

TERMS OF USE

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These Terms of Use are subject to change by *thumbroll* (also referred to herein as “we” or “us”), at any time in its sole discretion. Your use of the Services after such changes are made constitutes your acknowledgement and acceptance of the changes. Please consult these Terms of Use regularly. If you do not agree to all of these Terms of Use, please do not use the Services.

These Terms of Use apply to use of the Services and any account provided therefore. *thumbroll* may operate additional projects or services, which require separate or additional terms. In such cases, the terms specific to the additional project or service control to the extent there is a conflict with these Terms of Use.

Privacy

Your privacy is important to us. Please review our Privacy Policy, which describes our collection, retention, and use of information about users of the Services. The Privacy Policy is expressly incorporated herein by reference and made a part of these Terms of Use.

Accounts

In order to access, use, or otherwise provide information to the Services, you may be asked to create an account and provide certain registration details or other information. You agree that you will not use the Services or create an account unless you are at least 13 years of age. You agree that all information you provide to the Services will be correct, current, and complete and that you will maintain the accuracy and completeness of this information.

You further agree that you will not distribute your login credentials to any other person, or authorize use of your account by any other person, and that you will not solicit, collect, or use the login credentials of other users. You agree that you will not transfer, sub-license, sell, or assign your rights in your account to any other person. Any unauthorized use of your account by any third party is subject to these Terms of Use as though you were using the account.

thumbroll reserves the right to terminate your account or restrict or refuse access to your account, or to delete any content posted through your account, with or without notice, for any reason or no reason, and without any liability to you. If your account is terminated or otherwise deactivated, whether by *thumbroll*, yourself, or anyone else, your data and Content (defined below) will no longer be accessible through your account, but that data and Content may persist and appear

within the Services. Nevertheless, *thumbroll* has no obligation to retain any data or Content associated with your account following termination or deactivation of the account.

User Content

You are solely responsible for your conduct and any data, text, files, information, usernames, images, graphics, photos, profiles, audio and video clips, sounds, musical works, works of authorship, applications, links and other content or materials (collectively, “Content”) that you submit, post, transmit, or display on or via the Services.

In consideration of your access to and use of the Services, you agree not to post, submit, publish, transmit, or display, in connection with the Services, any material that:

- you do not own or do not have the right to post, including proprietary material of any third party;
- infringes any intellectual property or other right of any entity or person, including violating anyone’s patent, copyright, trademark, trade secret, right of privacy, right of publicity, or moral rights;
- breaches any agreement with any other person or entity;
- does not pertain directly to the Services;
- violates any law or may be considered to violate any law;
- advocates illegal activity or conveys an intent to commit an illegal act;
- is violent, nude, partially nude, vulgar, obscene, pornographic, sexually suggestive, or indecent;
- threatens or abuses others, libels, defames, invades privacy, stalks, bullies, is false, discriminatory, racist, hateful, abusive, harassing, or offensive, or otherwise injurious or objectionable;
- seeks to exploit or harm children by exposing them to inappropriate content, asking for personally identifiable details, or otherwise;
- impersonates or spoofs someone else’s identity, or misrepresents your connection to any other entity or person or otherwise forges or manipulates headers or identifiers (including URLs) to disguise the origin of the Content;
- advertises any commercial endeavor (e.g., offering for sale products or services) or otherwise engages in any commercial activity (e.g., conducting raffles or contests, displaying sponsorship banners, and/or soliciting goods or services), except as may be specifically authorized on the Services;

- constitutes spam or other unsolicited communications
- solicits funds, advertisers or sponsors;
- includes programs which contain viruses, worms, spyware, malware, and/or Trojan horses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications;
- disrupts the normal flow of dialogue, causes a screen to scroll faster than other users are able to type, or otherwise act in a way which affects the way any *thumbroll* page is rendered or displayed in a user's browser or device or affects the ability of other people to engage in real time activities via the Services;
- disobeys any policy or regulations established from time to time regarding use of the Services or any networks related to the Services; or
- contains hyper-links to other sites that contain content that falls within the descriptions set forth above.

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Disclaimer

YOU USE THE SERVICES AT YOUR OWN RISK (INCLUDING BUT NOT LIMITED TO ANY DAMAGE TO YOUR COMPUTER SYSTEM, LOSS OF DATA, DAMAGE RESULTING FROM RELIANCE ON THE SERVICES, OR OTHER DAMAGES THAT RESULT FROM OBTAINING ANY CONTENT FROM THE SERVICES INCLUDING COMPUTER VIRUSES) EVEN IF *THUMBROLL* HAS BEEN ADVISED OF OR IS AWARE OF THE RISK OF SUCH DAMAGE. TO THE EXTENT PERMITTED BY LAW, *THUMBROLL*, ITS SUBSIDIARIES, AFFILIATES, LICENSORS, SERVICE PROVIDERS, CONTENT PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE “*THUMBROLL* PARTIES”) PROVIDE THE SERVICES, INCLUDING WITHOUT LIMITATION, THE CONTENT, **“AS IS,” “AS AVAILABLE,” AND “WITH ALL FAULTS,”** WITHOUT WARRANTY OF ANY KIND, AND SPECIFICALLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A

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THE *THUMBROLL* PARTIES MAKE NO WARRANTY, REPRESENTATION, COVENANT, OR GUARANTEE WHATSOEVER, EXPRESS OR IMPLIED:

- i) AS TO THE VALUE, QUALITY, TIMELINESS, USEFULNESS, RELIABILITY, SECURITY, SUITABILITY, ACCURACY, TRUTHFULNESS, OR COMPLETENESS OF THE SERVICES, OR THE CONTENT;
- ii) THAT THE SERVICES WILL OPERATE UNINTERRUPTED OR ERROR-FREE;
- iii) THAT THE SERVICES, OR THE CONTENT WILL MEET YOUR NEEDS OR EXPECTATIONS;
- iv) AS TO THE QUALITY OR VALUE OF ANY OF *THUMBROLL*' PRODUCTS, SERVICES, CONTENT, INFORMATION, OR OTHER MATERIAL YOU PURCHASE OR OBTAIN VIA THE SERVICES; OR
- v) THAT ANY ERRORS PERTAINING TO THE SERVICES WILL BE CORRECTED.

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Limitation on Liability

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YOU AGREE THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES OR INJURIES THAT ARISE OUT OF *THUMBROLL'S* ACTS OR OMISSIONS, THE DAMAGES, IF ANY, CAUSED TO YOU ARE NOT IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF ANY WEB SITE, SERVICE, PROPERTY, PRODUCT OR OTHER CONTENT OWNED OR CONTROLLED BY THE *THUMBROLL* PARTIES, AND YOU WILL HAVE NO RIGHTS TO

ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION OR EXPLOITATION OF ANY WEB SITE, PROPERTY, PRODUCT, SERVICE, OR OTHER CONTENT OWNED OR CONTROLLED BY THE *THUMBROLL* PARTIES.

BY ACCESSING THE SERVICE, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

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You acknowledge and agree that *thumbroll* is not a backup service and you are solely responsible for content backup and storage. The *thumbroll* Parties will not be liable to you for any modification, suspension, or discontinuation, of the Services, or the loss of any Content. You further acknowledge that the Internet may be subject to security breaches, and as such, submission of content or other information may not be secure. You agree to accept sole and exclusive responsibility (as between *thumbroll* and you) for adequate protection of your data and/or devices and equipment used in connection with the Services.

You are solely responsible for your interactions with other users of the Services, whether online or offline. You agree that The *thumbroll* Parties have no responsibility or liability whatsoever for the conduct of any user.

Indemnification

You (and any third party on whose behalf you operate an account or activity on the Services) agree to indemnify and hold The *thumbroll* Parties harmless from any claims, liabilities, damages, losses, and expenses, including without limitation, reasonable attorney's fees and costs, arising out of or in any way connected with the following (whether resulting from your activities on the Services or those conducted on your behalf): (i) your Content or your access to or use of the Services; (ii) your breach or alleged breach of these Terms of Use; (iii) your violation of any third-party right, including without limitation, any intellectual property right, publicity, confidentiality, property, or privacy right; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental and quasi-governmental authority, or (v) any misrepresentation made by you. You agree that The *thumbroll* Parties will have no liability in connection with any such breach or unauthorized use, and you agree to indemnify any and all resulting loss, damages, judgments, awards, costs, expenses, and attorneys' fees of the Indemnified Parties in connection therewith. You also agree to indemnify and hold The *thumbroll* Parties harmless from and against any claims brought by third parties arising out of your use of the Services, your violation of these Terms of Use, or the infringement by you or made under your account, of any intellectual property or other right of any person or entity. You will cooperate as fully required by *thumbroll* in the defense of any claim. The *thumbroll* Parties reserve the right to assume exclusive control of its defense in any matter subject to your indemnification, which shall not excuse your obligation to indemnify The *thumbroll* Parties. You shall not settle any dispute subject to your indemnification under these Terms of Use without written consent from *thumbroll*. You will not settle any claim without the prior written consent of *thumbroll*.

Time Limitation on Claims

You agree that any claim you may have arising out of or related to your relationship with *thumbroll* must be filed within one year after such claim arose; otherwise, your claim is permanently barred.

Parental Notice

Pursuant to 47 U.S.C. Section 230(d) as amended, *thumbroll* hereby notifies you that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors. Information identifying current providers of such protection is available on the Internet (e.g., http://en.wikipedia.org/wiki/List_of_content-control_software).

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Copyright Claims

If you believe that your copyright has been infringed in any way by the Services, promptly provide in writing the following information to our Digital Millennium Copyright Act (17 U.S.C. §512) Designated Agent:

- i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- ii) Identification of the copyrighted work claimed to have been infringed, or if multiple copyrighted works at a single on-line site are covered by a single notification, a representative list of such works at that site;
- iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit *thumbroll* to locate the material;
- iv) Information reasonably sufficient to permit *thumbroll* to contact you, such as an address, telephone number and e-mail address;
- v) A statement that you have a good faith belief that the use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law;

vi) A statement that the information in the notice is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

The Designated Agent for the Services is:

Christie, Parker, & Hale LLP
Attn: *thumbroll* LLC DMCA Designated Agent
P. O. Box 29001
Glendale, California 91209-9001

Or fax to: (626) 577-8800, Attn: *thumbroll* LLC DMCA Designated Agent

Other Intellectual Property Claims

If you believe that your other intellectual property or publicity rights have been infringed in any way by the Services, please provide a detailed description of the alleged infringement for further investigation via e-mail to info@thumbroll.com. *thumbroll's* receiving, investigating, or responding to your e-mail shall not constitute *thumbroll's* agreement or verification of your claim(s) nor any admission of liability therefor. *thumbroll's* makes no commitment, covenant, promise, warranty, representation, or guarantee that it will receive, review, investigate, or respond to your claim within any particular time.

Notification

You agree that *thumbroll* may send you electronic notices to the e-mail address that you provided to *thumbroll* in creating your account, or by displaying the notice via the Services. You agree that all notices, agreements, disclosures, and other communications that *thumbroll* provides to you electronically satisfy any legal requirement that such communications be in writing.

Governing Law and Venue

The laws of the State of California govern these Terms of Use and the Privacy Policy, and any claim or dispute that you may have against *thumbroll*, without regard to any conflicts of law principles. Sole venue and jurisdiction for any disputes or claims that you may have against *thumbroll* shall be exclusively resolved in the state and federal courts located in Los Angeles, California. You hereby irrevocably consent to the venue and jurisdiction of such courts.

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