

# INTRODUCTION.

This Acceptable Use Policy ("AUP") sets out the actions prohibited to users of the Namibian Network Information Centre (cc) ("NA-NiC") Network ("NA-NiC Network"). This AUP is in addition to rules governing qualifications for registration.

"Users" are defined as anyone

- who uses or accesses the .NA® Domain Name Register,
- who has responsibility for one or more host records in the .NA® zone files generated from the .NA® Register,
- registrants of a .NA® country code Top Level ("ccTLD") Domain Name (".NA® Domain Name"),
- and/or users of
  - hardware,
  - name servers,
  - bandwidth,
  - telecommunications transport,
  - zone files
  - e-mail routing services,
  - any other Domain Name resolution systems and services in the .NA® Register and/or zone.

This policy applies to all .NA® Domain Names (which end in the two letter suffix .NA®), including second-level .NA® Domain Names (such as com.NA) and sub second-level Domain Names (such as omadhina.co.NA) which resolve as a result of sub-delegation.

Use of a .NA® Domain Name or the NA-NiC Network in a manner that contravenes this AUP, may result in the suspension or revocation of a registrants right to use a .NA® Domain Name or to continue to be recognized as the registrant of a .NA® Domain Name. Suspension or revocation may apply to one or more .NA® Domain Names for which User is a registrant in addition to a particular .NA® Domain Name which may have given rise to a particular complaint.

NA-NiC reserves the right to modify or update this AUP at any time and any such modifications or restatements shall be posted on NA-NiC's website at <http://www.NA-nic.com.NA> from time to time.

NA-NiC will use reasonable commercial efforts to inform designated contacts in the event of changes to this AUP. Such efforts may include posting the revised AUP on NA-NiC's website and/or sending email notice that this AUP has been modified or updated.

NA-NiC supports the free flow of information and ideas over the Internet. Accordingly, NA-NiC does not actively screen or monitor, nor does it exercise editorial control over the content of any message or web site made accessible by Domain Name resolution services in the .NA® ccTLD.

NA-NiC may discontinue, suspend, or modify the services provided to any .NA® Domain Name (for example, through modification of .NA® zone files), to address alleged violations of this AUP (described further below). NA-NiC may determine in its sole discretion whether use of the NA-NiC network or a .NA® Domain Name is prima facie violation of this AUP. NA-NiC or affected parties may utilize the Council of Country Code Administrators ("CoCCA") AUP Complaint Resolution Services ("CRS") to resolve disputes over interpretation and implementation of this AUP, as described more fully in the CoCCA AUP CRS.

Users of the NA-NiC Network are obliged and required to ensure that their use of a .NA® Domain Name or the NA-NiC Network is at all times lawful and in accordance with the requirements of this AUP and applicable laws of Namibia, the operation of the .NA® ccTLD falling within the jurisdiction and being governed by the laws of Namibia.

This AUP should be read in conjunction with the CoCCA Complaint Resolution Policy and other applicable agreements, policies, laws and regulations.

By way of example, and without limitation, agreement between the User and Registrar may set forth representations and warranties and other terms and conditions, breach of which may constitute non-compliance with this AUP.

## **PROHIBITED USE.**

A "Prohibited use" of the NA-NiC Network or a .NA® Domain Name is a use which is expressly prohibited by provisions of this AUP. Registration of one or more .NA® Domain Names or access to services provided by NA-NiC may be cancelled or suspended for any breach of, or non-compliance with this AUP.

## **COMPLIANCE WITH LAW.**

The NA-NiC Network and .NA® Domain Names must only be used for lawful purposes. The creation, transmission, distribution, storage of, or linking to any material in violation of applicable law or regulation is prohibited.

This may include, but is not limited to, the following:

- Communication, publication or distribution of material (including through links or framing) that infringes upon the intellectual and/or industrial property rights of another person. Intellectual and/or industrial property rights include, but are not limited to: copyrights (including future copyright), design rights, patents, patent applications, trade marks, rights of personality, and/or trade secret information.
- Use of a .NA® Domain Name in circumstances in which the .NA® Domain Name is identical or confusingly similar to a personal name, company, business or other legal or trading name as registered with the relevant Namibia agency, or a trade or service mark in which a third party complainant has uncontested rights, including without limitation in circumstances in which:
  - The use deceives or confuses others in relation to goods or services for which a trade mark is registered in Namibia, or in respect of similar goods or closely related services, against the wishes of the registered proprietor of the trade mark; or
  - The use deceives or confuses others in relation to goods or services in respect of which an unregistered trade mark or service mark has become distinctive of the goods or services of a third party complainant, and in which the third party complainant has established a sufficient reputation in Namibia, against the wishes of the third party complainant; or
  - The use trades on or passes-off a .NA® Domain Name or a website or other content or services accessed through resolution of a .NA® Domain as being the same as or endorsed, authorized, associated or affiliated with the established business, name or reputation of another; or
  - The use constitutes intentionally misleading or deceptive conduct in breach of CoCCA recommendations, or the laws of Namibia; or
  - The .NA® Domain Name has been used in bad faith, including without limitation the following:
    - The User has used the .NA® Domain Name primarily for the purpose of unlawfully disrupting the business or activities of another person; or
    - By using the .NA® Domain Name, the User has intentionally created a likelihood of confusion with respect to the third party complainant's intellectual or industrial property rights and the source, sponsorship, affiliation, or endorsement of website(s), email, or other online locations or services or of a product or service available on or through resolution of a .NA® Domain Name;

- For the purpose of unlawfully selling, renting or otherwise transferring the Domain Name to an entity or to a commercial competitor of an entity, for valuable consideration in excess of a User's documented out-of-pocket costs directly associated with acquiring the Domain Name;
  - As a blocking registration against a name or mark in which a third party has superior intellectual or industrial property rights;
  - .NA® Domain Name registration which is part of a pattern of registrations where the User has registered Domain Names which correspond to well known names or trade marks in which the User has no apparent rights, and the .NA® Domain Name is part of that pattern;
  - The .NA® Domain Name was registered arising out of a relationship between two parties, and it was mutually agreed, as evidenced by a writing, that the Registrant would be an entity other than that currently in the register.
- Unlawful communication, publication or distribution of registered and unregistered know-how, confidential information and trade secrets;
  - Communication, publication or distribution, either directly or by way of embedded links, of images or materials (including, but not limited to pornographic material and images or materials that a reasonable person as a member of the community of Namibia would consider to be obscene or indecent) where such communication, publication or distribution is prohibited by or constitutes an offense under the laws of Namibia or within the meaning of the CoCCA recommended policies, whether incorporated directly into or linked from a web site, email, posting to a news group, internet forum, instant messaging notice which makes use of Domain Name resolution services in the .NA® ccTLD.
  - Material that a reasonable member of the community of Namibia would consider pornographic, indecent, and/or obscene or which is otherwise prohibited includes, by way of example and without limitation, real or manipulated images depicting child pornography, bestiality, excessively violent or sexually violent material, sexual activity, and material containing detailed instructions regarding how to commit a crime, an act of violence, or how to prepare and/or use illegal drugs.
  - Communication, publication or distribution of defamatory material or material that constitutes racial vilification.
  - Communication, publication or distribution of material that constitutes an illegal threat or encourages conduct that may constitute a criminal offense.
  - Communication, publication or distribution of material that is in contempt of the orders of a court or another authoritative government actor within Namibia.
  - Use, communication, publication or distribution of software, technical information or other data that violates export control laws or CoCCA recommendations.
  - Use, communication, publication or distribution of confidential or personal information or data which violates any right of privacy including confidential or personal information about persons that is collected without their knowledge or consent.

## **ELECTRONIC MAIL.**

NA-NiC expressly prohibits Users of the NA-NiC Network from engaging in the following activities:

- Communicating, transmitting or sending unsolicited bulk e-mail messages or other electronic communications ("junk mail" or "Spam") of any kind including, but not limited to, unsolicited commercial advertising, informational announcements, political or religious tracts. Such messages or material may be sent only to those who have expressly requested it. If a recipient asks a User to stop sending such e-mails, then any further e-mail messages or other electronic

communications would in such event constitute Spam and violate the provisions and requirements of this AUP.

- Communicating, transmitting or sending any material by e-mail or otherwise that harasses, or has the effect of harassing, another person or that threatens or encourages bodily harm or destruction of property including, but not limited to, malicious e-mail and flooding a User, site, or server with very large or numerous pieces of e-mail or illegitimate service requests.
- Communicating, transmitting, sending, creating, or forwarding fraudulent offers to sell or buy products, messages about "Make-Money Fast", "Pyramid" or "Ponzi" type schemes or similar schemes, and "chain letters" whether or not the recipient wishes to receive such messages.
- Adding, removing, modifying or forging NA-NiC Network or other network header information with the effect of misleading or deceiving another person or attempting to impersonate another person by using forged headers or other identifying information ("Spoofing").

#### **DISRUPTION OF NA-NiC NETWORK.**

No-one may use the NA-NiC Network or a .NA® Domain Name for the purpose of:

- Restricting or inhibiting any person in their use or enjoyment of the NA-NiC Network or a .NA® Domain Name or any service or product of NA-NiC. Actually or purportedly reselling NA-NiC services and products without the prior written consent of NA-NiC.
- Transmitting any communications or activity which may involve deceptive marketing practices such as the fraudulent offering of products, items, or services to any other party.
- Providing false or misleading information to NA-NiC or to any other party through the NA-NiC Network.
- Facilitating or aiding the transmission of confidential information, private, or stolen data such as credit card information (without the owner's or cardholder's consent).

## **CONSUMER PROTECTION, FAIR TRADING.**

A User using a .NA® Domain Name to sell goods or services over the Internet must provide clear links with sufficient and accurate contact details on such website so that consumers have the ability to contact the seller of such goods or services, and so that customers and prospective customers are clearly advised of any territorial limitations on the offer, sale or provision of any goods or services offered, sold or provided, and of any applicable laws, jurisdiction or CoCCA recommendations. In the event that it is credibly alleged that a .NA® Domain Name registrant has not followed such laws, NA-NiC will furnish the contact details for the registrant in accordance with the NA-NiC Privacy Policy.

## **NETWORK INTEGRITY AND SECURITY.**

Users are prohibited from circumventing or attempting to circumvent the security of any host, network or accounts ("cracking" or "hacking") on, related to, or accessed through the NA-NiC Network. This includes, but is not limited to:

- accessing data not intended for such user; logging into a server or account which such user is not expressly authorized to access;
- falsifying a user name or password; probing the security of other networks; executing any form of network monitoring which will intercept data not intended for such user.

Users are prohibited from effecting any network security breach or disruption of any Internet communications including, but not limited to:

- accessing data of which such User is not an intended recipient; or logging onto a server or account which such User is not expressly authorized to access.

- For the purposes of sections [integrity] and [disruption], "disruption" includes, but is not limited to:
  - port scans, ping floods, packet spoofing;
  - forged routing information;
  - deliberate attempts to overload a service, and attempts to "crash" host;
  - using the NA-NiC Network in connection with the use of any program, script, command, or sending of messages to interfere with another user's terminal session by any means, locally or by the Internet.

Users who compromise or disrupt NA-NiC Network systems or security may incur criminal or civil liability. NA-NiC will investigate any such incidents and will cooperate with law enforcement agencies if a crime is suspected to have taken place.

## **WHOIS ACCURACY.**

In order to facilitate cooperation with law enforcement agencies .NA® Domain Name Registrants are required to provide at registration and maintain correct contact information, for the Registrant, the Administrative Contact, the Billing Contact and the Technical Contact.

This means that the information

- must be good enough to allow to contact the Registrant quickly at any reasonable time without having to get information from anywhere else;
- must not be deceptive;
- (if possible for that type of information) must clearly identify the Registrant; and
- must be detailed enough to tell exactly who the Registrant is.

The Administrative Contact must

- be an individual who is authorized under the applicable law in the applicable jurisdiction to legally bind the Registrant and to receive service on behalf of the Registrant, and
- for avoidance of doubt this can not be a Registrar, Reseller, or another similar third party.

The Technical Contact must have write authority to the corresponding zone files, and if the Billing Contact is not provided, NA-NiC assumes that the Technical Contact performs this function.

Usually this information is provided and maintained by the Registrar, however, the ultimate responsibility remains with the Registrant. Failure to comply with this requirement will be seen in a serious light by NA-NiC.

## **NON-EXCLUSIVE, NON-EXHAUSTIVE.**

This AUP is intended to provide guidance as to what constitutes acceptable use of the NA-NiC Network and of .NA® Domain Names. However, the AUP is neither exhaustive nor exclusive in which case NA-NiC may, in its sole discretion, reasonably determine whether an action by a User is prohibited use.

## **COMPLAINTS.**

Persons who wish to notify NA-NiC of abusive conduct in violation of this AUP may report the same pursuant to the CoCCA Acceptable Use Policy Enforcement Procedure, which is instituted by submitting to NA-NiC or CoCCA a completed CoCCA Acceptable Use Policy Violation Complaint Form, a copy of which is available at <http://www.cocca.cx/index.php/aup-complaints.html>.

## **ENFORCEMENT.**

NA-NiC may, in its sole discretion, suspend or terminate a User's service for violation of any of the requirements or provisions of the AUP on receipt of a complaint and/or if NA-NiC believes suspension or termination is necessary to comply with the law, protect the public interest, prevent unlawful activity or protect the health, safety, or privacy of an individual.

If immediate action is not required, NA-NiC will work with Registrants and a complainant to remedy violations in accordance with the provisions detailed in the AUP Complaint Resolution Service and Policy to ensure compliance with this AUP violation prior to suspension or terminating service.

## **LIMITATION OF LIABILITY.**

In no event shall NA-NiC be liable to any User of the NA-NiC Network, any customer, nor any third party for any direct, indirect, special or consequential damages for actions taken pursuant to this AUP, including, but not limited to, any lost profits, business interruption, loss of programs or other data, or otherwise, even if NA-NiC was advised of the possibility of such damages. NA-NiC's liability for any breach of a condition or warranty implied by this AUP shall be limited to the maximum extent possible to one of the following (as NA-NiC may determine): supplying the services again; or paying the cost of having the services supplied again.

## **REMOVAL OF CONTENT RESPONSIBILITY.**

At its sole discretion, NA-NiC reserves the right to:

Remove or alter content, zone file data or other material from its servers provided by any person that violates the provisions or requirements of this AUP; or terminate access to the NA-NiC Network by any person that NA-NiC determines has violated the provisions or requirements of this AUP.

In any regard, NA-NiC is not responsible for the content or message of any newsgroup posting, e-mail message, or web site regardless of whether access to such content or message was facilitated by the NA-NiC Network.

NA-NiC does not have any duty to take any action with respect to such content or message by creating this AUP, and Users of the NA-NiC Network are obliged and required to ensure that their use of a .NA® Domain Name or the NA-NiC Network is at all times in accordance with the requirements of this AUP and any applicable laws and/or regulations.