

## Extra Risks When Advertising Or Trading On The Internet

The application of laws largely not designed for the Internet is complex and beyond the scope of this handout. We have commented briefly on Internet-related matters in the various sections of this handout. However, the following points should prove useful in flagging up high risk areas not already covered - see particularly section 10 below on the data protection laws.

### General matters

We strongly urge to put your real world contacts clearly in your website - this is both a practical and legal matter as people get frustrated when they cannot find a way of contacting a company. It also helps lend a sense of legitimacy to the site. You should ideally include all the information you are supposed to include in your headed paper - see above under "Business Names" - although this is not obligatory. In any event, if the Consumer Protection (Distant Selling) Regulations 2000 apply (i.e. if you sell services or goods to consumers over the internet), you must supply certain basic information on your site (see our detailed briefing on the Regulations on our website).

If you actually sell and invoice online, make sure that you give your VAT number online and provide the facility for the customer to print off a VAT invoice. Also make sure that your own records are adequate to satisfy HM Customs and Excise (they will accept information in proper secure electronic form nowadays).

For various reasons you may be advised to keep regular copies of your website in order to be able to prove the content of the site at any time. The regularity of the backup copies will depend upon your circumstances and can be anything from every few minutes (for high volume transactions) monthly.

### Disclaimers

If you give advice online or allow other people to post information on your site or have materials which could become infected by a virus and/or infect other people's PCs or even if you link into other people's sites and cause damage to your visitor as a result, you may need a disclaimer on the site to attempt to reduce your liability. Please note that in many cases disclaimers are of limited affect at best. This is especially the case with regard to defamation (see below).

### Contents supplied by outsiders online

Where you allow other people to put information up on your site, whether it is an advertisement, a directory entry, discussions in chat rooms or comments or observations in news groups or, e.g. restaurant reviews, you are exposed to a high risk of a claim for defamation. The first rule is to obtain insurance to protect you but even then you need to go further and ensure that the rules that people sign up to before they are allowed to submit material to you. You may well be advised to review the entries before they can appear on site (where possible) or monitor content on a regular basis. Above all, have a prominent complaints procedure to enable people to inform you promptly if they are unhappy with any content so that you minimise any claim that may be made - i.e. this is a damage limitation exercise.

By vetting material, you are exposed to a higher risk of a direct claim for defamation (as an editor/publisher) but this may nevertheless be preferable to failing to take any measures because you then still may be liable for failing to take reasonable steps to prevent defamation. There are software packages which can monitor your site and considerably reduce the risk of a claim for defamation but the better they are the more costly they are so you will need to weight up the commercial situation. In any event, insurance is a must. There are now quite a few insurance policies available for such risks.

Bear in mind that there is a staffing implication - you need to make sure that there are adequate staff to respond to any complaints promptly. Ideally that would be 24 hours a day as the Internet is a 24-hour medium but at least it must be daily (in some cases this will not be enough).

## **Jurisdictional problems**

Jurisdiction issues relating to the Internet are probably the most complex areas of internet law and cannot be covered in any meaningful way in this handout. Simply be aware however that by advertising and trading on the net you face a serious risk of litigation in multiple jurisdictions. Most companies cannot afford to take advice in each one but if there is a small number of jurisdictions in which you will be trading or from which you expect the majority of your business, it is maybe advisable to seek advice in those main areas and take a view on the rest. Again, insurance is then vital to help reduce exposure to risk (try Alexander Forbes and CFC Underwriting).

As stated above, local consumer laws will override conflicting terms in the laws of your chosen jurisdiction (any clause saying otherwise is ineffective). Specifying which laws will govern the contract, may be effective in setting the applicable laws (so that you can control risk to some extent) but this can never be guaranteed. In any event, in consumer sales within the EU, local consumer laws will always apply and you can always sue locally. This means you could find yourself being hauled into court in Greece or any of the other EU countries.

An area particularly problematic in the context of jurisdiction and of territorial conflicts is protection of intellectual property rights such as trademarks and copyright (the internet is a global concept whereas intellectual property rights are territorial) - see above.

## **NEED TO KNOW MORE?**

For further information on trade mark protection, contact Maitland Kalton. Should you prefer to telephone, call us on +44 (0)207 278 1817.

Kaltons Solicitors, 9 White Lion Street, London N1 9PD, UK.  
Telephone +44 (0)207 278 1817; Fax: +44 (0)207 278 1835.