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## Establishing a Presence on the World Wide Web: Legal Considerations

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### INTRODUCTION

Establishing a commercial presence on the World Wide Web (the Web) is increasingly becoming a necessity for businesses to establish or maintain a competitive edge in today's global economy. Whether a business chooses to go online to promote its products and services, reduce advertising costs, improve customer service or to co-ordinate supply and customer relations from several outlets there are legal issues that must be addressed to ensure minimum liability and exposure to risk.

The international nature of the Web and the fact that the Web is a digital medium necessitates the adaptation of existing legal paradigms to address the following:

- Intellectual Property (trademark, patent and copyright protection)
- Privacy (data protection) and spamming
- Unfair contract terms and consumer protection
- Electronic commerce, electronic cash and electronic signatures (authentication)
- Jurisdiction/Dispute Resolution (enforcement of legal rights including access to justice)
- Encryption and export control

Pivotal to addressing these areas is the formulation where relevant of the following agreements and policies:

- Chatroom policies
- Co-branding Agreements
- Content licensing and acquisition
- Electronic communications policies (e-mail, internet, extranet, website)
- Electronic payment and fund transfer
- Electronic record keeping policies
- End user agreements and terms and conditions
- End-user Internet access Agreements (individual and corporate)
- Internet-related insurance Agreements and policies
- Linking Agreements
- Multimedia licensing
- Online banking and trading Agreements
- Privacy policies
- Software and content development

- Technology licensing and acquisition
- Terms of service (clickwrap)
- Website development, hosting and maintenance Agreements

The legal goal for businesses online is to minimise risk by establishing the parameters of liability and creating certainty in online commercial transactions.

### INTELLECTUAL PROPERTY

The ease of duplication and dissemination of copyright material over the Internet and the ability of a trademark to be a domain name creates opportunities and challenges for businesses establishing a commercial presence on the Internet.

### COPYRIGHT

Businesses that generate their own copyright material should be wary that making their material available online leaves them susceptible to copyright infringement.

Businesses that use third party copyright material should ensure that they have the express permission of the copyright owner to use the material online. Permission from the copyright owner for use of the material offline will not suffice.

Businesses should determine with their graphic designer before the business goes online who will own the copyright in the artistic layout of the site.

### TRADEMARKS

Careful consideration should be given and research conducted in determining the business' domain name (unique address) as the choice can amount at times to an infringement of someone else's trademark. Disputes concerning trademarks and domain names may be expeditiously resolved utilizing the World Intellectual Property Organisation's Arbitration Mediation Center which is an Internet-based, online dispute resolution system.

Care should also be taken in linking to websites as in some circumstances linking without permission can lead to opposition in countries like the United States on the grounds of dilution.

### **CONSUMER AND DATA PROTECTION**

Online businesses need to be mindful of the consumer and data laws, practices and policies that are applicable, if any, in the countries where most of their customers come from.

### **ENCRYPTION AND EXPORT CONTROL**

The use of digital signatures is an important tool in addressing data security and authenticating orders. Globally, public key cryptography is the most popular form of cryptography and involves the use of both a private and public key. The sender of a message encrypts the message using a public key while the recipient of the message requires a private key to decrypt the message. Through this system the recipient can determine whether the data has been altered. However, although this system guarantees the integrity of the message, it does not guarantee the identity of the sender (public key owner). In order to remedy this a Certificate Authority is required. Certificate Authorities (CAs) are Trusted Third Parties (TTP) who provide a variety of cryptography services to their clients and are given a licence to produce digital certificates authenticating digital signatures. In Jamaica there are currently no Certification Authorities.

Legislation regulating digital signatures and establishing their legal status exists in North America and Europe but does not exist in Jamaica. Given the absence of legislation relating to e-commerce in Jamaica, and given the global nature of the Internet it is prudent that Jamaican businesses that are establishing a commercial presence on the Web uphold the legal standards of the country or countries that they expect their target market/audience to come from.

### **INTERNATIONAL**

Currently there is no one international treaty or guideline which governs electronic commerce. International treaties, model laws, standards and guidelines are being actively produced to cover the various aspects of electronic commerce. Once a business has established a commercial presence on the Web it becomes necessary to monitor and keep abreast of the international situation.

### **CONCLUSION**

Establishing a successful commercial presence on the Web requires a well thought out e-business strategy which reflects a thorough appreciation of the various legal aspects of online business. It is only through directly addressing online legal issues that a business can minimise its online liabilities and optimise the many benefits that can be derived from being online.