

# Mastering the Legal Issues in e-Commerce

By BNET Editorial

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When implementing an e-business strategy, one must fully understand any key legal issues—like copyright infringement laws and the principles of libel—early on. There are also more specific and technical restrictions that can affect (or restrict) the sale of your product within particular jurisdictions. You need to know what these rules are—and obey them.

When addressing legal matters on the Web, here's what to keep in mind:

- Prevention is better than damage control. Establishing a sound legal structure right away is much easier than trying to fight legal problems as they occur.
- Legal systems are getting a grip on the Internet. More and more laws are being passed that govern and regulate online business.
- You won't know the specific legal aspects of every jurisdiction, but you still need to isolate the key jurisdictions for your online business and make sure you adhere to whatever laws apply.

## What You Need to Know

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### Why are legal issues important?

Simply put, it's important to guard against unpleasant and potentially expensive consequences if you don't follow regulations and statutes or just ignore them. Some early e-commerce businesses adopted the latter approach, believing that cyberspace was a kind of *laissez-faire* autonomous zone beyond the reach of "terrestrial" government. They believed wrong and often paid for their indifference and neglect.

### Isn't the Internet exempt from many laws?

No, it most assuredly is not; and nobody dares believe that fallacy any more. That's good, too, because courts and government authorities around the world have shown no hesitation about claiming jurisdiction over online activity—in some cases, even when the Web site in question is hosted on another continent. Governments have applied civil sanctions (injunctions and damages) and criminal penalties (fines and even imprisonment) in certain instances, too.

## Is there an “easier way” to handle Internet legal matters?

Yes. The practical approach is to get legal advice about three specific locations that can affect your Web site’s operation. They are:

- The country—or countries—where your Web operations are principally based (most often, but not always, where your site is hosted)
- Countries whose citizens represent a primary target market of your Web site
- Any other countries that may claim authority over your Web site and the breach of whose laws might provoke nasty consequences. The U.S. is, by far, the best example; its legal powers have a dauntingly long reach.

## What to Do

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### Understand the Different Kinds of Web Site

While there are many different types of Web sites, they can broadly be divided into:

- *Shop-window Web sites.* They provide information about a company and its products but without encouraging any significant visitor interaction—rather like an online company brochure.
- *Contributed-content Web sites.* They allow visitors to contribute content, such as information about their identity, opinions and/or postings on message boards.
- *Full e-commerce Web sites.* They sell goods and services to visitors, either physical products which are delivered offline or digitized material which is available for downloading.

### Shop-window Web Sites

Don’t assume shop-window Web sites can’t encounter legal woes. They can. They contain various types of digitized content, such as graphics, text, images, music, and coding. That raises potential restrictions that apply to all forms of Web sites.

Web site owners must assume that all such content is protected: either by copyright—which, in effect, disallows that content’s inclusion on another Web site without the copyright owner’s expressed permission; or, in some cases, by “moral rights”—which require the author to be credited and that the work not to be significantly modified without the owner’s permission.

These clearances can take the form of a license or an assignment of copyright from the relevant rights holder, which might be a third-party Web site designer, photographer, journalist, or (in the more difficult case of music) two or more rights-holding organizations. In addition, you must ensure that your Web site content satisfies other legal requirements, including:

- Using registered trademarks of a third party: as part of your Web site's metadata, such use will generally constitute trademark infringement (Even a straightforward reference on a Web site to a third party's trademark can constitute an infringement)
- Linking, particularly deep linking, or framing, to third-party Web sites without the consent of those Web sites
- Posting misleading references about prices: for example, instances of online prices not having been updated can incur penalties
- Listing incorrect product descriptions: inaccurate statements about the quantity, size, fitness for purpose, or performance of goods, can also provoke repercussions
- Using unfair comparative advertising: comparisons between goods or services that are not intended for the same purpose must be avoided

Along with guarding against infringement of third parties' rights, it is important for owners to include in the terms and conditions of their Web sites words that protect their own copyrights and other rights. Usually this is done with language that appears near the bottom of a home page or as a reference with a link to the home page. It's not uncommon for the same language to also appear at the bottom of every page of a Web site.

## Contributed-content Web Sites

Web sites that encourage visitors to interact are exposed to several additional forms of legal risk. One of the most basic means of encouraging visitor interaction is a discussion board or "chat room." Such environments can pose legal problems though, because they typically are unchecked and allow visitors to post information at will, without any apparent restriction. That practice can leave you liable, either in a civil matter—where, say, a third party's rights have been infringed—or, in extreme situations, in a criminal case. To avert this threat, you need to take steps to control material that appears on your Web site.

Some of the most obvious problems here include:

- Defamatory statements
- Infringement of copyright material
- Obscene, blasphemous, threatening, racially discriminatory, and other legally objectionable material

To avoid liability for such material, you need to establish one or more of the following safeguards:

- Proactive moderation of material before it appears on the Web site
- A documented "notice and take down" procedure, under which infringing content is removed from the Web site as soon as it has been notified
- Regular review of material that has been posted and removal of anything that could be problematic

These actions all need to be explained in your Web site's terms and conditions, so visitors (and potential third-party complainants) are aware of the steps taken to prevent infringement. Many prudent owners also require visitors to register with the Web site before they can post messages. This allows an owner to contact the visitor should a problematic posting be made; should certain circumstances arise, it also enables a Web site to provide a visitor's personal and contact information to a wronged third party or law enforcement authority.

## Full E-commerce Web Sites

It goes without saying that a wide variety of goods and services are capable of being sold on a Web site. The seller can be either the Web site's owner or a third party with access to the Web site, like an online auction service. It is impossible to try to cover here all the situations that various kinds of products can raise. Many are restricted by specific regulations imposed by governments for social, ethical, and fiscal reasons. Examples include:

- Sales of alcohol
- Certain sales of medicines, particularly prescription-only medicines
- Financial services, betting, gaming, and lotteries
- Auctions, particularly in various European countries

Depending on the jurisdiction and type of product being sold, a Web site may need to adhere to regulations such as:

- Providing clear information to consumers before concluding a contract, including the identity of the supplier and the primary characteristics of what's being sold
- Explaining payment and delivery arrangements, and principal terms and conditions of the agreement between seller and purchaser
- A minimum period of time that allows a consumer to cancel for any reason and reject whatever has been purchased without penalty or loss

Whatever you sell from your e-commerce Web site, it is important that you form a legally binding contract with purchasers. For example, you might ensure that such a contract is established by requiring them to scroll through your terms and conditions and click on an "I accept" button.

## What to Avoid

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### You Do Nothing Because It's "Just Too Complicated"

Unquestionably, a dizzying array of legal issues exist to that can make selling on the Web a complex endeavor. However, that's no excuse for doing nothing! There is a basic minimum of laws to understand and obey, just as there in any business. The key point to remember: *Be aware of any*

*legal issues that, if not addressed properly, can affect your business—and possibly ruin it.* If in doubt, consult an attorney who is familiar with Web site law. It simply makes good business sense.

## **You Presume That the Law Doesn't Apply Online**

This is a very false assumption! Yes, it is often more difficult to successfully prosecute an organization that is selling on the Web. But that doesn't mean governments, corporations and private attorneys are ignoring those whom they feel are flouting the law just because they happen to be on the Web. They're not.

## **You Fail to Respond To Copyright and Libel Charges Quickly**

If a third party accuses you of libel or copyright infringement, it is imperative that you respond to the allegation immediately. In many courts, the longer the libelous material remains available on the Web site, the greater the penalties.

## **Where to Learn More**

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### **Book:**

Darrell, Keith B. *Issues in Internet Law*. Amber Book Company, 2005.

### **Web Sites:**

Bitlaw: A Resource on Technology Law: [www.bitlaw.com/internet/index.html](http://www.bitlaw.com/internet/index.html)

Global Legal Information Network: [www.glin.gov](http://www.glin.gov)

Internet Law Library: [www.internet-law-library.com](http://www.internet-law-library.com)