

E-Commerce Checklist

The internet was initially developed as a non-commercial means of communicating and transferring files and data. It has since developed into a huge commercial marketplace, as more and more businesses and consumers have realised its uses for conducting business and buying and selling goods and services. It is now almost impossible to imagine carrying on business without it. The collision between technology and the law has transformed the internet into a potential legal minefield.

Hercules Constan suggest that you utilise the following checklist in taking precautions to reduce or minimise your liability in dealing on the internet:

1. Clearly show terms and conditions

Place a prominent link on each page of your web site to a description of your contractual terms and conditions, including details of warranties, refund and return policies, delivery procedures, prices and delivery times (consistent with international commercial guidelines).

Make copyright and disclaimer notices or terms and conditions compulsory viewing for users of your web site.

2. Copyright notice and ownership

Just because something is on the internet doesn't mean you can use it without paying for it. If your web site is created by a web developer, make sure you sign an agreement stating:

- Who owns copyright in the contents of the web site;
- What you can do with those things owned by the developer;
- Who is responsible for obtaining necessary permissions or licences for any third party content, product names or marks included in your web site or in meta tags to your web site.

Include a copyright notice on your web site with a link to it from each web page, detailing:

- Who owns copyright in material on the web site;
- What use of the copyrighted material is permitted by site visitors;
- Who visitors should contact to request permission for use of the material.

You can further protect your copyrighted material by using technology such as watermarking, encryption of information, bars or the use of a password to download certain material.

3. Trade mark use and ownership:

Do you own or are you licensed to use any trade marks shown or used by you? Any trade marks should be clearly

shown with the [™] or [®] symbols and their ownership properly acknowledged.

4. Liability for unauthorised content of third parties

If you include a billboard or newsgroup in your web site, be aware that you may be responsible for any defamatory, pornographic, or otherwise offensive content posted on it by your users.

To reduce the risk of liability for defamatory material posted on billboards or newsgroups in your web site, include a prominent disclaimer clearly stating that you are not responsible for the control and monitoring of content on the relevant web pages. However, be aware that this may not protect you from liability, and you may be required to carefully and regularly monitor those billboards and newsgroups for offensive material anyway.

Provide a mechanism for receiving complaints about the content of your site and remove any offensive material as soon as you are made aware of an objection to it. You have obligations under the common law, Competition and Consumer Act 2010, Broadcasting Services Act 1992 and the Copyright Act 1968.

5. Regularly up-date your web site and make sure information on it is accurate

Regularly check your web site and keep all product information and prices up-dated, to reduce the risk of legal disputes and keep your customers happy.

- Carefully check your prices. Clearly and accurately show all prices, stating all additional costs such as GST, customs duty and delivery costs, as well as the currency in which your prices are calculated.
- You can be liable for displaying outdated or inaccurate product information. Product descriptions should be clear and accurate and state the date and time of information up-dates.

6. Request permission to link

Get permission before you provide a link between your web site and someone else's web site. It might result in them agreeing to place a link to your site from their site as well.

Don't "deep link" (a link directly to an internal web page of another site without going through that site's home page) or "frame" (displaying information from another site within your own web site frame) any links on your web site.

Include a disclaimer stating that you are not responsible for any content on the linked sites or for any goods or services available from them.

Frequently check the links in your web site to make sure that the linked sites are still active and don't contain offensive material.

7. Provide confirmation of transactions

Provide your customers with a record of their completed transaction as soon as possible, including details of the goods or services they have agreed to purchase, the purchase price and the expected date for delivery.

8. Secure your web site and maintain privacy

Clearly disclose why any information is being collected by you from your customers, and how it will be used.

Clearly display your privacy policy on your web site, including a clear explanation of how financial information will be handled and a warning to your customers that sending confidential data to your site is at their own risk.

Be particularly careful with any confidential information such as credit card or personal details sent over the internet. If you want to use personal information from customers for research or marketing purposes or pass it on to others, first get permission from your customers. An "opt-in" provision, requiring customers to agree to your use of the information is more customer friendly than an "opt-out" provision permitting the use of the information unless the customer objects.

Don't buy any list of email or contact addresses for potential customers unless you know they have been provided voluntarily and that the owners have consented in writing to your use of their information.

9. Put your contact details on your web site

Prominently display your email address as well as your physical business address, telephone numbers and ABN on your web site – customers like to know where they can turn to if they have any problems dealing with you online.

10. Competition and consumer law

You are required to comply with the provisions of the Competition and Consumer Act 2010 (Commonwealth) and cannot contract out of many of the obligations under the Australian Consumer Law. You should ensure that any material on your website or in your software or trading terms and conditions is not misleading or deceptive, that you are not engaging in unconscionable conduct, and that any warranties and limitations on liability comply with the requirements in the Act.

11. Are you intending to deal with customers outside Australia?

Your web site can be seen not just in Australia, but also worldwide. If you want to deal only within a limited region, include a notice clearly stating that on your web site.

If you intend to conduct business with people outside Australia, be aware that the contents of your web site must comply with the laws of all countries with which you conduct business.

Note: This is intended only as a brief introduction to some of the legal aspects of names and trade marks and is not intended to be legal advice. You should not rely on this summary as a substitute for appropriate legal advice suited to your particular needs. You should seek and retain the advice of one of our solicitors if you require a comprehensive and up to date analysis of the law relating to your particular circumstances.

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12. Obtain legal advice

Before you launch your web site or any major updates to it get legal advice from a lawyer who can advise you in detail on these matters and on any other issues particularly relevant to your business online.

The law relating to technology is changing at a rapid rate. Hercules Constan can help you to maximise the benefit you can get from your web site, software, trade mark or domain name assets. We aim to help you take advantage of opportunities that you might not otherwise have been able to, and add value to your online business. Hercules Constan can help you to maximise the benefit you can get from your online business. If you need assistance or advice on any of these matters, please do not hesitate to contact our office.

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