

Expert Advice and Avoiding Rookie Mistakes When Building Your Website

Privacy Policies

Most websites will require a Privacy Policy if they collect any data from users, including interacting with readers who post comments, registering to use or access the site or information/documents, making purchases or donations via the website or any website that uses cookies or analytics to track users. Many state laws require a Privacy Policy disclosure and federal law requires it in certain circumstances². Some international laws will require a privacy disclosure if your website reaches users in that country.³ Best practices in today's global marketplace is to include Privacy Policy on your website to ensure regulatory compliance.

A Privacy Policy will tell users what personal information is collected, how it will be used and how it will be stored and protected. While there are some templates available on the internet, it is important that these basic templates be customized to reflect your business website and the specific kinds of data and activity that will take place via the website.

Terms and Conditions

While it's not legally required for websites to have Terms and Conditions, having them is considered best practice, especially if your website is involved in e-commerce, collects user data, or allows user-generated content. Having Terms and Conditions is beneficial because it helps protect the business by limiting liability. Terms and Conditions often include disclaimers and notices that clarify the extent of the website's or business's responsibility to visitors. By defining rules for website use, legal risks can be minimized.

Terms and Conditions also enhance the business' ownership rights over website content by addressing copyright, intellectual property, and other ownership-related matters. Having clear terms ensures that users understand their rights and obligations when interacting with the business' website. While not legally mandated, having a well-crafted Terms and Conditions provides legal protection, clarifies rules, and fosters transparency with your website's users.

² The website collects information about or targets its content to children under the age of thirteen (the Children's Online Privacy Protection Act or COPPA); The businesses is significantly engaged in financial activities, such as banks (Gramm-Leach-Bliley Act or GLBA); The business is engaged in health care services (Health Insurance Portability and Accountability Act or HIPPA)

³ In the European Union, the General Data Protection Regulation ("GDPR") requires all companies operating in the European Union (EU) or that handle personal data of people located in the EU to have a Privacy Policy. Other countries such as Canada, Australia, and the UK also have laws that require websites to have a privacy policy.

While there are some templates available on the internet, it is important that these basic templates be customized to reflect your business website. Working with an experienced attorney can be beneficial, especially if your business is in an industry that requires additional disclosures and protections because of its subject matter or target audience.

DMCA Notice

DMCA stands for Digital Millennium Copyright Act. Your website can take advantage of a “safe harbor” from infringement claims if it posts a DCMA contact person, email and phone number where DCMA take-down notice can be sent by those who believe their copyright has been violated by something posted on your website (by you or users of your website). Technically the DMCA agent should be registered with the US Copyright Office. However, this registration comes with a fee that many companies do not want to pay and posting clear contact information on the website seems to be effective.

If you host a website and you receive a DMCA notice, or you manage a website and your ISP passes a notice to you, the first thing you should do is evaluate if there is a proper claim to copyright of the offending copyrighted material. If it seems legitimate, accept a DMCA notice as a warning and remove the infringing material immediately. If you believe the allegedly infringing use is covered by a fair use exception in copyright law, you should remove the content temporarily as a good faith effort to comply and contact the owner of the content (person who sent the DMCA take down notice) and explain why you believe the specific use on your website falls under fair use protections. If the owner agrees or you get a legal opinion that it clearly falls within a fair use exception, you can contact the person who sent the notice and try to sort things out or work with an attorney to file a counter notice. A counter notice is a written and signed document providing details about the content that was removed from the site and a statement, under the penalty of perjury, that the material in question did not infringe on any copyrights and was removed from the website as a result of a mistake. After receiving the counter notice, the complainant has 14 days to either cancel the takedown notice or file a lawsuit.

If your website accepts posts or comment from the general public, it is imperative to have a DMCA notice to avoid liability for posts by others that may have infringing content.

ADA and Disability Access

Under the Americans with Disabilities Act, most individuals and companies that do business online must provide equal access to goods and services. Businesses open to the public must take steps to provide appropriate communication aids and services (often called “auxiliary aids and services”) where necessary to make sure they effectively communicate with individuals with disabilities. The recommended practice is to design the business’ website to comply with the Web Content Accessibility Guidelines created by the World Wide Web Consortium (W3C) for

accessible web-based content⁴. WCAG is the global standard adopted by the accessibility community.

The federal government⁵ describes website practices that can be deemed violations of the ADA as accessibility barriers:

- **Poor color contrast.** *People with limited vision or color blindness cannot read text if there is not enough contrast between the text and background (for example, light gray text on a light-colored background).*
- **Use of color alone to give information.** *People who are color-blind may not have access to information when that information is conveyed using only color cues because they cannot distinguish certain colors from others. Also, screen readers do not tell the user the color of text on a screen, so a person who is blind would not be able to know that color is meant to convey certain information (for example, using red text alone to show which fields are required on a form).*
- **Lack of text alternatives (“alt text”) on images.** *People who are blind will not be able to understand the content and purpose of images, such as pictures, illustrations, and charts, when no text alternative is provided. Text alternatives convey the purpose of an image, including pictures, illustrations, charts, etc.*
- **No captions on videos.** *People with hearing disabilities may not be able to understand information communicated in a video if the video does not have captions.*
- **Inaccessible online forms.** *People with disabilities may not be able to fill out, understand, and accurately submit forms without things like:*
 - *Labels that screen readers can convey to their users (such as text that reads “credit card number” where that number should be entered);*
 - *Clear instructions; and*
 - *Error indicators (such as alerts telling the user a form field is missing or incorrect).*
- **Mouse-only navigation (lack of keyboard navigation).** *People with disabilities who cannot use a mouse or trackpad will not be able to access web content if they cannot navigate a website using a keyboard.*

You will want to review your website for these issues and ensure that your website is compliant with WCAG recommended practices. This is a growing area of law and there are increasing lawsuits being filed against small business owners for violations. This is an easy way to mitigate this risk exposure.

Credit Card Charges

The new law in New York requires that prices be listed with the credit card fees included. It is acceptable to list and offer a discount for cash but you cannot say there will be a surcharge added

⁴ [WCAG 2 Overview | Web Accessibility Initiative \(WAI\) | W3C](#)

⁵ [Guidance on Web Accessibility and the ADA | ADA.gov](#)

to the base price. The price listed must include any surcharges as included. If you engage in e-commerce, you will want to review any pricing you have on your website or marketing materials to ensure compliance with these new regulations.

Don't forget to review the tips for ownership of your creative content and proper use of copyright and trademark notices!