

LEGAL ISSUES

KIRAN SANDFORD OF MISHCON DE REYA CONSIDERS THE RANGE OF LEGISLATION APPLICABLE TO ONLINE COMMERCE, BOTH IN THE UK AND WHEN SELLING ABROAD

Online businesses operate in a highly regulated environment. Not only do they have to comply with all the legal requirements that apply to traditional businesses, they also have to deal with a range of legal issues unique to the online environment.

Businesses that get it wrong may face a range of problems, from their customer contracts being unenforceable to expensive retrofits of their Web sites. In extreme circumstances their site may even be shut down, so it's worth looking at the legal issues early on.

DISTANCE SELLING REGULATIONS

Many online businesses know that there are special rules governing distance selling but some only have a hazy idea of what's involved. The Distance Selling Regulations apply to all online businesses dealing with consumers. They require them to give customers a seven-day cooling off period, to provide them with certain information, and to comply with their obligations to customers within specific timeframes.

Online businesses will normally have to provide the following information on their site:

- Company (and trading) name and address;
- Full description of the goods or services they're providing, with tax-inclusive prices, delivery charges and methods of payment;
- Delivery arrangements;
- The customer's right to cancel during the cooling-off period;
- How long a price or offer remains valid;
- The cost of any communication beyond basic rate phone charges, such as premium rate calls;
- Whether the business has the right to supply substitute goods if those ordered aren't available. It must also tell the consumer if it will pay for the return of unwanted substitute goods;
- The minimum time for which a customer is committed to taking any ongoing goods or services – for example, the minimum time for which they have to pay a monthly subscription for the delivery of DVDs.

Businesses also have to provide customers with the following information by email before the goods are delivered or, at the latest, in good time during the provision of any ongoing services:

- Confirmation of the information in the first four points above;
- Details of how to cancel and any related conditions, such as who's responsible for the costs of returning any goods;
- An address for complaints;

- Details of after-sales services and guarantees;
- Any conditions on exercising the right to cancel where the contract is for more than a year or an unspecified period.

The customer's cooling-off period is often calculated from the date this information is provided, rather than delivery. Suppliers also have to fulfil their obligations to customers within 30 days, unless the customer has agreed otherwise.

E-COMMERCE REGULATIONS

Online businesses face further regulation in the shape of the E-Commerce Regulations, which, in many cases, apply to online businesses dealing with other businesses as well as those dealing only with consumers. Some of the information that needs to be provided overlaps with that in the Distance Selling Regulations, but key additional details businesses have to provide are:

- Details of any trade register in which the business appears;
- VAT number.

Businesses should make this information available in a directly and permanently accessible form.

So that both the customer and the supplier know when they've entered into a binding commitment, suppliers must also stipulate the following on their Web sites:

- The technical steps needed for the contract to become binding, so that customers can understand at what point they'll commit themselves;
- Whether or not the contract will be filed by the business and whether it will be accessible;
- A means for customers to change their orders easily before buying;
- The languages in which the contract can be entered into.

Businesses must then acknowledge receipt of orders as soon as possible, ensuring that they frame their response as an acknowledgement rather than an acceptance of the order, which may not happen until a later time.

TERMS AND CONDITIONS

It isn't a statutory requirement to have terms and conditions but most businesses will consider it prudent. Site location is important here, as putting the terms and conditions in the wrong place may mean they're not effective. Make sure they're brought to the attention of users and that users click to accept them before buying.

Under the E-Commerce Regulations, terms and conditions must be in a form that allows the customer to store and reproduce them.

DATA PROTECTION ACT

Businesses must process any personal data they collect fairly, in line with the Data Protection Act 1998. Basic details, such as what the data may be used for and who will have access to it, should be made clear upfront. The aim is to obtain the customer's buy-in to all intended uses of his or her data in user-friendly language early on.

More detailed provisions may be contained in a clear and easily accessible privacy policy. Ideally users should click to accept this policy.

Businesses will often have to obtain consent from users for direct marketing by email. For other forms of marketing, giving the customer a right to refuse (opt out) will often be sufficient.

COUNTRY-SPECIFIC LAW

So far we've focused on English law issues that apply to UK-operated sites. Online businesses also face the prospect of having to comply with laws in other countries, because their sites are accessible worldwide.

The Distance Selling regime applies throughout the EU. However, many EU countries have taken a different approach to the UK, so it's not safe to assume that the details will be the same. In particular, many EU countries require the cooling-off period to be longer than seven days.

In theory an EU online business only has to comply with the legal regime in its home country. Unfortunately there are a number of exceptions to this general rule. In particular, Web site operators will still have to comply with consumer regulations in each EU country which they target.

Businesses face a more complex position from countries outside the EU. Clearly it's not possible to comply with laws all over the world, but it may be best practice to comply with laws in the countries the business targets. One way to overcome the difficulties of dealing with other countries may be to have country-specific sections on the site.

CONCLUSION

Many of the legal requirements represent best practice anyway, so they shouldn't present a problem for most online businesses. However, businesses may save time and money (as well as providing a more user-friendly experience for their customers) if they factor the legal requirements into the Web site design and architecture at an early stage in the design process.

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