

ECN

electronic
communications
network

ACCEPTABLE USE POLICY

1 INTRODUCTION

- 1.1 Thank you for taking the time to read ECN's Acceptable Use Policy (AUP). By accessing this website, or by contracting with us for services, you agree, without limitation or qualification, to be bound by this policy and the terms and conditions it contains, as well as any other additional terms, conditions, rules or policies which may from time to time be made available to you in connection with this service/website.
- 1.2 The purpose of this AUP is to:
 - 1.2.1 comply with the relevant laws of the Republic;
 - 1.2.2 specify to customers and users of our services/website, what activities and online behaviour are considered an unacceptable use of our services/website;
 - 1.2.3 protect the integrity of our network; and
 - 1.2.4 specify the consequences that may flow from undertaking such prohibited activities.
- 1.3 This document contains a number of legal obligations which you are presumed to be familiar with. As such, we encourage you to read this document thoroughly and direct any queries to our customer services/legal department.
- 1.4 ECN respects the rights of our customers and users of our services to:
 - 1.4.1 freedom of speech and expression;
 - 1.4.2 access to information; and
 - 1.4.3 privacy; human dignity, religion, belief and opinion in accordance with our constitution.
- 1.5 We undertake not to interfere with any of the rights set out in 1.4, unless:
 - 1.5.1 required to do so by law;
 - 1.5.2 such rights are exercised for unlawful purposes; or
 - 1.5.3 the exercise of such rights threatens to cause harm to another person, or affect the integrity of our network.

2 ISPA MEMBERSHIP AND CODE OF CONDUCT

ECN confirms that in compliance with section 72 of the Electronic Communications and Transactions Act 25 of 2002, ECN is a member of the Internet Service Providers' Association ("ISPA") and has adopted and implemented the association's official Code of Conduct, which can be viewed at <http://www.ispa.org.za/code-of-conduct>.

3 UNLAWFUL USE

- 3.1 ECN's services/website may only be used for lawful purposes and activities. We prohibit any use of our website/network and the transmission, storage and distribution of any material or content using our network, in a manner that violates any law, or regulation of the Republic, including but not limited to any:
 - 3.1.1 violation of local and international laws prohibiting child pornography, obscenity, discrimination (including racial, gender or religious slurs), hate speech, or speech designed to incite violence or hatred, or threats to cause bodily harm;
 - 3.1.2 activity designed to defame, abuse, stalk, harass, or physically threaten any individual in the Republic or beyond its borders; including any attempt to link to, post, transmit or otherwise distribute any inappropriate, or defamatory material.
 - 3.1.3 violation of Intellectual Property laws, including materials protected by local and international copyright, trademarks and trade secrets;
 - 3.1.4 violation of an individual's right to privacy, including any effort to collect personal data of third parties without their consent;

- 3.1.5 fraudulent activity whatsoever, including dubious financial practices, such as pyramid schemes, the impersonation of another subscriber without their consent, or any attempt to enter into a transaction with ECN on behalf of another subscriber, without their consent;
 - 3.1.6 violation of the exchange control laws of the Republic.
 - 3.1.7 activity that results in the sale, transmission, or distribution of pirated, or illegal software;
 - 3.1.8 failure to respond to a request by a recipient of unsolicited mail to be removed from any mailing, or direct marketing list and continuing to send unsolicited mail, following such a request for removal.
- 3.2 ECN cannot be held liable if you make any unlawful use of any multimedia content accessed through the search facility provided by ECN's network, or otherwise available through access to our network, whether for commercial or non-commercial purposes.
- 3.3 Where any user resides outside of the Republic, permanently or temporarily, such user will be subject to the applicable laws of the country in which she/he is currently resident. On presentation of a legal order to do so, or under obligation through an order for foreign legal assistance, ECN will assist foreign law enforcement agencies in the investigation and prosecution of a crime committed using ECN's resources, including the provisioning of all personal identifiable data.

4 PROHIBITED ACTIVITIES

The following sections outline activities that are considered an unacceptable use of ECN's services/network/website and also detail the guidelines for acceptable use of certain facilities/services, as the case may be.

4.1 Threats to Network Security

Any activity which threatens the functioning, security and/or integrity of ECN's network is unacceptable. This includes but is not limited to any:

- 4.1.1 efforts to attempt to gain unlawful and unauthorised access to the network or circumvent any of the security measures established by ECN for this purpose;
- 4.1.2 efforts to use ECN's equipment to circumvent the user authentication, or security of any host, network or account ("cracking" or "hacking");
- 4.1.3 forging of any TCP-IP packet header (spoofing), or any part of the header information in an email, or a newsgroup posting;
- 4.1.4 effort to breach, or attempt to breach the security of another user, or attempt to gain access to any other person's computer, software, or data without the knowledge and consent of such person;
- 4.1.5 activity which threatens to disrupt the service offered by ECN through "denial of service attacks"; flooding of a network, or overloading a service, or any unauthorised probes ("scanning" or "nuking") of others' networks;
- 4.1.6 activity which in any way threatens the security of the network by knowingly posting, transmitting, linking to, or otherwise distributing any information or software which contains a virus, Trojan horse; worm, lock, mail bomb, cancelbot or other harmful, destructive or disruptive component;
- 4.1.7 unauthorised monitoring of data, or traffic on the network without ECN's explicit, written consent; and
- 4.1.8 unsolicited mass mailing activity, including direct marketing, spam and chain letters for commercial or other purposes, without the consent of the recipients of those mails.

4.2 Public Space, Third Party Content and Sites

- 4.2.1 In reading this AUP, or in signing a service contract with ECN, you acknowledge that ECN has no power to control the content of the information passing over the Internet

and its application, including e-mail, chat rooms, news groups, or other similar fora. ECN cannot be held responsible or liable, directly or indirectly, for any of the abovementioned content, in any way, for any loss or damage of any kind incurred as a result of, or in connection with your use of, or reliance on, any such content.

4.2.2 Our services also offer access to numerous third party webpages. You acknowledge that we exercise absolutely no control over such third party content, or sites and in such cases, our network is merely a conduit, or means of access and transmission. This includes, but is not limited to, third party content contained on or accessible through the ECN network websites and web pages, or sites displayed as search results, or contained within a directory of links on the ECN network. It remains your responsibility to review and evaluate any such content and that any and all risk associated with the use of, or reliance on, such content rests with you.

4.2.3 Access to public Internet spaces, such as bulletin boards, Usenet groups, chat rooms and moderated forums, is entirely voluntary and at your own risk. ECN does not moderate any of these services, or your communications, transmissions, or use of these services. We do not undertake any responsibility for any content contained therein, or for any breaches of your right to privacy, that you may experience as a result of accessing such spaces.

4.3 **Unsolicited, Spam and Junk mail**

4.3.1 Spam and unsolicited bulk mail are highly problematic practices. They affect the use and enjoyment of services by others and often compromise network security. ECN will take swift and firm action against any user engaging in any of the following unacceptable practices:

4.3.1.1 sending unsolicited bulk mail for marketing, or any other purposes (political, religious or commercial), to people who have not consented to receiving such mail;

4.3.1.2 operating or maintaining mailing lists without the express permission of all recipients listed;

4.3.1.3 failing to promptly remove from lists invalid, or undeliverable addresses, or addresses of unwilling recipients or a recipient who has indicated he/she wishes to be removed from such list;

4.3.1.4 using ECN's service to collect responses from unsolicited e-mail sent from accounts on other Internet hosts, or e-mail services, that violate this AUP, or the AUP of any other Internet service provider;

4.3.1.5 including ECN's name in the header, or by listing an IP address that belongs to ECN, in any unsolicited email whether sent through ECN's network, or not;

4.3.1.6 failure to secure a customer's mail server against public relay as a protection to themselves and the broader Internet community.

4.3.2 Public relay referred to in 4.3.1.6 occurs when a mail server is accessed by a third party from another domain and utilised to deliver mails, without the authority or consent of the owner of the mail-server. Mail servers that are unsecured against public relay often become abused by unscrupulous operators for spam delivery and upon detection such delivery must be disallowed. ECN reserves the right to examine users' mail servers to confirm that no mails are being sent from the mail server through public relay and the results of such checks can be made available to the user. ECN also reserves the right to examine the mail servers of any users using ECN's mail servers for "smarthosting" (when the user relays its mail via an ECN mail server to a mail server of its own or vica-versa), or similar services at any time to ensure that the servers are properly secured against public relay. All relay checks will be done in strict accordance with ECN's privacy policy.

4.3.3 ECN provides a spam and virus filtering system to protect customers from unsolicited mail and viruses. The customer acknowledges that this system might incorrectly identify a valid message as spam, or as a virus and consequently this message might

not be delivered to the customer. The customer acknowledges and agrees that ECN shall without limitation have no responsibility for, or liability in respect of any data lost as a result of this system. ECN reserves the right to examine incoming, or outgoing mail to the extent necessary to determine if it is classified as spam.

4.4 Webmail

4.4.1 Webmail and other web based email services made available by ECN are provided on an "as is" basis without representations, warranties or conditions of any kind, and the customer acknowledges and agrees that ECN shall have no responsibility for, or liability in respect of, any aspect of the Webmail services, including without limitation for any lost, or damaged data, or any acts or omissions of ECN. As webmail storage space is limited, some Webmail messages may not be processed, due to space constraints or message limitations.

4.4.2 Webmail is provided to individuals and for personal use only. Any unauthorised commercial use of the Webmail service, or resale of the Webmail service, is expressly prohibited.

4.5 Protection of Minors

ECN prohibits customers from using ECN's service to harm, or attempt to harm a minor, including, but not limited to, hosting, possessing, disseminating, distributing, or transmitting material that is unlawful, including child pornography.

4.6 Privacy and Confidentiality

ECN respects the privacy and confidentiality of our customers and users of our service. Please review our privacy policy which details how we collect and use personal information gathered in the course of operating this service.

4.7 User Responsibilities

4.7.1 Customers are responsible for any misuse of ECN's services that occurs through the customer's account. It is the customer's responsibility to ensure that unauthorised persons do not gain access to or misuse ECN's service.

4.7.2 ECN urges customers not to reply to unsolicited mail, or "spam", not to click on any suggested links provided in unsolicited mail. Doing so remains the sole responsibility of the customer and ECN cannot be held liable for the Customer being placed on any bulk mailing lists as a result.

4.7.3 Where the customer has authorised a minor to use any of ECN's services, or access its websites, you accept that as the parent/legal guardian of that minor, you are fully responsible for:

4.7.3.1 the online conduct of such minor;

4.7.3.2 controlling the minor's access to and use of any services, or websites;
and

4.7.3.3 the consequences of any misuse by the minor, including but not limited to transactions entered into by the minor using such access.

4.7.4 ECN cannot be held liable for any business dealings you have with any third parties on the Internet, including any vendors, or advertisers found on, or through the ECN network. ECN assumes no responsibility whatsoever for any charges you, or any user of your account incurs when making purchases, or other transactions in this manner. The responsibility for ensuring compliance with all applicable customs and exchange control laws in connection with any such transactions, shall be the customer's.

5 NOTICE AND TAKE-DOWN PROCEDURES

5.1 ECN confirms that it has a procedure in place for the notice and take-down of illegal material. In compliance with section 77 of the Electronic Communications and Transactions Act (No. 25 of 2002), ISPA is ECN's designated agent for this process. ISPA can be reached on Tel:

010 500 1200 / Fax: 086 606 4066 or takedown@ispa.org.za. The notice and take-down procedure can be viewed at www.ispa.org.za/tdn

- 5.2 Customers are also notified of the content and procedures of the ISPA Code of Conduct (available on <https://ispa.org.za/code-of-conduct/>), which may be used against any Internet service provider who fails to comply with the Code of Conduct. We urge you to familiarise yourselves with this Code.

6 COMPLAINTS AND PROCEDURES

- 6.1 It is the customer's responsibility to familiarise himself, or herself with the procedure set out below and report any cases of violation of this AUP to ECN's designated complaints handling agent.
- 6.2 Please note that ECN cannot handle complaints concerning networks, or users that do not have service contracts with us, or our affiliates, or are outside of our control.
- 6.3 In order for ECN to thoroughly investigate the complaint and take appropriate action, all complaints must be in writing, via fax or e-mail and contain as much information as possible, including, but not limited to:
- 6.3.1 the origin of abuse or offence, including the website, full mail headers, relevant log file extracts etc;
 - 6.3.2 any contact details for the source of the complaint;
 - 6.3.3 a brief explanation why the incident is considered to be an offence.
- 6.4 ECN discourages anonymous complaints being made via this service, and urges complainants to supply their name and contact details to us. Such information will not be released, except where required by law enforcement. Anonymous complaints will however be acted upon as long as sufficient detail as outlined above, is supplied.

7 ACTION FOLLOWING BREACH OF THE AUP

- 7.1 Upon receipt of a complaint, or having become aware of an incident, ECN may take any of the following steps:
- 7.1.1 in the case of a network, inform the user's network administrator of the incident and request the network administrator, or network owner, to address the incident in terms of this AUP and the ISPA Code of Conduct;
 - 7.1.2 in severe cases suspend access of the user's entire network, until the abuse can be prevented by appropriate means;
 - 7.1.3 in the case of individual users, warn the user; suspend the user's account and/or revoke or cancel the user's network access privileges completely;
 - 7.1.4 in all cases, charge the offending parties for administrative costs, as well as for machine and human time lost due to the incident;
 - 7.1.5 assist other networks or website administrators in investigating credible suspicions of any activity listed in this AUP;
 - 7.1.6 share information concerning the incident with other Internet access providers, or publish the information, and/or make available the users' details to law enforcement agencies.
 - 7.1.7 institute civil or criminal proceedings;
 - 7.1.8 institute such urgent, or interim relieve as may be necessary to protect the interests of ECN and any third party;
 - 7.1.9 claim such damages as ECN may have suffered.

8 RESERVATION AND NON WAIVER OF RIGHTS

8.1 ECN reserve its rights to:

- 8.1.1 amend or alter this policy at any time, and without notice to you;
- 8.1.2 take action against any individuals, companies or organizations that violate any of the prohibited activities set out herein, or engage in any illegal or unlawful activity while accessing our services;
- 8.1.3 at its sole discretion, act against other types of abuse not listed in this document and to investigate, or prevent illegal activities being committed over our network;
- 8.1.4 monitor user and network traffic for site security purposes and prevent any unauthorised attempts, to tamper with our site, or cause damage to our property;
- 8.1.5 suspend, revoke, or cancel ECN's services to the customer/user if the safety and integrity of ECN's resources are placed at risk in continuing to provide service to the subscriber/user;
- 8.1.6 remove any information, or materials in whole, or in part, that in ECN's sole discretion, is deemed to be offensive, indecent, or otherwise objectionable.

8.2 ECN does not undertake to guarantee the security of any data passing through its networks.

8.3 Although ECN will provide a "best effort" service, including regular updates on computer viruses and other threats to security of data, it is the responsibility of the communicating parties to safeguard their data. ECN cannot be held liable for any loss, or damage arising as result of the failure to do so.

8.4 ECN does not waive its right to enforcement of this AUP at any time, or prejudice its right to take subsequent action, should ECN fail, neglect, or elect not to enforce a breach of the AUP at any time.