

The use of services from Media Smart Inc. constitutes agreement to these terms.

Content:

All services provided by Media Smart Inc. may only be used for lawful purposes. The laws of the province of New Brunswick and of Canada apply.

The customer agrees to indemnify and hold harmless Media Smart Inc. from any claims resulting from the use of our services.

Use of our services to infringe upon any copyright or trademark is prohibited. This includes but is not limited to unauthorized copying of music, books, photographs, or any other copyrighted work. The offer of sale of any counterfeit merchandise of a trademark holder will result in the immediate termination of your account. Any account found to be in violation of another's copyright will be expeditiously removed, or access to the material disabled. Any account found to be in repeated violation of copyright laws will be suspended and/or terminated from our hosting. If you believe that your copyright or trademark is being infringed upon, please email sales@mediasmart.ca with the information required. A list of required information may be found here. If the request is of a licensing issue, we may require further documentation.

Using a shared hosting account as a backup/storage device is not permitted, with the exception of one cPanel backup of the same account. Please do not take backups of your backups.

Examples of unacceptable material on all shared hosting servers include:

- * Topsites
- * IRC Scripts/Bots
- * Proxy Scripts/Anonymizers
- * Pirated Software/Warez
- * Image Hosting Scripts (similar to Photobucket or Tinypic)
- * AutoSurf/PTC/PTS/PPC sites
- * IP Scanners
- * Bruteforce Programs/Scripts/Applications
- * Mail Bombers/Spam Scripts
- * Banner-Ad services (commercial banner ad rotation)
- * File Dump/Mirror Scripts (similar to rapidshare)
- * Commercial Audio Streaming (more than one or two streams)
- * Escrow/Bank Debentures
- * High-Yield Interest Programs (HYIP) or Related Sites
- * Investment Sites (FOREX, E-Gold Exchange, Second Life/Linden Exchange, Ponzi, MLM/Pyramid Scheme)
- * Sale of any controlled substance without prior proof of appropriate permit(s)
- * Prime Banks Programs
- * Lottery/Gambling Sites

- * MUDs/RPGs/PBBGs
- * Hacker focused sites/archives/programs
- * Offensive material of any type
- * Material of a sexual and/or pornographic nature
- * Material promoting hate or hate crimes
- * Sites promoting any illegal activities
- * Forums and/or websites that distribute or link to warez/pirated/illegal content
- * Bank Debentures/Bank Debenture Trading Programs
- * Fraudulent Sites (Including, but not limited to sites listed at aa419.org & escrow-fraud.com)
- * Push button mail scripts
- * Broadcast or Streaming of Live Sporting Events (UFC, NASCAR, FIFA, NFL, MLB, NBA, WWE, WWF, etc)
- * Anonymous or Bulk SMS Gateways

Media Smart Inc. services, including all related equipment, networks and network devices are provided only for authorized customer use. Media Smart Inc. systems may be monitored for all lawful purposes as follows: to ensure that use is authorized, for management of the system, to facilitate protection against unauthorized access, and to verify security procedures, survivability, and operational security. During monitoring, information may be examined, recorded, copied and used for authorized purposes. Use of Media Smart Inc. system(s) constitutes consent to monitoring for these purposes.

Any account found connecting to a third party network or system without authorization from the third party is subject to suspension. Access to networks or systems outside of your direct control must be with expressed written consent from the third party. Media Smart Inc. may, at its discretion, request and require documentation to prove access to a third party network or system is authorized.

We reserve the right to refuse service to anyone. Any material that, in our judgment, is obscene, threatening, illegal, or violates our terms of service in any manner may be removed from our servers (or otherwise disabled), with or without notice.

Failure to respond to email from our abuse department within 48 hours may result in the suspension or termination of your services.

If in doubt regarding the acceptability of your site or service, please contact us at sales@mediasmart.ca and we will be happy to assist you.

Potential harm to minors is strictly forbidden, including but not limited to child pornography or content perceived to be child pornography (Lolita):

Any site found to host child pornography or linking to child pornography will be suspended immediately without notice.

Violations will be reported to the appropriate law enforcement agency.

It is your responsibility to ensure that scripts/programs installed under your account are secure and permissions of directories are set properly, regardless of installation method. When at all possible, set permissions on most directories to 755 or as restrictive as possible. Users are ultimately responsible for all actions taken under their account. This includes the compromise of credentials such as user name and password. It is required that you use a secure password. If a weak password is used, your account may be suspended until you agree to use a more secure password. Audits may be done to prevent weak passwords from being used. If an audit is performed, and your password is found to be weak, we will notify you and allow time for you to change/update your password.

Zero Tolerance Spam Policy

We take a zero tolerance stance against sending of unsolicited e-mail, bulk emailing, and spam. "Safe lists", purchased lists, and selling of lists will be treated as spam. Any user who sends out spam will have their account terminated with or without notice.

Sites advertised via SPAM (Spamvertised) may not be hosted on our servers. This provision includes, but is not limited to SPAM sent via fax, phone, postal mail, email, instant messaging, or usenet/newsgroups. No organization or entity listed in the ROKSO may be hosted on our servers. Any account which results in our IP space being blacklisted will be immediately suspended and/or terminated.

Media Smart Inc. reserves the right to require changes or disable as necessary any web site, account, database, or other component that does not comply with its established policies, or to make any such modifications in an emergency at its sole discretion.

Media Smart Inc. reserves the right to charge the holder of the account used to send any unsolicited e-mail a clean up fee or any charges incurred for blacklist removal. This cost of the clean up fee is entirely at the discretion of Media Smart Inc.

Payment Information

You agree to supply appropriate payment for the services received from Media Smart Inc., in advance of the time period during which such services are provided. You agree that until and unless you notify Media Smart Inc. of your desire to cancel any or all services received, those services will be billed on a recurring basis.

Cancellations must be done in writing via e-mail. Once we receive your cancellation and have confirmed all necessary information with you via e-mail, we will inform you in writing (typically email) that your account has been canceled. An employee will confirm your request (and process your cancellation) shortly thereafter. This process reduces the likelihood of mistakes, fraudulent/malicious requests, and ensures you are aware that the files, emails, and account may be removed immediately after a cancellation request is processed.

As a client of Media Smart Inc., it is your responsibility to ensure that your payment information is up to date, and that all invoices are paid on time. You agree that until and unless you notify Media Smart Inc. of your desire to cancel any or all services received, those services will be billed on a recurring basis, unless otherwise stated in writing by Media Smart Inc.

If you wish to cancel and not renew your domain name(s) we require notification at least 60 days in advance of the listed expiration / renewal date(s). Subsequently, domain name are typically renewed 30 to 60 days before the renewal/expiry date. It is the customer's responsibility to notify our staff via email at sales@mediasmart.ca for any domain registration cancellation. No refunds can be given, once a domain is renewed. Once a domain name is registered and/or renewed it cannot be modified, cancelled or refunded. All domain name registrations and renewals are final.

Backups and Data Loss

Your use of this service is at your sole risk. All customers are responsible for full and complete back-ups of any files and/or data residing on your shared web hosting account. You agree to take full responsibility for files and data transferred and to maintain all appropriate backup of files and data stored on the Media Smart Inc. shared server space.

Cancellations

Media Smart Inc. reserves the right to cancel, suspend, or otherwise restrict access to the account at any time with or without notice.

Customers may cancel at any time via e-mail. If the account is eligible, any request for a refund will be given on a prorated usage basis. Refunds are to be determined once the account has been canceled.

There are no refunds on administrative fees and/or install fees for custom software.

Violations of the Terms of Service will waive the refund policy.

Resource Usage

User(s) may not:

- 1) Use 25% or more of system resources for longer than 90 seconds. There are numerous activities that could cause such problems; these include: CGI scripts, FTP, PHP, HTTP, etc.
- 2) Run stand-alone, unattended server-side processes at any point in time on the server. This includes any and all daemons, such as IRCD.
- 3) Run any type of web spider or indexer (including Google Cash / AdSpy) on shared servers.
- 4) Run any software that interfaces with an IRC (Internet Relay Chat) network.

- 5) Run any bit torrent application, tracker, or client. You may link to legal torrents off-site, but may not host or store them on our shared servers.
- 6) Participate in any file-sharing/peer-to-peer activities
- 7) Run any gaming servers such as counter-strike, half-life, battlefield1942, etc
- 8) Run cron entries with intervals of less than 15 minutes.
- 9) Run any MySQL queries longer than 15 seconds. MySQL tables should be indexed appropriately.
- 10) When using PHP include functions for including a local file, include the local file rather than the URL. Instead of include ("http://yourdomain.com/include.php") use include ("include.php")
- 11) To help reduce usage, do not force html to handle server-side code (like php and shtml).
- 12) Only use https protocol when necessary; encrypting and decrypting communications is noticeably more CPU-intensive than unencrypted communications.

INODES

The use of more than 250,000 inodes on any shared account may potentially result in a warning first and if no action is taken future suspension. Accounts found to be exceeding the 100,000 inode limit will automatically be removed from our backup system to avoid over-usage, however databases will still be backed up. Every file (a webpage, image file, email, etc) on your account uses up 1 inode.

Sites that slightly exceed our inode limits are unlikely to be suspended; however, accounts that constantly create and delete large numbers of files on a regular basis, have hundreds of thousands of files, or cause file system damage may be flagged for review and/or suspension. The primary cause of excessive inodes seems to be due to users leaving their catchall address enabled, but never checking their primary account mailbox. Over time, tens of thousands of messages (or more) build up, eventually pushing the account past our inode limit. To disable your default mailbox, login to cPanel and choose "Mail", then "Default Address", "Set Default Address", and then type in: :fail: No such user here.

Mail policy and limits

There is a 500 hourly outgoing email limit per domain on all shared servers. This means each domain/subdomain gets its own separate 500 outgoing emails per hour limit. This limit is also applied towards mailing lists. If you send over this amount in any hour, the e-mails will fail and may bounce back with a undeliverable error.

Shared servers limit each connecting IP to 30 POP checks per hour. If you go over this, you will likely get a password error indicating your login is incorrect. To fix this, just wait an hour and it will automatically unlock. To prevent this from happening, disable automatic send/receive or set a higher time interval, such as checking once every 10 minutes.

Any mailing list over 500 email addresses is only allowed to be sent to during off-peak times to prevent high server loads. Off peak times qualify as all day Saturday and Sunday, and 2AM - 7AM Atlantic Standard Time, Monday through Friday.

Bandwidth Usage

You are allocated a monthly bandwidth allowance. This allowance varies depending on the hosting package you have purchased. Should your account pass the allocated amount we reserve the right to suspend the account until the start of the next allocation, suspend the account until more bandwidth is purchased at an additional fee, suspend the account until you upgrade to a higher level of package, terminate the account and/or charge you an additional fee for the overage. Unused transfer in one month cannot be carried over to the next month.

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Uptime Guarantee

If your shared hosting server has a physical downtime that is not within the 99.0 % uptime you may receive one month of credit on your account. Approval of the credit is at the discretion of Media Smart Inc. dependent upon justification provided. Third party monitoring service reports may not be used for justification due to a variety of factors including the monitor's network capacity/transit availability. The uptime of the server is defined as the reported uptime from the operating system and the Apache Web Server which may differ from the uptime reported by other individual services.

* If a shared hosting server has more than 1.0 % downtime during any month, you may receive one month of credit for your hosting plan.

* Approval of the credit is at the discretion of Media Smart Inc., dependant upon our records.

* Server maintenance does not count as downtime.

* Just because your website does not work, this does not necessarily mean your server has downtime. As long as the server is available to deliver your content, then the guarantee is met. It is your responsibility to have working content on your web site.

* To request a credit, please contact sales@mediasmart.ca with the details of your justification. All requests must be made in writing via email.

* Media Smart inc. will not be held responsible in any manner for excessive or prolonged network failure or downtime beyond its control. Network failures may be caused by fire, explosions, electrical damage, lightning, wind, flood, storm damage, acts of war, invasion, insurrection, economic downturn, threats of war, acts of terrorism, threats of terrorism, loss of network backbone and/or relay services, Internet service provider non-availability or downtime and the failure of any service normally provided by third-parties.

Indemnification

By using the service of Media Smart Inc. the customer agrees that it shall defend, indemnify, save and hold Media Smart Inc. harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees asserted against Media Smart Inc., its agents, its customers, officers and employees, that may arise or result from any service provided or performed or agreed to be performed or any product sold by customer, its agents, employees or assigns. Customer agrees to defend, indemnify and hold harmless Media Smart Inc. against liabilities arising out of; (1) any injury to person or property caused by any products sold or otherwise distributed in connection with Media Smart Inc.; (2) any material supplied by customer infringing or allegedly infringing on the proprietary rights of a third party; (3) copyright infringement and (4) any defective products sold to customers from Media Smart Inc. shared hosting server.

Disclaimer

Media Smart Inc. shall not be responsible for any damages your business may suffer. Media Smart Inc. makes no warranties of any kind, expressed or implied for services we provide. Media Smart Inc. disclaims any warranty or merchantability or fitness for a particular purpose. This includes loss of data resulting from delays, no deliveries, wrong delivery, and any and all service interruptions caused by Media Smart Inc. and its employees.

Disclosure to law enforcement

Media Smart Inc. may disclose any subscriber information to law enforcement agencies without further consent or notification to the subscriber upon lawful request from such agencies. We will cooperate fully with law enforcement agencies.

Changes to this policy

Media Smart Inc. reserves the right to revise its policies at any time without notice.