



Basic Law for Web Designers: No. 2: Website Terms and Conditions

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27 Aug 2011

In "Basic Law for Web Designers No. 1"¹, I discussed web design contracts. I now wish to discuss the terms and conditions that should appear on a website.

Basic Requirements

Every website should have at least two sets of terms and conditions:

- **Website access terms:** provisions regulating access to the site covering such matters as disclaimers, downloads, linking and so forth; and
- **A Privacy Statement:** an indication of the data to be collected, how they are to be used, the name and address of the data controller and similar information.

If goods or services are advertised or supplied over the internet, the site should contain the terms and conditions upon which the goods or services are offered. Those terms and conditions and indeed the website itself should comply with The Consumer Protection (Distance Selling) Regulations 2000², The Electronic Commerce (EC Directive) Regulations 2002³ and The Provision of Services Regulations 2009⁴.

Website Access Terms

¹ <http://www.jdsupra.com/post/documentViewer.aspx?fid=2405f8e5-613d-41d0-a026-91e8b62b5636>

² SI 2000 No. 2334,
<http://www.legislation.gov.uk/ukxi/2000/2334/contents/made>

³ SI 2002 No. 2013,
<http://www.legislation.gov.uk/ukxi/2002/2013/contents/made>

⁴ SI 2009 No. 2999,
<http://www.legislation.gov.uk/ukxi/2009/2999/contents/made>

In order to view a website it is necessary to reproduce it. As the Court of Appeal confirmed in *The Newspaper Licensing Agency Ltd and Others v Meltwater Holding BV & Others*⁵ - albeit in somewhat different circumstances - digital content is protected by copyright and a licence from the copyright owner is required for its reproduction. Such a licence can be subject to conditions on linking, downloading and so on. I call those conditions "website access terms".

I usually commence website access terms with the following words:

"1. Licence

(1) Access to this website requires the reproduction of copyright material which can be done lawfully only with the licence of ABC Ltd. ("ABC").

(2) ABC grants such licence only on the following terms.

(3) If you do not accept these terms you may not visit this site and must leave immediately."

I usually follow that provision with an acknowledgement that any trade mark, copyright or other intellectual property belongs to ABC. I then set out the conditions for downloading and linking, any disclaimers that may be necessary, a clause severing any provision that may be void or unenforceable, reservation of the right to vary the terms without notice, a no waiver provision, such other terms as the business may require and a choice of law and jurisdiction clause.

Privacy Statement

⁵ [2011] EWCA Civ 890 (27 July 2011)
<http://www.bailii.org/ew/cases/EWCA/Civ/2011/890.html>



Although there is no specific requirement in the Data Protection Act 1998⁶ or other legislation to adopt a privacy policy it assists compliance and reduces the risk of legal challenge either by the Information Commissioner or a data subject. It is also one of the requirements for self-certification under the US Commerce Department's "Safe Harbor" agreement with the EU⁷. A privacy statement is a summary of such a policy.

The OECD⁸ website provides a useful tool for generating a privacy statement known as "The OECD Privacy Statement Generator"⁹. The OECD makes clear that the generator is "first and foremost an educational tool" that "provides guidance on conducting an internal review of existing personal data practices and on developing a privacy policy statement." It does not guarantee compliance with the Data Protection Act 1998, the OECD Guidelines¹⁰ or any other code. It asks a series of questions the responses to which help to build the statement.

Typical provisions include a statement of purpose, a description of the data to be collected and the means of collection, a statement as to whether cookies are collected, the postal and email addresses of the person responsible for the website and the address to which data subject enquires should be addressed.

Terms and Conditions of Business

So far as possible these should be the same as the terms that appear in the website owner's business and promotional stationery but the regulations mentioned overleaf make a number of additional requirements. In "Basic Law for Web Designers, No 1"¹¹, I warned of the dangers of simply copying somebody

⁶ <http://www.legislation.gov.uk/ukpga/1998/29/contents>

⁷ See "FAQ Self-Certification" on the US Commerce Department's "export.gov" website at http://export.gov/safeharbor/eu/eg_main_018388.asp

⁸ Organization for Economic Co-operation and Development

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http://www.oecd.org/document/39/0,3746,en_2649_34255_28863271_1_1_1_1,00.html

¹⁰ OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data
http://www.oecd.org/document/18/0,3746,en_2649_34255_1815186_1_1_1_1,00.html

¹¹

<http://www.jdsupra.com/post/documentViewer.aspx?fid=2405f8e5-613d-41d0-a026-91e8b62b5636>

else's contractual terms. That warning applies with added force to anything published on the internet as software has been developed to detect pirated copy. For their own protection, web developers should satisfy themselves that their customers' terms and conditions are properly licensed and, if necessary, seek indemnities from their customers against claims by third parties.

The Consumer Protection (Distance Selling) Regulations 2000 apply to business to consumer (as opposed to business to business) transactions and cover mail order and telephone sales as well as those made over the internet. The Regulations require suppliers to provide consumers with details of their transactions including cancellation rights where they apply.

The Electronic Commerce (EC Directive) Regulations 2002 specify the information that must be displayed on a website about the supplier and the contractual process. For instance, the supplier's name, contact details, VAT registration number and trade or professional association must be displayed as well as the steps for completing the transaction.

Much the same information is required by The Provision of Services Regulations 2009 as well as particulars of the supplier's regulator and professional indemnity insurance. Web designers should pay particular attention to those regulations when developing sites for professional services providers such as accountancy and law firms and chambers.

Further Information

A good starting point would be my articles on e-commerce¹², data protection¹³ and web design terms and conditions¹⁴ as they link to publications on the Business Link and Office of Fair Trading Websites which in turn refer to other resources. I also publish an occasional newsletter for web developers¹⁵ to which you can subscribe by calling or emailing me. □

¹² <http://nijptech.wordpress.com/information-technology/electronic-commerce/>

¹³ <http://nijptech.wordpress.com/information-technology/data-protection/>

¹⁴ <http://nijplaw.wordpress.com/2010/11/07/website-terms-and-conditions-2/>

¹⁵ <http://hosted-p0.vresp.com/307065/b08f1a47f0/ARCHIVE>