

e-Commerce Law for Web Administrators

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With the growing technical ease of adding e-commerce facilities to FE and HE institutions' websites, and the financial pressure to raise income, the inclusion of online purchase facilities in VLEs and MLEs is sure to grow. However, such facilities need to be compliant with a number of recent regulations which have their origin in European Community law.

The regulations which have to be considered by web administrators implementing or developing e-commerce facilities as part of their institutional website are the Electronic Commerce (EC Directive) Regulations 2002 (the 'e-Commerce Regulations'), the Consumer Protection (Distance Selling) Regulations 2000 (the 'Distance Selling Regulations') and the Privacy and Electronic Communications Regulations 2003 (the 'Privacy Regulations'). Each of these provides different, but largely complementary, obligations on educational establishments concerning the provision of goods and services (and in some cases just information) to students and others.

e-Commerce Regulations

The e-Commerce Regulations apply not only to websites which are used for buying and selling goods and services, but also to a variety of 'information society services'. These are likely to include websites offered by education establishments, as well as virtual learning environments.

Information to be provided

The e-Commerce Regulations require the provision of certain information on all websites, including name, address, email address and VAT number of the website provider. If the site (or goods and services sold through it) are offered by a company, the company registration number must be provided. Any prices on the web site must be clear and unambiguous, and should be stated inclusive of tax and delivery costs. The rules do not dictate exactly where this information should go, although it must be "easily, directly and permanently accessible".

Online contract formation

Certain other information and facilities must be supplied to all customers before orders are placed online. The customer must be told the 'technical steps' involved in completing the transaction. It should be clear at what point a contract is formed. The user must be given an acknowledgement promptly after the order is placed. Any terms and conditions should be provided in a way that enables the customer to copy and retain them.

Liability of intermediaries

The e-Commerce Regulations provide important defences to liability for damages where the educational establishment is a 'mere conduit' in providing a communications network, or where, in providing a website or any service on it (such as a chat room) it is simply a host for the information. The educational establishment must meet a number of tests to benefit from the defences, and must continue to act appropriately in its operation of the network and website. In the case of chat rooms, and other content posted by users, it should be wary of carrying out any monitoring. In all circumstances it must act promptly upon notification of abuse.

Distance Selling Regulations

The Distance Selling Regulations are narrower in scope than the e-Commerce Regulations. They apply only to contracts entered into at a distance, and apply only to business-to-consumer transactions. This is likely to cover contracts between educational establishments and students.

Prior information

An educational establishment must provide a variety of information to the customer prior to entering to any contract. This includes the information required under the e-Commerce Regulations and in addition: a description of the main characteristics of the goods or services; the arrangements for payment, delivery or performance; and the existence of a seven working day cancellation period. This prior information must be provided in a clear and comprehensible manner which is appropriate to the means of distance communication used.

Once a customer places an order, the educational establishment must provide confirmation of the prior information otherwise it will not be able to enforce the distance contract. The information must be in writing or another durable medium (like email). At the same time, further information must be provided including details of the student's right to cancel the contract.

Cancellation

The Distance Selling Regulations provide for a mandatory cancellation period (also sometimes known as a 'cooling off' period) during which the consumer can withdraw from the contract. Once a consumer cancels the contract it must be treated as if it had never been entered into. All sums paid by the consumer (including delivery fees and taxes) must be returned.



However, the cancellation period does not apply to all contracts. In particular, cancellation will not be possible after a service has begun (with the customer's consent), if the institution has explicitly stated this prior to the contract being formed.

The start of the cancellation period varies depending on whether, and when, the prior information has been confirmed in writing/email. This means that while there is a statutory requirement to provide a seven working day cancellation period from the day after the goods are received/the contract for services is concluded, this may effectively extend to three months and seven working days. This highlights the importance of providing the written confirmation of prior information promptly on completion of the contract.

The Privacy Regulations

The Privacy Regulations brought into force a range of controls on use of electronic communications. Probably the most crucial for educational establishments are those regulating the use of unsolicited marketing by e-mail (which includes SMS and other electronic communication methods) and the use of website cookies.

Unsolicited email marketing

The Privacy Regulations prohibit the sending of unsolicited email communications to individual subscribers (e.g. john.smith@home.com, but not corporate subscribers like john.smith@work.com) without the subscriber's prior consent.

An unsolicited message is one that the subscriber has not specifically invited. There is an exception relating to messages promoting goods or services similar to those which the subscriber has previously purchased, or has expressed an interest in purchasing, and has been given an opportunity to opt-out.

Prior consent does not mean the same thing as 'opt-in'. An 'opt-in' generally refers to a tick box where a subscriber positively indicates that they want to receive the communication. Prior consent does not specifically require opt-in, provided that the method used includes a clear indication of the subscribers intention to give consent, and gives the subscriber an opportunity to 'opt-out'.

In all cases the Privacy Regulations prohibit direct marketing by electronic mail to all subscribers (individual and corporate, previous or new) unless each e-mail contains the identity of the sender; and a valid 'unsubscribe' address.

Cookies

The Privacy Regulations also required that an educational establishment must not store information or gain access to information stored in the terminal equipment of a user (like website cookies) unless the user "is provided with clear and comprehensive information about the purposes of the storage of, or access to, that information" and "is given the opportunity to refuse the storage of or access to that information." For further details on how to comply see www.aboutcookies.org



Points to Remember for Web Administrators

The following points should be borne in mind when offering goods, services or information through websites:

1. Consider what information is necessary under the e-Commerce Regulations and the Distance Selling Regulations, and make sure that this is appropriately presented on the website.
2. Consider the extent to which the defences under the e-Commerce Regulations in relation to network provision and hosting content can be relied upon, and ensure that appropriate network control and 'notice and takedown' policies are put in place.
3. Consider the need to provide a cancellation period to users, and structure the e-commerce process to take account of this, sending the additional information as soon as possible following conclusion of the contract.
4. When you are collecting personal data ensure that you provide for prior consent to email marketing, and make sure that unsolicited communications are not sent unless such consent has been obtained, or there is an entitlement otherwise to send them under the Privacy Regulations.

This paper contains an overview of some of the key legal issues to be considered in relation to the topic. For more detailed information see www.out-law.com. This paper does not constitute legal advice.



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