



eCommerce Legal Considerations

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What we will cover:

Today we will cover some of the legal considerations of going online, including:

- Intellectual property;
- Website terms of use;
- Privacy obligations and privacy policies;
- Electronic transactions;
- Click through sale terms and conditions;
- Returns policies; and
- Delivery and risk.

Intellectual Property

Protection

- Protecting your IP will increase the value of your business.
- Registering a company name is not enough. Consider:
 - Trademarking the word; and/or
 - Trademarking your logo.
- Registered protection stops others trading on your brand.
- Ultimately, it's an asset that you can sell.

Infringement

- May force you to “cease and desist”.
- Always check IPONZ. Better yet, get a lawyer to do it.
- Consider your permissions before taking images off Google.

Website build contract

Website Terms of Use

- What are these, what do they do and why should I care?
- Not legally required, but good fallback protection.
- Basic elements:
 - Limitation of Liability
 - Permitted Use
 - IP/Copyright
 - Governing Law
- Check out AdviSME for a free website terms of use.

Privacy

- Privacy is important for:
 - legal compliance; and
 - visitors to feel safe on your site/ exchange information.
- Any business that collects personal information from customers must:
 - have a privacy policy; and
 - make the policy readily available (best on your website).
- You must ensure that the customer is informed about:
 - what information is being collected; and
 - the purpose it is to be used for.

Privacy Policy

A privacy policy ensures that people are aware:

- that you're collecting information about them;
- why you're collecting the information;
- what you're going to use it for;
- who you're going to give it to (if anyone);
- whether the person has to give you the information and what will happen if they don't;
- that they can access the information you hold about them, and they can correct it if it's wrong.

Check out AdviSME for a free privacy policy.

Privacy (its never-ending...)

Even if you have a privacy policy:

- only collect information that is necessary for a lawful purpose (needed to provide goods or services);
- collect the information directly from the individual (unless it is publicly available);
- only use the information for the purpose it was collected;
- store the information securely;
- give the individual access to the information if requested;
- do not store the information any longer than necessary.

Spam (be careful...)

- Sending bulk unsolicited promotional emails?
- It's illegal unless authorised.
- Make sure you adhere to these 3 points:
 - consent - you must have consent (which can be by tick box);
 - identify - it should be clear who the communication is from; and
 - unsubscribe - you must include an 'unsubscribe' facility to allow recipients to opt out of receiving your messages.

Electronic Transactions

- There is no legal difference between electronic transactions and paying for something with cash.
- This means the same laws apply, which includes the Consumer Guarantees Act and the Fair Trading Act.
- The difference between the FTA and the CGA is that:
 - the FTA covers claims about products and services before they're sold; and
 - the CGA covers the quality of those products and services after sale.

FTA – The Basics

- The Fair Trading Act protects consumers against being misled or treated unfairly.
- The Act prohibits misleading and deceptive conduct, unsubstantiated claims, false representations and certain unfair practices.
- It also prevents unfair terms in consumer contracts.
- Criminal penalties may apply. Companies can be fined up to \$600,000 and individuals up to \$60,000.

CGA – The Basics

- The CGA protects consumers by:
 - setting minimum guarantees for all products and services; and
 - allowing customers to seek repairs, replacements or refunds when goods or services are faulty.
- Different rules can apply depending on whether your customer is a business or an end consumer (a human).
- Sellers can contract out of the FTA and CGA for b2b transactions.
- Any contracting out must be done in writing at the point of sale.

Terms of Trade

- Best practice is to have customers accept your terms of trade otherwise they may not be bound by them.
- Terms of trade are different from your website terms of use.
- Main purpose of terms of trade is to limit liability in products/services sold.
- Need to be notified and accepted to be enforceable (not just on website somewhere).
- Use click through acceptance.

Delivery, Risk and Returns

- **Delivery Policy:** A clear, defined delivery policy is a must-have (also promotes customer confidence).
- **Risk:** Loss in transit/ insurance?
- **Contractors:**
 - Contractors vs Employees?
 - Insurance?
- **Returns policy:** Remember your CGA obligations!

Thank you for your time. Any questions?

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