

Protecting Yourself, Your Website and Your Consumer

Which one of us has not gone to a website to purchase a book, clothing or present instead of going to the store? What about balancing our checkbooks or paying bills online? Or how about simply surfing the web on our lunch break? With the growth of the Internet and our ever-evolving technological fast paced world, the number of individuals who have not engaged in such activity is quickly diminishing. However, while the number of individuals who have not engaged in such activities is decreasing, the number of individuals who fear for the safety of their privacy while online is increasing. A recent study showed 92% of consumers are “concerned” and 67% are “very concerned” about the misuse of their personal information gathered online. In fact, 76% of consumers who are generally not concerned with their privacy while offline fear for their privacy while online.

Most importantly, these fears result in fewer online sales. In fact, the Federal Trade Commission (FTC) estimated that 2.8 billion dollars was lost in retail sales in previous years because people chose to abandon the completion of their sales while online. Specific concerns by individuals included credit card theft, fraud, identity theft, unwanted email solicitations and general harassment.

As a businessman and a website operator, the safety of your customers and their fears should be one of your primary concerns. Consumers want to be reassured that by disclosing their personal information on your website, they will not be taken advantage of. In order to alleviate these consumer fears, the FTC has urged website operators to define their privacy protections on the homepage of their website through a Privacy Policy.

A Privacy Policy is a statement of the website owner’s standards concerning the collection, use and/or sale of data from the visitors to its website. Privacy Policies work to assure the consumer of their legal right to privacy while on the Internet, by informing the consumer that their information is not being gathered for illegal purposes such as identity fraud but rather just for marketing and research of consumer trends and habits.

The FTC recommends that websites should be required to provide “clear and conspicuous” notice of their information gathering techniques. Adequate notice would include: (1) What information the website collects; (2) How they collect it; (3) How they use it; (4) What sort of access and choice they give surfers to amend or delete the information; (5) What sort of security they provide for the information; (6) Their practices relating to sharing the information with Third Parties and (7) Whether other entities are collecting information through their site.

However, simply providing a privacy policy on your website is not enough to conform to the FTC’s requirements. There are several ramifications of either not having a privacy policy or not abiding by it. First of all, if the privacy policy in place on the website is not abided by, you can be facing heavy fines of up to \$100,000 (which several companies are being forced to pay), face civil liability suits brought by the Attorney General’s Office of Illinois and other states on behalf of consumers, and law suits for invasion of privacy. Second, if your website either advertises to children or you have actual knowledge that children under 13 are using your website and their personal information is being collected, the Children’s Online Privacy Protection Act of 1998 comes into play. The Act has strict requirements for website operators who, as one of

the Act's requirements must obtain verifiable parental consent before using children's information for any purpose, marketing, statistics or otherwise. Third, the Federal Trade Commission Act Section 5 (FTC Act) prohibits unfair or deceptive acts or practices in the marketplace and, courts have interpreted that the FTC Act applies to website's privacy policies. The Act, which prohibits "unfair and deceptive trade practices", defines that same term as applying to website privacy policies, and provides broad federal recourse for consumers who feel that companies have violated their stated privacy policies and as such have engaged in "unfair and deceptive trade practices", punishable under the Act. Companies such as Microsoft, Guess and Eli Lilly have been prosecuted under the FTC Act for not abiding by their stated privacy policies.

Overall, a website's Privacy Policy is aimed at the protection of the consumer who puts his trust in your particular website's ability to keep his personal information confidential. However, as the website operator, you are not without protections through the law. The Terms and Conditions which should be found on your website, serve to protect you as the website operator from unauthorized use of your site.

These Terms and Conditions act like contracts between your website and the user who may be surfing, purchasing or researching your site. As a contract, the Terms and Conditions offer you a contractual remedy against the user for failing to comply with any provision in the agreement.

Operators of a website, must create Terms and Conditions in order to regulate the use of information and services found on their website. The Terms and Conditions allow your company and/or website to: (1) Dictate how the site may be used or may not be used (2) Dictate who may use the site (for example, only persons over 18 years of age); (3) Dictate procedures or policies for the site (for example, return policies, complaint policies, notification of copyright infringement policies); (4) Dictate your company's waiver of implied legal warranties; (5) Dictate the limit of your company's liability for the site and, (6) Dictate jurisdiction for any disputes about relating to the site.

Furthermore, by having Terms and Conditions in place you are greatly protecting yourself against liability and reducing your risk of litigation. User agreements serve to limit the liability of your company for damages of all kinds regarding the use of the site, such as: errors on the site, viruses on the site or products, failure of the site to operate, third party links, and any purchases or services. Terms and Conditions are an extremely beneficial provision to lower risk, especially regarding purchases and postings on the site, which by nature carry a high risk of disputes and litigation.

For assistance with creating a unique Privacy Policy and Terms and Conditions for your business, please call Serge Biberman at 312-410-7863.