

COMPANY WEBSITES – NO SHORTAGE OF LEGAL ISSUES

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These days, it is rare to find a business that does not have a website. Unfortunately, many businesses don't pay proper attention to the legal issues that relate to their website. This article will identify several key issues, and provide advice regarding how to deal with them.

Ownership of a Website

Most businesses don't have the in-house technical expertise that is required to develop a website. As a result, most businesses hire a third party to design and develop a website for them.

Under *The Copyright Act (Canada)*, copyright in a website happens automatically as that website is being created. The owner of that copyright is the developer of the website, not the business that is paying the fee for its development. In order for this business to own the copyright in its own website, the Website Development Agreement must include an assignment of copyright in the website from the developer to that business. In the absence of such an assignment, the business only has an implied license to use the website.

In many cases, this implied license may be 'good enough', so long as the relationship between the business and the developer remains positive. However, if that relationship deteriorates with the result that the business wishes to transfer its website to another service provider for redevelopment and/or hosting, the original developer of the website may refuse to accommodate this request. This is obviously not a good situation for the business to be in, especially if the website is essential or even very important to its business operations.

Hosting of a Website

Many website developers offer hosting services. There are also companies whose core competency is the provision of hosting services. As a result, businesses typically have many options in terms of where their website will be hosted.

To protect their interests, businesses should never enter into a website hosting arrangement in the absence of a formal Hosting Agreement that, at a minimum:

- (a) contains service level provisions that are acceptable to the business; and
- (b) provides the business with appropriate remedies in the event that the service level guarantees are not satisfied. In this regard, most Hosting Agreements will provide the customer with a credit to be applied against future payments in the event that the service level guarantee is not satisfied during a prescribed period of time (typically a month). Unfortunately, these credits are effectively useless if the actual service levels fall far short of the guaranteed service levels with the result that the business is not getting the value out of its website that it contemplated. To guard against this problem, the Hosting Agreement needs to grant the business the right to terminate the Hosting Agreement in the event that the actual service levels fall below a prescribed threshold over some predetermined period of time.

Terms and Condition of Use

Every website should have Terms and Conditions of Use which, at a minimum:

- (a) include a copyright notice;
- (b) identify and protect the business' trade-marks (or those of a third party) that are referenced on the website;
- (c) include a Governing Law provision (typically, at least for most of our clients, the laws in force in Manitoba); and
- (d) include appropriate disclaimers – for example, use of the website is at your own risk, etc.

Businesses that use websites to conduct business transactions need to ensure that their Terms and Conditions of Use are very carefully drafted so as to be appropriate for those transactions.

Online Privacy Policy

Websites of Manitoba businesses are currently governed by the federal government's *Personal Information Protection and Electronic Documents Act* ("PIPEDA"). PIPEDA clearly requires any business that collects, uses and/or discloses personal information to have a Privacy Policy that is part of that business' overall Privacy Project.

As a result, if a website collects personal information from visitors, then it needs an online Privacy Policy, especially if the business wishes to subsequently use and/or disclose that personal information.

Legal Review Before the Website Goes Live

Finally, businesses need to be very careful about the content of their website. While businesses want to promote themselves to prospective customers, prospective suppliers, prospective employees, etc., don't be surprised if your competitors are also visiting your website. As a result, don't put any information on your website that you would not want your competitors to know about. This is especially important in terms of how you describe new products and/or services that are currently being developed. In this regard, a legal review of a website before it goes live can in many cases prove invaluable.

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