

E-commerce and the law

Anna Soilleux-Mills and Alasdair Lamb

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Overview

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- Contracting via the Internet
- Selling goods and services online
- Consumer law and rights
- User generated content – liability and defences
- Data, privacy and marketing
- Advertising



Case Study

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- Bill is a 3rd year computer science student with an obsession with the boyband “One Dimension”.
- He designs and sets up a website about One Dimension.
- There is the facility for fans to set up their own profile on the site, and privately message each other.
- Bill also decides to recoup some of his set-up costs for the site by selling One Dimension merchandise.



Contracting over the Internet

The basic requirements

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- For a contract to be binding:
 - Offer
 - Acceptance
 - Consideration
 - Intention to create legal relations and certainty of terms
- A business will want to structure its site as an “invitation to treat” (not capable of acceptance) and ensure the consumer is the party making an offer



Signing a contract online?

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“Digital signatures, scanned manuscript signatures, typing one’s name (or initials) and clicking on a website button are, in our view, all methods of signature which are generally capable of satisfying a statutory signature requirement. We say that on the basis that it is function, rather than form, which is determinative of the validity of a signature. These methods are all capable of satisfying the principal function: namely, demonstrating an authenticating intention.”*

**Some exceptions apply (e.g. contracts to buy property)*



Electronic Commerce: Formal Requirements In Commercial Transactions

Law Commission - December 2001

Contracting over the Internet Information requirements

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What information does Bill have to give consumers when offering goods and services online?

- Short answer = LOTS!
- What information must be given
- How it must be given
- When it must be given

E Commerce Regulations 2002, Companies Act 2006 and Consumer Contracts Regulations 2013, ADR Regulations, Provision of Services Regulations 2009

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Information requirements

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General information requirements:

- Identity of the trader (e.g. Name, address, VAT number, company no, contact details)
- Main characteristics of goods, services, digital content
- Information about the consumer's right to cancel (and model cancellation form)
- Digital content's functionality and technical protection (if applicable)
- Digital content's compatibility
- Payment, delivery and performance arrangements
- Link to EU online dispute resolution platform.....

.....etc etc etc.

Consumer Contract Regulations 2013

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Information requirements

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Information to be given before the order process begins

- Delivery restrictions
- Accepted means of payment
- What technical steps are required to conclude the contract (e.g. crumb trail)
- Will concluded contract be filed and accessible?
- How to identify and correct input errors prior to placing order.
- Languages offered for contract

Consumer Contracts Regulations 2013, E-Commerce Regulations 2002

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Information requirements

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Directly before placing an order

- Main characteristics of goods, services, digital content
- Total price
- Additional delivery charges and other costs
- Minimum duration of the contract

Consumer Contracts Regulations 2013

Other requirements

- Include an order button, labelled and easily legible, indicating an obligation to pay e.g. “Pay now”

- Avoid using pre-ticked boxes



- If providing customer helpline number, this must be basic rate only

Consumer Contract Regulations 2013

Contracting over the Internet

Confirming an order

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After the order has been submitted:

Bill must:

- Acknowledge the receipt of an offer “without undue delay”
- Take care this acknowledgement of an offer is not “acceptance” – this can be done later
- Provide a copy or confirmation of the contract – on a “durable medium” (e.g. paper, email or personalised account) including the characteristics of the goods or services, identity of supplier, total price including tax or monthly cost in the case of subscriptions, any additional charges, duration of contract or conditions of termination

Consumer's right to cancel

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- 14 day “cooling off period”
- Bill must tell consumers about their cancellation rights
- Bill must provide a model cancellation form
- Goods: Starting from the date that consumer takes possession
- Services: Starting from the date the contract is entered into
- Can be excluded for digital content and some services with the consumer's agreement.

Consumer Contract Regulations 2013

Consumer Rights Act 2015

Implied terms

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Goods and (paid for) digital content:

- Satisfactory quality
- Fitness for purpose
- As described
- (For digital content only) compensation for damage

Services

- Reasonable care and skill
- In line with information provided
- Reasonable price (if no price agreed)
- Performed within a reasonable time (if no period agreed)

- Consumer terms must be:
 - Fair
 - Reasonable
 - Written in plain English
- Unfair terms will not be binding on a consumer

Consumer Rights Act 2015



- “Unfair commercial practices” are prohibited.
- Misleading consumers, aggressive commercial practices etc.
- Can result in criminal liability
- List of practices which are automatically considered unfair, include
 - Certain false claims (e.g. cure illness)
 - High pressure selling techniques (e.g. “you could be in danger if....”)
 - A business pretending to be a consumer (e.g. when leaving product reviews)
 - Describing something as “free” when there are costs other than the unavoidable cost of delivery/collection

Consumer Protection (Unfair Trading) Regulations 2008

- Bill's website is generating a lot of web traffic, and in an attempt to capitalise on the website's success, Bill builds some new features:
 - A One Dimension online game for website members; and
 - A mobile app to mirror the website.



CMA principles for apps and web-based games

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- Be transparent and accurate about costs associated with a game (including the costs of any in-app purchases)
- Make the commercial intent of any in-game message clear – distinguish commercial messages from gameplay
- Don't include direct exhortations to children to make purchases or otherwise pressure them to make purchases (or persuade a parent to make purchases for them)
- Make it clear payments should not be made without the informed consent of the person who owns the bank account - opt-out consent not sufficient
- *Compliance*
- Both studios and platforms must comply
- Range of actions in case of breach, including court proceedings

Law of Tort

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- A civil wrong
- Law of tort demands that, in certain circumstances, we are answerable for our actions.

Negligence

Trespass

Defamation

Interference

Misstatement

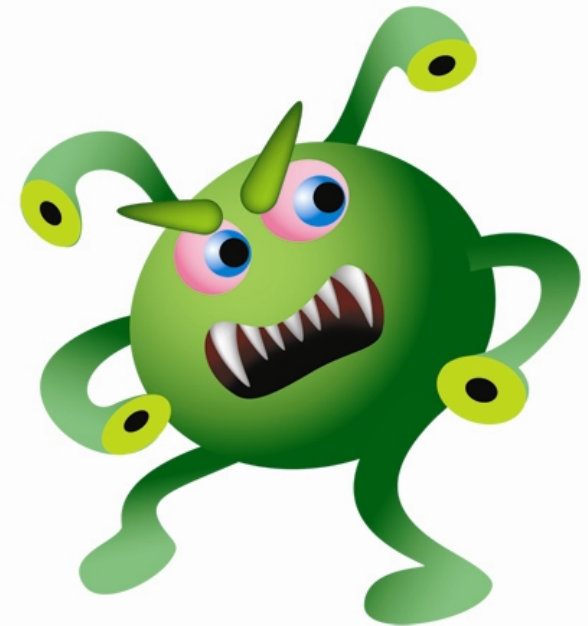
**Product
liability**



Bill offers via his website various “One Dimension” related files, such as screen savers and videos that registered users of the site can download for free. He doesn’t use anti-virus programs to check the files. The files infect his users’ computers with a virus. Bill’s website contains no disclaimers or warnings about viruses, worms etc.

What would his users need to prove to sue him for negligence?

- Duty of care is owed
- Breach of duty
- Breach of duty caused damage
- Damage was reasonably foreseeable



Users of Bill's website have been uploading infringing videos and photos. One Dimension's record label send Bill a letter asking him to remove the videos of the band – and threatens legal action for copyright infringement if he doesn't comply.

Can Bill be liable for the content posted by users of his website?

Copyright, Designs & Patents Act 1988, Electronic Commerce Regulations 2002

- Bill has collected lots of email address and mobile numbers as a result of users placing orders for merchandise or signing up to use the site.
- He wants to use that data to send his members promotional materials in an attempt to further increase sales.

What are the data protection issues here?

Data protection – Key legislation and principles

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- ***The Data Protection Act 1998***
- Eight principles:
 - “Fair and lawful” processing
 - Obtained only for one or more specified and lawful purposes
 - Adequate, relevant and not excessive
 - Accurate and up-to-date
 - Not kept for longer than necessary
 - Processed in accordance with data subject’s rights
 - “Appropriate” security measures
 - Not transferred outside the EEA unless “adequately” protected
- ***Regulated by the Information Commissioner's Office***
 - ICO has the power to fine up to £500,000 for serious breach
- ***Incoming General Data Protection Regulation (GDPR) – finest of up to 4% of global turnover (in force from 25 May 2018)***

Privacy and Electronic Communications Regulations 2003

- **Consent to unsolicited marketing via email, SMS, direct messages on Facebook etc.**
 - Opt- in consent vs. soft opt in
 - Opt-in consent is required for email/SMS marketing, unless:
 - Contact details are obtained during course of sale or negotiation for sale for goods/service
 - marketing relates to your similar goods and services
 - Recipient was provided with a means of refusing marketing when they gave their email address
 - Must give a method to unsubscribe in each communication sent.

Privacy and Electronic Communications Regulations 2003

- **Cookies (and similar technologies)**
 - Consent required to set cookies
 - Exception for cookies which are “strictly necessary” (e.g. “add to basket”)
 - Must give clear and comprehensive information about cookies
- **New Regulation – proposed to be in force from 25 May 2018. MUCH bigger fines.**

Regulation of Investigatory Powers Act 2000

Can Bill monitor the private messages users send to each other on his site?

- Criminal offence to intercept communications in the course of their transmission via postal, public or private telecommunications systems
- Exceptions:
 - Consent
 - Lawful authority
 - Lawful Business Practice Regulations:
 - authorises specified interceptions carried out for business purposes (e.g. training purposes)
 - must use all reasonable efforts to inform of the interception

- Advertising must be legal, decent, honest and truthful
- CAP Code for non-broadcast ads
- BCAP Code for broadcast ads



Useful websites

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You can find more information on specific topics on the following websites:

Black letter law

- www.legislation.gov.uk

Intellectual property

- www.ipo.gov.uk

Data protection, privacy, marketing

- www.ico.org.uk

Advertising

- www.asa.org.uk

Consumer law

- <https://www.gov.uk/government/organisations/competition-and-markets-authority>

Any questions?

For more information
please contact:

Anna Soilleux-Mills

+44 207 067 3765

anna.soilleux-mills@olswang.com

Alasdair Lamb

+44 207 067 3136

alasdair.lamb@olswang.com