

FROM BRICK-&-MORTAR TO THE CLOUD: IS YOUR E-COMMERCE BUSINESS COMPLIANT?

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Simply put, electronic commerce or “E-commerce” is the selling and buying of goods or services, or the transmitting of funds or data, over the internet. The most common type of E-commerce is online shopping, which has become a booming international industry with more than 1 billion online shoppers worldwide.

In a very competitive economic climate, with competitors just a convenient click away, companies can hardly afford not to be online in order to promote their brand, grow sales and reach customers that were previously out of reach.

INTRODUCTION

When last did you do business with a company without “Googling” them? These days your company website is the first place people go to in order to learn more about you, your business, your services or products, the way you present yourself and the manner in which you do business. Your company website is the public face of your business. It is therefore important that your website displays a professional image, one that is not only easy to use, convenient, informative and safe, but also compliant.

Just like we have to comply with certain laws in a “brick-&-mortar” business, there are various laws governing E-commerce. We briefly discuss some of the legal requirements for your E-commerce business below.

E-COMMERCE LEGAL REQUIREMENTS

South African law requires you to display certain information on your website, and this includes the following:

Company Information

- > Full name and legal status of your company
- > Company registration number, name of office bearers and company’s place of registration
- > Membership of any self-regulatory or accreditation bodies to which the company belongs and its contact details
- > Any code of conduct to which the company subscribes and how the code can be accessed

Contact information

- > Physical address and telephone number
- > Email address

Sales or Product Information

- > A sufficient description of goods or services to enable a consumer to make an informed decision
- > Price of goods/services, including transport costs, taxes (such as VAT) or any other fees
- > The manner of payment
- > Terms and conditions that apply to the transaction
- > The time within which goods will be delivered or services rendered (legislation prescribes minimum delivery times)
- > The manner and period within which consumers can access and maintain a full record of the transaction
- > Return, exchange and refund policy
- > Any alternative dispute resolution code to which the company subscribes
- > Security procedures and privacy policy in respect of payment, payment information and personal information
- > Minimum duration of the agreement, where the agreement is for the ongoing supply of goods or services
- > Cooling-off rights of consumers.

Make sure you have proper terms and conditions on your website. Most of the above requirements can be dealt with sufficiently in your terms and conditions. Your terms and conditions should also cover issues relating to privacy (like the use of cookies), your liability (do you have links to other sites on your website?), acceptable use policy (especially if you provide online services like online forums) and complaint handling processes, just to mention a few. Remember to make sure that your terms and conditions are displayed properly on your website and that consumers agree to be bound by your terms and conditions before a transaction is concluded, otherwise it will be difficult, if not impossible, for you to enforce it.

It is essential that your E-commerce business uses a payment platform that is secure and that complies with accepted technological standards. Is your website PCI compliant? In other words, does it comply with the Payment Card Industry's Data Security Standards? Your company will be liable for any damages suffered by a consumer if you do not use a secure payment platform.

In terms of marketing it is important to understand your obligations and the consumers' rights relating to advertising, the manner in which you communicate with consumers and promotional competitions. There are codes directing advertising and specific legislation governing things like promotional competitions and consumers' rights to "opt out" if they do not wish to receive further communications from you.

Google amended its AdWord trademarks policy a while back allowing the use of rivals' trademarks as keywords in AdWord campaigns. This seems like a progressive manner to direct traffic to your website, but make sure you understand South African trademark laws.

Also remember that your company's manual published in terms of the Promotion of Access to Information Act must be posted on your website.

Lastly, like any other business, your online business also needs to comply with general legislation such as the Consumer Protection Act, the Protection of Personal Information Act, the National Credit Act, the Copyright Act and the Value Added Tax Act.

CONCLUSION

According to E-commerce expert, Ajeet Khurana, the first rule of E-commerce is: "make it easy for a customer to buy". This may seem like a daunting task when it feels like your website will be bogged down with formalities and legalese, but it does not have to be. With the right approach your E-commerce business can be compliant and your compliance can even assist you to "make it easy for a customer to buy".

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Wilmari Strachan has been a Director at Werksmans Attorneys in the Technology practice since October 2014. Her areas of specialisation include technology, internet and telecoms law.

Wilmari has performed legal consulting for a number of years for large listed companies in the IT industry and retail sector. She has been involved in ground-breaking innovation and technology advancements in the South African internet market.

Working for a leading ISP, Wilmari drafted and negotiated agreements with international providers for the landing of the first international submarine capacity cables in Africa. She also lent her expertise to the creation of the first open peering and uncapped internet policies and agreements in South Africa.

Wilmari has completed a mediation course at the Family Mediation Association of the Cape (FAMAC) and co-mediated in various disputes referred to mediation.

From 2011 to 2012, she served on the management committee of the Internet Service Providers Association of South Africa (the regulatory body for internet service providers).

Wilmari completed a finance course at University of Cape Town's Graduate School of Business, as well as various Harvard Law School programmes.

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