

## **NCD ASP Policy**

As an Application Service Provider ("ASP"), NCD offers its subscribers the means to access and disseminate information. NCD also wants its subscribers to be fully informed of their rights and obligations in connection with their use of the Internet. This NCD ASP Policy, which supplements and explains certain terms of each customer's respective services agreement (the "Service Agreement"), is intended as a plain English guide to those rights and obligations.

The fundamental fact about the Internet is that no one – neither NCD nor anyone else – owns or controls it. This fact accounts for much of the Internet's openness and value, but it also places a high premium on the judgment and responsibility of those who use the Internet, both in the information they retain and in the information they disseminate to others. When subscribers obtain information through the Internet, they must keep in mind that NCD cannot monitor, verify, warrant or vouch for the accuracy and quality of the information that subscribers may acquire. Because NCD cannot monitor and censor the Internet, and will not attempt to do so, NCD cannot accept any responsibility for injury to its subscribers that results from inaccurate, unsuitable or offensive Internet communications.

When subscribers disseminate information through the Internet, they also must keep in mind that NCD does not review, edit, censor or take responsibility for any information its subscribers may have NCD publish. This places on subscribers what will be, for most, an unfamiliar responsibility. 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 NCD facilities and may reach a large number of people, including both subscribers and nonsubscribers of NCD, subscribers' postings to the Internet may affect other subscribers and may harm NCD's goodwill, business reputation and operations. For these reasons, subscribers violate NCD ASP Policy and the Services Agreement when they, their affiliates or subsidiaries engage in the following activities:

**Spamming** – Unsolicited, commercial mass e-mailing (known as "spamming") is a strongly disfavored practice among Internet users and service providers. It is particularly harmful not only because of its negative impact on consumer attitudes toward NCD, but also because

it can overload NCD's equipment and disrupt service to NCD subscribers.

**Copyright Violation** – Violation of copyrights held by individuals and corporations or other entities can result in civil and criminal liability for the infringer, and can involve the ASP in litigation and possible loss of reputation.

**Distribution and/or Transmission of Obscene or Indecent Speech or Materials** – Violation of indecency and obscenity laws can result in criminal penalties.

**Defamation** – Defamatory speech distributed over the Internet can result in civil liability for the defamer and litigation against the ASP whose facilities were used to distribute the defamatory material.

**Illegal/Unauthorized Access to Other Computers or Networks** – The illegal or unauthorized accessing (often known as "hacking") of computers or networks carries potential civil and criminal penalties under both federal laws and the laws of most states.

**Distribution of Internet Viruses, Worms, Trojan Horses and Other Destructive Activities** – Distribution of Internet viruses, worms, Trojan horses and other destructive activities, such as hacking, can result in serious civil and or criminal liability under federal and state law.

**Export Control Violations** – The law limits the ability of persons to export encryption software, over the Internet or otherwise, to points outside the United States.

**Other Activities**, whether lawful or unlawful, that NCD determines to be harmful to its subscribers, operations or reputation, including any activities that restrict or inhibit any other user from using and enjoying the service or the Internet.

As we have pointed out, the responsibility for avoiding the harmful activities just described rests primarily with the subscriber. NCD will not, as an ordinary practice, monitor the communications of its subscribers to ensure that they comply with NCD ASP Policy or applicable law. When NCD

becomes aware of harmful communications, however, it may take any of a variety of actions. NCD may remove information that violates its policies, implement screening software designed to block offending transmissions, or take any other action it deems appropriate, including termination of a subscriber's contract with NCD.

NCD has developed extraordinary security measures to secure data retained on the e-WIX system, however, NCD can not take any responsibility for the security of communications transmitted over NCD's facilities. NCD will comply fully, however, with all applicable laws concerning the privacy of its subscribers' on-line communications. In particular, NCD will not intentionally monitor or disclose any private electronic mail messages sent or received by its subscribers unless required to do so by law. NCD may, however, monitor its service electronically to determine that its facilities are operating satisfactorily. Also, NCD may be required to disclose information transmitted through its facilities in order to comply with court orders, statutes, regulations or governmental requests. Finally, NCD may disclose information transmitted over its facilities where necessary to protect NCD and its subscribers from harm, or where such disclosure is necessary to the proper operation of the system.

Finally, NCD wished to emphasize that in signing the Services Agreement, subscribers indemnify NCD for any violation of the subscriber of the Services Agreement, or of law or NCD policy, that results in loss to NCD or the bringing of any claim against NCD. This means that if NCD is sued because of activities of the subscriber that violate any law, the Services Agreement or the policy (which is part of the Services Agreement), the subscriber will pay any damages awarded against NCD plus costs and reasonable attorneys' fees.

We hope the Policy Statement is helpful in clarifying the obligations of ASP Internet users, including NCD and its subscribers, as responsible members of the Internet.