Facilitating a Violation of this AUP-** This means advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP (including, without limitation, by the provision of software that "harvests" electronic addresses from the Internet). It also includes the facilitation of the means to spam, initiation of pinging, flooding, mail-bombing, denial of service attacks, and piracy of software.

**Export Control Violations** - If you are located in the United States, this means exporting encryption software over the Internet or otherwise, to points outside the United States.

**Usenet Groups** - This means that the content of any Usenet Group must not violate this AUP. You agree that Catchya or any of its Suppliers may at any time determine not to accept postings from newsgroups where either of us have actual knowledge that the content of the newsgroup violates the AUP.

**Other Illegal Activities** - Engaging in activities, whether lawful or unlawful, that Catchya or any of its Suppliers respectively, may determine to be harmful to the subscribers, operations, reputation, goodwill, or customer relations of either Catchya or any of its Suppliers.

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## 7. Our Rights Where You Engage in Prohibited or Harmful Activities

7.1 In addition to any other rights in clause 5, if you engage in any Prohibited Activity, or, if Catchya or any of its Suppliers become aware that you are otherwise engaging in any harmful activities, or, you otherwise breach or violate any of the terms of this AUP, you agree that Catchya or any of its Suppliers may take any action to stop the Prohibited Activity, harmful activity, violation or breach of this AUP, including but not limited to:

7.1.1 removing any or all information, content, material software or other content stored in the facilities, network or systems of Catchya or any of its Suppliers;

7.1.2 shutting down a website or service (which may include, without limitation, for the avoidance of doubt, parked pages and online cards);

7.1.3 implementing screening software designed to block offending transmissions;

7.1.4 denying access to the Internet;

7.1.5 suspending your access to the Services;

7.1.6 terminating your account with Catchya without notice to you; or

7.1.7 take any other action it deems appropriate.

7.2 Catchya may provide you with notice that Catchya or any of its Suppliers intends to take any action under clause 7.1, but is not obliged to do so.

## 8. Security of Information on the Internet

Catchya is concerned with the privacy of on-line communications and websites (which may include, without limitation, for the avoidance of doubt, parked pages and online cards). However, you acknowledge that Catchya cannot warrant or guarantee that any online communication will be secure. Accordingly, you agree that neither Catchya nor any of its Suppliers take any responsibility for the security of information transmitted over the facilities of Catchya or any of its Suppliers (as the context requires). You further agree that neither Catchya nor any of its Suppliers accepts any liability for any injury to you (whether monetary or otherwise) as a result of any information transmitted over the facilities of Catchya or any of its Suppliers.

## 9. Disclosure of Information

- 9.1 You agree that Catchya or any of its Suppliers may disclose information, including but not limited to, information concerning you, a transmission made using the network of Catchya or any of its Suppliers (as the context requires), or a websites (which may include, without limitation, for the avoidance of doubt, parked pages and online cards), in order to comply with a court order, subpoena, summons, discovery request, warrant, statute, regulation, or governmental request.
- 9.2 You further agree that neither Catchya nor any of its Suppliers assumes any obligation to inform you that your information has been provided and in some cases, such notice may be prohibited by law.
- 9.3 You also agree that Catchya or any of its Suppliers may disclose your information or information transmitted over the network of Catchya or any of its Suppliers (as the context requires) where necessary to protect Catchya and/or any of its Suppliers and others from harm, or where such disclosure is necessary to the proper operation of the system.

## 10. Additional Provisions for Australian Customers

In addition to the above provisions, if you reside in Australia, you agree to comply with the following additional provisions:

- 10.1 You may have certain additional legal responsibilities relating to supervising and controlling children's access to the Internet content and other obligations under the Broadcasting Services Act 1992 (Cth), as amended or replaced from time to time ("the AB Act"), or other applicable legislation. You may view these at either <http://www.iaa.net.au> or <http://www.aba.gov.au>. If you are a parent, these websites will also provide you with information about procedures that you can implement to control the access of children to the Internet and the use and application of Internet content filtering software to restrict the content of information on the Internet.
- 10.2 In addition to any other "Prohibited Activity" mentioned above in clause 5, you must not use the network of Catchya or any of its Suppliers (as the context requires) to advertise, transmit, store, post, display, obtain or otherwise make available:
- 10.2.1 any Prohibited Content or Potentially Prohibited Content, as each is respectively defined by the Australian Broadcasting Act;
  - 10.2.2 content that is (or would be) classified RC or X by the Classification Board of Australia, including, without limitation, any of the following information:
    - 10.2.2.1 material containing detailed instruction in crime, violence or drug use;
    - 10.2.2.2 bestiality;
    - 10.2.2.3 real depictions of sexual activity;
    - 10.2.2.4 material containing excessive violence or sexual violence; and

- 10.2.3 to minors - content hosted in Australia that is classified R and is not subject to a restricted access system and which complies with criteria determined by the Australian Broadcasting Authority ("ABA"), including, without limitation, any of the following:
  - 10.2.3.1 material containing excessive violence or sexual violence;
  - 10.2.3.2 material containing strong violence or sexual violence;
  - 10.2.3.3 material containing any simulated or implied sexual activity;
  - 10.2.3.4 material that deals with issues or contains depictions that require an adult perspective.

You should also be aware that you may at any time formally complain to the ABA if at any time you become aware that any website (which may include, without limitation, for the avoidance of doubt, parked pages and online cards) hosted by Catchya or any of its Suppliers (as the context requires) on behalf of a customer of Catchya who has obtained any of the Services who either resides in Australia and/or conducts business in Australia, and which contains Prohibited Content or Potentially Prohibited Content. If you wish to do so, please make your formal complaint in accordance with the procedure required by the ABA, which you can view on their website, which is located at <http://www.aba.gov.au>.

## 11. Liability and Indemnity

- 11.1 You agree that Catchya shall have no liability to you with respect to this AUP or any action taken, or inaction, by Catchya or any of its Suppliers in connection with this AUP (including, without limitation, in relation to any violation of this AUP).
- 11.2 You agree that Catchya shall have no liability to you with respect to this AUP or any action taken, or inaction, by Catchya or any of its Suppliers in connection with this AUP (including, without limitation, in relation to any violation of this AUP).
- 11.3 You acknowledge and agree that you are required to indemnify Catchya, any of its Suppliers and all directors, officers, employees and agents of Catchya and any of its Suppliers in relation to this AUP in accordance with the terms of the Indemnity contained in the Terms and Conditions for the relevant Services that you have obtained from Catchya.