

It's a Digital World

Legal considerations for e-commerce sites and companies doing business online.

BY JIM CHESTER



The universality and anonymity of the Internet require online companies to deal with a number of special issues beyond those in the offline world.

Because websites can be accessed from almost anywhere, compliance with complex state, federal, and foreign legal requirements and systems can present significant challenges. Also, online content may be accessed by children, who have a number of state and federal protections. In addition, companies engaging

in e-commerce must address legal matters relating to terms of sale, sales tax, payment systems, and similar commercial issues.

Internet business and e-commerce law often fits within the areas of intellectual property law (patent, trade secret, trademark, and copyright), business and commercial transactions law, and regulatory law. However, the unique and mercurial nature of business conducted on the Web involves a blending of

these traditional legal practice areas that makes e-commerce and Internet business law its own legal sub-specialty.

Some common Internet business matters include:

- *Domain name registration and hosting.* Companies and service providers abide by contracts to ensure the registration of domains and hosting of websites.
- *Cybersquatting and domain name*

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disputes. When a domain includes a registered or famous trademark not owned by the person or company registering the domain, cybersquatting occurs. In such situations, the trademark owner can legally require the registrant to turn over the domain.

- *Privacy and publicity issues.* Companies must navigate myriad state, federal, and sometimes foreign privacy laws with respect to personal and financial user information, as well as automated data collection technology, such as cookies or Web beacons. Websites should post an up-to-date privacy policy that reflects the company's collection practices and use of user data. Sites obtaining private data and financial information can be the target of hackers, cyberterrorists, identity thieves, and other criminals, so they must ensure that their sites and data are secure. In the event of a data breach, the company needs protocols for informing users so they can protect themselves from future crimes.
- *Terms of use—also called terms of service, terms and conditions, or just terms.* A contract between the company that operates the site and the site users, terms of use are important and should clearly define the rights and obligations of the company and the users.
- *Copyright issues.* Companies that allow user-generated content must avoid allowing users to post copyrighted material. Due to the sheer volume of content posted online, it is practically impossible for companies and websites to police all such content to prevent possible infringement. The Digital Mil-

lennium Copyright Act largely protects site owners from lawsuits related to copyright-infringement by their users, but the company must post its DMCA policy and follow DMCA protocols.

In addition to these common website issues, companies operating e-commerce sites must also address the following:

- *Terms of sale.* E-commerce sites need comprehensive contractual relationships regarding the terms of the sale to include payment terms, refunds, warranties and returns, and other aspects of the transaction. In the event of a dispute, there may be questions regarding when it would be proper to sue, whether the courts have authority over all the parties, and whether any judgment can be enforced.
- *Payment mechanics.* The site owner will enter into agreements with credit card merchant processors or third-party processors like PayPal. Moreover, if the site handles direct payments, the owner must ensure that all customer financial data is protected.
- *Sales tax.* In the past, e-commerce has been attractive to consumers because most transactions involving the delivery of goods or services across state lines have been exempt from state and local sales taxes. In recent years, however, states have gotten more aggressive in requiring e-commerce to include sales tax.
- *Export controls and other trade regulations.* Companies selling goods and services online must ensure that they do not run

afoul of U.S. trade laws, which prohibit transactions with certain persons or countries and can cover physical shipments as well as digital delivery of goods (e.g., software) via email or download.

In conclusion, the global accessibility and ever-present nature of the Internet require that businesses understand the novel and unique legal issues presented by a company's online presence. **TBJ**



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