

1. Definitions and Interpretation

1.1 Definitions

If we have used Capitalised Terms in this Acceptable Use Policy (AUP) the meanings or definitions are set out below. These definitions apply unless the context requires otherwise.

ABA means the Australian Broadcasting Authority.

AUP means this Acceptable Usage Policy.

Cancelbot means a controversial "bot" program used in Usenet newsgroups to fight spammers. The Cancelbot automatically looks for and removes mass postings.

Chat Room A virtual room where a chat session takes place. Technically, a chat room is really a channel, but the term *room* is used to promote the chat metaphor.

Denial of Service or **DoS** means an attack that is specifically designed to prevent the normal functioning of a system and thereby to prevent lawful access to that system and its data by its authorized users. DoS can be caused by the destruction or modification of data, by bringing down the system, or by overloading the system's servers to the extent that service to authorized users is delayed or prevented. Denial of Service attacks normally stem from external sources using telecommunications (such as via the Internet).

End User means the person that purchases the Items from You that are supplied to You by WCG. An End User is the ultimate user of the Items and will not resell the item to another party.

Instant Messaging or abbreviated **IM**, means a type of communications service that enables you to create a kind of private chat room with another individual in order to communicate in real time over the Internet, analogous to a telephone conversation but using text-based, not voice-based, communication. Typically, the instant messaging system alerts you whenever somebody on your private list is online. You can then initiate a chat session with that particular individual.

Open Relay means an SMTP Email Server that allows a third party to relay e-mail messages, i.e., sending and/or receiving e-mail that is not for or from a local user. Open relays make it possible for mobile users to connect to corporate networks by going first through a local Internet Provider, which then forwards the message to their home ISP, which then forwards the message to the final destination. However, a downside of open relay technology is the proliferation of its usage by spammers looking to obscure or even hide the source of the large-volume e-mails they send.

Opt Out Notice means a direction by the consumer that they no longer want to be sent messages from you.

Packet Sniffer means a program which displays the contents of all packets passing through a network connection--you might think of it as a wire tap for computers.

People of a party, means each of the party's directors, officers, employees, agents, contractors, advisers and representatives but does not include the other party.

Phishing means the term coined by hackers for attempting to lure personal information out of people by persuading them to visit web sites that look like genuine bank, credit card, or payment sites, when they are actually sophisticated fakes of those sites.

Port Probing means either a large group of computers on the internet are all probed for a particular port that would indicate a certain type of program running (like a web server) or the targeting of just one machine and will usually probe all the ports on that machine to see if it can identify all the services on a given machine. There are also combinations of these two that will probe more than one port on more than one computer.

Service(s) are the services WCG sells to the Acquirer which are made up of one or a number of Components and are themselves able to be ordered separately or as part of a Bundle. Services are a chargeable item. Services have Service Numbers as their Identifier.

SPAM means unsolicited or unauthorised advertising, promotional materials, junk mail, mail bombing, chain letters, multiple newsgroup cross-posting, or other form of solicitation or commercial electronic messages as defined in the Spam Act 2003 (Cth) sent in breach of the Spam Act. The sending of Bulk electronic messages of any kind (including email, fax, and SMS) or unsolicited email is regarded as SPAM. Bulk means 30 electronic messages over a 15 minute consecutive period.

SPIM means spam over instant messaging (IM). SPIM is perpetuated by bots that harvest IM screen names off of the Internet and simulate a human user by sending spam to the screen names via an instant message. The SPIM typically contains a link to a Web site that the spimmer is trying to market. Also referred to as **instant spam** or the less-intrusive sounding **IM marketing**.

Spoofing means Impersonating a server or person without permission (i.e pretending to be someone else) to deliberately induce a user or a resource to take an incorrect action. Attempting to gain access to a system by pretending to be an authorized user, impersonating, masquerading and mimicking are forms of spoofing.

Time Bomb means a resident computer program that triggers an unauthorized act at a predefined time.

Trojan Horse means a seemingly-innocent program that contains and conceals harmful code. When a Trojan Horse is opened, the malicious code performs its damage on the unsuspecting computer.

USENET SPAM means Excessive electronic Newsgroup messages. Excessive means posting the same or substantially the same message (**Message**) to one or more Newsgroups resulting in a Bredbart Index of 20 or more. A Bredbart Index is calculated by multiplying the number of Messages by the square root of the number of Newsgroups that they are posted to over a consecutive 45 day period (For example, posting 20 identical (or substantially similar) messages to 16 Newsgroups over a 45 day period results in an index of 80).

Worm means a computer program which replicates itself and is self-propagating. Worms, as opposed to viruses, are meant to spawn in network environments. Worms usually are designed to slow down a network or even crash it.

Virus means a "virus", "worm" or "Trojan horse" or similar computer program. A Virus is generally a piece of programming code inserted into other programming to cause some unexpected and usually undesirable event such as lost or damaged files. Viruses can be transmitted by downloading programs from other sites or be present on a diskette. The virus lies dormant until circumstances cause its code to be executed by the computer.

1.2 Definitions

A reference to You (**You**) in this AUP includes a reference to your People, downstream Service Providers, End Users or anyone else (other than WCG or its People) who uses the Service(s).

A Reference to **WCG** means Wholesale Communications Group Pty Limited and its related bodies corporate and/or its Third Party Suppliers where relevant.

2. Introduction

Any Agreement made between You and Wholesale Communications Group Pty Limited or Related Bodies Corporate for a service (**Service**) is covered by this Acceptable Usage Policy. In undertaking this Agreement You agree to comply with this AUP when You use that Service.

3. Prohibited Use of Service

You must not use the Service, attempt to use the Service or allow any of the Services provided by WCG to be used in a way that, You or WCG could be deemed to have resulted in the Service:

- (a) **(Breach of Law)** breaching or becoming involved in a breach of law, order, or regulation (including that of a foreign country), mandatory code of conduct; or a voluntary code of conduct that you have agreed to comply with;
- (b) **(Damage to Property or People)**
 - (i) damaging property or causing injury to a person; or
 - (ii) harassing, menacing or stalking people;
- (c) **(Protection of Minors)**
 - (i) enabling a minor to access material inappropriate for a minor; or
 - (ii) establishing (or try to establish) contact with a minor otherwise unknown to You;
- (d) **(Discrimination)** unlawfully inciting discrimination, hate or violence towards one person or group, for example because of their race, religion, gender or nationality;
- (e) **(Obscenities, Defamatory, Offensive, Abuse)**
 - (i) sending, displaying, access, make available, publish, distribute or otherwise be involved in material that is obscene, defamatory or is, or would be regarded by WCG or another person, acting reasonably, in all the circumstances, be considered to be offensive or abusive; or
 - (ii) storing of such material on any WCG Service;
- (f) **(Illegal business practices and gambling)**
 - (i) engaging in any misleading, and/or deceptive business or marketing practice; or
 - (ii) being involved in providing or promoting any illegal pyramid selling schemes or unlawful gambling or gaming activities;
- (g) **(Affecting the rights of others)**
 - (i) infringing WCG's or any other person's rights including, but not limited to copyright, trademark, trade secret, patent or other property or other intellectual property rights or moral rights; or
 - (ii) constituting a misuse of WCG or any other person's confidential information; or

- (iii) resulting in a breach of any obligation that You owe WCG or any other person.

You are not authorised to access WCG's computer systems or networks for any purpose other than to use the Service in accordance with this AUP and your Agreement with WCG for supply of the Service(s). You:

- (h) **(Interfering with Services and Systems)** must not interfere with the proper operation of the Services or any part of WCG or a Third Party Supplier's network or systems operated by WCG or Third Party Supplier;
- (i) **(Newsgroups, forums, chat rooms and instant messaging)** must not use the Services to contribute to, or participate in, a Newsgroup, Forum, Chat Room or Instant Messaging service in a way that has an adverse effect on the proper operation of those Newsgroups, Forums, Chat Rooms or Instant Messaging services.
- (j) **(SPAM)**
- (i) must not use the Services, attempt to use the Services or allow a third party to use the Services to send, cause the sending of or otherwise be involved in the sending of, SPAM, USENET SPAM or SPIM;
- (ii) must not benefit from SPAM, USENET SPAM or SPIM (which includes causing or requesting any of your details to appear in SPAM, USENET SPAM or SPIM and/or receiving responses to SPAM, USENET SPAM or SPIM).
- (iii) must not purchase, create, use, distribute, sell or otherwise be involved in software, services or lists of sites, addresses, numbers or other identifiers of any kind (including email addresses and phone numbers) that are used to promote, send, or assist with the sending of, SPAM, USENET SPAM or SPIM.
- (k) **(Open relay and Port Probing)** must not use the Services, attempt to use the Services or allow a third party to use the Services to access or use WCG's or anyone else's systems, networks or data (including through Open Relay, Port Probing and the use of Packet Sniffers) without consent, regardless of whether or not such access or use has any adverse effect on the system, network or data;
- (l) **(Spoofing and Phishing)**
- (i) must not use the service for Spoofing in any form; or
- (ii) must not use the Services, attempt to use the Services or allow a third party to use the Services to create, send or alter in any way and by any means (including Spoofing, Phishing and use of third party mail servers), the contents of an electronic message for the purpose of hiding, obscuring or deleting the source of the message or making the message appear to come from someone other than you;
- (m) **(Malicious Programs)** must not use the Service, attempt to use the Service or allow the Service to be used in connection with any program (including a Virus, Trojan horse, Worm, Cancelbot, Time Bomb), that is designed to provide or allow any form of unauthorised control of, or result in an adverse effect on, a computer, a network or data (whether the computer, network or data is WCG's or anyone else's)
- (n) **(Malicious Activity)**

- (i) must not use the Service, or attempt to use the Service for any activity (including a Denial of Service attack), that is designed to provide or allow any form of unauthorised control of, or result in an adverse effect on, a computer, a network or data (whether the computer, network or data is WCG's or anyone else's);
- (ii) must not deface web-sites without the permission of the website owner;
- (iii) must not make use of "probing" of devices on the internet with the intent of searching for and/or identifying security weaknesses on those devices;
- (iv) must not interference with service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks and denial of service attacks. If WCG asks, You must demonstrate the steps that You are taking to prevent any such use;
- (o) (**Usage limits**) must not use the Services, attempt to use the Services or allow a third party to manipulate or bypass WCG or Third Party Suppliers content usage limits, by any means including connecting multiple pieces of hardware or software to the Service.
- (p) (**Copyright**) You are responsible for ensuring that You do not store on the WCG System, transfer or cause to be transferred over the WCG Network, reproduce or make available for distribution through the WCG Network, any data where the storage, reproduction, transfer, or distribution of, that data is in contravention of the Copyright Act 1968 (Cth) or otherwise infringe any third party intellectual property rights (such as by using, copying or distributing data or software without the permission of the owner).

4. Email

4.1 Email Messages

Where WCG supplies You a Service that includes or is in itself an Email Service:

- (a) (**Usage limits**) WCG will set limits on the size of emails sent to or by You, the period for which email messages can be stored and the maximum disk space that will be allotted on WCG's servers for your Service. These limits are set out in the Service Schedule for your chosen Service (**Mail Quota**).
- (b) (**Deletion of Email**) WCG will delete any electronic mail message sent by You or addressed to You if:
 - (i) the size of the mail message addressed to You (including attachments) exceeds your Mail Quota;
 - (ii) the size of the mail message sent by You (including attachments) exceeds 10 MB;
 - (iii) the total of your undeleted messages (including attachments) exceeds your Mail Quota;
or
 - (iv) You have not deleted the message within 180 Calendar days of it becoming available to you (whether read or unread). WCG recommend that you delete emails on a regular basis. Once deleted, the message will not be able to be retrieved;
 - (v) the message has been stored in the Deleted, Spam, or Outbox folders 7 days after the message becomes available to you or was sent by you;

If WCG delete any electronic mail messages under the terms of this agreement we are not required to notify You or the sender of the mail message(s);

- (c) **(Sending Mail via SMTP)** You will not send any electronic mail message via SMTP that is sent using a server other than the WCG SMTP servers, unless WCG otherwise agree with you;
- (d) **(Service Cancellation)** If your Service is cancelled, WCG may delete any stored or received emails in your email account after 30 Calendar days.

5. Internet Use Risks

- (a) The Internet contains content you may find unsuitable, offensive or adult in nature and which may breach Australian laws. WCG does not endorse or control such content and disclaims any and all liability in respect of such content. You have the right to make complaints to the ABA about Internet content which is or could be rated R, X or Refused Classification (RC).
- (b) You must take all reasonable measures to prevent unauthorised access to the WCG Service. You acknowledge that if you run certain applications (such as File Transfer Protocol or Hyper Text Transfer Protocol), other users may gain access to your computer.
- (c) If you buy goods or services on the Internet WCG will not be responsible or liable for those goods and services and you will be responsible for any fees or charges you incur. If you send confidential information such as your credit card details over the Internet, you bear all risks and losses arising from such transmissions.
- (d) WCG may monitor your use of the WCG Service to ensure that you are complying with these Terms, but WCG is not obliged to do so. WCG may investigate any misuse or suspected misuse of the WCG Service and may involve the police or other law enforcement agencies in doing so. WCG may recover the cost of such investigation if it is established that you have misused the WCG Service. If your use of the WCG Service causes any loss or damage to third parties, you must compensate those third parties for such loss or damage.

6. Service Use Obligations (Things You Must Do)

6.1 Bulk Messages or Email

If you send Bulk solicited electronic messages, then:

- (a) You must include in each message, an email address, telephone number, facsimile number or mailing address that can be used to notify you that the recipient no longer wishes to receive such messages from you ("Opt Out Notice"); and
- (b) if you are sent an Opt Out Notice, then you must immediately comply with the notice.

6.2 Reporting of Child Pornography

If You are made aware that any Service you obtain from WCG is being used to access material that a person, acting reasonably, may have grounds to believe is child pornography or child abuse material, You must report it immediately to WCG and the relevant Law Enforcement Agency.

7. Compliance

7.1 Compliance by Your Service Providers and End Users

Without limiting any clause in this AUP, if you resell the services to another party, be it another Service Provider or an End User, you must ensure that those who use the Services comply with all the clauses of this AUP. Without limitation, You must:

- (a) ensure that the conditions of use or other documents governing the relationship between You and each Service Provider or End User:
 - (i) incorporate a reference to an Acceptable Use Policy applicable to the provision of the Service no less onerous than the Acceptable Use Policy given by WCG to You and containing no provisions which are inconsistent with this AUP,
- (b) enforce compliance by your Service Providers with this AUP; and
- (c) enforce compliance by your End Users with this AUP (other than this clause 7); and
- (d) Promptly notify WCG if you become aware of a breach of this AUP by any of your Service Providers or End Users.

7.2 Regulatory Authorities

Commonwealth legislation allows the Australian Broadcasting Authority ("ABA") to direct WCG to attend to certain matters including removal of prohibited Internet content from our servers or prevent users from accessing certain Internet content. You agree that we may take any necessary steps in order to comply with any relevant industry code of practice or direction from the ABA or other regulatory authority. We may take these steps at any time without notice to You.

7.3 Investigation by Authorities

WCG reserves the right to act in any manner it deems appropriate where there are reasonable grounds for suspecting that illegal or unacceptable usage of the WCG Network and Systems is occurring. WCG will co-operate fully with Commonwealth and State Police and other bodies investigating unlawful behaviour on or via its network or systems. WCG reserves the right to suspend Your access if Your usage of the WCG Network or Systems is subject to any investigation.

8. Variation

This Acceptable Use Policy may be revised by WCG from time to time at its sole discretion and without notice. The latest version will always be available on the WCG website.