

Bigfish Technology Acceptable Use Policy



BIGFISH
TECHNOLOGY

ABN 99 114 613 115

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Bigfish Technology Acceptable Use Policy (Updated 1 February 2005)

Bigfish Technology is herein referred to as "Bigfish".

This is Bigfish's Acceptable Use Policy. It applies to you if you are a Bigfish Customer or User ("you"). It is intended to ensure that your use of Bigfish's service is trouble free and that you have due regard to the law and the needs of other users.

Please read it carefully. It is a condition of your use of our service that you comply with the terms of this Policy.

Please look out for any amendments to the Policy that Bigfish ("we") might make in the future. From time to time we will make amendments to it by giving you notice of the change and you will then be obliged to comply with the policy as amended.

In this policy we use the following definitions:

Customer means the person or company which has entered into an agreement with Bigfish for supply of Services whether via Bigfish's web site or otherwise.

Daily Email Limit means the greater of:

- (a) 1,000 messages per day sent via your own mailing list or email client; or
- (b) One message per mailing list per day, where you have purchased additional mailing lists.

Potentially Prohibited Content means that content so defined by the Broadcasting Services Act, 1992 (as amended).

Prohibited Content means that content so defined by the Broadcasting Services Act, 1992 (as amended).

Service means all products and services offered by Bigfish from time to time, which you use.

Spam means:

- (a) mass-delivered and/or randomly delivered advertising or other material;
 - (b) sent to groups of recipients who are not known to you, who have not requested the material,
- or who have not granted permission for the mail to be sent to them;
- (c) delivered via email or discussion groups; and
 - (d) which does not contain an unsubscribe option.

Users means users of the Service who have not obtained it as a Customer, but via a Customer who is authorised to resell the Services such as a Bigfish Partner.

1. Some General Principles

1.1 Bigfish is not responsible for the content of traffic. We exercise no supervision or control whatsoever over the content of the information passing through our network.

- (a) We do not assume any responsibility for information not sent or expressly authorised by us.
- (b) The responsibility for traffic that does not conform with this policy and all possible consequences lies with the sender of the traffic.
- (c) We accept no responsibility for the consequences of unauthorised breach of our system security such as hacking or denial of service attacks.

- 1.2 You should familiarise yourself with your legal responsibilities. You can view your legal responsibilities in relation to:
- (a) supervising and controlling children's access to internet content;
 - (b) procedures which parents can implement to control children's access to internet content, including availability, use and appropriate application of internet content filtering software; and
 - (c) obligations which may exist in relation to your content under the Broadcasting Services Act 1992 (as amended) or other applicable state legislation, at either of the following web sites: <http://www.iaa.net.au>; or <http://www.aba.gov.au>.
- 1.3 You are responsible for use of your account. If you permit others to use our Service, you are responsible for making users of the Service aware of this policy and obtaining compliance of your users with this policy.
- 1.4 You are responsible for complying with conditions of use of other networks. If we provide you with access to a network outside our Service you must comply with any acceptable use conditions which apply to that network.



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2. Acceptable Uses

2.1 It is your responsibility to ensure that you and others whom you permit or enable to use Bigfish's Service do so as follows:

- (a) use our Service in a manner which does not violate any applicable laws or regulations;
- (b) respect the conventions of the newsgroups, lists and networks that you use;
- (c) respect the legal protection afforded by copyright, trade marks, license rights and other laws to materials accessible via our Service;
- (d) respect the privacy of others and observe the provisions of Bigfish's Privacy Policy at <http://www.bigfishtech.com.au/policy/>
- (e) use the Service in a manner which does not interfere with or disrupt other network users, services or equipment;
- (f) refrain from acts that waste resources or prevent other users from receiving the full benefit of our services; and
- (g) comply with Bigfish's terms and conditions of supply.

2.2 Your use of our Services should be ethical and in accordance with accepted community standards.

3. Unacceptable Uses

3.1 You must comply with the law. It is not acceptable to use our service for any purpose which violates local, state, federal or international laws. You should obtain independent legal advice about your potential liability for the consequences of the publication of material on a web site or content database.

3.2 Specific kinds of use are not allowed. It is not acceptable to use our Service to do any of

the following ("Unacceptable Conduct"):

- (a) send Spam;
- (b) provide a capability on a Bigfish-hosted site which permits third parties to send Spam from a Bigfish server;
- (c) intentionally omit, forge, delete or misrepresent transmission information including headers, return mailing addresses, internet protocol addresses;
- (d) engage in any activity intended to withhold or mask Customer's, or if you are an authorised reseller, its User's corporate identity or contact information;
- (e) send electronic chain letters;
- (f) distribute messages to inappropriate or unrelated forums, newsgroups or mailing lists;
- (g) send email to a recipient after the recipient has unsubscribed from your mailing list or has advised you by other means that they do not wish to be on the mailing list;
- (h) send more emails than the Daily Email Limit (unless you are using Promotions Manager, in which case this subclause does not apply);
- (i) undertake activities which cause or may cause third party service providers to place Bigfish's internet protocol (IP) addresses on a blacklist and/or block those IP addresses;

- (j) undertake any activity which impedes Bigfish's ability to provide its Service;
- (k) make transmissions of any type or quantity which adversely affect our operation or jeopardise the use of our service, or its performance for other subscribers;
- (l) violate copyright or other intellectual property rights;
- (m) illegally store, use or distribute software in order to transmit threatening, libellous, obscene or offensive materials;
- (n) engage in electronic 'stalking' or any other form of harassment such as using abusive or aggressive language;
- (o) misrepresent or defame others;
- (p) harass or impersonate Bigfish or other users;
- (q) commit fraud, gain unauthorised access to any computing, information, or communications devices or resources, including but not limited to any machines accessible via the internet;
- (r) damage, modify or destroy the files, data, passwords, devices or resources of Bigfish, other users or third parties;
- (s) engage in misleading or deceptive online marketing practices;
- (t) conduct any business or activity or solicit the performance of any activity that is prohibited by law;
- (u) make an unauthorised transmission of confidential information or material protected by trade secrets;
- (v) place on the internet, obtain through the internet or transmit using the internet, Prohibited Content or Potentially Prohibited Content;
- (w) place on the internet, obtain through the internet or transmit using the internet any of the following:
 - a. Content which is (or would be) classified RC or X by the Classification Board.
Such content includes:
 - i. material containing detailed instruction in crime, violence or drug use;
 - ii. child pornography;
 - iii. bestiality;
 - iv. excessively violent or sexually violent material
 - v. real depictions of actual sexual activity; or
 - b. Content hosted in Australia which is classified R and not subject to a restricted access system which complies with criteria determined by the ABA. Content classified R is not considered suitable for minors and includes:
 - i. material containing excessive and/or strong violence or sexual violence;
 - ii. material containing implied or simulated sexual activity;
 - iii. material which deals with issues or contains depictions which require and adult perspective;
- (x) Use the internet with intent to:
 - a. procure a child under 16, or a person whom you believe to be a child under 16 to engage in a sexual act; or
 - b. expose without legitimate reason, a child under 16 or a person whom you believe to be a child under 16, to any indecent matter.
- (y) propagate computer worms, viruses and other types of malicious programs;
- (z) use the service to interfere or disrupt other network users, services or equipment;
- (aa) attempt to do any of the things set out in (a) to (z) above.

3.3 It is not acceptable to use our Service to solicit subscribers to become subscribers of other competitive services.

3.4 Resale of our Services to others is strictly forbidden under all circumstances unless expressly approved by Bigfish in writing. The Partner program provides for the resale of services.

4. Third Party Complaint Process

4.1 From time to time, Bigfish receives complaints from third parties ("Complaints") regarding unacceptable Conduct, allegedly being conducted by Customers or their Users. Bigfish will make reasonable endeavours to resolve such complaints by working with



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Customers. The complaint process set out here does not apply to complaints the subject of court order or proceedings, or where Bigfish reasonably believes that it must take urgent action without reference to the Customer.

4.2 Bigfish's policy is to put the complaining party in direct contact with the party best able to answer the complaint. Accordingly, Bigfish's Customers authorise and direct Bigfish to provide to third party complainants the relevant Customer's email contact details.

4.3 You have a right to complain to the ABA about content. If you become aware that a web site hosted by Bigfish contains Prohibited Content or Potentially Prohibited Content, you can make a formal complaint to the Australian Broadcasting Authority by contacting them at: ABA, Head Office, Level 15 Darling Park, 201 Sussex Street, Sydney NSW 2000, or through their web site at URL <http://www.aba.gov.au>.

5. What We May Do to Ensure That This Policy is Being Followed

5.1 We may monitor your account but will respect your privacy. We may monitor the conduct of your account to determine whether this policy is being followed.

5.2 If we monitor the conduct of your account we will safeguard your privacy subject to the terms of our Privacy Policy.

5.3 We may suspend or terminate your account and/or notify the authorities. If we believe that your use of the Service may break the law or that you have not complied with this policy we may:

- (a) warn you by email (but we are not obliged to do so);
- (b) suspend your access to the Service;
- (c) terminate your account without notice; and/or
- (d) notify and provide relevant information to the authorities, as appears appropriate in the circumstances.

5.4 In the event of taking action under 5.3 we reserve the right to delete any or all of your information, material, software or other content stored on our system in our sole discretion.

5.5 We may, in our absolute discretion and without notice to you, suspend or terminate your access to the Service:

- (a) where we are made aware that a court order, judgment, decree, determination or otherwise has been made to the effect that the Customer data is illegal, offensive, objectionable or in breach of a third party's rights; and
- (b) if we are directed to do so by the ABA under a takedown notice in accordance with its obligations under the Broadcasting Services Amendment (Online Services) Act 1999 (as amended).
- (c) in respect of Customer managed server products, where after giving you notice (by email or logged job), you fail to act on our reasonable request to implement urgent server patching or other security measures designed to limit the impact of identified exploits or other vulnerabilities.

5.6 You agree that you will have no claim against Bigfish in respect of any action reasonably

taken by Bigfish in its implementation of the terms of this Acceptable Use Policy, and you indemnify Bigfish against any claim by a User arising out of the same.



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