

The Surly Curmudgeon

Terms of Service and Privacy Policy

Executive Summary

All visitors to this website agree that they have read, understand, and will comply with the Terms of Service and Privacy Policy below as one of the conditions for accessing the site. In summary, these policies disclaim all responsibility for the security and privacy of any information website visitors provide. Access to the website is entirely by the visitors' own choice and at their own risk. By accessing the website, visitors agree to hold the operator of the website entirely blameless for anything whatsoever that may occur as a result of visiting the site. Brian reserves the right to control the content of this website however he sees fit with no guarantee whatsoever that any content on the site will be either suitable or unsuitable for any purpose except Brian's own. By accessing The Surly Curmudgeon, you are implicitly agreeing that you have read, understood, and will abide by this Terms of Service and Privacy Policy and the accompanying Cookie Policy.

Apology

Sadly, in today's lawyer-gluttled and litigation-happy society, all website operators are required for their own protection to implement a declaration of the Terms of Service and Privacy Policy for their websites. Many locales also require that websites provide a disclosure of their use of cookies (see below). Some locales also require that website operators register with local authorities and obtain a license from them before they may legally publish a website. Happily for the time being, South Carolina, U.S.A. does not require such registration, but I suspect that the time is coming soon when all governments will have such a requirement so they can effectively prevent Internet users from being exposed to any "disapproved" ideas.

In a Nutshell

The Surly Curmudgeon will strive to protect and respect any information you share on the website including usernames, real names, passwords, and contact information. I promise *never* to sell this information to any third party. But despite my best intentions, the world is full of disreputable folks who have no such intentions and make no such promises. The Surly Curmudgeon will do his best to combat their efforts, but will probably fail now and again. Therefore, *please* don't put any information on The Surly Curmudgeon you wouldn't be willing to have scrolling across the Jumbotron in Times Square or sold by some faceless information thief to some greedy corporation or Big Brother governmental entity.

Terms of Service

The following terms and conditions govern all use of this website and all content, services and products available at or through the website (taken together, the Website). The Website is owned and operated by Brian Hupp ("Brian"). The Website is offered subject to your acceptance without modification of all of the terms and conditions contained herein and all other operating rules, policies (including, without limitation, Brian's Privacy Policy) and procedures that may be published from time to time on this Site by Brian (collectively, the "Agreement").

Please read this Agreement carefully before accessing or using the Website. By accessing or using any part of the web site, you agree to become bound by the terms and conditions of this agreement. If you do not agree to all the terms and conditions of this agreement, then you may not access the Website or use any services. If these terms and conditions are considered an offer by Brian, acceptance is expressly limited to these terms. The Website is available to anyone who accepts this Agreement.

1. **Your Account and Site.** The user account conditions listed in this paragraph will apply in addition to all other conditions contained in this Agreement pertaining to unregistered Website visitors. If you create content on the Website, you are responsible for maintaining the security of your account and content,

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and you are fully responsible for all activities that occur under the account and any other actions taken in connection with the content. You must not describe or assign keywords to your content in a misleading or unlawful manner, including in a manner intended to trade on the name or reputation of others, and Brian may change or remove any description or keyword that he considers inappropriate or unlawful, or otherwise likely to cause Brian liability. You must immediately notify Brian of any unauthorized uses of your content, your account or any other breaches of security. Brian will not be liable for any acts or omissions by You, including any damages of any kind incurred as a result of such acts or omissions.

2. **Responsibility of Contributors.** If you post content to the Website, comment on Website content, post links on the Website, or otherwise make (or allow any third party to make) material available by means of the Website (any such material, "Content"), You are entirely responsible for the content of, and any harm resulting from, that Content. That is the case regardless of whether the Content in question constitutes text, graphics, an audio file, or computer software. By making Content available, you represent and warrant that:
 1. the downloading, copying and use of the Content will not infringe the proprietary rights, including but not limited to the copyright, patent, trademark or trade secret rights, of any third party;
 2. if your employer has rights to intellectual property you create, you have either (i) received permission from your employer to post or make available the Content, including but not limited to any software, or (ii) secured from your employer a waiver as to all rights in or to the Content;
 3. you have fully complied with any third-party licenses relating to the Content, and have done all things necessary to successfully pass through to end users any required terms;
 4. the Content is not spam, is not machine- or randomly-generated, and does not contain unethical or unwanted commercial content designed to drive traffic to third party sites or boost the search engine rankings of third party sites, or to further unlawful acts (such as phishing) or mislead recipients as to the source of the material (such as spoofing);
 5. the Content is not pornographic, does not contain threats or incite violence towards individuals or entities, and does not violate the privacy or publicity rights of any third party;
 6. your Content is not getting advertised via unwanted electronic messages such as spam links on newsgroups, email lists, other websites, and similar unsolicited promotional methods;
 7. your blog is not named in a manner that misleads your readers into thinking that you are another person or company. For example, your blog's URL or name is not the name of a person other than yourself or company other than your own; and
 8. you have, in the case of Content that includes computer code, accurately categorized and/or described the type, nature, uses and effects of the materials, whether requested to do so by Brian or otherwise.
3. **Responsibility of Website Visitors.** Brian has not reviewed, and cannot review, all of the material, including computer software, posted to the Website, and cannot therefore be responsible for that material's content, use or effects. By operating the Website, Brian does not represent or imply that he endorses the material there posted, or that he believes such material to be accurate, useful or non-harmful. You are responsible for taking precautions as necessary to protect yourself and your computer systems from viruses, worms, Trojan horses, and other harmful or destructive content. The Website may contain content that is offensive, indecent, or otherwise objectionable, as well as content containing

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technical inaccuracies, typographical mistakes, and other errors. The Website may also contain material that violates the privacy or publicity rights, or infringes the intellectual property and other proprietary rights, of third parties, or the downloading, copying or use of which is subject to additional terms and conditions, stated or unstated. Brian disclaims any responsibility for any harm resulting from the use by visitors of the Website, or from any downloading by those visitors of content there posted.

4. **Content Posted on Other Websites.** We have not reviewed, and cannot review, all of the material, including computer software, made available through the websites and webpages to which this Website links, or that link to this Website. Brian does not have any control over those non-Brian-managed websites and webpages, and is not responsible for their contents or their use. By linking to a non-Brian-managed website or webpage, Brian does not represent or imply that he endorses such website or webpage. You are responsible for taking precautions as necessary to protect yourself and your computer systems from viruses, worms, Trojan horses, and other harmful or destructive content. Brian disclaims any responsibility for any harm resulting from your use of non-Brian-managed websites and webpages.
5. **Copyright Infringement and DMCA Policy.** Just as Brian asks others to respect his intellectual property rights, he respects the intellectual property rights of others. If you believe that material located on or linked to by this Website violates your copyright, you are encouraged to notify Brian in accordance with Brian's Digital Millennium Copyright Act ("DMCA") Policy. Brian will respond to all such notices, including as required or appropriate by removing the infringing material or disabling all links to the infringing material. Brian will terminate a visitor's access to and use of the Website if, under appropriate circumstances, the visitor is determined to be a repeat infringer of the copyrights or other intellectual property rights of Brian or others. In the case of such termination, Brian will have no obligation to provide a refund of any amounts previously paid to Brian.
6. **Intellectual Property.** This Agreement does not transfer from Brian to you any Brian or third party intellectual property, and all right, title and interest in and to such property will remain (as between the parties) solely with Brian. Brian, The Surly Curmudgeon logo, and all other trademarks, service marks, graphics and logos used in connection with the Website are trademarks or registered trademarks of Brian or Brian's licensors. Other trademarks, service marks, graphics and logos used in connection with the Website may be the trademarks of other third parties. Your use of the Website grants you no right or license to reproduce or otherwise use any Brian or third-party trademarks.
7. **Attribution.** Brian reserves the right to display attribution links such as 'Blog at the Website,' theme author, and font attribution in your blog footer or toolbar.
8. **Partner Products.** By activating a partner product (e.g. theme) from one of our partners, you agree to that partner's terms of service. You can opt out of their terms of service at any time by de-activating the partner product.
9. **Domain Names.** If you are registering a domain name, using or transferring a previously registered domain name, you acknowledge and agree that use of the domain name is also subject to the policies of the Internet Corporation for Assigned Names and Numbers ("ICANN"), including their Registration Rights and Responsibilities.
10. **Changes.** Brian reserves the right, at his sole discretion, to modify or replace any part of this Agreement. It is your responsibility to check this Agreement periodically for changes. Your continued use of or access to the Website following the posting of any changes to this Agreement constitutes acceptance of those changes. Brian may also, in the future, offer new services and/or features through

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the Website (including, the release of new tools and resources). Such new features and/or services shall be subject to the terms and conditions of this Agreement.

11. **Termination.** Brian may terminate your access to all or any part of the Website at any time, with or without cause, with or without notice, effective immediately. If you wish to terminate this Agreement or your account (if you have one), you may simply discontinue using the Website. Notwithstanding the foregoing, if you have a paid services account, such account can only be terminated by Brian if you materially breach this Agreement and fail to cure such breach within thirty (30) days from Brian's notice to you thereof; provided that, Brian can terminate the Website immediately as part of a general shut down of our service. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.
12. **Disclaimer of Warranties.** The Website is provided "as is". Brian and his suppliers and licensors hereby disclaim all warranties of any kind, express or implied, including, without limitation, the warranties of merchantability, fitness for a particular purpose and non-infringement. Neither Brian nor his suppliers and licensors, make any warranty that the Website will be error free or that access thereto will be continuous or uninterrupted. You understand that you download from, or otherwise obtain content or services through, the Website at your own discretion and risk.
13. **Limitation of Liability.** In no event will Brian, or his suppliers or licensors, be liable with respect to any subject matter of this agreement under any contract, negligence, strict liability or other legal or equitable theory for: (i) any special, incidental or consequential damages; (ii) the cost of procurement for substitute products or services; (iii) for interruption of use or loss or corruption of data; or (iv) for any amounts that exceed the fees paid by you to Brian under this agreement during the twelve (12) month period prior to the cause of action. Brian shall have no liability for any failure or delay due to matters beyond his reasonable control. The foregoing shall not apply to the extent prohibited by applicable law.
14. **General Representation and Warranty.** You represent and warrant that (i) your use of the Website will be in strict accordance with The Website Privacy Policy, with this Agreement, and with all applicable laws and regulations (including without limitation any local laws or regulations in your country, state, city, or other governmental area, regarding online conduct and acceptable content, and including all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside) and (ii) your use of the Website will not infringe or misappropriate the intellectual property rights of any third party.
15. **Indemnification.** You agree to indemnify and hold harmless Brian, his contractors, and his licensors, and their respective directors, officers, employees and agents from and against any and all claims and expenses, including attorneys' fees, arising out of your use of the Website, including but not limited to your violation of this Agreement.
16. **Miscellaneous.** This Agreement constitutes the entire agreement between Brian and you concerning the subject matter hereof, and may only be modified by a written amendment signed by an authorized executive of Brian, or by the posting by Brian of a revised version. Except to the extent applicable law, if any, provides otherwise, this Agreement, any access to or use of the Website will be governed by the laws of the state of South Carolina, U.S.A., excluding its conflict of law provisions, and the proper venue for any disputes arising out of or relating to any of the same will be the state and federal courts located in Oconee County, South Carolina. If any part of this Agreement is held invalid or unenforceable, that part will be construed to reflect the parties' original intent, and the remaining

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portions will remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, will not waive such term or condition or any subsequent breach thereof. You may assign your rights under this Agreement to any party that consents to, and agrees to be bound by its terms and conditions; Brian may assign his rights under this Agreement without condition. This Agreement will be binding upon and will inure to the benefit of the parties, their successors, and permitted assigns.

Brian's Privacy Policy

Brian Hupp (“**Brian**“) operates The Website and may operate other websites. It is Brian’s policy to respect your privacy regarding any information collected while operating his websites, however, Brian makes no representation that any of the information you may post to this website will remain private or secure. Visitors must not post any information on The Website or any of Brian’s other websites that they wish to keep private. Consider any information you post to The Website or any of Brian’s other websites to be in the public domain, freely visible to anyone in the world for whatever use anyone in the world might choose to make of it.

Website Visitors

Like most website operators, Brian collects non-personally-identifying information of the sort that web browsers and servers typically make available, such as browser type, language preference, referring site, and the date and time of each visitor request. Brian’s purpose in collecting non-personally-identifying information is to better understand how Brian’s visitors use The Website. From time to time, Brian may release non-personally-identifying-information in the aggregate, e.g., by publishing a report on trends in the usage of The Website.

Brian also collects potentially personally-identifying-information like users’ Internet Protocol (IP) addresses and domain names. Brian only discloses logged in user and commenter IP addresses under the same circumstances that he uses and discloses personally-identifying-information as described below, except that commenter IP addresses, domain names, and email addresses are visible and disclosed to the administrators of the website where the comment was left. Commenter names are visible and disclosed generally to all other visitors to The Website.

Gathering of Personally-Identifying-Information

Certain visitors to Brian’s websites choose to interact with Brian in ways that require Brian to gather personally-identifying-information. The amount and type of information that Brian gathers depends on the nature of the interaction. For example, he asks visitors who sign up at or subscribe to The Website to provide a name and email address. In each case, Brian collects such information only insofar as is necessary or appropriate to fulfill the purpose of the visitor’s interaction with Brian. Brian makes no representation whatsoever that personally-identifying-information provided by visitors to The Website or any of Brian’s other websites will remain private and secure. Visitors must not provide any information to The Website about themselves or any third party which should be kept private or secure. Visitors can always refuse to supply personally-identifying-information, with the caveat that so doing may prevent them from engaging in certain website-related activities.

Furthermore, anyone wishing to receive e-mail notifications from the Website (e.g. notification about newly posted content) can do so by “subscribing” to the Website. When such visitors subscribe, their contact information and notification preferences will be provided to a third-party service (e.g. MailChimp) which will retain and manage the visitor’s contact information and notification preferences in accordance with the third-

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party service's own terms of service and privacy policy. Subscribers may change their notification preferences, review the information being retained about them, and/or request that their information be removed at any time either through the third-party's integral self-service automated subscription management mechanism or by contacting Brian directly.

Aggregated Statistics

Brian may collect statistics about the behavior of visitors to his websites. Brian may display this information publicly or provide it to others.

Protection of Certain Personally-Identifying-Information

Brian makes no representation whatsoever that any Personally-Identifying-Information provided to The Website or any of Brian's other websites will remain secure or private, except that Brian will not rent or sell potentially-personally-identifying- and personally-identifying-information to anyone. If you are a registered user of a Brian-managed website and have supplied your email address, Brian may occasionally send you an email to tell you about new features, solicit your feedback, or just keep you up to date with what's going on with Brian and his products. If you send a request (for example via email or via one of our feedback mechanisms), Brian reserves the right to publish it in order to help clarify or respond to your request or to help support other users. Brian makes no representation whatsoever that any potentially-personally-identifying- or personally-identifying information will be protected against unauthorized access, use, alteration or destruction. Any and all information provided by visitors to The Website or any Brian-managed website is provided strictly by the visitor's own choice and at their own risk.

Cookies

A cookie is a small text file that a website stores on a visitor's computer, and that the visitor's browser provides to the website each time the visitor returns. Brian may use cookies to help Brian identify and track visitors, their usage of The Website or other Brian-managed websites, and their website access preferences. Visitors who do not wish to have cookies placed on their computers should set their browsers to refuse cookies before using Brian's websites, with the drawback that certain features of Brian's websites may not function properly without the aid of cookies. See The Surly Curmudgeon Cookie Policy.

Client-side Scripts

Client-side scripts are small blocks of code (e.g. Javascript) downloaded to a website visitor's device along with requested website content and executed by the visitor's device either automatically (e.g. to display an animation or play a sound) or upon some visitor interaction (e.g. when a visitor submits a contact form). By default, most web browsers enable execution of client-side scripts, but visitors may disable script execution in their local browser settings. However, if a visitor chooses to disable client-side scripts, certain services of the requested website (e.g. submitting visitor comments) may not function properly.

CAPTCHA

The Internet is rife with servers called "bots" which automatically and invisibly perform various functions ranging from the relatively benign (like sending unsolicited e-mail (spam) or advertisements) to the more malicious (like denial of service attacks, phishing, monetary scams, ransomware, and identity theft/resale). Websites often combat such bots by asking visitors to "prove" they are human beings – not bots. One popular mechanism websites use for this is called a CAPTCHA – Completely Automated Public Turing test to tell Computers and Humans Apart. For example, visitors may be asked to provide the answer to a simple random arithmetic problem, or to identify which or a randomly selected group of photos contains a particular

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characteristic). Sometimes, a CAPTCHA may operate behind the scenes and website visitors may not even be aware of it. Web forms often contain hidden fields which are invisible to human visitors, but which bots detect and fill in, thus revealing themselves to not be humans, allowing the website to reject their input. CAPTCHA forms and processing scripts are frequently provided by third-party services such as Google's reCAPTCHA service and InCAPTCHA Enterprises' hCAPTCHA service. The Surly Curmudgeon makes use of a locally provided arithmetic problem type CAPTCHA on some of its forms, and may from time to time also use third-party provided CAPTCHA functionality. CAPTCHA services do not retain any visitor information, but do require client-side scripts to function properly.

Business Transfers

If The Website, or substantially all of its assets, is acquired by someone other than Brian, or in the unlikely event that Brian goes out of business or enters bankruptcy, user information would be one of the assets that is transferred or acquired by a third party. You acknowledge that such transfers may occur, and that any acquirer of The Website may continue to use your personal information as set forth in this policy.

Ads

Ads appearing on any websites may be delivered to users by advertising partners, who may set cookies. These cookies allow the ad server to recognize visitors' computers each time they send an online advertisement to compile information about visitors or others who use visitors' computers. This information allows ad networks to, among other things, deliver targeted advertisements that they believe will be of most interest to visitors. This Privacy Policy covers the use of cookies by Brian and does not cover the use of cookies by any advertisers.

Privacy Policy Changes

Although most changes are likely to be minor, Brian may change his Privacy Policy from time to time, and at Brian's sole discretion. Brian encourages visitors to frequently check this page for any changes to his Privacy Policy. If you have an account, you might also receive an alert informing you of these changes. Your continued use of The Website after any change in this Privacy Policy will constitute your acceptance of such change.