

*If you want to be briefed on the legal ins and outs of eCommerce, take a look at these helpful hints.*

There are many laws that apply to businesses operating online. Businesses should do thorough research or seek legal advice about which legal obligations affect them and how to respond.

There are two aspects covered in this eNote, which provide just an indication of what to look out for:

- Compliance — privacy, fair trading, consumer protection and spam
- Rights and responsibilities — copyright, trademarks and patents.

In addition, there are both local and international dimensions to these legal considerations, as geographical boundaries are not apparent when you surf the Internet.

It is worth contacting your Victorian Business Centre, industry associations, an accountant or CPA Australia for guidance on any voluntary and mandatory eCommerce codes of practice that may affect your eCommerce venture.

## Compliance

### Privacy

The Internet and related technologies offer new avenues for the collection, use and abuse of information, including personal information. In this environment, it is important to have a framework in place that balances the need for exchanging information with the need to protect privacy. This is what privacy laws try to do.

- Broadly speaking, privacy laws control the way in which someone's personal information can and can't be used.
- The Internet has enabled a free flow of information that more easily leads to unethical practices. Examples include:
  - unauthorised use of a person's email identity and address
  - ability to locate people's physical addresses easily through email and website transactions

- insecure electronic transmissions
- data trails created by logging email messages, online transactions and web pages visited
- software that captures email addresses from websites.

See [www.privacy.gov.au](http://www.privacy.gov.au) for further details.

### Consumer Protection and Consumer Credit

Consumer protection laws apply to all Internet contracts, when selling online. It is important to:

- ascertain the identity of the consumer
- ensure the consumer properly understands the terms and conditions of the contract
- ensure the consumer has undeniably accepted the terms and conditions
- ensure the consumer has undeniably received notices where required.

### Spam Act 2003

It is against Australian law to send spam ('electronic junk mail') or other unsolicited email messages.

- Commercial electronic messages must only be sent with the addressee's consent, must include clear and accurate identification of the sender, and must include a functional unsubscribe ('opt-out option')
- The Australian Communications Authority website provides information on the *Spam Act 2003* at [www.spam.aca.gov.au](http://www.spam.aca.gov.au)
- The Australian Government Information Management Office (AGIMO) also provides information about the *Spam Act 2003* at [www2.dcita.gov.au/ie/trust/improving/spam\\_home](http://www2.dcita.gov.au/ie/trust/improving/spam_home).

## Fair Trading

Federal and State Fair Trading laws apply equally to business conducted on the Internet and by traditional means. The Trade Practices Act 1974 and State and Territory Fair Trading legislation prohibit misleading and deceptive conduct including false and misleading representations and omissions of information which misleads or deceives customers.

In Victoria, legislative protections go further and require disclosure of the supplier's full business address or telephone number, the total price, postal/delivery charges and the availability of any cooling off rights. Where such cooling off rights exist, they are deemed to be 10 days.

## Rights and Responsibilities

### Copyright

Copyright protection applies automatically to words, pictures, music and other "works" that people create, whether on the Internet or elsewhere. Copyright gives authors a set of rights to control how their work can be dealt with.

- Copyright laws govern how "works" can be re-used and/or copied. They apply on the Internet just as much as anywhere else
- Copyright gives you rights over the text and pictures that you create for your website and restricts you using the content from others
- Authors can put conditions on the use of their content, for example, for "non-commercial purposes"
- Copyright also applies to the text and attachments in emails

### Patents

Patents grant monopoly rights over a product or process for a limited period. To get this protection, an invention must be registered, and must meet minimum requirements of novelty, usefulness and inventiveness.

- Patent protection plays an increasingly important role with respect to the Internet and Internet-related activities in two important areas:
  - protection for computer-related technology
  - protection for business methods

## Trade Marks

A trade mark is used to distinguish your goods from those of your competitor. It is a distinctive word, phrase, letter, number, smell, sound, shape, picture, logo, aspect of packaging or combination of these.

- Exclusive rights to use a trade mark in relation to your goods are best protected by registration
- Further information on trade marks and patents is available from [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)

## Where to Get More Information

- The Commonwealth Treasury's Best Practice Model for Business — [www.ecommerce.treasury.gov.au](http://www.ecommerce.treasury.gov.au)
- Consumer and Business Affairs Victoria lists relevant eCommerce-related legislation — [www.consumer.vic.gov.au/ecommerce](http://www.consumer.vic.gov.au/ecommerce).
- The Australian Competition and Consumer Commission - [www.accc.gov.au](http://www.accc.gov.au) search for 'Tips for good business online'
- Privacy — [www.privacy.gov.au](http://www.privacy.gov.au)
- Refer to the Australian Securities and Investments Commission — [www.asic.gov.au](http://www.asic.gov.au) — for information about the regulatory approaches to eCommerce.
- Consumer protection — [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au), [www.oznetlaw.net](http://www.oznetlaw.net) and [www.aca.com.au](http://www.aca.com.au).
- Patents and trade marks — [www.ipaustralia.gov.au](http://www.ipaustralia.gov.au)
- Copyright — [www.copyright.org.au](http://www.copyright.org.au) — and [www.oznetlaw.net](http://www.oznetlaw.net).

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