

# Business and Community Engagement



## Essential E-commerce

This publication is aimed at UK further and higher education staff working in areas related to knowledge transfer, work based learning, community links, outreach, CPD, employer engagement, wider participation, and lifelong learning.

It is one of a series of publications produced by JISC Legal to raise awareness of the potential legal issues related to the use of technology by colleges and universities in relation to their business and community engagement activities.

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### 1. Introduction

If a college or university delivers any Business and Community Engagement activities online, the institution must make sure that its website and processes comply with the e-commerce rules.

This guide gives an overview of these rules.

### 2. What are the e-Commerce Rules?

There are three main sets of Regulations which apply to e-commerce (i.e. selling or providing goods or services through a website). These are:-

- The Consumer Protection (Distance Selling) Regulations 2000 (Distance Selling Regulations);
- The Electronic Commerce (EC Directive) Regulations 2002 (E-commerce Regulations); and
- The Privacy and Electronic Communications Regulations 2003 (Marketing Regulations).

### **What activities do these rules apply to?**

Some common examples would include:-

- Selling publications, graphics or research through a website;
- Providing an online training course;
- Making software available for purchase and download from the website;
- Sending newsletters to customers and partners;
- Hosting a subscription based wiki or blogspace; or
- Providing an online facility to book conference facilities.

The key issue is that the product or service is provided at a distance using electronic equipment.

### **3. The e-Commerce Regulations**

The institution must provide certain information about itself and the sale process to customers.

#### *Minimum Information*

The institution's website must contain the following information:-

- the institution's name, together with its geographic and email address;
- its VAT registration number;
- its company registration number (if appropriate); and
- all prices in clear and unambiguous terms, and whether they include tax and delivery.

#### *Sale Process*

Before an order is placed through the website, the institution must explain the sale process to the customer and the "technical steps" required to conclude the contract. This is so the customer knows the point at which he or she is bound to the contract. The issue of acceptance is discussed below.

It must also give details of how the customer can identify and correct any errors in his or her order prior to placing it. So, for example, there may be a confirmation screen at the end of the sale process which sets out details of the order and allows the customer to confirm those details or amend them.

If the institution is using standard terms and conditions, these have to be made available in a way which allows the customer to store and reproduce them. From a practical point of view, the terms and conditions must form part of the order process – they should be presented to the customer (either in complete form or through a hyperlink) with a box which the customer must tick to signify his or her acceptance of the terms. If the customer does not accept the terms, then the order should not proceed.

#### *Acknowledgment*

When the customer places his or her order, the institution must acknowledge receipt “without undue delay and by electronic means” – typically, an acknowledgement email is automatically generated and sent. This should simply confirm receipt of the order and that it is being processed.

#### *Acceptance*

Again, from a practical point of view, the institution should structure its e-commerce process to allow itself the maximum possible latitude. It should be made clear that, when the customer submits his or her order, this is an offer to purchase the goods or service from the institution, which it can then accept or reject. The contract should not be accepted immediately as this could bind the institution to something which it cannot or does not wish to honour. For instance, the particular publication may be out of print or the site may contain a pricing error.

#### *Failure to Comply*

If the institution doesn't comply with the rules, the customer may sue the provider for damages or, in certain circumstances, terminate the contract.

### **4. The Distance Selling Regulations**

These Regulations cover business to consumer transactions which are concluded at a distance (ie with no face to face contact). This would include email, telephone, fax or through a website. They do not apply where the institution is dealing with a business.

#### *Information Requirements*

Again, the Regulations set out that certain information must be provided to the customer (in a clear and comprehensible manner) before the contract is concluded, including :-

- a description of the characteristics of the goods/service;
- the arrangements for payment, delivery or performance; and
- the existence of the right to cancel the contract.

This information (which is additional to that which is required under the E-commerce Regulations) must be provided to the consumer in writing or another

“durable medium”, such as email. It must also set out details of the procedures and conditions for exercising the right to cancel.

### *Right to Cancel*

The right to cancel is an important part of the Distance Selling Regulations. The customer must be informed of this right to withdraw from the contract during the cooling off period. If the customer does withdraw, any sums paid by him/her must be refunded. It is as if the contract had never existed.

The cooling off period lasts for seven days and commences on the day following the customer’s receipt of the goods or, in the case of services, the conclusion of the contract. If however the customer has not been provided with the information referred to above by the time of delivery or conclusion of the contract for services, it could last for up to three months and seven days.

There are certain exceptions where the right to cancel will not apply. So, for instance, it will not apply to where the goods have been made to the customer’s specifications or where, in a contract for the supply of software, the goods are unsealed by the consumer.

Also, the right to cancel cannot be exercised where the service has already begun (with the customer’s consent) and the customer was given information about how the right to cancel would be affected before the contract was concluded.

## **5. Marketing Regulations**

An institution may only send unsolicited marketing email to an “individual subscriber” where that person has given his or her consent to such email. An individual subscriber basically refers to a private individual’s personal account, such as [john.smith@hotmail.com](mailto:john.smith@hotmail.com) or [joe.bloggs@aol.co.uk](mailto:joe.bloggs@aol.co.uk). Such a person is an individual subscriber as he or she is responsible for paying the charges on his or her account.

Accordingly, institutions should be very wary of lists acquired from third parties. Prior to using such a list, the institution should check the basis upon which the details were collected and satisfy itself that any consent given at the time of collection extends to the University’s proposed activities. In other words, the individual may have consented to receiving emails from the third party only. Accordingly, this would not be consent for the institution’s purposes.

### *Exception*

There is a limited exception where the sender collected the person’s details as a result of a previous transaction or negotiation between the parties. In this case, the sender can send emails about its similar goods or services. The sender however must give the recipient the opportunity to “opt out” of receiving such emails in the future (i.e. if you do not wish to receive any more marketing emails

from the University of Nowhere, please reply to this email, quoting Unsubscribe in the subject box). An institution should action unsubscribe requests accordingly.

#### *Corporate Subscriber*

The same restrictions do not apply where the institution is marketing to a corporate subscriber, i.e. [john.smith@limitedcompany.com](mailto:john.smith@limitedcompany.com). The Information Commissioner's Guidance states that schools, government departments and agencies, and other public bodies are also regarded as corporate subscribers. In these cases, it is the organisation which is liable for the line rental and use charges – so it is the subscriber for the purposes of the Regulations. Accordingly, on the basis of the Commissioner's Guidance, it would appear that the institution may market to named individuals at their corporate email addresses without falling foul of the Regulations.

#### *All Subscribers*

Regardless of the subscriber's status, each email which is sent must not conceal the sender's identity and must provide a valid address for unsubscribe requests.

#### *Failure to Comply*

The Regulations are enforced by the Information Commissioner and an aggrieved recipient of an unsolicited email (or SMS) can seek compensation from the sender for any damage which he or she has suffered as a result of the breach.

## **6. Summary**

Where an institution wishes to use its website to provide BCE activities, it must ensure that it meets the various information and procedural requirements which are set out in the E-commerce and Distance Selling Regulations. If it wishes to rely on standard terms and conditions, then the institution must ensure that they are incorporated into the sale process.

Also, whilst email can be a very effective and efficient marketing tool, the institution should conduct such activities within the terms of the Marketing Regulations.

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