

## **Terms of Use Agreement for Smashedpiano.com (.net and .org)**

August 15, 2008

Smashedpiano.com is an artistic networking and events-posting service that allows its Members to create profiles online to publicize themselves and their participating artists, their art, their organizations and their events to build awareness and audiences in a global community. Smashedpiano.com is owned and operated by Arraymusic, a non-profit charitable arts organization located in Toronto, Canada, and run by a volunteer board of directors.

Arraymusic, Smashedpiano and the Services / tools it offers ("Smashedpiano.com" or "Smashedpiano" or "we") include the Smashedpiano.com website (the "Smashedpiano.com Website", "Smashedpiano" or "the Website"), Content, a web-based user application (e.g. 'tool'), as well as any other Smashedpiano.com services and applications as they are offered from time to time by Smashedpiano.com in connection with the Website.

This Terms of Use Agreement ("Agreement") sets forth legally binding terms for your use of Smashedpiano.com. By using Smashedpiano, you agree to be bound by this Agreement, whether you are a "Visitor" (i.e. you browse the Website) or a "Member" / "Artist" (i.e. you have a password and have used this and the Smashedpiano.com web tool to create a webpage). "User" means any Visitor or Member. You are only authorized to use Smashedpiano.com (whether or not your use is intended) if you agree to abide by this Agreement (and all applicable laws). Please read the Agreement carefully then save it. If you do not agree with it, please leave Smashedpiano.com and discontinue use. If you want to become a Member, create a webpage, or make use of Smashedpiano's Services, you must read this Agreement then indicate your acceptance simply by proceeding to build and upload a webpage.

Smashedpiano.com's policy covers the acceptable use of its Services and Content as posted on the Website, and your rights, obligations and restrictions regarding the use of the Smashedpiano.com Website's Services and Privacy Policy.

To participate in the Website, you may at some point be notified that you are required to download software or content and/or agree to additional terms and conditions. Unless already provided for in Smashedpiano.com's Terms of Use Agreement, those additional terms will be hereby incorporated into this Agreement. To receive a copy of this Agreement email [admin@arraymusic.com](mailto:admin@arraymusic.com) with the Subject: 'Terms of Use Agreement for Smashedpiano.com.'

Smashedpiano may modify this agreement from time to time, effective upon posting by Smashedpiano to the Smashedpiano.com Website. You agree when you use the Smashedpiano.com Services to be bound by changes to the Agreement after such modifications are posted. To ensure you are aware of any changes please review this Agreement regularly.

Please choose the information ("Content") you post on Smashedpiano.com carefully. You MAY NOT post the following: Personal contact information (with the exception of emails), photographs with nudity, or sexually explicit / obscene, excessively violent, harassing or objectionable subject matter. Despite this prohibition, information given by other Smashedpiano.com Members (in their Profile) may contain inaccurate or inappropriate, offensive or sexually explicit material, products or services, and Smashedpiano.com assumes no responsibility or liability for such material. If you should become aware of any instances of misuse of the Smashedpiano Website or Services by anyone, please contact Smashedpiano.com right away.

Smashedpiano holds the right to exercise sole discretion with or without prior notice as well as to reject, refuse to post or to remove (all) postings by you, and can restrict, suspend or terminate your access to any (or all) part(s) of the Smashedpiano.com website and Services at any time for any (or no) reason, without liability.

1. **Eligibility.** Use of the Smashedpiano.com services and tools and Membership in the Smashedpiano.com community of website users where prohibited is void. By using Smashedpiano.com, you represent (warrant): (a) your information is accurate and truthful; (b) you will maintain the accuracy of your information; (c) you are 14 (years) or older; (d) your use of Smashedpiano does not violate applicable laws or regulations. Your profile /webpage/postings may be deleted and your Membership terminated without any prior warning if we believe you are under 14 years old.

2. **Term.** This Agreement will remain in force / effect while you use the Smashedpiano.com and its Services and are a Member/User. For any reason at any time you may terminate your Membership, by notifying Arraymusic by email of your desire to terminate membership and receiving confirmation of receipt by email. Also at any time, Smashedpiano.com may terminate your Membership without warning. This Agreement stays in effect after termination.

3. **Fees.** You acknowledge Smashedpiano.com reserves the right to charge for use of its Services and from may change these fees at its discretion. Should Smashedpiano terminate your Membership for breaching this Agreement, you will not be entitled to refunds of unused fees.

4. **Password.** When you become a Member, you will be given (or asked for) a password. You are solely responsible for the confidentiality of your password and maintaining its confidentiality. You agree to never use an account, username or password of another Member or to disclose your password to others and to notify Smashedpiano.com of any suspected unauthorized use of your account or password. You alone are responsible for the usage of your account.

5. **Members Use.** We prohibit any illegal / unauthorized use of Smashedpiano.com, including collecting Member/user-names/email addresses by any means for sending unsolicited email(s) or unauthorized framing of, or linking to, Smashedpiano.com's Website. Commercial advertisements, links and other kinds of solicitation can be removed from Member profiles without giving you prior notice. This may result in a member's termination. Legal action will be taken for illegal / unauthorized use of Smashedpiano.com. The services and information provided by Smashedpiano are for your personal, non-commercial use only, with the sole exception that you may benefit commercially indirectly by posting information about your music events and / or music which could lead to sales.

6. **Proprietary Rights in Content.**

Smashedpiano.com does not own, or claim to own, any of the content ("The Content") - e.g. text, files, images, video, sounds, music, photos, authored works or other materials - that you post on the Website. After posting Content to the Website, you continue to retain ownership rights to your Content and the right to use your Content as you choose so long as it does not contravene this Agreement. By publishing ("posting") Content on Smashedpiano.com, you grant Smashedpiano a limited license to use, modify, publicly display and/or perform, reproduce and/or distribute such Content strictly on, through or in connection with Smashedpiano.com.

Without this license, Smashedpiano.com is not able to provide its Services.

For example, without the right to modify Member Content, Smashedpiano.com would not be able to digitally compress music files that Members submit or otherwise format Content to satisfy technical requirements, and without the right to publicly perform Member Content, Smashedpiano.com could not allow Users to listen to music that is posted by Members. The license you grant to Smashedpiano.com is non-exclusive (meaning you are free to license your Content to anyone else in addition to Smashedpiano.com), fully-paid and

royalty-free (meaning that Smashedpiano.com is not required to pay you for the use on the Smashedpiano Services of the Content that you post), sub-licensable (so that Smashedpiano.com is able to use its affiliates and subcontractors such as Internet content delivery networks to provide the Smashedpiano Services), and worldwide (because the Internet and the Smashedpiano Services are global in reach). When you remove your Content from Smashedpiano, this license will terminate. This license does not grant Smashedpiano.com the right to sell your Content. It does not grant Smashedpiano.com the right to distribute your Content outside of the Smashedpiano Services.

You represent / warrant that: You own all the Content you post on the Smashedpiano Services, or otherwise have the right to grant the license set forth here, and posting your Content on Smashedpiano does not violate the privacy, publicity, copyright, contract or any other rights of any person. You agree to pay for all royalties, fees, and any other monies owing any person by reason of any Content that you post on Smashedpiano.

Smashedpiano Services contain Content of Smashedpiano.com ("Smashedpiano.com Content"). Smashedpiano.com Content is protected by copyright, trademark, patent, trade secret and other laws, and Smashedpiano.com owns and retains all rights in the Smashedpiano.com Content and the Smashedpiano Services. Smashedpiano.com hereby grants you a limited, revocable, non-sub-licensable license to reproduce and display the Smashedpiano.com Content (excluding any software code) solely for your personal use in connection with viewing the Smashedpiano Website and using the Smashedpiano Services.

Smashedpiano Services contain the Content of Users / Artists and Smashedpiano.com licensors. Except for the Content you post, you may not copy, broadcast, change, translate, publish, distribute in any way, perform, display, or sell any of the Content on Smashedpiano.

## **7. Posted Content.**

7.1. Smashedpiano.com may delete any Content that in its judgment violates this Agreement, or is considered by Smashedpiano to be offensive, illegal, violating the rights of, or harming or threatening the safety of, any person. Smashedpiano.com assumes no responsibility for monitoring its services for inappropriate Content or conduct. If at any time Smashedpiano.com chooses to monitor the Smashedpiano Services, Smashedpiano.com nonetheless assumes no responsibility for the Content, no obligation to modify or remove inappropriate Content or for the conduct of the

User submitting such Content.

7.2. You alone are responsible for the Content you post on Smashedpiano, and any material / information you transmit to others. Smashedpiano.com does not endorse and has no control over your / the Website Artists Content. Content is not necessarily reviewed by Smashedpiano.com prior to posting and does not necessarily reflect the opinions or policies of Smashedpiano.com. Smashedpiano.com makes no warranties, (either express or implied) about the Content or its accuracy or reliability or any of the materials / information you transmit to others on or through Smashedpiano.com.

8. **Prohibited Content / Activity.** The following partially lists the types of Content that is illegal / prohibited to post on Smashedpiano.com. Smashedpiano reserves the right to investigate and take legal action against anyone who, in Smashedpiano.com's discretion, violates this provision, including without limitation, removing offending communication from Smashedpiano and terminating violators membership. Prohibited Content includes, but is not limited to Content that:

- 8.1. is offensive and promotes racism, bigotry, hatred or physical harm against a group or individual;
- 8.2. harasses or advocates harassment of others;
- 8.3. exploits people in any way; i.e. sexually or violently;
- 8.4. contains nudity, violence or offensive subject matter or a link to an adult website;
- 8.5. solicits personal information from anyone under 18;
- 8.6. promotes information that is false or misleading or illegal activities or conduct that is abusive, threatening, obscene, defamatory or libelous;
- 8.7. promotes any illegal or unauthorized copy of another person's copyrighted work;
- 8.8. transmits "junk mail," "chain letters," or unsolicited mailings, including instant messaging, "spimming," or "spamming";
- 8.9. contains password only access pages or hidden pages or

images;

8.10. furthers any criminal activity or enterprise or provides instructions concerning illegal activities, such as (but not limited to) making / buying illegal weapons, violating a person's privacy or providing / creating computer viruses;

8.11. solicits from others passwords or personal identifying information for commercial or unlawful purposes;

8.12. involves commercial activities and / or sales without prior written consent;

8.13. includes a photograph of another person posted without that person's consent; or

8.14. uses sexually suggestive imagery or unfair, misleading or deceptive Content that draws traffic to the profile.

8b). The following partially lists types of illegal or prohibited activities on the Smashedpiano Website. Smashedpiano.com reserves the right to investigate and take legal action against anyone who violates this provision. Prohibited activity includes (but is not limited to):

8b).1. criminal or tortious activity, including pornography, fraud, trafficking in obscene material, drug dealing, gambling, harassment, stalking, spamming, spimming, sending of viruses or other harmful files, or copyright infringement;

8b).2. soliciting or advertising to any Member to buy or sell products or services through Smashedpiano. You may not transmit junk email or chain letters to other Members. Use of any information obtained from Smashedpiano to contact, advertise to, solicit, or sell to any Member without their prior explicit consent violates these rules.

8b).3. covering or obscuring banner advertisements on your profile page, or other Smashedpiano.com page using any means is strictly prohibited and illegal;

8b).4. disrupting, or creating an undue burden on the Smashedpiano Services or networks;

8b).5. impersonating another Member or person;

8b).6. using the account, username, or password of another Member at any time or disclosing your password to any third party or permitting any third party to access your account;

8b).7. selling or transferring your profile in any way;

8b).8 using information obtained from Smashedpiano to harass, abuse, or harm any person/s;

8b).9. displaying an advertisement on your profile, placing commercial content on your profile, posting blogs or bulletins with a commercial purpose, or sending private messages with a commercial purpose; or

8b).10. using Smashedpiano and its Services in a manner that is inconsistent with its laws and regulations.

9. **Copyright Policy.** You may not post, modify, distribute, or reproduce any copyrighted material, trademarks, or other proprietary information that belongs to others without obtaining the express prior written consent of the owner of such proprietary rights. It is policy to terminate a Members' privileges who repeatedly infringes copyright rights of others following notification by Smashedpiano.com to the copyright owner or their legal agent. If you believe your work has been copied / posted on Smashedpiano in a way that constitutes copyright infringement, please provide a Smashedpiano representative (who is employed by Arraymusic) with the following information: (i) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (ii) your description of the copyrighted work you claim has been infringed; (iii) a description of where the material you claim is infringing is located on Smashedpiano; (iv) your contact information; (v) your written statement that you believe the disputed use is not authorized by the copyright owner, its agent or the law; (vi) your statement, made under penalty of perjury, that your notice is accurate and you are the copyright owner or authorized to act for the copyright owner. To notify Smashedpiano of claims of copyright infringement contact Arraymusic at: Smashedpiano, Inc., Suite 218, 60 Atlantic Avenue, Toronto ON Canada M6K 1X9 Attn: Smashedpiano Copyright Agent; or email: [admin@Arraymusic.com](mailto:admin@Arraymusic.com).

10. **Member Disputes.** You are solely responsible for your interactions with other Smashedpiano.com Members. Smashedpiano has no obligation, but reserves the right, to monitor disputes between you and other Members.

**11. Disputes - General.** In the event of a dispute involving Smashedpiano, you agree that the dispute shall be governed by the laws of the province of Ontario, without regard to conflict of law provisions and you agree to exclusive personal jurisdiction in the provincial and / or federal courts located in Ontario, Canada. In a dispute, Smashedpiano.com may decide to settle by arbitration utilizing a dispute resolution procedure provided that the foregoing shall not prevent Smashedpiano.com from seeking injunctive relief in a court of competent jurisdiction.

**12. Privacy.** Use of Smashedpiano Services is governed by its Privacy Policy which, by this reference, is incorporated into this Agreement.

**13. Disclaimers.** Smashedpiano.com is not responsible for incorrect / inaccurate Content on the Smashedpiano Website or in connection with its Services, whether caused by Users of the Smashedpiano Services or by any of the equipment or programming associated with / utilized by Smashedpiano. Profiles that are created and posted by Members / Artists on the Smashedpiano Website may contain links to other websites. Smashedpiano.com is not responsible for the Content, accuracy or opinions expressed on such websites and in no monitors them. Inclusion of a linked website on Smashedpiano does not imply approval / endorsement by Smashedpiano.com and you access third-party sites at your own risk. Smashedpiano.com takes no responsibility for third party advertisements posted on this Website, nor does it take responsibility for goods or services provided by advertisers. Smashedpiano.com is not responsible for the conduct, online or offline, of Users of Smashedpiano. Smashedpiano.com assumes no responsibility for any error, omission, interruption, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, any User or Member communication. Smashedpiano.com is not responsible for problems or technical malfunctions of telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of any email or players due to technical problems or traffic congestion on the Internet or on any of the Smashedpiano Services, including any injury or damage to Users or to any person's computer related to participation in connection with Smashedpiano. Under no circumstances will Smashedpiano.com be responsible for any loss or damage, including personal injury or death, resulting from use of the Smashedpiano, or from the conduct of any Users of Smashedpiano, online or offline. The Smashedpiano Services are provided "AS-IS" / as available and Smashedpiano.com expressly disclaims any warranty of fitness for a particular purpose or non-infringement. Smashedpiano.com cannot guarantee / does not promise specific results from use of Smashedpiano.

**14. Limitation on Liability.** SMASHEDPIANO.COM WILL NEVER BE LIABLE

TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM YOUR USE OF THE SERVICES, EVEN IF SMASHEDPIANO.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SMASHEDPIANO.COM'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO SMASHEDPIANO.COM FOR THE SMASHEDPIANO SERVICES DURING THE TERM OF MEMBERSHIP.

15. **Indemnity.** You agree to indemnify and hold Smashedpiano.com, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your use of the Smashedpiano Services in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above and/or if any Content that you post on the Smashedpiano Website or through the Smashedpiano Services causes Smashedpiano.com to be liable to another.

16. **Other.** This Agreement is accepted on your use of the Smashedpiano Website and is further affirmed by you becoming a Member (e.g. creating a profile). This Agreement constitutes the entire agreement between you and Smashedpiano.com regarding use of Smashedpiano Services. The failure of Smashedpiano.com to exercise any right or provision of this Agreement shall not operate as a waiver of such right or provision. Smashedpiano.com is a trademark of Arraymusic, a legal incorporated charitable entity, and this Agreement operates to the fullest extent permissible by law. If any provision of this Agreement is unlawful or unenforceable, that provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.

Please contact us at Arraymusic with any questions regarding this Agreement pertaining to Smashedpiano.