

Acceptable Use Policy (AUP)

As a provider of Internet access, web site hosting, and other Internet-related services, VM Racks offers its customers (also known as subscribers), and their customers and users, the means to acquire and disseminate a wealth of public, private, commercial, and non-commercial information. VM Racks respects that the Internet provides a forum for free and open discussion and dissemination of information, however, when there are competing interests at issue, VM Racks reserves the right to take certain preventative or corrective actions. In order to protect these competing interests, VM Racks has developed an Acceptable Use Policy ("AUP"), which supplements and explains certain terms of each customer's respective service agreement and is intended as a guide to the customer's rights and obligations when utilizing VM Racks' services. This AUP will be revised from time to time. A customer's use of VM Racks' services after changes to the AUP are posted on VM Racks' web site, http://www.VMRacks.com/images/pdf_files/AUP.pdf the Internet, both in the information they acquire and in the information they disseminate to others. When subscribers obtain information through the Internet, they must keep in mind that VM Racks cannot monitor, verify, warrant, or vouch for the accuracy and quality of the information that subscribers may acquire. For this reason, the subscriber must exercise his or her best judgment in relying on information obtained from the Internet, and also should be aware that some material posted to the Internet is sexually explicit or otherwise offensive. Because VM Racks cannot monitor or censor the Internet, and will not attempt to do so, VM Racks cannot accept any responsibility for injury to its subscribers that results from inaccurate, unsuitable, offensive, or illegal Internet communications.

When subscribers disseminate information through the Internet, they also must keep in mind that VM Racks does not review, edit, censor, or take responsibility for any information its subscribers may create. When users place information on the Internet, they have the same liability as other authors for copyright infringement, defamation, and other harmful speech. Also, because the information they create is carried over VM Racks' network and may reach a large number of people, including both subscribers and nonsubscribers of VM Racks, subscribers' postings to the Internet may affect other subscribers and may harm VM Racks' goodwill, business reputation, and operations. For these reasons, subscribers violate VM Racks policy and the service agreement when they, their customers, affiliates, or subsidiaries engage in the following prohibited activities:

1. Spamming

Sending unsolicited bulk and/or commercial messages over the Internet (known as "spamming"). It is not only harmful because of its negative impact on consumer attitudes toward VM Racks, but also because it can overload VM Racks' network and disrupt service to VM Racks subscribers. Also, maintaining an open SMTP relay is prohibited. When a complaint is received, VM Racks has the discretion to determine from all of the evidence whether the email recipients were from an "opt-in" email list.

2. Intellectual Property Violations

Engaging in any activity that infringes or misappropriates the intellectual property rights of others, including copyrights, trademarks, service marks, trade secrets, software piracy, and patents held by individuals, corporations, or other entities. Also, engaging in activity that violates privacy, publicity, or other personal rights of others. VM Racks is required by law to remove or block access to customer content upon receipt of a proper notice of copyright infringement. It is also VM Racks' policy to terminate the privileges of customers who commit repeat violations of copyright laws.

3. Obscene Speech or Materials

Using VM Racks' network to advertise, transmit, store, post, display, or otherwise make available child pornography or obscene speech or material. VM Racks is required by law to notify law enforcement agencies when it becomes aware of the presence of child pornography on or being transmitted through VM Racks' network.

4. Defamatory or Abusive Language

Using VM Racks' network as a means to transmit or post defamatory, harassing, abusive, or threatening language.

5. Forging of Headers

Forging or misrepresenting message headers, whether in whole or in part, to mask the originator of the message.

6. Illegal or Unauthorized Access to Other Computers or Networks

Accessing illegally or without authorization computers, accounts, or networks belonging to another party, or attempting to penetrate security measures of another individual's system (often known as "hacking"). Also, any activity that might be used as a precursor to an attempted system penetration (i.e. port scan, stealth scan, or other information gathering activity).

7. Distribution of Internet Viruses, Worms, Trojan Horses, or Other Destructive Activities

Distributing information regarding the creation of and sending Internet viruses, worms, Trojan horses, ping, flooding, mailbombing, or denial of service attacks. Also, activities that disrupt the use of or interfere with the ability of others to effectively use the network or any connected network, system, service, or equipment.

8. Facilitating a Violation of this AUP

Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this AUP, which includes the facilitation of the means to spam, initiation of ping, flooding, mailbombing, denial of service attacks, and piracy of software.

9. Export Control Violations

Exporting encryption software over the Internet or otherwise, to points outside the United States.

10. Usenet Groups

VM Racks reserves the right not to accept postings from newsgroups where we have actual knowledge that the content of the newsgroup violates the AUP.

11. Other Illegal Activities

Engaging in activities that are determined to be illegal, including advertising, transmitting, or otherwise making available ponzi schemes, pyramid schemes, fraudulently charging credit cards, and pirating software.

12. Other Activities

Engaging in activities, whether lawful or unlawful, that VM Racks determines to be harmful to its subscribers, operations, reputation, goodwill, or customer relations.

As we have pointed out, the responsibility for avoiding the harmful activities just described rests primarily with the subscriber. VM Racks will not, as an ordinary practice, monitor the communications of its subscribers to ensure that they comply with VM Racks policy or applicable law. When VM Racks becomes aware of harmful activities, however, it may take any action to stop the harmful activity, including but not limited to, removing information, shutting down a web site, implementing screening software designed to block offending transmissions, denying access to the Internet, or take any other action it deems appropriate.

VM Racks also is aware that many of its subscribers are, themselves, providers of Internet services, and that information reaching VM Racks' facilities from those subscribers may have originated from a customer of the subscriber or from another third-party. VM Racks does not require its subscribers who offer Internet services to monitor or censor transmissions or web sites created by customers of its subscribers. VM Racks has the right to directly take action against a customer of a subscriber. Also, VM Racks may take action against the VM Racks subscriber because of activities of a customer of the subscriber, even though the action may effect other customers of the subscriber. Similarly, VM Racks anticipates that subscribers who offer Internet services will cooperate with VM Racks in any corrective or preventive action that VM Racks deems necessary. Failure to cooperate with such corrective or preventive measures is a violation of VM Racks policy.

VM Racks also is concerned with the privacy of on-line communications and web sites. In general, the Internet is neither more nor less secure than other means of communication, including mail, facsimile, and voice telephone service, all of which can be intercepted and otherwise compromised. As a matter of prudence, however, VM Racks urges its subscribers to assume that all of their on-line communications are insecure. VM Racks cannot take any responsibility for the security of information transmitted over VM Racks' facilities.

VM Racks will not intentionally monitor private electronic mail messages sent or received by its subscribers unless required to do so by law, governmental authority, or when public safety is at stake. VM Racks may, however, monitor its service electronically to determine that its facilities are operating satisfactorily. Also, VM Racks may disclose information, including but not limited to, information concerning a subscriber, a transmission made using our network, or a web site, in order to comply with a court order, subpoena, summons, discovery request, warrant, statute, regulation, or governmental request. VM Racks assumes no obligation to inform the subscriber that subscriber information has been provided and in some cases may be prohibited by law from giving such notice. Finally, VM Racks may disclose subscriber information or information transmitted over its network where necessary to protect VM Racks and others from harm, or where such disclosure is necessary to the proper operation of the system.

VM Racks expects that its subscribers who provide Internet services to others will comply fully with all applicable laws concerning the privacy of on-line communications. A subscriber's failure to comply with those laws will violate VM Racks policy. Finally, VM Racks wishes to emphasize that in signing the service agreement, subscribers indemnify VM Racks for any violation of the service agreement, law, or VM Racks policy, that results in loss to VM Racks or the bringing of any claim against VM Racks by any third-party. This means that if VM Racks is sued because of a subscriber's or customer of a subscriber's activity, the subscriber will pay any damages awarded against VM Racks, plus costs and reasonable attorneys' fees.

We hope this AUP is helpful in clarifying the obligations of Internet users, including VM Racks and its subscribers, as responsible members of the Internet. Any complaints about a subscriber's violation of this AUP should be sent to support@VMRacks.com.