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WEBSITE POLICIES

Website policies, terms of use and privacy policies are very important documents for websites, however in the rush and excitement of constructing the rest of the website, they are often overlooked by many people. Basically they set the ground rules for how users use your site - in terms of the modern trend to web "communities" they determine what users are allowed to do and what they are not allowed to do; and in the case of a e-commerce site they may establish the terms of the sale, return policies, warranties, licensing rights etc.

It is important not to just use stock or off the shelf terms of service or privacy policies. There is a temptation out there to cut a few corners and copy one from another website, or just go with the ones that your web designer always uses, in general it is not a good idea. First, since the terms of service/use ("TOS") are really a contract between you and the user of your website, it is really important to have a TOS that mirror the sorts of activities that you have on your site. If the two don't mesh it's like trying to stick a square peg in a round hole - it's just not going to work. Likewise, TOS for an e-commerce site will be vastly different than terms of service for an on-line "community". Each type of site raises different issues and different TOS are needed to adequately address each specific type of site.

Secondly, since the TOS are really contracts between the website provider and the user, they are usually going to be drafted to reflect the laws of the state that the company is in. So let's say that you are in Colorado and you use the terms of service of a website put on by a company in Florida. More likely than not the terms of service will say that the terms of service shall be interpreted under Florida law. Well, that should be simple enough to change to Colorado and you are all set - right? **WRONG!** Depending on what sort of site you took the TOS from there could be significant differences in some of the laws governing contracts, privacy, warranties and disclaimers. Often times in warranty disclaimers, states require very specific language to be used (usually in caps and bold) in order for the disclaimer to be effective. If the words are not exact, you may not be achieving the result you were anticipating.

While a lot of states do not have requirements for a privacy policy (in fact you could have a policy that says "we sell all of your information"), there is a chance for major liability if your published privacy policy does not match what you are doing in practice. Once again, this is where using a stock privacy policy or one you got from another site can get you in major trouble. There has been a court case in the past where a website provider just copied a privacy policy he thought looked good from another website and used it as his own. The only problem was that the other website privacy policy said all of the things that consumers and web users like to hear, such as we don't actively collect information about you, we don't use cookies, and we do not disclose any information we do collect to third parties. The only problem was that this company was collecting information and selling its lists to solicitors

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and others. The company was hit with a major damage award because it basically said one thing and did another. First of all it used deceptive business practices and it violated the agreement between the company and the user as to what the website would do with the individual's personal information.

We offer a full range of document drafting for websites, including terms of service, privacy policies, and intellectual property policies as well as e-commerce agreements. Come talk to us today about your specific needs.

Leyendecker & Lemire, LLC is a Denver-based law firm offering a full spectrum of Intellectual Property, Business and Entertainment related legal services for entrepreneurs, individual inventors, and businesses of all sizes. We pride ourselves in providing large firm quality, but with personalized service and attention the large firms do not provide to their smaller clients. Our strength is working with a client from the beginning of his/her venture to maximize the venture's value and potential, as well as, help minimize the risk of legal disputes. Call (303) 768-0123 or e-mail us at info@coloradoiplaw.com today to see how we can help you!

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