

Minding Your Business Online;

Practical tips for businesses which provide goods and services for sale on the worldwide web.

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Purpose of Presentation

- Outline points to consider when contracting for website development.
- Outline points to consider when utilizing a webpage.
- Outline the basic process for contracting online.



Website Development Contracts

- Specify the website in detail, so that it is clear what constitutes performance of the contract.
- Specify the browser being provided for since some websites may look different when viewed in different browsers.
- Specify which party will provide the content. Content by third parties must be carefully defined and warranties to accompany them drafted.
- Include terms to clarify who owns the intellectual property to the site's code.

Website Do's and Don't's

- Do include a prominently displayed privacy policy where personal information is being collected from customers and potential customers.
- Legislation both in place and proposed require that data subjects be properly informed of the nature and purpose of the processing of their information.
- Do not link to other sites unless there is a linking agreement. Linking gives the impression that the link has been authorized by the linked site or even that the site linked to is the work of the linker. This raises passing off, trademark infringement and copyright infringement issues.



Formation of Online Contracts

- Legal principles governing contract formation remain unaltered irrespective of whether the contract is concluded in the physical or virtual world.
- There must be offer, acceptance, intention to create legal relations, consideration and capacity to contract.



Online Contract Formation

- Contract formation commences with an offer or a statement which demonstrates an intention to be bound if accepted.
- An offer must be distinguished from an Invitation to Treat. An Invitation to Treat is a statement that indicates a willingness to enter into negotiations.



Online Contract Formation

- At common law shop displays are invitations to treat. Although analogous to invitations to treat depending on how they are structured they may be construed as a worldwide offer.
- Offers must be accepted. Acceptance is defined as the final unequivocal assent to an offer.

Pricing Errors

- Online merchandisers may be bound to fulfill orders where the price of the good or service was incorrectly stated.
- In 2002 Kodak listed the price of a digital camera as \$100.00 when the actual selling price was \$329.00. 200 orders were placed before the company caught on to the error. When the company attempted to refuse payment it was sued for breach of contract and eventually had to honour the sales.



Avoiding costly pricing mistakes

- In the terms and conditions for sale, structure the contractual process.
- Therefore, make it clear that the placement of an order the CUSTOMER is making an offer and the contract will only be accepted if accepted by the seller.
- State that taking payment from a credit card or debit card does not constitute acceptance.



Avoiding Costly Pricing mistakes

- State that if the offer is not accepted a full refund will be made.
- Once the credit card details are validated confirm that the offer. Do not confirm a completed contract or state that your goods will be dispatched within 24 hours etc. Just confirm that the order is being processed.
- Once you have reviewed the order dispatch the good and this signifies acceptance.

Conclusion

- When contracting for the development of a website specify the responsibilities of parties and pay close attention to copyright issues.
- When setting up your website, include a privacy page if you are going to collect personal information and ensure that linking agreements are concluded before linking to another's page.
- When selling goods and services structure the steps that will result in contract formation in the terms and conditions of sale so that the consequences of erroneous prices can be afforded.

THE END.

