

WEBAIR.COM Intellectual Property Agreement LAST UPDATED:

Thursday, November 16, 2006

This Intellectual Property Agreement between you ("Customer", "you" or "your") and Webair Internet Development, Inc. and its subsidiaries and affiliates ("Webair" or "we", "our" or "us") sets forth the parties rights and obligations with respect to intellectual property owned by you, Webair and other third parties, as applicable, implicated through the use of the Webair owned and operated Internet Protocol (IP) routing infrastructure through which Webair provides Internet connectivity and IP routing and transit to its customers and Webair's equipment, services, facilities and websites (including the primary Webair website on the World Wide Web at <http://www.webair.com>, as well as all other websites which are owned, operated and/or controlled by or on behalf of Webair, the webpages within those websites and all equivalent, mirror, replacement, substitute or backup websites and webpages that are associated with the primary website) (collectively the "Webair Network") and all claims related thereto. The terms and conditions of this Intellectual Property Agreement are in addition to the terms and conditions of your applicable service agreement with Webair ("Service Agreement") and in no event shall the terms and conditions of this Intellectual Property Agreement supersede, limit or qualify the terms and conditions of your Service Agreement. In the event of any conflict of terms between this Intellectual Property Agreement and your Service Agreement, the terms and conditions of your Service Agreement shall control.

We reserve the right, any time and from time to time, for any reason in our discretion, to change the terms of this Intellectual Property Agreement, as well as the Acceptable Use Policy, Service Level Agreement, and any additional terms that apply to the Webair Network. We will post or display notices of material changes on our website and we may also send you an email about these changes. Once we post them, these changes become effective immediately. If you use the Webair Network after we post a notice of any change, you will be bound by the change. Please check back frequently and review the terms and conditions of this Intellectual Property Agreement so you are aware of the most current terms and conditions of your agreement with us.

Proprietary Rights and Intellectual Property

"Webair Technology" means Webair's proprietary technology, including, without limitation, the equipment, services, software tools, hardware designs, algorithms, software (in source code and object code forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how and trade secrets and any intellectual property or other proprietary rights related thereto, whether tangible or intangible, throughout the world (whether owned by Webair or licensed by Webair from a third party), including, without limitation, any derivatives, improvements, enhancements, updates, modifications or extensions to the same conceived, reduced to practice or developed.

"Content" refers to all content, images, photographs, audio, video, audio-visual, text, graphics, artwork, illustrations, animations, data, information, databases, designs, other proprietary information and materials and all copyrightable or otherwise legally protectible elements, tangible or intangible, including, without limitation, the selection, sequence, 'look and feel' and arrangement of items, as well as all copyright and other rights in Marks or other intellectual property which you may encounter, are provided by, available from, or for your use in connection with the Webair Network. We use the term "Marks" to refer to trademarks, service marks, logos, brands and brand names, trade dress and trade names and all other distinctive identification. "Webair Content" means Content which is the property of or licensed by Webair. "Your Content" means the Content which is proprietary

to or licensed by you. "Third Party Content" means the Content which is the property of or licensed by a third party.

The Webair Technology and Webair Content (collectively the "Webair Intellectual Property") is either our property or owned by our licensors, suppliers, operational service providers, advertisers, business or promotional partners or sponsors and is legally protected, without limitation, under U.S. Federal and State, as well as applicable foreign laws, regulations and international treaties. We make no representations about the accuracy, reliability, completeness, or timeliness of any Webair Intellectual Property or the results to be obtained from using the Webair Intellectual Property and you expressly agree that your use of our Webair Network and Webair Intellectual Property is solely at your own risk. You may only use the Webair Intellectual Property in the form and through the channels we provide through the Webair Network; and you may not provide, grant access, assign, copy, transfer or transmit any Webair Intellectual Property to any other party or use it for any purpose other than as permitted in conjunction with your use of the Webair Network pursuant to the terms and conditions of your Service Agreement with Webair. If you violate these terms and conditions, in addition to any other rights we may have under the Service Agreement with you, we may terminate our Service Agreement with you and your license and rights to use the Webair Intellectual Property. And we or, as applicable, our licensors or suppliers may enforce our respective rights and seek damages and any other remedies permitted by law, directly against you.

Third Party Websites

The appearance, availability, or your use of third party websites, URLs or hyperlinks (often referred to as 'links') hosted, referenced or included anywhere on the Webair Network, does not constitute an endorsement by, nor does it incur any obligation, responsibility or liability on the part of Webair, or its respective successors and assigns, and/or their respective officers, directors, employees, agents, representatives, licensors, suppliers, and operational service providers. We do not verify, endorse, or have any responsibility for, any such third parties or third party websites, any Third Party Content, their business practices (including their privacy policies), or any goods or services associated with or obtained in connection with such third party or parties, whether or not any Webair Marks or any evidence of sponsorship is displayed on or in connection with the third party website or webpage as part of a co-branding, promotional arrangement or otherwise.

DMCA Notice and Takedown

Upon notice, we will remove or request that a third party remove Content from the Webair Network that infringes the copyright of others and to the extent we are able to do so we will disable access to our Service by anyone who repeatedly infringes the intellectual property rights of others. Webair processes claims of copyright infringement in accordance with the Digital Millennium Copyright Act of 1998, 17 U.S.C. § 512 et. seq (the "DMCA"). The DMCA addresses the rights and obligations of owners of copyrighted material who believe that their rights under U.S. copyright law have been infringed on the Internet, as well as the rights and obligations of Internet Service Providers on whose servers infringing material may reside.

Upon receipt of written notification provided in the manner required by 17 U.S.C. § 512, we will:

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Act expeditiously to remove, or disable access to, the Content that is claimed to be infringing or to be the subject of infringing activity;

✓Forward the written notification to the alleged infringer; and

✓Take reasonable steps to promptly notify the Content provider that we have removed or disabled access to the allegedly infringing Content.

If you believe that your work has been copied, adapted, reproduced, or exhibited on a Web site hosted by Webair in a way that constitutes copyright infringement, or that otherwise violates your intellectual property rights, and you would like Webair to remove the allegedly infringing Content from the Webair Network, you must provide written notice of the claimed infringing activity to our designated agent as set forth below.

Your notice must include substantially the following information:

- (1) An electronic or physical signature of the owner or of the person authorized to act on behalf of the owner of the copyright interest;
- (2) Identification of the copyrighted work (or works) that you claim has been infringed;
- (3) A description of the material that you claim is infringing, and the location where the original or an authorized copy of the copyrighted work exists (for example, the URL of the page of the web site where it is lawfully posted; the name, edition and pages of a book from which an excerpt was copied, etc.);
- (4) A clear description of where the infringing material is located on our web site, including as applicable its URL, so that we can locate the material;
- (5) Your name, address, telephone number, and e-mail address;
- (6) A statement that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- (7) A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

NOTE: THE FOLLOWING INFORMATION IS PROVIDED SOLELY FOR NOTIFYING OUR DESIGNATED AGENT THAT YOUR COPYRIGHTED MATERIAL MAY HAVE BEEN INFRINGED. DO NOT SEND ANY INQUIRIES UNRELATED TO COPYRIGHT INFRINGEMENT (E.G., REQUESTS FOR TECHNICAL ASSISTANCE OR CUSTOMER SERVICE, REPORTS OR E-MAIL ABUSE, ETC.) TO THE CONTACT LISTED BELOW. YOU WILL NOT RECEIVE A RESPONSE IF SENT TO THAT CONTACT.

WE CAUTION YOU THAT UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO HEAVY CIVIL PENALTIES. THESE INCLUDE MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS FEES INCURRED BY US, BY ANY COPYRIGHT OWNER, OR BY ANY COPYRIGHT OWNER'S LICENSEE THAT IS INJURED AS A RESULT OF OUR RELYING UPON YOUR MISREPRESENTATION. YOU MAY ALSO BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY.

Designation of Agent to Receive Notification of Claimed Infringement

Webair's designated agent to receive notification of claimed infringement is:

Webair Internet Development, Inc.
Attn: Legal Department
333 Jericho Turnpike
Suite 305
Jericho, NY 11753
Fax: (516) 938-5100
E-mail: legal@webair.com

Counter Notification

If you are a customer who has received notice from us that material has been removed from your Web site following our receipt of a notice of claimed copyright infringement, and you are the owner of the allegedly infringing material or are otherwise authorized to use such material (including 'fair use'), you may provide written counter notification to our designated agent. Your counter notification must include substantially the following information:

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Your physical or electronic signature;

∇Identification of the allegedly infringing material including the location at which the material appeared before it was removed or access to it was disabled;

∇A statement, under penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification;

∇Your name, address, telephone number, and e-mail address; and

∇A statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which you are located, or if your address is outside of the United States, of any judicial district in which Webair does business, and that you will accept service of process from the complaining party or its agent.

Upon receipt of written counter notification provided in the manner required by 17 U.S.C. § 512, we will:

∇Promptly provide the person who provided the notification with a copy of the counter notification, and inform that person that we will replace the removed material or cease disabling access to it in 10 business days; and

∇Replace the removed material and cease disabling access to it not less than 10, nor more than 14, business days following receipt of the counter notification, unless our designated agent first receives notice from the person who submitted the notification that such person has filed an action seeking a court order to restrain the Customer from engaging in infringing activity relating to the material on Webair's system or network.

Please note that ***we cannot and do not judge the merits of your claim (or counterclaim)***. Accordingly, we will not remove, or disable access to, any allegedly infringing material, nor restore any material that has been so removed, except according to the procedure set forth herein.

Service Fees; Repeat Infringers

Customers who have material removed in response to a notification of claimed infringement, and who do not assert that their use of the material removed was authorized (as evidenced by the filing of a counter notification), will be assessed a service fee of \$100.00 per incident. We may, at our discretion, terminate the Service Agreement of any customer in connection with whose account we receive more than one notification of claimed infringement (to which the customer does not provide a counter-notification) in any twelve-month period. We will terminate the Service Agreement of any customer in connection with whose account we receive three notifications of claimed infringement to which the customer does not provide counter-notifications in any twelve month period.

Revised 8/15/2006