

# e-vergent Acceptable Usage Policy

## Background

From time to time e-vergent may impose reasonable rules and regulations regarding the use of its services. Such rules and regulations are called Acceptable Usage Policies (AUPs) and are posted at <http://www.e-vergent.com/>. The AUPs are not exhaustive and e-vergent reserves the right to modify the AUPs at any time, effective upon the posting of the modified AUPs to <http://www.e-vergent.com/> notification of the modified AUPs. By registering for and using the services, and thereby accepting the terms and conditions of the Master Services Agreement or its equivalent, you agree to abide by the AUPs as modified from time to time. Any violation of the AUPs may result in the suspension or termination of your account or such other action as e-vergent deems appropriate. An unlisted activity may also be a violation of the AUPs if it is illegal, irresponsible, or disruptive use of the internet or e-vergent's network. No credits will be issued for any interruption in service resulting from policy violations.

VIOLETION OF ANY AUP IS STRICTLY PROHIBITED AND MAY RESULT IN THE IMMEDIATE TERMINATION OR SUSPENSION OF THE SERVICES YOU RECEIVE FROM E-VERGENT. YOU SHALL REMAIN SOLELY LIABLE AND RESPONSIBLE FOR YOUR USE OF THE SERVICES AND ANY AND ALL CONTENT THAT YOU DISPLAY, UPLOAD, DOWNLOAD, OR TRANSMIT THROUGH THE USE OF THE SERVICES. "CONTENT" INCLUDES, WITHOUT LIMITATION, YOUR E-MAIL, WEB PAGES, PERSONAL HOME PAGES, AND DOMAIN NAMES. IT IS E-VERGENT'S POLICY TO TERMINATE SERVICE OF AND FINE REPEAT INFRINGERS. E-VERGENT RESERVES THE RIGHT TO REFUSE SERVICE TO ANYONE AT ANY TIME.

## Customer Security Responsibilities

The customer is solely responsible for any breaches of security affecting servers, routers, workstations, or other systems under customer control. If a customer's system is involved in an attack on another network or system, it will be shut down and an immediate investigation will be launched to determine the cause/source of the attack. In such an event, the customer is responsible for the cost to rectify any damage done to the customer's connection and any other requirement affected by the security breach. The labor used to rectify any such damage is categorized as emergency security breach recovery and is currently charged at \$150 USD per hour. Inquiries regarding security matters may be directed the e-vergent helpdesk at 262-884-2040 or [support@e-vergent.com](mailto:support@e-vergent.com).

## Network Responsibility

Customers have a responsibility to use e-vergent's network responsibly. This includes respecting the other customers of e-vergent. E-vergent reserves the right to suspend and or cancel service with any customer who uses the e-vergent network in such a way that adversely affects other e-vergent customers. This includes, but is not limited to:

- Attacking or attempting to gain unauthorized access to servers and services that belong to e-vergent or its customers (i.e. "hacking" or "cracking"), and/or
- Participating in behavior which results in reprisals that adversely affect the e-vergent network or other customers' access to the e-vergent network.

E-vergent will react strongly to any use or attempted use of an internet account or computer without the owner's authorization. Such attempts include, but are not limited to, "social engineering" (tricking other people into releasing their passwords), password theft, security hole scanning, port scanning, etc. Any unauthorized use of accounts or computers by an e-vergent customer, whether or not the attacked account or computer belongs to e-vergent, will result in severe action taken against the attacker. Possible actions include warnings, account suspension or cancellation, fines, and civil or criminal legal action, depending on the seriousness of the attack. Any attempt to undermine or cause harm to a server or customer of e-vergent is strictly prohibited.

## **System and Network Security**

Violations of system or network security are prohibited, and may result in criminal and civil liability. E-vergent may investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan, or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring (“sniffing”) of data or traffic on any network or system without express authorization of the owner of the system or network.
- Interference with service to any user, host, or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system, and broadcast attacks.
- Forging of any TCP/IP packet header or any part of the header information in an e-mail or a newsgroup posting.

Violators of the policy are responsible, without limitations, for the cost of labor to clean up and correct any damage done to the operation of the network and business operations supported by the network, and to respond to complaints incurred by e-vergent. Such labor is categorized as emergency security breach recovery and is currently charged at \$150 USD per hour, required. Inquiries regarding security matters may be directed to e-vergent’s helpdesk at 262-884-2040 or [support@e-vergent.com](mailto:support@e-vergent.com) if there is concern with the privacy of online communications and websites. 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, e-vergent urges its customers to assume that all of their online communications are insecure. E-vergent cannot take responsibility for the security of information transmitted over e-vergent’s facilities.

## **Password Protection**

The customer is responsible for protecting customer’s password and for any authorized or unauthorized use made of customer’s password. The customer will not use or permit anyone to use e-vergent’s service to guess passwords or to access other systems or networks without authorization. E-vergent will fully cooperate with law enforcement authorities in the detection and prosecution of illegal activity.

## **Internet Etiquette**

The customer is expected to be familiar with and to practice good internet etiquette (“Netiquette”). The customer will comply with the rules appropriate to any network in which e-vergent may provide access. The customer should not post, transmit, or permit internet access to information the customer desires to keep confidential. The customer is not permitted to post any material that is illegal, libelous, tortuous, indecently depicts children, or is likely to result in retaliation against e-vergent by offended users. E-vergent reserves the right to refuse or terminate service at any time for violation of this section. This includes advertising services or sites via IRC in clear violation of the policies of the IRC channel.

## **Lawful Purpose**

All services may be used for lawful purposes only. Transmission, storage, or presentation of any information, data, or material in violation of any applicable law, regulation, or AUP is prohibited. This includes, but is not limited to: copyrighted material or material protected by trade secret and other statute or dissemination of harmful or fraudulent content.

Using any e-vergent service or product for the purpose of participating in any activity dealing with subject matters that are prohibited under applicable law is prohibited.

Any conduct that constitutes harassment, fraud, stalking, abuse, or a violation of federal export restriction in connection with use of e-vergent services or products is prohibited. Using the e-vergent network to solicit the performance of any illegal activity is also prohibited, even if the activity itself is not performed. In addition, knowingly receiving or downloading a file that cannot be legally distributed, even without the act of distribution, is prohibited.

Connections within the e-vergent network are open to the public. You are solely responsible for your usage of the e-vergent network and servers and any statement you make on connections within the e-vergent network may be deemed “publication” of the information entered. Acknowledging the foregoing, you specifically agree not to use our service in any manner that is illegal or libelous.

## **Copyright Infringement – Software Piracy Policy**

E-vergent’s network may only be used for lawful purposes. Transmission, distribution, or storage of any information, data, or material in violation of United States or state regulation or law, or by the common law, is prohibited. This includes, but is not limited to, material protected by copyright, trademark, trade secret, or other intellectual property rights.

Making unauthorized copies of software is a violation of the law, no matter how many copies you are making. If you copy, distribute, or install the software in ways that the license does not allow, you are violating federal copyright law. If caught with pirated software, you or your company may be liable under both civil and criminal law, and you may be fined up to \$250,000 and/or receive up to 5 years in jail.

In compliance with the Digital Millenium Copyright Act (the “DMCA”), please email DMCA notifications of claimed copyright infringements to [abuse@e-vergent.com](mailto:abuse@e-vergent.com) or by postmail to:

e-vergent Abuse Department  
e-vergent.com, LLC  
8330 Corporate Drive  
Racine, WI 53406

Fraudulent activity should be reported to the [Internet Fraud Complaint Center](#)

E-vergent will cooperate fully with any civil and/or criminal litigation arising from the violation of this policy.

## **Child Pornography on the Internet**

E-vergent will cooperate fully with any criminal investigation into a customer’s violation of the Child Protection Act of 1984 concerning child pornography. Customers are ultimately responsible for the actions of their clients over the e-vergent network, and will be liable for illegal material posted by their clients.

According to the Child Protection Act, child pornography includes “photographs, films, video, or any other type of visual presentation that shows a person who is or is depicted as being under the age of eighteen years and is engaged in, or is depicted as engaged in, explicit sexual activity, or the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years or any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years.”

Violations of the Child Protection Act may be reported to the U.S. Customs Agency at 1-800-BEALERT.

## **Commercial Advertisements with E-mail**

E-vergent takes a zero tolerance approach to the sending of Unsolicited Commercial E-mail (UCE) (or “spam”) over our network. Very simply, this means that customers of e-vergent may not use, or permit others to use, our network to transact in UCE. Customers of e-vergent may not host, or permit hosting of, sites or information that are advertised by UCE (“spamvertised”) from other networks. Violations of this policy carry severe penalties, including termination of service and monetary fines.

Sending a message, especially an advertisement, to more than five recipients, is by itself spamming unless the individuals have specifically requested to be added to a mailing list on that topic. This includes both commercial advertisements and informational messages sent to recipients via electronic mail (email). E-mail is a person-to-person medium, not a broadcast medium.

Customers of e-vergent are strictly prohibited from using or permitting others to use UCE or spam over our network. As our customers are ultimately responsible for the actions of their clients over the e-vergent network, it is advisable that customers develop a similar, or stricter, policy for their clients. Violation of e-vergent’s spam policy will result in severe penalties. Upon notification of an alleged violation of our spam policy, e-vergent will initiate an immediate investigation (within 48 hours of notification). During the investigation, e-vergent may restrict customer access to the network to prevent further violations. If a customer is found to be in violation of our spam policy, e-vergent may, at its sole discretion, restrict, suspend, or terminate customer’s account. Further, e-vergent reserves the right to pursue civil remedies for any costs associated with the investigation of a substantiated policy violation. E-vergent will notify law enforcement officials if the violation is believed to be a criminal offense.

Violation of e-vergent’s spam policy may be reported to [abuse@e-vergent.com](mailto:abuse@e-vergent.com).

## **IP Addressing Policy**

E-vergent administers the network on which customer connections reside. The customer cannot use IP addresses which were not assigned to them by e-vergent staff. Any customer found using IPs which were not officially assigned will be suspended from network access until such time as the IP addresses overlap can be corrected.

## **Billing**

The customer understands that the customer is responsible for paying for any network resources that are used to connect the customer’s connection to the internet. The customer may request that the customer’s connection be disconnected from the internet, but the customer will still be responsible for paying for any network resources used up to the point of suspension or cancellation.

## **Suspension**

E-vergent reserves the right to suspend network access to any customer if, in the judgment of the e-vergent network administrators, the customer’s connection is the source or target of the violation of any of the other terms of the AUPs or for any other reason which e-vergent chooses. If inappropriate activity is detected, all accounts of the customer in question will be deactivated until an investigation is complete. Prior notification to the customer is not assured. In extreme cases, law enforcement will be contacting regarding the activity. The customer will not be credited for the time the customer’s machines were suspended. The customer will be credited on a prorated basis based on the monthly fees the customer pays for the service that is suspended for the time the customer’s connections were suspended.

## **Cancellation**

E-vergent reserves the right to cancel service at any time. If inappropriate activity is detected, all accounts of the customer in question will be deactivated until an investigation is complete. Prior notification to the customer is not assured. In extreme cases, law enforcement will be contacted regarding the activity. All fees paid in advance of cancellation will be prorated and paid by e-vergent if e-vergent institutes its right of cancellation. Any violation of policies which results in extra costs will be billed to the customer (i.e. transfer, space etc.).

## **Indemnification**

E-vergent wishes to emphasize that in signing the Master Services Agreement or its equivalent, customer indemnifies e-vergent for any violation of the Master Services Agreement, or its equivalent, law or AUP that results in loss to e-vergent or the bringing of any claim against e-vergent by any third party. This means that if e-vergent is sued because of a customer's or a customer of a customer's activity, the customer will pay any damages awarded against e-vergent, plus costs and reasonable attorney's fees.

## **Disclaimer of Responsibility**

E-vergent is under no duty to look at each customer's or user's activities to determine if a violation of the AUPs has occurred, nor do we assume any responsibility through our AUPs to monitor or police internet-related activities. E-vergent disclaims any responsibility for any such inappropriate use and any liability to any person or party for any other person's or party's violation of this policy.

All sub-networks, resellers, and managed connections of e-vergent must adhere to the above policies. Failure to follow any term or condition will be grounds for immediate cancellation.

INDIRECT OR ATTEMPTED VIOLATIONS OF THE AUPs AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY, ON YOUR BEHALF, SHALL BE CONSIDERED VIOLATIONS OF THESE AUPs BY YOU.