

## Fair Use Policy

### Contents

1	ABOUT THIS POLICY	1
2	UNREASONABLE USE OF RESOURCES	1
3	UNACCEPTABLE USE OF RESOURCES	3
4	SPAM	4
5	SECURITY	6
6	COPYRIGHT	7
7	WHAT HAPPENS IF YOU BREACH THIS POLICY?	7

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## 1 ABOUT THIS POLICY

1. The purpose of this Policy is to outline what Yomojo considers to be unreasonable or unacceptable use of the Yomojo services (*Services*).
2. This Policy:
  - (a) sets out the rules which apply to the use of our Services, including your responsibilities, permitted uses and prohibited uses of those Services; and
  - (b) seeks to maintain and protect the integrity of the infrastructure, our network and systems used to deliver the Services to ensure that you and all other users can enjoy optimum use of our Services.

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## 2 UNREASONABLE USE OF RESOURCES

1. Your Yomojo Service is provided for personal use or commercial use. Personal use means that the Yomojo products and services are used by individuals, only for private use and in a manner which is reasonable. Commercial use means the Yomojo products and services are used by business customers only in the ordinary course of their business and in a manner which is reasonable. You must not:
  - (a) use software (such as automated agents) to maintain a connection or to reconnect when you are not personally using such connection;
  - (b) download software or other material for sale, distribution or other non-personal use;
  - (c) attempt to make more than one simultaneous connection to the Service;
  - (d) run a telemarketing business or call centre;
  - (e) re-supply, resell or commercially exploit the Service or re-route call traffic in order to disguise the originating party or for the purposes of resale;
  - (f) call 13xx or 18xx numbers to make indirect calls through other providers;
  - (g) use the Service for the purpose of arbitrage;
  - (h) make or receive calls on our network for the purpose of resale, resupply or commercial exploitation;
  - (i) use the Service to continuously call forward or to initiate multiple simultaneous calls;
  - (j) use the Service in any manner that may present a threat or risk to the security of our Services or the integrity of our network;
  - (k) use the Service for any purpose stated to be prohibited in your application or in your Service schedule;
  - (l) use the Service in any manner that may cause death, personal injury or damage to property;

- (m) use the Service in any manner which is defamatory, abusive, menacing, threatening, harassing, offensive, violates privacy, or incites violence or hatred towards any person or class of persons, or which could give rise to civil or criminal proceedings;
- (n) use the Service in any manner which is illegal, fraudulent or otherwise prohibited under any applicable Commonwealth, State or Territory law or which is in breach of any code, standard or content requirement of any other competent authority;
- (o) use the Service to store, send, reproduce, publish, or distribute any content or material which is restricted, prohibited or otherwise unlawful under any applicable Commonwealth, State or Territory law, or which is likely to be offensive or obscene to a reasonable person;
- (p) use the Service to make inappropriate contact with children or minors;
- (q) use the Service to provide unrestricted access to material that is unsuitable for minors;
- (r) use the Service to do anything (including store, send or distribute material) which interferes with other users or restricts or hinders any person from accessing, using or enjoying the Internet, our Services, our network or systems;
- (s) use the Service to forge header information, email source address, or other user information, or otherwise maliciously or illegally impersonate or obscure the original source of data;
- (t) use the Service to access, monitor, use, control, or make modifications to, or otherwise interfere with, any other person's equipment, systems, networks or data, without that lawful authority;
- (u) use the Service to attempt to probe, scan or test the vulnerability of any other person's equipment, systems, networks or data, without lawful authority;
- (v) use the Service to compromise the security or integrity of any network or system;
- (w) use the Service to access, download, store, send or distribute any harmful programs or material with the intent of compromising the security of any network or system (including viruses, Trojans, or password guessing programs);
- (x) use the Service to engage in any unreasonable activity which impairs the ability of other people or systems to use our Services or the Internet (including directed denial of service attacks, flooding networks, or over-loading services);
- (y) use the Service to tamper with, hinder the operation of or make unauthorised modifications to any network or system;
- (z) use the Service to host servers for business or private use, without prior consent;

- (aa) if you are a residential customer, use the Service in a way which could not be reasonably regarded as ordinary personal use (eg a residential product cannot be used for commercial purposes);
  - (bb) if you are a business customer, including a small to medium business customer, use the Service in way which could not be reasonably regarded as ordinary business use;
  - (cc) undertake abnormal or excessive use of back to base services;
  - (dd) undertake SIM boxing or use the Service in connection with a device that switches or re-routes calls to or from our network to another carrier's network;
  - (ee) wholesale any Service or use the Service in connection with any device that switches or reroutes calls potentially keeping a line open for hours;
  - (ff) use the Service to wholesale supply any service (including transit, refile or aggregate domestic or international traffic) on our network;
  - (gg) use a 'mobile voice' SIM card in a non 'mobile voice' device; or
  - (hh) use the Service for anything which isn't standard person to person communication.
2. Yomojo considers your use of the Service to be unreasonable if you make or receive calls on our network other than for your own personal or business use, as stated above.
  3. Yomojo considers your use of the Services to be unreasonable if your use is considered fraudulent by Yomojo or to adversely affect the Yomojo network or another customer's use of, or access to, the Service provided by Yomojo or our network.
  4. Among other things, unreasonable use includes resupplying the Service without Yomojo's consent so that a third party may access or use Yomojo's Services.

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### **3 UNACCEPTABLE USE OF RESOURCES**

You may not use our Services in any manner which improperly interferes with another person's use of our Services or for illegal or unlawful purposes. You may not use any equipment or devices on our network (including SIM cards) which have not been approved by us. We consider the use of our Services or unauthorised equipment in this way to be unacceptable.

Here are some examples of uses which we consider 'unacceptable'. This is not intended to be an exhaustive list:

- (a) if you provide us with false user information to use the Service;
- (b) using any equipment or device (including SIM card) on our network which has not been authorised by us;

- (c) using the Service to send unsolicited or unwanted commercial electronic messages to individuals or businesses;
- (d) using the Service to gain improper access to another person's private or personal information;
- (e) using the Service to distribute or make available indecent, obscene, offensive, pornographic, illegal or confidential material;
- (f) using the Service to defame, harass or abuse anyone or violate their privacy;
- (g) contravening any applicable laws when you use the Service;
- (h) using the Service to communicate with emergency service organisations where an emergency situation does not exist;
- (i) using the Service to distribute or make available material that is misleading or deceptive as to your identity;
- (j) infringing any person's intellectual property rights, including copyright, when you use the Service;
- (k) using the Service to 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;
- (l) using the Service to obtain or attempt to obtain unauthorised access to any computer, system or network; or
- (m) using the Service in a manner designed to compromise the security or interfere with the operation of the Service or any other computer, system or network.

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#### **4 SPAM**

1. When using the Service or our network, you must at all times comply with the *Spam Act 2003* (Cth) and the regulations made thereunder including the *Spam Regulations 2004* (Cth) (together *Spam Legislation*).
2. In particular, you must not:
  - (a) use or permit the use of the Service or our network to accept, transmit or distribute bulk and/or unsolicited commercial electronic messages, including messages of an advertising or promotional nature (*spam*); or
  - (b) supply, acquire or use or permit the supply, acquisition or use of any software designed to harvest email addresses through the Service or our network or any electronic email address list produced using such address-harvesting software.

3. The only circumstances in which the Service or our network may be used to send unsolicited emails of an advertising or promotional nature are where such emails are sent:
  - (a) to persons with whom you have a pre-existing business, professional or personal relationship; or
  - (b) to persons who had previously indicated to you their consent to receive such emails from you from time to time, for example by ticking a box to that effect on your website.
  
4. Subject to clause 4(3), you must not send unsolicited bulk emails using the Service or our network. Any such emails must:
  - (a) include information about the individual or organisation who authorised the sending of the emails; and
  - (b) contain a functional unsubscribe facility made known to the recipients who may exercise an option to be removed from your mailing list.
  
5. Yomojo may suspend the Service in the following events:
  - (a) if the Service or our network is being used to host any device or service that allows email to be sent between third parties not under your authority and control; or
  - (b) you are in breach of the Spam Legislation,  
whether or not the same occurs with your knowledge, through misconfiguration of your equipment or network or by other means not authorised by you such as through a Trojan horse or computer virus.
  
6. If it comes to Yomojo's notice that Spam is being transmitted through your account using the Service or our network, Yomojo may take the following action to block your account from which, in our reasonable opinion, the Spam originates:
  - (a) we will apply a 'Spam Portal Block' which will limit your internet access for that account to your Spam Portal web page which has further information about Spam and allows you to address the Spam issue and resolve it; and
  - (b) your account will be released from the Spam Portal Block not less than two (2) hours AFTER Yomojo is satisfied that Spam is no longer being transmitted through your account.

Notwithstanding the above actions by Yomojo, you remain liable for all costs and charges relating to your internet access regardless of the length of time and the number of times a Spam Portal Block is applied to your account.
  
7. You must use your best endeavours to secure all equipment, devices and networks within your control against being used by third parties in breach of the Spam Legislation, including where appropriate:
  - (a) installation and maintenance of appropriate up-to-date antivirus software;

- (b) the installation and maintenance of an appropriate and adequate firewall software; and
  - (c) the application of operating system and application software patches and updates.
8. Yomojo may scan any IP address ranges allocated for your use with the Service in order to detect the presence of open or otherwise mis-configured mail and proxy servers.
9. If the Service is suspended and the grounds upon which it was suspended are not corrected by you within seven (7) days, Yomojo may terminate the Service.

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## 5 SECURITY

1. You:
- (a) are responsible for any misuse of the Service or our network that is in breach of your agreement with Yomojo (including this Policy) and must take reasonable steps to ensure that others do not gain unauthorised access to the Service or our network;
  - (b) must not use or permit the use of the Service or our network to obtain or attempt to obtain unauthorised access to any computer, system or network or to carry out any unauthorised or unlawful activity; and
  - (c) must notify Yomojo immediately of any breach of this clause.
2. You acknowledge that when accessing the internet through using the Service and our network there is a possibility that other parties may gain unauthorised access to:
- (a) the Service or our network; or
  - (b) your equipment connected to our network (including any software used in conjunction with such equipment); or
  - (c) your confidential or personal information,
- thereby causing harm, damage or loss to you. You agree to bear all risks of such harm, damage or loss occurring through your use of the Service and our network.
3. Yomojo is not responsible for any content that you may publish via websites, email, newsgroups, online forums or other publishing mediums accessed through the Service or our network. You acknowledge that Yomojo may take such action as it may deem appropriate to block access to, remove or refuse to post any content:
- (a) in order to comply with any law or any directions of a regulator or other authority; and
  - (b) that Yomojo in its sole discretion considers to be defamatory, offensive, abusive, indecent, menacing or otherwise inappropriate regardless of whether such content is unlawful,

and you agree to indemnify Yomojo against any claims, loss, actions, damages, suits or proceedings against Yomojo arising out of or otherwise related to such activities.

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## 6 COPYRIGHT

1. You are responsible for ensuring that you do not infringe the intellectual property rights of any person in relation to any material that you access or download from the internet and copy, store, send or distribute using the Services.
2. You must not use the Services to copy, adapt, reproduce, distribute or otherwise make available to other persons any content or material (including but not limited to music and video files in any format) which is subject to copyright, unless you have a lawful right to do so.
3. You must not use the Services to do any other acts in relation to such copyright material which would infringe the exclusive rights of the copyright owner under the *Copyright Act 1968* (Cth) or any other applicable laws, unless you have a lawful right to do so.
4. Yomojo may immediately cease hosting and remove from our network or systems any content upon receiving a complaint or allegation that the material infringes copyright or any other intellectual property rights of any person.

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## 7 WHAT HAPPENS IF YOU BREACH THIS POLICY?

If Yomojo believes on reasonable grounds that you have breached this Policy or engaged in any unreasonable use of the Service, Yomojo may (but is not obliged to) take one or more of the following steps:

- (a) contact you about your breach and, if your breach continues, we may suspend, limit or terminate the Service;
  - (b) place you in a separate pool of users with similar usage patterns in order to free up resources for other users;
  - (c) inform appropriate government and regulatory authorities of suspected illegal or infringing conduct;
  - (d) delete or edit any of your data (including web page content) stored on our computer systems;
  - (e) where we consider your breach to be material, without notice suspend your access to the Service indefinitely or for a specific period;
  - (f) place usage, time or download limitations on your use of the Service;
  - (g) refuse, in our absolute discretion, to renew any Service used by you in the future.
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