



310 Common Legal Issues in Running an eCommerce Website

Deirdre C. Brekke
General Counsel
Cardean Learning Group LLC

Daniel R. Harper
Vice President, Corporate Counsel
OCE-USA Holding, Inc.

Stacey Olliff
General Counsel
Shopzilla, Inc.

Faculty Biographies

Deirdre C. Brekke

Deirdre C. Brekke is general counsel for Cardean Learning Group LLC, located in Chicago, formerly UNext, a global leader in online learning, which delivers high-quality post-secondary educational programs and courses, including a renowned M.B.A. program developed with a consortium of leading business schools, to adult learners through the internet. Cardean teaches all of its courses through its internet-based learning system and also does the majority of its marketing through the internet, and Ms. Brekke addresses ecommerce and website issues daily.

Before joining UNext, Ms. Brekke served as divisional general counsel for Moore North America, Inc. (now a division of R.R. Donnelly). Prior to that, she held in-house positions at Sears Roebuck & Co., focusing on information technology and related matters, and The NutraSweet Company, a division of Monsanto Company, where she concentrated in the areas of transactions and international commercial law.

Ms. Brekke received her B.A. from Emory University and graduated magna cum laude from the University of Georgia School of Law. She is currently pursuing her M.B.A. through Cardean Learning Group.

Daniel R. Harper

Daniel R. Harper is vice president, corporate counsel for Océ-USA Holding, Inc. in Chicago. He provides general legal guidance and counsel to the North American operations of Océ N.V., a Dutch company. His responsibilities at Océ include counseling on commercial transactions, employment matters, internal investigations, litigation, corporate policy and procedure, intellectual property, software licensing, technology, and marketing.

Prior to joining Océ, Mr. Harper was senior counsel at Spiegel, Inc. where he provided legal guidance to the information technology and iMedia groups for the corporate parent as well as the Eddie Bauer, Spiegel Catalog, and Newport News subsidiaries. He also managed the Spiegel Group intellectual property portfolio, negotiated and drafted commercial transactions, managed litigation, and was the chairman of the Spiegel Group corporate privacy committee. Prior to Spiegel, Mr. Harper was in private practice with the law firm of Carey, Filter, White & Boland in Chicago, where he divided his time between litigation and transactional work.

Mr. Harper serves as the Secretary of ACC's Information Technology and eCommerce Committee and is a member of the board of directors of ACC's Chicago Chapter.

He received a B.A. from Villanova University and is a graduate of DePaul University College of Law.

Stacey Olliff
General Counsel
Shopzilla, Inc.

310: Common legal issues in Running an eCommerce Website

The following materials have been abbreviated for printing purposes. The original version is available on the course material CDROM and online at www.acca.com/am/05/material.php.

“Trademarks, Copyrights and Other Website Legal Issues”

Deidre C. Brekke

“[T]his document highlights a few key statutes and cases which illustrate the current issues of trademark and copyright law that relate to website development and provides access to additional resources which further explore these topics.” The Anticybersquatting Consumer Protection Act is included as an appendix. This material is organized as follows:

- I. Trademarks on the Internet
- II. Copyrights on the Internet
- III. Linking and Framing

“Shopzilla User Agreement”

provided by Stacey Olliff

This webpage contains the terms that a user agrees to when he/she uses the Shopzilla.com website.

“Copyrights Complaint”

Cardean Learning Group

This statement appears on the NYIT website and invites those who believe that the website infringes on their copyrights to notify the Cardean Learning Group Legal Department of the infringement.

“Sample Website Hosting Agreement With Commentary”

This comprehensive document was prepared “by the parent company of several retail, catalog and internet merchants” to govern the terms of their relationship to host their “mission critical” websites. The document is organized as follows:

- I. Introductory Paragraph
- II. Recitals
- III. Terms and Conditions
 1. Services

2. License and Proprietary Rights
3. Client Content
4. Fees and Taxes
5. Warranties
6. Indemnification
7. Limitation of Liability
8. Termination and Renewal
9. Liaison
10. Performance Standards
11. Miscellaneous

- Schedule A: Services and Costs
- Schedule B: Service Level Agreement

“[Sample] Services and Consulting Agreement Web Site Development”

This agreement covers the terms whereby the client contracts with the host to provide the services described in the attached “Statement of Work.” The agreements organized into the following topics:

1. Definitions
2. Ownership
3. Restrictions on Use
4. Services
5. Personnel
6. Confidential Information
7. Payment
8. Indemnification
9. Limitation of Liability
10. Warranties
11. Limitations on Client Consent
12. Developer Exclusivity
13. Termination and Renewal
14. Covenant
15. Miscellaneous

- Exhibit A: Statement of Work
 1. Overview
 2. Team
 3. Rates
 4. Schedule of hours for invoices
 5. Report of Actual Hours
 6. Roll Over of Hours
 7. Joint Press Release

“[Sample] Master Information Technology Services Agreement”

This document covers the following aspects of an agreement between a client and a host company:

1. Agreement Structure
2. Definitions
3. Services
4. Term and Renewal
5. Inspections and Audits
6. Security
7. Substitutions, Additions and Deletions of Third Party Agreements
8. New Services
9. Warranties/Representations/Covenants
10. Independent Contractor and Personnel
11. Required Consents
12. Alternative Providers
13. Charges
14. Credits
15. Confidentiality
16. Termination
17. Liability
18. Indemnification
19. Insurance
20. Dispute Resolution
21. Force Majeure
22. Intellectual Property
23. General

- Master Definitions Appendix

The following materials have been abbreviated for printing purposes. The original version is available on the course material CDROM and online at www.acca.com/lam/05/material.php.

“Overview of Recent California Privacy and Security Laws Affecting E-commerce Business”

Stacey Olliff

This document covers four laws enacted by the California Legislature that “apply to all businesses that operate on a nationwide basis, even if they have no physical presence in California, and have particular significance for e-commerce businesses. ...Collectively, these laws impose new compliance obligations on businesses that collect information on their websites and potentially put them at risk of litigation in California in the event they fail to properly implement the new laws.” The four laws are:

- I. Online Privacy Protection Act of 2003
- II. California "Shine the Light" Statute
- III. California Security Breach notification Statute
- IV. California Information Security Procedures Statute

The following materials have been abbreviated for printing purposes. The original version is available on the course material CDROM and online at www.acca.com/lam/05/material.php.

“Senate Commerce Passes Bills To Protect Sensitive Consumer Data.”

According to this article, “[t]he ‘Identity theft Protection Act’ (S. 1408) would set national standards for notifying consumers about data security breaches, require businesses to safeguard sensitive consumer information, allow individuals to freeze their credit reports, and limit the solicitation of Social Security numbers.”