

Website

terms and conditions

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Many CIOs do not pay much attention to the terms and conditions on their company's website. However, a recent case in the United Kingdom should serve as a wakeup call to all businesses to carefully consider the terms under which people use their websites and reduce the risk of costly litigation.

Patchett v Swimming Pool and Allied Trades Association (SPATA) involved an industry body making representations on its website regarding the financial stability of its members. Unfortunately one of its members, Crown Pools, became insolvent during construction for the Patchetts and they decided to bring an action against SPATA in negligence alleging that SPATA had breached its duty of care due towards them in relation to the information it provided on its website. The Patchetts argued SPATA was liable for the loss suffered by the Patchetts due to reliance on that information.

Fortunately for SPATA the website also included a suggestion that users of the website should consider the contents of an additional information pack. The Court held that this operated as a disclaimer against the liability that would otherwise have arisen.

Given the increasing number of websites that are relied upon by users this case is a serious cause for concern. Any CIOs responsible for a website that provides information that may be relied upon should check that it contains an appropriate

and up-to-date disclaimer in relation to that information.

The risk in Australia is arguably even greater than that in the UK due to the operation of section 52 of the Trade Practices Act 1974 (Cth) which prohibits conduct in trade or commerce which is misleading or deceptive conduct or likely to mislead or deceive.

While it is not possible to disclaim liability in relation to a breach of this requirement, a statement urging independent verification of information and cautioning against reliance may reduce the risk of loss suffered by a user being recoverable.

Although website terms and conditions can be helpful from a liability perspective, there are other issues that should also be addressed, including:

- (a) **Scope of licence to the user** - CIOs should consider the extent to which they are comfortable with users using the content from the website e.g. whether or not users can use the data on the website for commercial purposes;
- (b) **Restrictions on use of the website** - the permission to use the website should be subject to the user not performing undesirable acts in connection with the website e.g. uploading viruses to the website or overloading the website with requests as a denial of service

attack;

- (c) **Use of user content** - users that upload content should be required to grant an express licence permitting the copying and modification of their content and give express warranties and indemnities in relation to use of that content not infringing third party's intellectual property rights;
- (e) **Privacy policy** - for businesses to which the Privacy Act 1988 (Cth) applies it is important to notify individuals giving personal information over the website the way in which that personal information will be handled and may be used (and where applicable link to your privacy policy); and
- (f) **Terms of sale** - terms and conditions of use of a website can be a way of binding the user to particular terms of supply of goods and services available through the website.

As far as legal expenses go, website terms and conditions are one of the less expensive legal documents a CIO is likely to encounter. While always desirable, well drafted terms and conditions are particularly useful if you can imagine any situation in which a user of your website could rely on the information available on it and suffer loss. ↓

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