

TMX Web Services

Terms Of Service and Acceptable Use Policy

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TMX Web Services (TMX) is a provider of virtual web hosting to numerous clients, and as such, we have a responsibility to protect each client and to provide the best services available. The following Terms of Service are designed to ensure that these obligations are met.

Our goal is to assist you in any way we can to ensure the success of your site. However, you should understand that your site is on a shared server with other sites. Any abuse by one user will have a negative impact on all other clients on that server. If there is ever a problem, rest assured that we will contact you promptly so that we may work together to remedy the situation in a mutually beneficial way.

Currency Conventions:

All prices and fees described within the TMX Web Services website are in terms of U.S. currency.

Payment Policy:

All accounts are set up and billed on a prepay basis. All accounts are billed monthly on an anniversary basis, meaning, for example, that if your account was activated and 11th of a given month, your monthly payment will be due on the 11th of each subsequent month. The only exception is your first month's service, which will be billed on the date of your account activation. All hosting fees are considered due and payable on your due date. All pricing is guaranteed for the term of prepayment. The customer is responsible for all monies owed on the account from the time it was activated to the time that the customer notifies TMX, in accordance with the [cancellation procedures](#) described below, of their desire to terminate services.

Money Back Guarantee:

We offer a 14 day money back guarantee on all of our hosting accounts. If you decide to cancel your account for any reason within the first 14 days of service, we will provide you with a full refund of all hosting costs paid by you to TMX. Cancellation of your account must be in accordance with cancellation policy below, must not be due to a Terms of Service violation, and must be received by TMX within 14 calendar days from the date of account activation. Cancellation requests received prior to actual account activation will be processed immediately. Depending on your method of payment, refunds may be either via company check, or a credit back to your charge card. Please note that the money-back guarantee does NOT apply to domain name registrations. *All domain registration sales are final.*

Past Due Accounts:

All accounts are due and payable on the due date as described above. Accounts that are not paid in full within 10 days of the due date will be subject to suspension. Accounts not paid in full within 20 days of the due date will be subject to cancellation .

Cancellation Policy:

All cancellation requests must be submitted via email to cancellations@tmxwebservices.net. Cancellation requests that are submitted via any other means or to any other email address will not be processed. Account cancellation may be requested at any time. All request for cancellation will be processed within two business days. TMX reserves the right to cancel service at any time. All hosting fees paid in advance of cancellation will be prorated and returned either via company check or a credit back to your charge card, depending on your method of payment. Any violation of policies which results in extra costs to TMX Web Services will be billed to the customer

Abuse Of The Law:

All services provided by TMX may be used for lawful purposes only. Transmission, storage or presentation of any information, data or material in violation of any United States Federal, State or City law or of any laws within the subscribers country of residence is prohibited. This includes, but is not limited to: drug dealing; attempting without authorization to access a computer system; pirating (distributing copyrighted material in

violation of copyright law, specifically MP3s, MPEG's, ROMs and ROM emulators, and "WAREZ"); gambling; schemes to defraud; trafficking in pornographic or obscene material; sending a message or having content that is obscene, lewd, lascivious, filthy, or indecent with intent to annoy, abuse, threaten, or harass another person; threatening bodily harm or damage to individuals or groups; violating U.S. export restrictions; stalking; or violating other state or federal law such as the Electronic Communications Privacy Act, the Computer Fraud and Abuse Act, or the Economic Espionage Act. Linking to illegal material is also prohibited. TMX reserves the right to check system files, email, and other data on our servers for illegal content and materials, or for any other reasons deemed necessary.

Pornography:

Pornography and sex-related merchandising, even if legal, is not an acceptable use of TMX's servers.

Abuse Of The Legal Rights Of Others:

Examples of unacceptable activities in this regard include posting private information about a person without their consent, infringing intellectual property rights, defaming a person or business, and knowingly making available code which will have a deleterious effect on third party computers. TMX supports free speech on the Internet, and will not suspend or cancel a customer's account simply because it disagrees with the views expressed by the customer. Where there are allegations that a customer's on-line activity has violated the legal rights of a third party, TMX will not substitute itself for a court of law in deciding tort claims raised by the third party.

The subscriber agrees to indemnify and hold harmless TMX from any claims resulting from the use of the service which damages the subscriber or any other party.

Client Responsibility:

The client is responsible for all activity originating from their account. The client is responsible for securing their username/password. Use of TMX's service requires a certain level of knowledge in the use of Internet languages, protocols, and software. This level of knowledge varies depending on the anticipated use and desired content of the web space by the client. The following examples are offered: Web Publishing: requires knowledge of HTML, properly locating and linking documents, FTPing Web contents, Graphics, text, sound, image mapping, etc. FrontPage web publishing: knowledge of the FrontPage tools as well as Telnet and FTP understanding and capability. CGI-Scripts: requires a knowledge of the UNIX environment, TAR & GUNZIP commands, Perl, CShell scripts, permissions, etc. Mail: a use of mail clients to receive and send mail, etc. The client agrees that he or she has the necessary knowledge to create and maintain their web space. Client agrees that it is not the responsibility of TMX to provide this knowledge or support outside matter specific to TMX's servers.

Third-party Scripts/Software Programs:

You are permitted to install third-party scripts/software programs in the web space provided by TMX. TMX does not install or assist you to install these thirdparty scripts/software programs.

In addition, TMX reserves the right to determine if a script/software program being used on our servers is permitted. If we determine a script/software program to be unacceptable, the offending script/software program will be disabled and you will be provided with an email notice of this action, as well as a short period of time in which to fully remove the script/software program from our servers. If the script is not removed within the defined grace period, your account will be suspended indefinitely pending resolution of the issue. TMX reserves the right to fully remove any offending scripts/software from our servers ourselves without prior notice or warning if we determine it to be the appropriate course action. TMX will be the sole arbiter in all issues arising from this policy.

Scripts that are expressly and explicitly disallowed at the time of this writing:

- **Matt Wright's "FormMail", all versions.** Even the "fixed" versions of this script are vulnerable to various well-known exploits that can put our servers at risk. A suitable drop-in replacement has been made available by [the NMS project](#) .

- **Ultimate Bulletin Board, CGI versions** - This behemoth of a bulletin board was not designed with the needs of the shared-server environment in mind, and is a huge resource hog.
- **Ikonboard** (Non Mysql version)
- **YaBB** (Perl/CGI Version)
- **Any IRC related software** (bots, servers, etc...)
- **Proxy Servers**
- **nph-proxy**
- **The Anonymizer**, or any other type of anonymizing software

Our Policy Regarding "Spam":

Spamming, or the sending of unsolicited bulk messages from or through a TMX server, or referencing an e-mail address or domain that is maintained on a TMX Web Services machine in a spam email or while spamming, is STRICTLY prohibited, and is grounds for immediate termination of service. Additionally, it is expressly forbidden to host a website on TMX Web Service's servers that sells or otherwise promotes or makes available software whose main function is to facilitate spamming. This type of software, commonly referred to as "spamware", includes email address harvesters, bulk emailing software, open proxy detection software, and other programs of that general nature.

In general terms, "Unsolicited bulk messages" can be defined as the sending of multiple substantially similar e-mail messages to people who have not directly given you or your organization confirmed permission to send them such messages, or the sending of any discussion group message that primarily promotes your interests without contributing to an ongoing discussion (except in the case of messages to groups with a charter or FAQ that specifically encourages "announcements" related to your topic). The definition includes messages sent through our servers or any other servers. It also includes multiple substantially similar discussion-group posts, or a single message posted to more than five Usenet newsgroups.

- You may not send unsolicited bulk messages using our facilities, or send unsolicited bulk messages from another service provider's servers advertising a web site or other service you have hosted on our servers, nor allow others to send unsolicited bulk messages on your behalf. Any mailing list you operate through our servers must contain only people who you can confirm have asked to receive mail from you. (This means that the use of purchased e-mail address lists is a violation of this clause of the Agreement!)
- You may not use your TMX Web Services account to intentionally receive replies from, or distribute information to, any person responding to unsolicited bulk messages. This is commonly done by people using junk e-mail to advertise a web site; the web site is hosted by one provider, and another provider is used for e-mail collection to reduce the possibility of complaints to the web host. An e-mail box used in such a way is called a "drop box".
- You may not engage in any activities that could cause our computer systems to be added to anti-spam or anti-abuse blacklists.
- You may not provide support to others who send unsolicited bulk messages (included, but not limited to, offering e-mail addresses or bulk mail software for sale).
- You may not violate laws regulating spam, such as those listed at SpamLaws.com.
- You may not have engaged in these prohibited activities elsewhere before opening an account with us.
- Legitimate mailing lists you operate (those that aren't defined as "unsolicited bulk messages") must still conform to accepted spam prevention guidelines as detailed at MAPS (in the "[Guidelines](#)" section). You agree to maintain complete records of how and when each person "opted in" and confirmed the subscription, and you agree to provide those records to us upon request.

- **The CAN-SPAM Act of 2003 (S. 877) is in effect as of January 1 2004. Please note that the CAN-SPAM act does not obligate TMX to accept or provide service to spamming clients, nor will simple compliance with the CAN-SPAM act prevent one from being in violation of our posted policies.**

Finally, since the determination as to what exactly constitutes spam and spamware can oftentimes be situational and/or somewhat subjective, TMX will be the sole arbiter as to what constitutes a violation of this provision. Any accounts suspected to be in violation of the above will be suspended immediately pending review of the situation, and terminated immediately and without prior notice if it is determined that the account is in fact in violation of these policies. Furthermore, the customer will be liable for any fees, fines, or labor costs incurred by TMX Web Services as a result of the customer's violation of this provision..

If you are not sure if your actions will be in violation of this policy, please ask first (abuse@tmxwebservices.net).

Abuse of TMX's Server Resources:

Running programs in the background on a TMX server without TMX's prior written authorization, or running chat rooms, Internet Relay Chat, IRC bots, and the like are not acceptable uses of TMX's servers. Further, any usage of ten percent (10%) or more of our system resources is an undue burden on our system and is unacceptable. If your usage ever exceeds ten percent (10%) of system resources, your account may be terminated immediately and without prior notice. In addition any domain that exceeds their allotted bandwidth by more than 15% can be terminated without prior notice.

Hacking/Cracking:

TMX reserves the right to report illegal activities to any and all regulatory, administrative, and/or governmental authorities for prosecution.

The following examples of unacceptable behavior are non-exclusive, and are provided for guidance purposes. If you are unsure if your actions will be a violation of our policies please ask abuse@tmxwebservices.net

Server broadcast messages or any message sent on an intrusive basis to any directly or indirectly attached network Attempt to circumvent any user authentication or security of host, network, or account. Accessing data not intended for user. Probing the security of any network. Spawning dozens of processes. Port scans, ping floods, packet spoofing, forging router information, Denial of Service attacks, sniffers, flooding, spoofing, ping bombing, smurfs, winnuke, land, teardrop. Promulgation of viruses. IRC bots such as eggdrop or BitchX. Any activity, whether or not the intrusion results in the corruption or loss of data, will be investigated and proper action taken. The presence of any of these programs, whether or not run, will result in action against the user including suspension, termination, or legal action where necessary.

Back-Ups:

Full backups of website content are made daily. No guarantees are made of any kind, either expressed or implied, as to the integrity of these backups. Backups are made for server restoration purposes only. It is the clients' responsibility to maintain local copies of their web content and information. If loss of data occurs due to an error of TMX, TMX will attempt to recover the data for no charge to the client. If data loss occurs due to the negligence of the client in securing their account or by an action of the client, TMX will attempt to recover the data from the most recent archive for a \$75.00 fee.

IP Addresses:

TMX maintains control of any and all IP addresses that may be assigned to the client, and reserves in its sole discretion the right to change or remove any and all IP numbers and addresses.

Limited Liability:

TMX shall not be responsible for any claimed damages, including incidental and consequential damages, which may arise from TMX's servers going off-line or being unavailable for any reason whatsoever. Further, TMX shall not be responsible for any claimed damages, including incidental or consequential damages, resulting from the corruption or deletion of any web site from one of TMX's servers. All damages shall be

limited to the immediate termination of service.

Refusal of Service:

We reserve the right to refuse, cancel, or suspend service at our sole discretion. All Sub-Networks, distributive hosting sites, and dedicated servers of TMX must adhere to the above policies.

Failure to follow any term or condition will be grounds for immediate account deactivation.

TMX shall be the sole arbiter of what is and is not a violation of these acceptable use policies. TMX reserves the right to terminate an account at any time and for any reason that causes or has the potential to cause harm to our network, our equipment, our clients' web sites, and our reputation within the internet/business community. TMX reserves the right to delete all content and files upon account termination. TMX reserves the right to withhold any pre-paid funds for any site removed for violations of these policies against any costs incurred by TMX as a direct result of the client's violation of these policies. TMX reserves the right to refuse, cancel, or suspend service at our sole discretion.

TMX reserves the right to change the Acceptable Use Policy without prior notice or warning. Non-enforcement of any part of the Acceptable Use Policy does not constitute consent.

Any questions or reports of violations of our policies should be referred to abuse@tmxwebservices.net immediately. Each complaint will be investigated promptly and thoroughly.