

Doing Business Online

Legal & Privacy Considerations

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GOODWIN



Neighborhood Business Initiative

What is doing business online?

- Buying and selling goods via a website
- Providing an online platform for creating, sharing and viewing media
- Collecting information from customers and consumers
- Providing an “app” for mobile use
- Online advertising
- ... and much more

Agenda

- What are the basics I should know about my online site's content?
 - Terms of Service
- What are the basic requirements I should know in collecting and sharing information and data and marketing online?
 - Privacy Policy
 - Data Protection
 - Marketing – emails and calls

Terms of Service

Terms of Service

- Contract that governs a customer's use of your website, app, and related services that your business provides
- Defines rights and obligations and limits liabilities



Terms of Service

- Effective date
- Permitted and prohibited uses of website/app/services
- Registered users must provide accurate information and maintain password privacy.
- Operator's ability to change/modify/end services
- IP rights
 - User-generated content: customer owns, but grants operator broad license
 - Copyright agent / Digital Millennium Copyright Act safe harbor
 - Trademark rights (of both operator and third-parties)

Terms of Service – Cont'd

- Standard contractual provisions: e.g., limitation of liability, disclaimer of warranties, indemnification of operator, arbitration and class action waivers
 - State consumer protection laws may limit effectiveness of these provisions (CA/NJ)
- Changes: customers must be notified and agree again.
- Miscellaneous
 - Social networking “connect” functionality?
 - Third-party payment processors like PayPal or Stripe?

Privacy and Data Protection

Collecting Personal Information

- Businesses that collect personally identifiable information from customers (including name, email address, shipping address, phone number, email address, payment information) and employees must take steps to properly handle and secure it.

Collecting Personal Information

- US Privacy Law is sector-specific
 - Federal Trade Commission (FTC) regulates and oversees businesses
 - States have individual privacy laws and data breach notification laws
 - Children's Online Privacy Protection Act
- If customers live outside of the US, certain regional laws may apply
 - EU Data Protection Directive
 - Canadian Anti-Spam Law (CASL)/ Personal Information Protection and Electronic Documents Act (PIPEDA)

Know Your data

- Identify all data sources
 - Personally Identifiable Data
 - Automatically Collected Data
 - Data from Third Party Sources
 - Data about Employees
- What Are You Sharing?
 - Vendors and Service Providers
 - Third Party affiliates
 - Advertisers
 - Aggregate Data
 - Social Media
- How Are You Using Data?
 - How long are they storing
 - Where are they transferring data
 - What are they creating with the data



Crafting Effective Online Privacy Policy

- Who needs an Online Privacy Policy?
 - An operator of a commercial website or online service that collects personally identifiable information through the Internet about individual consumers residing in California who use or visit its commercial website shall conspicuously post its privacy policy on its website. (Cal Bus. Prof Code 22575-22579)
- What does an effective Privacy Policy do?
 - Provides consumers and users notice of how data will be collected and used
 - Provides information about opt-outs
 - Clearly and in plain language describes Company's data collection practices
 - Provides contact information for company representatives

Children's Privacy

- If your website targets children under the age of 13, you will need to comply with the Children's Online Privacy Protection Act (COPPA).
- The FTC considers several factors when determining whether or not a website targets children including: the site's visual content, the use of animated characters, or whether advertising promoting or appearing on the website is directed at children.



Managing Third Party Service Providers

- When providing vendors or service providers access to personal information:
 - Ensure that they are only provided information necessary to provide the services
 - Seek assurances that personally identifiable information will be protected
 - Disclose generally that Company may share personally identifiable information with third parties.
- Many businesses take advantage of third party services for certain business functions including:
 - Cloud storage
 - Payment processing
 - Payroll processing
 - Email marketing
 - Advertising
 - Shipping/Postage

Marketing

Marketing Emails and Calls

CAN-SPAM, TCPA, etc.



CAN-SPAM

- Covers all “commercial messages”
- Key requirements:
 - Accurately identify the sender.
 - Don’t use false or misleading “From,” “To,” or routing info.
 - Don’t use deceptive subject lines.
 - Identify the message as an advertisement.
 - Include your valid physical postal address.

CAN-SPAM

- Key requirements (cont'd):
 - Include functioning, clearly displayed opt-out.
 - 1 reply email or 1 web page visit
 - Make sure your spam filter doesn't block opt-out requests.
 - Honor opt-out within 10 business days.
 - Monitor what others are doing on your behalf.

TCPA

Telephone Consumer Protection Act

- Generally restricts solicitations by phone—land line or mobile—and limits automated calls / texts for marketing purposes
- Prior express written consent required for:
 - Autodialed and/or pre-recorded telemarketing calls
 - Marketing messages sent via text

TCPA

Telephone Consumer Protection Act (cont'd)

- May obtain consent electronically (e.g., email, website form, text message, etc.)
 - Requires affirmative act from consumer that demonstrates consumer understanding of implications of providing consent
 - Companies should retain evidence of consumers' consent.
- Marketers must provide automated, interactive “opt-out” mechanism that permits consumers to unsubscribe from marketing messages.

Thank you!