



THE BOTTOMLINE

ASK THE EXPERT *by Katrina Gleber*

Q: Our station is interested in engaging in e-commerce transactions on the station's website to sell programming-related products. What issues should we be aware of before we start?

A: Many stations are examining new ways to monetize their websites. As a result, you are not alone when you consider the new methods available to earn revenue online, either through direct web sales, online advertising, or website linking relationships. As you consider entering into these arrangements, you should be aware of a number of legal issues and consult with an attorney before engaging in such practice.

Here are some of the issues to consider:

- **Terms of sale or “clickwrap” agreements:** All sales made via your website should be subject to a written agreement between you and the consumer. Such agreements provide the outline of legal terms governing the transaction and put the consumer on notice of the payment terms, representations and warranties applicable to the product being purchased, and the legal remedies available to the parties. Due to the “click-through” acceptance of these agreements, courts have sometimes found certain provisions in these agreements to be unenforceable. Therefore, you should consult an attorney to draft such an agreement before posting it online.
- **Online Privacy:** Because e-commerce transactions require the collection of personally identifiable information—such as the consumer’s name, address, phone number, email address, or birth date, and credit card information—you should be aware of federal and state laws governing the collection, use and maintenance of such data. **Your website should include a “Privacy Policy,”** notifying end users of your data collection practices in a clear and conspicuous manner. If this data will be shared with third parties, e.g., advertisers or operational service providers, you should include such disclosure practices in the Privacy Policy. This data should also be maintained in a secure, encrypted manner to prevent potential online security breaches, and you should delete or destroy such information promptly once it is no longer needed. The Federal Trade Commission has engaged in a number of enforcement proceedings against companies engaging in unfair and deceptive trade practices related to the unauthorized disclosure of sensitive personally identifiable information.
- **Websites Directed to Children:** If your website is directed to children under 13, or you are planning on selling products directed to such children, then you should be aware of the requirements imposed by the federal [Children’s Online Privacy Protection Act](#). This law and the accompanying regulations specify the kind of information that must be included in the website’s Privacy Policy, how to receive “verifiable parental consent” from a parent when collecting information from a child under 13, and other

obligations with respect to protecting a child's privacy online.

- **Internet Taxes:** Most states are prohibited from imposing a tax on Internet access. However, state sales taxes may still apply. Therefore you should consult an accountant to determine the applicability of such laws.
- **Processing and fulfillment of orders:** Claims made on your website regarding the processing and fulfillment of orders must comply with federal regulations. Pursuant to such requirements, you must have a reasonable basis for stating that a product can be shipped within a certain timeframe, and if no timeframe is stated on your website, then you must have a reasonable basis for believing that the ordered product can be shipped within 30 days.
In addition, consumers should be notified promptly of unexpected delays and when corresponding refunds may be available.
- **Advertising issues:** The Federal Trade Commission prohibits unfair or deceptive trade practices. Therefore, online advertisements must be truthful and substantiated with clear and conspicuous disclosures. Advertising should not mislead consumers in such a way as to affect their buying decisions. In addition, certain products and services, e.g., gambling, alcohol, or prescription medicine, etc., may be subject to additional disclosures pursuant to FTC regulations or state law.
- **Intellectual Property:** Issues governing the use of trademarks and copyrights are an important element on every website. In particular, if you are including third-party trademarks on your site in connection with the sale of certain products, you must ensure that you have the appropriate trademark licenses granting such use. Similarly, if you are selling products in connection with programming aired on your station, you must consider whether the products are properly licensed from the rights-holder.

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"Ask the Expert" is featured in *BottomLine* the last Thursday of each month.

In past months, topics have ranged from closed captioning of pledge breaks to new regulations from the FCC.

Want to "**Ask the Expert?**" Send your query to lisa@pbma.org and look for the expert response in a future *BottomLine* issue.