

E-Commerce

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Legal Considerations

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WHY WORRY ABOUT LEGAL ISSUES?

- Understand your legal issues and potential risks
- Protect yourself and your customers
- Provide a safe, secure business





CYBERLAW

- **“THE LAW OF THE HORSE”**
 - No distinct values
 - Applies every legal issue in this new forum
- **REGULATION AND CONTROL**
 - Dissemination of information in a world mediated by computers
- **JURISDICTION**
 - Where in the world are we to adjudicate??

ISSUES TO CONSIDER

- Business issues
 - Incorporation
 - Trademark
 - Copyright
- Website
 - “Clickwrap” agreements
 - Electronic Signature
 - Domain name
- Legal Infrastructure
 - Jurisdiction
 - Privacy Policies
 - The FTC



INCORPORATION

- SEPARATE LEGAL AND FINANCIAL STRUCTURE
 - Limits your personal liability
 - Looks more professional
 - Taxes
- PROMOTES FUTURE GOALS
 - If you plan to grow your company
 - Have employees,
- DOES NOT protect you from any criminal charges





TRADEMARK

- WORD, PHRASE, SYMBOL OR DESIGN
 - identifies and distinguishes the source of particular goods.
- TRADEMARK ACT “LANHAM ACT”
 - ensures that consumers can correctly identify the sources of goods or services
- YOUR DOMAIN NAME AND YOUR BRANDING ARE VALUABLE
 - register your trademark



COPYRIGHT

- Protect your site's content
- The owner of a copyright has the exclusive right to:
 - copy the work
 - modify the work (create "derivative works")
 - distribute the work
 - perform the work publicly
 - display the work publicly



Buying content for your website or business

- **OBTAIN A WARRANTY** from the seller or licensor stating that the seller owns all the rights and agrees to indemnify you (i.e. pay you for the costs) if someone else sues you for using the content.
 - Usually large content providers willing to do this
 - As will many small ones
- **SIGN AGREEMENT WITH YOUR CONTENT CREATOR**
 - So that you own the work product
 - If you don't, the creator will own the copyrights to the works.
- **WORKS IN THE "PUBLIC DOMAIN"**
 - Either do not qualify for copyright protection under the law, or the protection has expired



WEBSITE

- “CLICKWRAP” & “BROWSEWRAP” AGREEMENTS
- DOMAIN NAME
- ELECTRONIC SIGNATURE
- PRIVACY POLICY



CLICKWRAP AGREEMENTS

- LEGAL REMEDY FOR BREACH OF CONTRACT, SHOULD SAY:
 - You will be paid,
 - You waive legal warranties that are implied by law on sales of products of goods,
 - You may disclose users' identities to government authorities upon request (there have been law suits to prevent this, or as a result of this),
 - The user is over 18 and a US citizen,
 - The site may only be used as permitted,
 - Venue and jurisdiction for disputes are in whatever state you prefer,
 - There are limits to your civil (anything other than criminal) liability,
- IF YOU USE SITE TO TRANSACT BUSINESS
 - Bank protection since this is a signed document
- GIVES YOU "TEETH" TO GO AFTER PURCHASER
 - You can demand payment under the contract.



DOMAIN SITE NAME

- Just because you have a trademarked name, it doesn't mean that you have the right to that name for your website.
 - Or if you have a registered domain name, can't always use that as your business name.
- **Uniform Domain-Name Dispute-Resolution Policy (UDRP):** To resolve conflicts of domain name
 - When a registrant chooses a domain name,
 - And agrees to participate in an arbitration-like proceeding should any third party assert a claim.
 - Nationally and Internationally



ELECTRONIC SIGNATURE

- **Uniform Electronic Transactions Act "UETA"**
 - "an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record."
- **Electronic Signatures in Global and National Commerce Act (ESIGN) 2000,**
 - to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.



PRIVACY POLICY

- Is there a Constitutional Right to data privacy?
- Website Policy to Contain:
 - what personal information is collected,
 - how the personal information may be used,
 - To whom the personal information may be disclosed,
 - Security measures taken to protect the personal information,
 - Whether the website uses cookies and/or web bugs



FEDERAL TRADE COMMISSION

- FTC regulates trade and commerce with regard to consumers to ensure
 - Truthful advertising,
 - Product purchase guidelines are followed,
 - Collection of consumer data and privacy policy guidelines are followed.
 - Shipping guidelines are followed

TALK TO A LAWYER



- IF YOU ARE GOING TO TRANSACT eCOMMERCE
 - Use a website to engage in business
 - Start a new business,
 - ETC.



THANK YOU!

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