Guide for Website Terms and Conditions / Privacy Policy

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# Overview

Creating a website is an exciting way to expand your marketing reach, generate new business sales, or just pursue new opportunities – whether for private or commercial use. But with an online presence you are also exposing yourself to risk from users of your website; users who might be concerned about how you are using and protecting their private data, how you are dealing with conflicts and issues arising from the use of your site, or who might just want to know any risk associated with using your site.

It is very important to have a Term and Conditions document written especially for your site, as well as a Privacy Policy that covers your use of private information in order to properly protect yourself and your business.

This guide will answer some of the most common questions related to the use and implementation of Terms & Conditions and Privacy Policies on websites and should help you get the coverage that you need.

# General Information

* Am I required to have a Privacy Policy or Terms and Conditions?
  + A Privacy Policy is required for websites in certain industries that collect personally identifying information regarding their users. These industries include, but are not limited to, the financial services industry and the health care industry. Certain states, such as Texas and California, require a website to contain a privacy policy if the website can be accessed by one of their residents. Since the internet is global, it is highly recommended to have both a Privacy Policy and Terms and Conditions for your website.
* What is the purpose of the Privacy Policy and the Terms and Conditions?
  + A Privacy Policy is a disclosure document, which informs customers how personal information will be collected, used and stored by the website owner. The Terms and Conditions establish the rules for using a website.
* What must be included in the Privacy Policy and the Terms and Conditions?
  + A Privacy Policy should state what information is collected from the user, how it will be used, and what information will be shared with third parties, if any. There is no set requirement on what must be included in the Terms and Conditions of a website. What should be included depends on what type of business you are in, what activities you conduct on your website, and what type of information you collect from users.
* What kind of liability protection does a Privacy Policy and Terms and Conditions provide me, especially when they include disclaimers?
  + A properly drafted Privacy Policy and Terms and Conditions provide the best possible protection against potential claims that may arise from users of your website. By having a properly drafted and readily available Privacy Policy, you inform users how you will collect and use their personal information. Courts may look more favorably on a company that has a posted privacy policy that the company adheres to. A court is also more likely to enforce a well-drafted and easily accessible Terms and Conditions. Therefore, it is crucial that the Terms and Conditions can clearly describe to users what is and what is not permitted on your website.

# Implementation

* Where should the Privacy Policy and the Terms and Conditions appear on my website?
  + It is best to put both the Privacy Policy and Terms and Conditions in a location on your website where users can easily find and access it. Many websites choose to hyperlink their Privacy Policy and Terms and Conditions on the bottom of each webpage.
* Can the Privacy Policy and the Terms and Conditions both be displayed on one web page?
  + Usually, the Privacy Policy and the Terms and Conditions are located on separate webpages. If they are on separate webpages, the Terms and Conditions should reference the Privacy Policy. Alternatively, the Privacy Policy and the Terms and Conditions can be displayed on one webpage but the titles or headings indicating the Privacy Policy section and the Terms and Conditions section should be easily identifiable.
* When do I need to ask the users of my website to agree to the Privacy Policy and the Terms and Conditions?
  + When a user should accept a website’s Privacy Policy and Terms and Conditions is determining on a case-by-case basis. It is best to have users agree to both your Privacy Policy and Terms and Conditions when they initially sign up for a service or product on your website. For example, if you are selling products on your website, the user should be required to accept both the Privacy Policy and Terms and Conditions before their order is confirmed and payment is accepted. If users of your website can sign up for membership, the user should accept the Privacy Policy and Terms and Conditions before the membership application is submitted.
* How can I have users agree to the Privacy Policy and the Terms and Conditions?  Do I have to have users click or check a box that says "I agree"?
  + It is recommended to have users agree to your Privacy Policy and Terms and Conditions by having them check a box or click a button which states “I agree” to ensure they are aware of both policies which affect their use of your website. The text surrounding the button should indicate the user’s agreement to the terms of the contract.
* Should the Privacy Policy and Terms and Conditions be located under the same URL or can I link from another website instead?
  + The Privacy Policy and Terms and Conditions should be located under the same URL and should not be hosted on another site.
* Should I have links to the Privacy Policy and Terms and Conditions on all webpages on my site?
  + It is advisable that you provide hyperlinks to the Privacy Policy and Terms and Conditions on each webpage of your website.
* Do I need to include links to the Privacy Policy and Terms and Conditions in all emails that I send out?
  + While it is not required that you provide links to the Privacy Policy and Terms and Conditions in every email, it is recommended that you provide these links in the emails you send out so that users are fully aware of these policies.

# Tracking and Privacy

* Do I need to list my phone number and/or address somewhere on my site?
  + You are not required to provide your phone number or physical address on your website. However, it is recommended that you provide an email address or a “contact us” form which can be used to contact your company if a user has questions or complaints.
* Do I need to obtain any personal information from users when they agree to the Privacy Policy and the Terms and Conditions?
  + It is important to keep track of which users have agreed to your Privacy Policy and Terms and Conditions. Storing and tracking of the users who have accepted the Privacy Policy should also be stored in a way that is covered by the Privacy Policy.
* Do users need to agree to the Privacy Policy and/or Terms and Conditions again if I update them?
  + It is highly recommended that you have users agree to your Privacy Policy and Terms and Conditions again if any changes have been made; however, it is common to include language in the Privacy Policy and Terms and Conditions that includes the user’s agreement to any future changes or updates
* How do I keep track of users who have agreed to the Privacy Policy and the Terms and Conditions?
  + There are many different methods in which you can track which users have agreed to your website’s Privacy Policy and Terms and Conditions. Your website developer should be able to advise you on the numerous options that are available and discuss which method would work best for you.

# Getting your own Terms and Conditions, and Privacy Policy

* Can I just take a Privacy Policy and Terms and Conditions from another website?
  + A Privacy Policy and Terms and Conditions are specifically tailored for each individual website and each type of business. Thus, another website’s Privacy Policy and Terms and Conditions may not reflect the needs of your business and may expose your business to liability.
* Can you provide me with a template to create my own Privacy Policy and Terms and Conditions?
  + We do not provide templates to Privacy Policy and Terms and Conditions for websites because this should be drafted by an attorney with particular care in tailoring the Privacy Policy and Terms and Conditions for the individual business or purpose of your website.
* Can you review my Privacy Policy and/or Terms and Conditions for me?
  + Yes, we can review your current Privacy Policy and/or Terms and Conditions. You can submit a request to schedule a consultation with an Advantage Attorney in your state.
* Can you draft my Privacy Policy and/or Terms and Conditions for me?
  + The Advantage Attorney can draft a Privacy Policy and Terms and Conditions customized for your website and business.