



Website Terms and Conditions: Some Best Practices

I have been been drafting quite a few T&Cs for websites lately, and in the course of reviewing some T&C out in the wild, I realized that there are few best practices in place. For larger companies, I think there was a time when these terms and conditions were seen as an annoyance, some nagging requirement of the legal department or they lawyers. For smaller sites, they were something that was quickly slapped together, cut and pasted from some competitors, and off you go.

But terms and conditions do matter. As more and more of our life is moving online, then these terms and conditions- these rules of the road, are very important. Below is a breakdown of some best practices have used in drafting T&C for a client's websites:

Ability to modify terms

Always include language that allows the owner the ability to modify the T&Cs. As business needs and conditions change, the site should be able to grow, adapt and change with the business.

Notice

Any change in the T&C should be conducted with an adequate notice period. There has been a lot of heat around this subject, and there is conflicting jurisprudence around the extent to which an organization may change its terms and conditions unilaterally, and what constitutes notice. One aspect is clear, notice of some sort is required.

Opportunity to reject terms (e.g. terminate account)

One of the reasons for notice is this allows the a user the ability to opt out, or reject the new T&Cs. The most common way is by allowing the user the ability to close or terminate the accounts.

Limited license and reservation of rights

Access to a website should be construed to provide a general grant to any and all material on that site. An owner should clearly state the extent of the license to the website material and associated services that are bestowed by accessing the site or registering a profile. The T&Cs should also clearly state that any right not granted to the user is reserved by the site owner.

Prohibited uses and Content

An owner should establish the rules of conduct of an orderly online community. Establishing a baseline of conduct which will not be tolerated allows an owner to effectively manage the user generated content (UGC) and users on the site. However, any application of user policy which establishes prohibited uses, should be applied uniformly to all users.

Submission rules and limitations

With sites that have UGC, it is also important that the owner establish the submission procedures and rules. Similarly as above, these submission procedures should be applied evenly to all content.

Ownership/license for creative content (e.g. images, videos, blog post) and general submissions (e.g. forum post, customer service submissions, suggestions)

Since so many sites today rely on UGC, it is important that a site has a clear and manageable policy for the use of user submissions. The site must have the sufficient ownership rights in this content, even if there is a significant change in the sites core purpose or services.

Indemnification

This is one of these boilerplate terms that even many attorneys speed past. Don't. UGC can provide a wide range of legal complexities by and between users. With a well crafted indemnification provision an owner can made sure that they are removed from any these inter user disputes.

Right to remove

This is the most powerful tools that an owner has to maintain control of the site. An owner should clearly establish the conditions under which a user will be removed from membership on a site. As with many aspects of the T&Cs, the decision to remove a user must be evenly applied and clearly communicated.

DMCA Language

Simply a must. There must be this language in the T&C. I will pull together a separate post on this requirement.

These are just some of the basic concepts that any site owner should keep in mind when putting together a site's T&Cs. Future posts will dive deeper into issues surrounding e commerce, privacy, and classification of site data.

<http://www.thecaliforniabusinessattorney.com/2011/03/09/website-terms-and-conditions-some-best-practices/>