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Internet legal issues

The emergence of the Internet and its various applications to business has changed the way we work, live and learn. The new business system is bringing significant increases in profitability through increases in revenue, productivity and efficiency with corresponding reductions in costs, time and resources.

Although the fundamentals of doing business remain the same, the medium for communicating and transacting business has changed creating a new, uncharted legal environment.

The main legal issues

Federal Government

The *Electronic Transaction Act 1999 (Cwlth)* covers issues of Authenticity, Integrity, Confidentiality, Matters of Evidence and Matters of Jurisdiction. In order to achieve a uniform, national legislative environment, the States and Territories have also agreed to enact similar legislation.

Queensland Government

The Queensland Government has created an *Electronic Transactions (Queensland) Act 2001* to fulfil its commitment to national uniformity and to boost confidence in e-Business uptake and e-transactions with Government.

Definition

The *Electronic Transactions (Queensland) Act 2001* defines e-commerce as:

- a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy; or
- a communication of information in the form of speech by means of guided or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

The *Electronic Transactions (Queensland) Act 2001* confirms the Internet as a valid medium of communication while still requiring that its content must still be subject to relevant legislative requirements. At this early stage in the legislation of the Internet, it is virtually certain that subsequent legislation will evolve to deal with present areas of impediment and areas of need yet to be discovered.



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The main legal issues

Trademarks and domain names

Usually, the first challenge for a business is to secure a Domain Name for a web site. This in itself can often be difficult to achieve because registration is conducted on a “first to file” basis. Firstly, to register a domain name, a business must own the business name from which the intended domain name is to be derived. In many cases, however, this is not nearly enough to fully secure the name you might want, for many other businesses have names from which the same name might be derived, eg McDonalds farm vs McDonalds fast foods (www.mcdonalds.com) or Kays Fashion Clothing vs Kentucky Fried Chicken (www.kfc.com).

The ownership of a trademark is also particularly relevant. Trademark registration is conducted on a “first to use” basis and a particular mark may be registered in over 40 different classes of goods or services. In recent examples, litigation has shown that the ownership of a trademark may take precedence over a domain name and even business and company names, particularly where there may be allegations that one business is seeking to trade on another businesses reputation, eg Virgin Airlines recently commenced litigation against eVirgin Home Loans and Virgin Computers over the use of the name Virgin.

To correctly ensure you chose a name, which does not infringe the rights of another business, a number of searches must be performed as follows:

- Domain Name Search - use www.ina.com.au.
- Trademark Search – use www.ipaustralia.gov.au.
- White/Yellow Pages Search – use www.whitepages.com.au and www.yellowpages.com.au.
- Australian Securities and Investment Commission – use www.asic.gov.au.

These searches can all be done over the Internet and free of charge. Similar searches will also need to be performed if you intend trading in other countries.

It is also recommend that you seek the advice of Patent and Trademark Attorneys. These initial searches may be simple, but the subsequent registration and qualification processes, particularly for trademarks, are best handled by specialists.

Key legal agreements for your e-Business

Any form of business requires the establishment of relationships with other parties from the customer, to the supplier, the government and many others. Using the Internet in your business activities is no different, in fact the Internet provides the opportunity to greatly expand the number of relationships you have in business with all concerned.



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Some relationships where legal agreements may be involved include:

- Agreements with ISP's to supply Internet services.
- Agreements with suppliers of web site hosting services (often the same ISP).
- Engaging a web site developer.
- Signing web site maintenance agreements.
- Agreements with Suppliers to use the Internet to engage in business to business (B2B) activities, ie e-business procurement.
- Agreements with customers who may qualify for discounts on bulk purchases made over the Internet (B2C).
- Using logos, tradenames or product names under licence from a supplier.

As always, common sense and good business judgement must prevail, so remember to use specialist resources. Speak with your local State Development Centre Officer, your Accountant, Solicitor, or other Business Consultant.

Payment and security

The rapid development of the Internet has caused some difficulty with developing adequate legislation in some areas. Thus, the legal framework for trading online can sometimes be unclear regarding regulations about trading in this new "environment without borders".

As a result, it has become widespread practice to adopt a practical approach to legal risk identification and risk management. Businesses are advised carefully consider payment and security issues when developing and implementing an e-Business strategy. Lack of confidence in this new medium is one of the main obstacles facing online traders. Consumers are often reluctant to provide personal and credit card information over the net in spite of significant evidence that Internet transactions are more secure than phone, fax or postal transactions.

The intention of the *Privacy Act 1998 (Cwlth)* is that any web site owner who collects personal information online will have to take reasonable steps to ensure the customer is aware of who is collecting the information and how it will be used.

Because the *Privacy Act 1998 (Cwlth)* also requires firms to protect people from unauthorised access and disclosure of personal information, business owners will also have to address data security issues. Firewalls, passwords and encryption technology are some of the more appropriate ways to ensure the safety of information sent electronically and many businesses are closely investigating and implementing these options.

Privacy and confidentiality

Business operators beware! To make effective use of a web site, it must be designed to capture personal and transactional information about customers, however you need to be aware of your obligations under the law when handling or using that information.



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The *Privacy Act 1998 (Cwlth)* is based on the National Principles for the Fair Handling of Personal Information, it covers the private sector and State Government owned corporations. This Act is just one of numerous Federal and State government initiatives to promote trust in the use of e-business technologies and confidence that personal information will be treated with respect and will not be misused or improperly disclosed to others.

This means that web site owners have an obligation to protect the personal information provided by consumers. The main ways in which a small business can help to instill trust and confidence in consumer use of the web site is as follows:

- Provide relevant, up to date and reassuring information about the extent and level of privacy and security used with the system.
- Handle or use consumer information with integrity and in accordance with the National Privacy Principles and other matters of law as they arise.
- Ensure reliable delivery of goods or services and implement strong and effective after sales support services.
- Develop strong online relationships and encourage a culture of consumer confidence and participation through FAQ's, testimonials, Case Studies, product and other relevant information, value added services and access to a variety of communication options, eg email, phone, fax etc.

The experienced business person will no doubt recognise these points as important and common sense business practice, irrespective of the new electronic environment in which they seek to strive for business excellence.

The National Privacy Principles can be seen at www.privacy.gov.au and include:

- Collection, use and disclosure of personal information.
- Data quality, and security.
- Openness about the use of personal information.
- The right to access or correct personal information.
- The use of identifiers.
- The right to anonymity.
- The transfer of personal information.

Consumer protection, identity and fraud

The Federal Government, with support from the States, is presently creating a world class consumer protection environment in Australia because e-Business activity offers substantial economic and social benefits to Australian businesses.

The Government is preparing a *Direct Marketing Model Code of Practice* to provide guidance in the conducting of business to consumer (B2C) e-commerce activities. Industry associations are also producing similar codes of conduct for members and introducing "seals of approval" schemes to help boost confidence.

Further information may be found at www.ija.net.au, www.dcita.gov.au/shoponline, www.asic.gov.au and www.accc.gov.au.



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Copyright and intellectual property

The *Copyright Act 1968 (Cwlth)* aims to promote business and consumer confidence in compliance and security systems and issues. To harness the efficiencies e-commerce offers, businesses need to have software, which is compatible with the systems of their business partners. The Act allows software companies to design software compatible with the needs of industries and businesses generally throughout the supply chain.

Generally, the normal rules of copyright remain the same. Even though it seems very easy to save, print or copy other people's work or web site material, permissions are still required and acknowledgements need to be made.

Complaint handling and dispute resolution

Common sense, as always, is best applied in these situations.

Firstly, a business should provide on their web site clear and easily accessible information on complaints handling procedures and dispute resolution matters. Open publication of this information often goes a long way to dispelling customer frustration and minimising the loss of loyalty, when a customer is dissatisfied for some reason. It is often a good idea to include information about external dispute resolution agencies or relevant government bodies, eg Department of Fair Trading.

Such procedures need to address and respond to customer complaints and difficulties in a reasonable and timely manner, without charge, and without prejudicing consumer rights to legal redress.

Further information

For additional information and to keep up-to-date, the following web sites are helpful (although not exhaustive):

www.crownlaw.qld.gov.au	Crown Law
www.ipaustralia.gov.au	IP Australia
www.legalmart.com.au	Legal Mart
www.qls.com.au	Queensland Law Society
www.gadens.com.au	Gadens Lawyers
www.gnl.com.au	Gilshenan and Luton
www.iia.net.au	Internet Industry Association
www.dcita.gov.au	Department of Communication, Information Technology and the Arts
www.asic.gov.au	Australian Securities and Investment Commission
www.accc.gov.au	Australian Competition and Consumer Commission
www.law.gov.au	Attorney General's Window on the Law
www.privacy.gov.au	The Australian Privacy Commissioner
www.ina.com.au	Internet Names Australia

The following fact sheet provides further information on these issues:

- Benefits of e-commerce