

CollinsBensonGoldhill Legal Briefing

GOING ONLINE LEGAL ASPECTS OF A WEBSITE

GOING ONLINE – the legal aspects of a website

by Ed Harris Hughes

The prospect of starting a new online campaign for your business can be an exciting time. Equally, the process of designing a website that accurately reflects your brand and entices customers to purchase products and services from your business can be a rewarding experience. However, in the process of getting a site to launch as quickly as possible, many businesses ignore the need to produce comprehensive legal protection for their sites and consequently can leave themselves open to potentially damaging claims.

It is important for those businesses who use a web designer to create their site that they get their designer to assign, in writing, any intellectual property rights that arise out of his/her work on the new site. The designer should also give you assurances that the functionality of the site is DDA compliant.

The extent of the legal coverage you will require to put on your site will depend on the complexity of the website. For example you will need considerably more protection if your site has e-commerce functionality due to the demands of UK contract law and the pitfalls created by selling goods and services over the internet. You should therefore provide your legal advisers with a beta copy of your website before it goes live so that they can advise you on precisely the extent and nature of the legal documentation that will need to govern your site.

You should be aware that even the most basic websites will be subject to the following legislation:

- The Data Protection Act 1998 (“DPA”)
- Privacy and Electronic Communications (EC Directive) Regulations 2003
- Disability Discrimination Act 1995 (“DDA”)
- E-Commerce (EC Directive) Regulations 2002

This means it must provide a minimum level of information to its users which is easily, directly and permanently accessible. This information should include the name of the business, its email address, its geographical address, the company’s registration number and place of registration, its VAT registration number and details of any professional association it is a part of.

Data Protection

If the website contains functionality which allows the company to hold data about identifiable individuals (data subjects), it will need to be registered with the Information Commissioner as a “data controller” and comply with the provisions and principles of the DPA to ensure fair use and processing of that personal data. Furthermore if you will be collecting information about your website users, it is essential that the website includes a privacy statement about the way it collects and uses the data about its users. The privacy statement should typically cover the following points (i) what information is collected from the user (ii) how that data is handled (iii) how that data is secured (iv) the use of cookies obtained from the user.

The Privacy and Electronic Communications (EC Directive) Regulations 2003 was brought into effect to, amongst other things, regulate those businesses that carry out marketing by telephone, fax, automated calling systems, e-mail, SMS, MMS or using any other form of electronic communication and organisations that operate cookies on their websites. In particular the 2003 Regulations sought to restrict those businesses which carry out direct marketing campaigns on data subjects unless they have directly chosen to opt in to be marketed to in this way.

Website terms and conditions

Website terms and conditions are imperative for your company in order to protect its interests and should include aspects such as (i) acceptance by website users of your use of the information on the website (ii) changes of content (iii) links to other websites (iv) copyright protection (v) disclaimers and limitation of liability (vi) indemnities.

Intellectual Property

You need to make sure that any intellectual property rights are protected properly, for example by incorporating a copyright notice and putting express restrictions on copying logos. Make use of your registered trade mark symbols and obtain appropriate licences and consents for the use of third party material.

You will need written authority from the owner of any website with which it has a hyperlink in order to prevent copyright infringement. The company should also ensure it has a statement in its terms and conditions that it does not accept liability for the content of any third party website.

E-Commerce

The Electronic Commerce (EC Directive) Regulations 2002 govern the conduct of electronic commerce in the UK. They are an integral part of UK online law and impact many online activities. However, the 2002 Regulations are only part of the UK law governing e-commerce. English contract law governs all forms of contracting whether it is online or offline. You should take legal advice when devising the e-commerce functionality of your site so that you can get advice on how best to avoid the pitfalls of UK contract law.

The regulations can effectively be broken down into three areas

Information Requirements: (applies to anyone who advertises or sells goods or services online (e.g. via the internet, mobile phone or interactive television)).

These requirements include providing your end users with:

- the full contact details of your business
- details of any relevant trade organisations to which you belong
- details of any authorisation scheme relevant to your online business
- your VAT number, if your online activities are subject to VAT
- clear indications of prices, if relevant, including any delivery or tax charges.

The information requirements outlined above are in addition to existing requirements, including those under the Consumer Protection (Distance Selling) Regulations 2000. These, amongst other things, require you to provide a description of your goods or services, details of any after sales services and guarantees and details of your customers' rights to cancel orders.

Commercial Communications: (applies to anyone who actively promotes their goods or services through any form of electronic communication (e.g. an e-mail advertising your goods or services)).

These requirements include providing your end users with:

- clear identification of any electronic communications designed to promote (directly or indirectly) your goods, services or image (e.g. an e-mail advertising your goods or services)
- clear identification of the person on whose behalf they are sent
- clear identification of any promotional offers you advertise e.g. any discounts, premium gifts, competitions, games
- clear explanation of any qualifying conditions regarding such offers
- clear indication of any unsolicited commercial communications you send.

Electronic Contracting (applies to anyone who enables end users to place orders online)

These requirements include providing your end users with:

- a description of the different technical steps to be taken to conclude a contract online so as to ensure that the end user know at which point they will be committing themselves to a contract
- an indication of whether the contract will be filed by your business and whether it can be accessed
- clear identification of the technical means to enable end users to correct any inputting errors they make
- an indication of the languages offered in which to conclude the contract.

If your business is bound by specific codes of conduct then these must be made available to the end user. You must also provide functionality for the end user to store and access your terms and conditions of sale (i.e. save and print). If the end user places an order online, you must:

- acknowledge receipt of the order without undue delay and by electronic means;
- make available appropriate, effective and accessible technical means which will allow them to identify and correct input errors *prior* to the placing of the order.

The Regulations state that the order and the acknowledgement of receipt are deemed to have been received when the parties to whom they are addressed are able to access them. Receipt of the order need not be acknowledged by the same means used by your customer to place their order.

These requirements do not apply to

- online transactions between two businesses if both parties agree to opt out of them
- contracts concluded exclusively by exchange of e-mail or by equivalent individual communications.

Non-compliance with the Regulations could have serious implications for a business. Depending on the exact nature of the non-compliance, end users may

- cancel their order
- seek a court order against you
- sue you for damages for breach of statutory duty if they can demonstrate that they have suffered a loss as a result of your failure to comply with your obligations under the Regulations.

In conclusion, there are a considerable number of legal implications in setting up any form of website and the basic rule of thumb is that the more information you obtain from your users the more diligent you must be at understanding the law.

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