

Legal Considerations for Websites

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This briefing note looks at some of the legal considerations for e-business when operating a website. If you sell goods and services and are trading on line you may also be interested in our "Trading Online" and "Collecting and Using Data" briefing notes.

Web Design

It is important that you spend the time to ensure that your website is designed correctly. By 'design' we do not just mean how your website 'looks and feels', (though this is important). We also mean how your website is structured; its architecture; whether it has variable content; how that content is up dated etc. Can your website deal with legal issues such as the incorporation of terms and conditions and provide adequate data protection warnings? If you would like further information on this area please see our "Contracts with Web Designers and Hosts" briefing note.

Use of Copyright Works

Many regard the web as the ultimate freedom of expression: where music and video can be downloaded, articles copied, photographs downloaded and printed, comments posted etc. However, e-businesses should bear in mind that it is unlawful to do anything to infringe another party's copyright.

You cannot make available or incorporate within your site music, video clips, articles, photographs or any other third party work or content without the copyright owners permission. To do so without the necessary consents, would amount to a breach of copyright and expose your business to damages claims.

You should also bear in mind that if you commission a third party (as opposed to one of your employees) to produce a copyright work for you, (e.g. a cartoon for your home page), you will not own the copyright in that work unless you specifically ask the third party to assign or transfer the copyright in the work to you (by entering into an assignation or assignment). If you do not obtain an assignation/assignment of the copyright in the work then your right to use the work may be

limited and you may not always be able to use and exploit the work for other media or in other circumstances – (e.g. a photograph taken by a third party to be incorporated in your offline marketing material, may not always be lawfully reproduced on your website).

Regulatory Compliance

The E-Commerce Directive

The E-Commerce Directive, which was implemented in the UK by the Electronic Commerce (EC Directive) Regulations 2002, was introduced to harmonise the rules relating to online trading and advertising throughout Europe. The Directive covers "information society services" (that is any service normally provided for remuneration, at a distance, by means of electronic equipment and at the request of a recipient of a service). This term is extremely wide and covers activities including: selling goods and services online, offering online information and providing commercial communications (e.g. adverts or e-mail).

In order to try to provide legal certainty, the Directive provides that a business established in the UK will need to comply with UK laws when they are providing information society services to consumers in the EEA. This is known as the "country of origin" principle and means that businesses based in the UK need only comply with UK law when selling or advertising via the internet within Europe.

However, as the www is accessible throughout the world, thought may need to be given as to effect of your website in other jurisdictions. Care needs to be taken when doing business outside the EEA. If you are actively targeting users in countries outside the EEA, you may be subject to the laws and jurisdiction of those countries (especially where those users are consumers). In the absence of any international agreement on jurisdictional issues, this is simply a risk that will need to be borne in mind when carrying out e-business throughout the world. A practical solution to this is to attempt to provide warnings that your website is only directed at users in certain countries.

The E-Commerce Directive and the UK regulations state that certain information need to be given to users if you are trading or advertising online. This includes:

- your business name and the address where your business is established;
- contact details including an email address;
- details of any registration in a public trade register or of any authorisation scheme;
- details of membership of any professional body for certain regulated professions; and
- your VAT registration number.

In addition:

- any prices must be indicated clearly (including whether they are inclusive of tax and delivery costs);
- all commercial communications (e.g. advertising) must be clearly identified as such; and
- all unsolicited emails or spam must be clear and capable of being identified as such.

If you are concluding contracts online then you must also provide to the user clear information of:

- the different technical steps to follow to conclude the contract; and
- the technical means of identifying and correcting input errors prior to placing an order.

Companies Trading Disclosures

Under the Companies Trading Disclosures Regulations 2008, all trading companies are required to display the following information in a prominent place on their website or email which is deemed a business communication:

- their registered name, number and office;
- the part of the UK in which they are registered.

Data Protection

If you do capture and process personal data (that is information which can identify a living individual) you should ensure that your site is compliant with the Data Protection Act 1998. Many e-businesses will think nothing of collecting information from visitors to their site whether, by way of a request for information from a visitor to their site, by a user posting details to a message board, by using cookies, or by offering interactive functionality. However, if you are capturing personal data and using it for a particular purpose, you are required to give appropriate warnings to the data

subjects and to ensure that you only process that data in accordance with the Data Protection Act. Please see the "Data Protection and the Internet" briefing note for more information.

Terms and Conditions

In order to attempt to avoid liability for certain issues and to give users fair warnings, e-businesses would be well advised to have in place terms and conditions of use for their site.

Many terms and conditions will include provisions in relation to the following:

Copyright Notice - confirmation that a user of the site only has limited rights to access copyright material on the site and that they may not copy the material for any purpose inconsistent with the ordinary use of the site.

Links - a disclaimer of liability for any information contained in another party's website accessed via a link on your site. There is always a risk that if you provide a link to another party's website that this could be seen by the user as some sort of endorsement of that website. In certain circumstances your business could be held liable for the content of that site. It is also worth noting that not all businesses are keen for others to point links at their site and it is advisable to seek the permission of the site owner before establishing a link.

Data Protection/Privacy Statement - a statement about what personal data will be gathered, the purposes for which it will be used etc. Please note that great care needs to be taken with this wording. Please see the "Data Protection and the Internet" briefing note.

Disclaimers - attempting to limit the liability for the content of the site by excluding any warranty as to the site's accuracy, completeness or currency.

Law & Jurisdiction - Which laws govern the use of your website (bearing in mind that almost all sites are accessible by everyone throughout the world. Just in case there was to be a dispute it is better to stipulate which laws govern the site and which courts will have jurisdiction

It should be noted that all terms and conditions need to be drafted carefully to ensure that they are relevant and appropriate to the particular circumstances of the e-business and its website. To use terms and

conditions which bear no reality to the situation can often cause more damage than good.

Incorporating your Terms and Conditions

One of the most important considerations is how effectively are your terms and conditions brought to the attention of the user. Often the terms and conditions are found via a link located at the bottom of the homepage. This approach does run the risk that in the event of a dispute, the courts may rule that the terms and conditions were not adequately drawn to the attention of the user and therefore do not govern the relationship between the e-business and the user.

In certain circumstances, e-businesses may wish to draw specific risk areas to the users attention by providing information at key points without the need for the user to read through the entire terms and conditions. However, there is always a need to balance up the attractiveness and usability of a site against the legal risks which may be involved.

Defamation

It is important to consider the impact that your website might have on the www. A single comment on your web page or inserted by a user could be read by numerous people around the world. Accordingly, care should be taken that nothing is displayed on your website which might be damaging or claimed to be defamatory to the party to whom it relates.

Particular attention should be given to websites that allow for user-generated content. The terms and conditions should specifically prohibit illegal or defamatory content.

Web Access & Disability

The Disability Discrimination Act 1995 makes it unlawful for providers of goods and services to discriminate against disabled people by treating them less favourably and without justification. By 2004, when most of the Acts obligations will have come into force, e-businesses will have to ensure that they make 'reasonable adjustments' to their websites to ensure that their sites are accessible. This could mean providing text alternatives to website content, alternative attributes on images used for navigating and ensuring that the site can be read by text to sound software. By way of illustration, in an Australian case, a user was awarded \$20,000 dollars against the organisers of the Commonwealth Games because their website was not accessible to him, therefore excluding him from participating in an important cultural event.

Action Points:

- Carry out regular website audits, especially of your terms and conditions of use, terms and conditions of sale/supply and your privacy policy;
- Obtain all necessary copyright consents for third party content;
- Ensure that you are providing all required information to users;
- Draft appropriate terms and conditions of use;
- Consider data protection compliance issues;
- Ensure your business is compliant with the E-Commerce Directive.

This briefing note sets out a summary of the law at the time of writing and is for information purposes only. It should not be regarded as legal advice but if you would like further information please contact:



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