

From the Intellectual Property Group

1. Terms of use.

Just like in traditional brick-and-mortar stores, libraries, and amusement parks, you need to post notices and policies on your website that govern the use of materials, services, and goods from your site. A terms of use (also referred to as “terms and conditions” or “terms of service”) is a page on your website that outlines the rules a user agrees to abide by to use your website. These rules will vary depending on your business or the purpose of your site.

Common rules a website owner will put in a terms of use include:

- **Acceptable Content.** If you run any type of site where users can post comments, articles, questions, or any materials, you want to establish what content is and is not acceptable.
- **Acceptable Use.** If visitors can interact with each other on your website, then consider including a clause that tells the users what types of behavior will not be tolerated.
- **Payment Terms.** If you are selling products or services, you should specify your payment terms and what happens if a payment is not received.
- **Standard Clauses.** Include clauses such as limitation of liability, copyrights and trademarks, modification of the website, and governing law.

A terms of use can act as a measure of insurance for website owners because it demonstrates that a site user (who makes a claim against the website) acknowledged that he/she knew and understood the rules of that particular website. A terms of use is also important to site users because it gives them an idea of what is at stake for them in, for example, joining a site’s community or buying one of its products.

Does your website need terms of use? If you have anything more than a small, information-only site, then you probably do.

2. Privacy policy.

If your website collects personal data from your users, then you should post a privacy policy.

Some common items you may cover in your privacy policy include:

- If your site collects information from users;
- How your site collects information from users (placing an order, signing up for an account, etc.);
- What type of information the site collects;
- How the collected information will be used;
- If users can access the information you collect to update, correct or delete it.
- If you disclose the information to others and if so, to whom;
- If you use a shipping company to which you provide customer names and addresses, or if you share users’ information with other parties, such as your website host;
- If you set cookies, clear descriptions of how these cookies are deployed on your site, what kind of information is collected by these cookies, and how the information will be used;

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- If your website includes third party online advertising, a warning that these third parties may collect information about the user through cookies and that you do not have access to, or control over, the information these third parties may collect and that the information practices of these third parties is not covered under your privacy policy; and
- That you may change the policy at your discretion.

Don't hide your privacy policy. Make it easily accessible and use a font that is readable and be sure to provide your contact information for users who have privacy questions or concerns.

3. Disclaimers.

The primary reason for a website disclaimer is to limit, or attempt to limit, the liabilities that may arise from your website.

Typically, a website disclaimer will state:

- The owner of the website;
- The website to which the disclaimer applies (if the website owner owns multiple sites);
- What liability is accepted or not accepted by the website owner; and
- The website owner's policy regarding advertising, third party websites, and links assessable via his/her website.

Regardless of the type of website or the content that is on your site, it is important that you include a website disclaimer to ensure that liability of your website is limited wherever possible.

4. Collecting information from minors.

The Children's Online Privacy Protection Act (COPPA) requires that commercial websites obtain parental consent (under most circumstances) prior to the collection of any personally identifiable information (e.g., a child's name, mailing address, screen or user name) from children who they know to be under the age of 13. In addition, COPPA requests that websites that collect personal information from children under the age of 13 provide parents with:

- Notice. Parents must be provided notice regarding what information is collected, how the information will be used, and with whom the information may be shared.
- The ability to prevent further use of the information collected about the child and prevent any future collection of personal information from the child.
- The ability to access and review their child's personal information.

COPPA also limits the amount of personal information a website can collect from a child.

For more information about COPPA, visit www.coppa.org.

5. Using copyrighted work.

You cannot freely use someone else's work on your website simply because it has been posted on the Internet. Whether you find the material online or off, you most likely need permission to reproduce it. As a general rule, any original work—whether text, visual art, photographs, or music—is protected by copyright law which means you may not use such work without permission from the copyright owner. Giving credit or a "thank you" to the copyright owner does not allow you to get around this rule. It is wise to operate under the assumption that all material is protected by copyright law unless you have good reason to know that it is not.

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6. Using another's trademark.

Similarly, you need permission from trademark owners to display another's logo, slogan or symbol on your website. Limited exceptions may apply.

7. Protecting your own IP.

You need to protect your own intellectual property from potential infringers.

You can do this by:

- Identifying and registering your intellectual property with the appropriate governmental agency;
- Inserting a copyright/trademark symbol and notice on every page where the intellectual property is displayed;
- Digitally watermarking your material;
- Adding metadata to your material to make it easier to track down infringers;
- Including an intellectual property policy in your terms of use that spells out exactly what people can do and cannot do with your copyrights and trademarks;
- Providing your contact details in a highly visible spot on your website so people know how they can obtain permission to use your intellectual property; and
- Taking action against those that violate your intellectual property rights. Knowing that a company polices its rights is a big deterrent against infringement.

8. Protect your website content.

Your content is copyrighted when it is created and fixed in tangible form, e.g., posted on your website. While it is impossible to completely prevent theft of your content, there are steps you can take to help preempt potential infringers:

- Decide which rights you plan to reserve or share and visibly display the traditional © notice with either “some rights reserved” or “all rights reserved” at the footer of every page on your website;
- Link your website to a Copyright Policy that spells out your terms of use regarding your copyrights (and trademarks) and what others can or cannot do with your original content;
- Set a notifying service such as Google Alerts or Talkwalker Alerts to notify you when certain keywords or phrases from your website are being published elsewhere on the Internet;
- Use duplicate content detection and monitoring tools such as Plagium or Plagiarisma; and
- Register the content of your website with the U.S. Copyright Office. Doing so generally provides greater protections and advantages if an infringement occurs.

9. Links, frames, and inlining.

Linking, framing, and inlining are common methods of connecting to information at other websites, but all carry the potential risk of getting into trouble from the content owner:

Linking: Most often, a website will connect to another in the form of a hyperlink that when clicked upon, will take a site user to another webpage's homepage. Generally, you do not need permission for a regular word link to another website's homepage. If there is some concern over the link, most issues can be resolved by asking permission and/or having the linked site sign a linking agreement that gives permission for your link.

Deep linking (links that bypass a website's homepage) is typically not considered copyright infringement. Some well-known websites like Amazon welcome deep links. However, if a commercial website has no linking policy or says that deep links are not allowed, then you should ask permission.

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Framing: Framing is similar to linking in that you code a word or image so that it will connect to another webpage when the user clicks on it. What makes framing different is that instead of taking the user to the linked website, the information from that website is imported into the original page and displayed in a special “frame.” Technically, when you’re viewing framed information your computer is connected to the site doing the framing—not the site whose page appears in the frame. Framing can be considered copyright (or trademark) infringement, so when in doubt, seek permission.

Inlining: Inlining (sometimes referred to as “mirroring”) is the process of displaying a graphic file on one website that originates at another. In 2003, the 9th Circuit ruled that inlined links to thumbnail images was permissible as fair use. However, the law is not clear as to whether inlined links to full-sized images is permissible, thus seeking permission is recommended.

10. Website Audit.

It is strongly recommended that all website owners have an audit performed on their websites by an attorney in order to identify and deal with issues that might arise due to changes made on the site or changes in the law. Having a website audit can help prevent potential litigation and protect intellectual property rights.

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