



Commercial lawyer Jo Tall highlights the legal hotspots to watch out for

Is your website legal?

Many entrepreneurs I meet do not actually know if their website is legal or not! And how should they know. When they set up their websites, whether they have followed a ready-made template or appointed a web designer, the focus will have been on the content and functionality and not the legality of the site. What's more, no alarm bells ring out when a website goes live alerting them to the fact that the Distance Selling Regulations apply or that the Information Commissioner is about to take down their site for unlawful data processing! Only recently, a business was fined £500,000 for not complying with the Data Protection Act. So, just in case you are one of those entrepreneurs or are about to launch a website, here are some key areas to check:

DO YOU COLLECT PERSONAL DETAILS OF YOUR VISITORS?

Most websites invite their visitors to register on the site by submitting their name and e-mail address at the very minimum in order to receive newsletters, updates etc. If you do this and you store the data (whether it is on your computer or in traditional filing cabinets, you will be considered to be "processing personal data" and are therefore subject to the Data Protection Act 1998. In essence this means that you must comply with eight principles which set out how you can use the data, how you must store it and what rights your 'data subjects' have. If you collect more personal details such as religious or political affiliations or health matters, these fall into the category of 'sensitive data' and must be treated with even more care. Above all, you must register as a data processor with the Information Commissioner's Office (ICO). This is easily done online by going to their website at www.ico.gov.uk and completing the appropriate forms. The cost is around £35 per year. Entire books have been written on this subject and as the ICO is tightening up on those who process data without complying with the Data Protection Act with heavy fines, it is worth checking out the website above. It is well stocked with useful guidance notes to help you comply and understand the law.

The implications of the law for your website are that you should have a 'Privacy Policy' which spells out what you are doing with the data you collect, whether you use cookies, or you will be sending the data to third parties etc. Ideally there should be a link to the Privacy Policy on every page and especially at the point where visitors enter their details. Depending on the type of marketing you want to do and the data you collect, you should also have a box for visitors to tick next to a statement such as "I agree to receive [emails], [SMS messages] from selected third parties". It is best to take legal advice as to what should be in this statement.

DO YOUR VISITORS KNOW WHO IS BEHIND THE WEBSITE?

Go to the 'Contact' page of many websites and you will find an email address such as info@..... and, if you are lucky, a telephone number. This is illegal! As a website owner, you must set out a geographical address for people to contact you at. If you are a limited company, you must set out the full company name, where it is registered, its registration number and registered office address. If you are a member of a professional association that consumers can turn to if you perform badly, this should be set out too. Ideally this information should be set out on every page or alternatively under the 'Contact' section of your website. Finally, if you are VAT registered, your VAT number should also be set out if you will be selling through the website.

DO YOU SELL GOODS OR SERVICES ONLINE?

Imagine your website is up and running with enticing looking goods and services, the shopping basket waiting to be filled. Minutes later you jump for joy as you get your first notification from your payment processor that someone has made a purchase. You dispatch the goods or get the service lined up. Did you know that if you are dealing with consumers, they can change their minds and you have to reverse the whole process?

USEFUL WEBSITES

www.companieshouse.gov.uk
www.offt.gov.uk
www.ico.gov.uk


ONLY RECENTLY, A BUSINESS WAS FINED £500,000 FOR NOT COMPLYING WITH THE DATA PROTECTION ACT

THERE ARE CURRENTLY 280,848,493 WEBSITES ON THE WORLD WIDE WEB

These are the so-called "cooling-off-rights" under the Distance Selling Regulations. They apply whenever a contract is made with consumers and you do not meet face to face. So this could also apply to telephone sales made through your website. The implications for you are twofold:

a) Financial – you will have to refund the cost of the goods/services and the postage incurred in sending the goods to them. Whilst the consumer has to pay the postage in returning the goods, your outward postage is lost.

b) Legal – it is no good hoping the consumer may not know about his/her rights. You have to alert the consumer to them at the point they make their purchase! This is best done by having terms and conditions of purchase, including notice of their cancellation rights, that customers must accept before they part with their money. Again this is best done by having a 'tick box' with a link to the terms and conditions of purchase that must be ticked in order to proceed with the transaction.

If you are suddenly feeling demoralised that all of your takings are on hold, fear not because consumers only have seven working days from the date after the goods arrive or the service order is confirmed to change their mind. After that any returns are either under statutory warranties or whatever terms you happen to offer. There are additional exceptions to the cooling off rights too, for example, if the goods in question have been made to order or are perishable, or if they concern audio or computer software that has been unsealed or downloaded. 

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