E-commerce — advice for business

More and more Australian businesses are developing an online presence, either to complement their 'bricks and mortar' operation or as their main shopfront. Messages from the media and industry are urging businesses to be up and running in cyberspace to stay competitive.

But in the rush to get online, it's important that businesses don't overlook their legal obligations.

The same consumer protection laws which apply off line apply online. In other words, your website needs to comply with the Trade Practices Act in the same way as would a classified ad put in the newspaper or a representation made to a customer.

The following information is a guide which deals very broadly with some of the issues that businesses should be aware of when trading online. It is not a substitute for legal advice.

The law

If you're conducting online transactions with customers or if you're just putting information about your business or your products up on the Internet, you need to make sure the material complies with the Trade Practices Act.

The Act prohibits conduct in Australia which is, or is likely to be, misleading or deceptive. It specifically prohibits making false claims about products, as well as pyramid and referral selling, offering prizes or free items without the intention of providing them as advertised, and trying to place consumers in a position where they will pay for unsolicited goods or services.

There are several rules that apply to any business engaged in advertising and selling. The Commission's publication **Advertising and Selling** explains these general principles which govern fair and ethical trading.

But the online medium is different from other forms of publication and businesses need to come to grips with these differences.

If you are hiring a consultant to design a website for your business, ask them to take the following information into account.

Trading with overseas consumers

If you are trading with consumers in other countries, be aware that you may be subject to their consumer protection laws. Seek legal advice before conducting business with people overseas. If you only want to trade with Australian consumers, put a statement on your website to this effect.

Structuring your website

Internal hyperlinks

Internal hyperlinks — links that take consumers from one page to another within a website — are the key to structuring information in a clear and accessible way. They make it easy for consumers to choose what they want to read, in what order, and to skip the rest.

Potential problems

The downside of installing lots of hyperlinks is that consumers may unwittingly miss information on the site which qualifies or places conditions on product information or sales.

If consumers don't read that vital information because they haven't accessed the right hyperlink they may have false impressions about your offers or products.

For example, let's look at a hypothetical website which offers consumers a 'free website design' on one of its web pages. This page is accessed via a hyperlink from the home page stating 'free website'.

Directly below the offer is a link called 'get your free site now'. If consumers follow this link they are taken to an online form where they can submit their personal information including their credit card details. End of transaction.

However, if consumers explore the website further, they find that the free website deal requires them to host the site with the business for two years which costs $1000 per year and has to be paid up front.

This information qualifies the offer made on the 'free website' page, but only consumers who read the whole website will be getting the full story.

A consumer could purchase these services without having ever appreciated the true nature of the offer and the extent of the charges which will apply. In spite of having provided full information, the site is likely to mislead consumers.

Protect yourself

- Don't assume that consumers will access all hyperlinks.

- Make sure each web page stands alone so that all of the information about any offer or product is clearly visible on the same page.

Disclaimers

Many websites use disclaimers in an attempt to limit their liability or qualify other information on their site. Disclaimers are often accessed via a link at the bottom of a page in relatively small print.

Potential problems

Disclaimers and the use of techniques such as *conditions apply are inherently problematic. The main selling point used for a product may make such a strong impression that no number of asterisks and associated fine print can dispel it. If a disclaimer is not appropriately emphasised or attempts to contradict the marketing pitch, the qualifications it contains are unlikely to have any effect.

On the Internet, disclaimers and qualifications become even more dangerous for the advertiser. If the disclaimer has to be accessed through a link or is in small print at the bottom of a page, you can't be sure that consumers will hit the link or scroll down to see it.

The problem is essentially the same as discussed in the section about structuring your website.

Protect yourself

- Make disclaimers compulsory viewing

If the disclaimer is a compulsory page the consumer must view it at some stage while in the site. Alternatively, have the disclaimer appear in a dialogue box which opens on a user's screen when they access your home page.

External links

External links are the building blocks of the Internet. They enable consumers to visit other sites directly from your own. External links can make your site useful and informative which will encourage consumers to come back.

Potential problems

Problems can arise if:

- consumers are likely to be confused about whether they have actually left your website; or

- consumers are likely to be confused about the association between your business and the website you have linked to.

Deep linking is particularly problematic. It involves linking to a page 'deep' within another website with the effect of bypassing that site's home page and its advertising.

For example, an Internet-based news service in the US, **Shetland News**, reproduced headlines from a website operated by **Shetland Times**, with hyperlinks from these headlines to the full stories located on the **Shetland Times** website. In this case, an Internet user could mistakenly believe that the news stories were being provided by the **Shetland News** site when the service was actually being provided by another party.

This matter was settled — the deep linking was allowed to continue provided that the links acknowledged that the articles were 'Shetland Times stories' and the **Shetland Times** logo was displayed on the site.

Linking to another website should not falsely imply an association with the owner of that website. Anything that creates an impression that the third party has approved or endorsed your company or its products when this is not the case is in danger of misleading and deceptive conduct.

Protect yourself

- Get permission before you link to another person's website, especially if you are linking to a page 'deep' within the website.

- Put appropriate information near the link so that it is clear to consumers that if they access the link, they will be leaving your site.

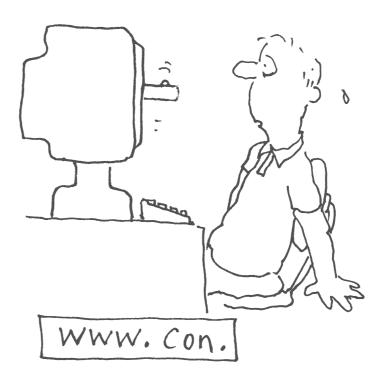- Get independent legal advice.

Framing

Framing is a technique which means if you're browsing the web, you can open a web page from another site so that the content of that page appears inside the frame of the page you set off from. The URL displayed remains that of the original page.

Frames can be used to display different pages of a site. Often the frame contains basic site navigation information and a menu.

Framing can also be used when linking to other websites. When users access a link from your website, your site's frame 'wraps' pages from the target site. This can have the effect of hiding the target site's own advertising or identifying features.

Potential problems

Framing combined with external links, particularly deep links, can potentially be misleading. Consumers may think that they have accessed a page which is part of your website when in fact they have followed a link to a completely different party's web page which is being displayed within your site's frame. It is especially misleading if your site's URL continues to appear in the address bar and can imply an association between your website and the site to which people are taken which, in reality, may not exist.

Protect yourself

- Don't use frames to wrap content that isn't your own unless you have received permission from the target site to do so.

- Put appropriate information near the link so that it is clear to consumers that if they access the link, they will be leaving your site.

Meta tags

Meta tags are words within the source code of a web page which are usually invisible to Internet users when looking though their browsers. Meta tags contain information about the content of the web page. Many search engines use meta tags to find websites in response to queries by Internet users.

Potential problems

Some web developers recommend using a broad range of terms in meta tags to increase the chances of a website being listed in search engine results. Businesses should be careful about using terms that do not relate in any way to the content of the website. If the content does not correspond to the terms used in the meta tags, it may be misleading or deceptive.

You should also be careful about using other people's individual, product or company names in the meta tags. Often, these words can be subject to trade marks. There have been a number of lawsuits taken against people in the USA because they have used someone else's registered trademark in their meta tags. This could also be misleading if it wrongly implies that there is a formal association between you and the person, company or product name you have used in the meta tag.

Protect yourself

- Use only relevant words in your meta tags.

- Get permission from relevant sources (e.g. trademark holder)

before you use the name of a product, person or company in your meta tags.

Selling online

There are many factors to consider if you are entering into transactions with consumers online. The Commonwealth Treasury has released a draft of a Best Practice Model for Business titled *Building Consumer Confidence in Electronic Commerce*. Information about this model can be found in the publications section (electronic commerce and consumer protection) at http://www.treasury.gov.au.

A final version should be released soon.

Businesses can also assess their websites against the ACCC online shopping checklist (see centre-spread). It helps consumers decide whether to trade with a business online.

Buying Internet services for your business website

Free web pages or other Internet related services

Offers of free web pages can have several meanings — check that you're being told the whole deal. For example, the web design may be free, but the company offering the service might expect that you host your web pages with them once they have designed them. Remember, web design doesn't put your site up on the Net — for that you need hosting and domain name services. Most businesses have a unique domain name which clearly identifies their business.

Protect yourself

♦ Get full details of all fees and charges that may be associated with the 'free' service or product.

♦ Find out before you commit if you are obliged to purchase other services from the company, such as hosting or domain name services and, if so, how much they charge.

♦ Ask how much it will cost to modify the site in the future. Good websites grow and change regularly and you don't want any nasty surprises when you go back and ask for modifications.

♦ Ask about whether you will have your own domain name for your website.

Registering with search engines

If someone is offering to register your website with search engines, ask which ones. Only a few search engines are used by most web users and many won't accept automated submissions. It only takes a few minutes to fill in the online forms most search engines use to accept registrations — you may be better off doing it yourself.

Protect yourself

♦ Clarify which search engines you will be registered with.

♦ Get full details of who uses the search engine, fees to be charged and any other services.

Listings in Internet directories

If you are invoiced for registration with Internet directories, check that you requested to be registered. It contravenes the Trade Practices Act to demand payment for unsolicited goods, such as entering your business in a directory without your authorisation.

Protect yourself

♦ Check that the directory exists.

♦ Check that the directory is well known, well indexed and likely to be used by your potential customers.

♦ Don't pay if you didn't request that your business be entered.

Emailing potential clients

Be sceptical of anyone, or any program, offering to contact hundreds of potential clients on your behalf using email. This usually involves sending unsolicited email or spam to large numbers of Internet users.

Most Internet service providers (ISP) stop services to clients who use spam because it wastes their bandwidth resources and slows down the Internet generally. It's against 'nettiquette', the unspoken

rules of the Internet. Consumers don't like it because it costs them to download.

Protect yourself

♦ Don't send email unless you have a pre-existing relationship with the recipient.

♦ Make it easy for recipients of your emails to opt out of continuing to receive your messages and always stop sending messages once you have been asked.

♦ Don't buy email addresses unless you know they were provided voluntarily and that the owners were aware they would receive emails from you.

♦ Check your ISP's policy on sending email.

Hosting, web design and other services

You may want one company to design, maintain and/or host your website or you may wish to do some of it yourself.

Make sure you clearly outline what services you want from the web services business and get an agreement in writing. You may then have recourse to the statutory warranties under the Trade Practices Act if the service you receive is sub-standard or doesn't fulfil the purposes you outlined.

Services must be carried out with due skill and care and they must achieve the result the customer wants, as made clear to the service provider.

Protect yourself

Before engaging people to provide web services, ask the following questions:

♦ Are you locked in to using the company's services for a fixed term?

♦ What are the full fees that you will have to pay? How are these fees broken up and are they likely to change over the course of your contract?

♦ Can the company design/host sites which support online transactions?

♦ Can the company provide you with full and accurate records of online transactions to meet your tax and other obligations?

♦ Does the company have secure servers to support online transactions?

♦ Will the company respond to your needs quickly (e.g. modifying your website or correcting problems such as servers going down?)

♦ Does the company allow you to occupy sufficient space for your website on their server?

♦ Can the company provide you with useful statistics about where traffic to your website has come from?

♦ Does the company provide 24-hour technical support? This is important for overseas transactions conducted in different time zones.