



FlipTV's ACCEPTABLE USE POLICY

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1 ACCEPTABLE USE POLICY

- (a) Your use of the NBN Service signifies your acceptance and adherents to FlipTV Acceptable Use Policy (AUP) as though you had actually signed the AUP paper - please read it carefully.
- (b) If in FlipTV's opinion, you breach the Acceptable Use Policy by actions that are considered abusive or inappropriate and by definition considered unlawful; FlipTV will suspend your service and pending further investigation may result in termination. Further, the AUP is not comprehensive and as such, if there are services that in any way may be determine as being illegal, inappropriate, or detrimental to our network or any customers, we will terminate your service without notice.
- (c) FlipTV reserve the right from time to time, if required to amend the AUP policy and to deploy the revised AUP documentation on the web site. Any such changes or revisions will be effective after 30 days from when the revised AUP was first posted.

2 GENERAL

- (a) This policy is designed to ensure that your use of the NBN service does not break any laws, or being involved in breaking any Australian or International laws, Order or Regulations. I.e. illegally reproducing and distributing copyright material.
- (b) You are responsible for ensuring that use of the NBN service and your FlipTV account complies with this policy. *You* are also responsible for any use of the NBN service even if, for example, a friend, family member, guest or employee who gains access to the NBN service or your FlipTV account uses it, with or without your consent.
- (c) You should consult this policy regularly to ensure that *your* activities conform to the most recent version.
- (d) If there is an inconsistency between any other part of your agreement and this policy, this policy will apply.



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 that 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) inappropriate material or activities that put children at risk in particular to Child pornography, or
- (c) pyramid or other illegal soliciting schemes, or
- (d) any fraudulent activities, including impersonating any person or entity or forging anyone else's digital or manual signature.

4 **SECURITY**

- (a) The service must not be used to obtain or attempt to obtain unauthorised access to any Telephone, Mobile phone, Computer, system or Network.
- (b) 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, or testing the vulnerability of other network,
 - (iii) breaching any security or authentication measures of a system or network
- (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,



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- (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.
 - (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) *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 can 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) transmitting confidential information over the Internet (such as *your* credit card number or other personal information), or
 - (iii) accessing and viewing *content* on the Internet or otherwise available through the *service* that may be offensive to some individuals, or inappropriate for children viewers.
- (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 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, news groups 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.
- (d) 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) from our servers, blocking access to newsgroups, closing or suspending your FlipTV Internet account, filtering the Internet content made available to you or restricting access to a particular website.
- (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 from our servers, closing or suspending your FlipTV Internet account, filtering the Internet content made available to you or restricting access to a particular website.
- (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. 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,*
- (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'),*
- (d) *We are not responsible for forwarding or storing messages sent to any FlipTV account that has been suspended or cancelled. Such messages may be returned to sender, ignored, deleted, or stored temporarily at our sole discretion.*

8 NEWS GROUPS

- (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. Data files may only be posted to online forums that specifically permit this.*
- (c) *You must not disrupt or attempt to disrupt online forums by posting a large number of messages that contain no substantive content.*



9 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) *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*.
- (c) *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.
- (d) 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.
- (e) Upon cancellation of an *FlipTV Internet account*, *we* are authorised to delete any files, programs, data and email messages associated with the *FlipTV Internet account*.
- (f) 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.
- (g) *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.
- (h) 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.



10 UNREASONABLE USE

Please note that *our* right to suspend or *cancel the service* **without notice to you** under this clause overrides any requirement *we* may have to give *you* notice in other parts of the *agreement*.

- (a) Applies to all customers, *we* consider *your* use of the *service* to be unreasonable if:
- (i) *your* extensive Internet or Phone usage of the *service* affects other customers' access to the network; or
 - (ii) *you* set up switch devices that overcome the subscription and/or pricing charges, potentially keeping a session open for hours and limiting the ability for other customers to access the *service*.
 - (iii) *your* NBN Phone/Broadband service is for residential domestic use only unless there exists a prior arrangement with FlipTV specifically for a Business service to the one premise(s).

11 UNACCEPTABLE USE

- (a) *You* must not use the *service* in a manner, which, interferes with the rights of other users. For example, *you* must not:
- (i) provide false user information to *us* or other users, or
 - (ii) send large amounts of unsolicited or unwanted messages to individuals or individual business accounts.
- (b) In using the *service*, *you* must not break any laws or infringe the rights of other persons. For example, *you* must not:
- (i) distribute or make available indecent, obscene, offensive, pornographic, illegal or confidential material,
 - (ii) defame, harass or abuse anyone or violate their privacy,
 - (iii) contravene any applicable laws,
 - (iv) distribute or make available material that is misleading or deceptive as to *your* identity,
 - (v) infringe any person's *intellectual property rights*,
 - (vi) monitor data or traffic on any *network* or system if *you* do not have the authorisation of the owner of the *network* or system to do so, or interfere or disrupt the *service*, any computer system access through it or any other person's use of it.



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- (c) *You* must comply with any rules imposed by any third party whose content or service *you* access using the service.
- (d) *You* may only use any *content* accessible through the *service* for personal and non-commercial purposes. For the avoidance of doubt, this prohibition includes framing, linking, posting in news groups and any other form of copying by persons other than as approved by the content provider.
- (e) To detect and deal with breaches of this policy and to ensure compliance with any relevant industry code of practice, notification or direction by any relevant regulatory authority, *we*:
 - (i) will co-operate with other *carriage service providers* to control unacceptable user behaviour,
 - (ii) may give *your* details to the police and to other law enforcement agencies if *you* are suspected of breaking any laws in connection with the use of the *service*,
 - (iii) may implement technical mechanisms to prevent behaviour which breaches this policy (for example, which block multiple postings before they are forwarded to their intended recipients),
 - (iv) may exercise any rights we have under the Terms and Conditions or relevant service description, including suspending or cancelling use of the service,
 - (v) May take any other action *we* deem appropriate, including taking action against offenders to recover costs and expenses of identifying them

12 WHAT DO THE 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

News Groups 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.



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

FlipTV customer 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 each of the FlipTV Phone Service, FlipTV Broadband on NBN Service 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).