

Chapter 16

Key Contracts Needed for SMEs Conducting E-Business: A Practical Guide from a UK Law Perspective

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ABSTRACT

In order for a small to medium enterprise (SME) to conduct business electronically, that SME requires the establishment of a website. This requires agreements relating to (1) website development, (2) website hosting (3), Internet access, and (4) online content and advertising. The chapter will provide a practical guide from a UK law perspective for a SME in relation to the issues which should be considered when contracts for the above mentioned services are negotiated. The chapter does not cover the issues relating to how the SME should set up its arrangements with its own customers (for example, through website terms and conditions) nor does it consider e-commerce legislation required when conducting business on the Internet.

INTRODUCTION

Increasing use of the Internet as a business medium has created the need for new service and supply agreements to facilitate that business to emerge. Any small to medium enterprise (SME) wanting to establish an online business presence requires agreements relating to some or all of the following:

- website development;
- website hosting;

- Internet access; and
- online content and advertising.

The next sections in this chapter provide a practical guide from a UK law perspective for a SME in relation to the issues which should be considered when contracts for the above mentioned services are negotiated. Even though such agreements were unheard of before the advent of the Internet, it is important to remember that the general principles of contract law apply in the same manner as for other conventional contractual arrangements.

DOI: 10.4018/978-1-60960-765-4.ch016

It should be noted that this chapter focuses on the contracts related to the establishment of the website and does not cover the issues relating to how the SME should set up its arrangements with its own customers (for example, through website terms and conditions) nor does it consider the various e-commerce legislation required when conducting business on the Internet.

DEFINITIONS

There is no one definition for a SME. According to a study conducted by the International Labour Organisation, more than 50 definitions were identified in 75 countries with considerable ambiguity in the terminology used (Pobobsky 1992). In the UK the most widely used definition of an SME is that of a firm with 0-250 employees (DTI 2007).

The distinction between e-commerce and e-business is not entirely clear and frequently the terms are used interchangeably. Davydov (2000) defines e-business as:

“an all encompassing concept of enabling the exchange of information and automation of commercial transactions over the Internet.”

For the purposes of this chapter, the definitions of SME and e-business as outlined above will be used.

THE NEED FOR THIS GUIDE

Whilst there have been various checklists on a number of different types of website agreements as well as various articles and books on such contracts, to date as far as the author is aware, there has been no collective “guide” on the contractual issues related to the specific contracts needed by SMEs to conduct e-business. One reason for this may be that although e-business has spread rapidly

throughout large firms, its growth amongst SMEs has been much less pervasive (Poole 2006).

This chapter attempts to provide such a guide for the benefit of SMEs.

WEBSITE DEVELOPMENT AGREEMENTS

Background

The Internet allows users to search for and retrieve information stored in remote computers. Any person or organisation with Internet access can “publish” information on the Internet. To create a presence on the Internet, a website (comprising one or more web pages) is required. The forms and functions of websites have evolved remarkably in recent years, from allowing the supply of static information consisting of text only, to billboard type websites, to those that constitute fully interactive, e-commerce enabled marketplaces (Chong 2009).

Initial Considerations

The appointment of an appropriate website developer and host is the first key decision for a SME wishing to establish an Internet presence (Bode 2001). The following are some initial considerations that should be taken into account. The extent to which these issues need to be addressed depends on the complexity of the proposed website and the underlying business.

Does the SME Need a Website Developer, or can the SME do this Itself?

The SME needs to consider whether it has the in house resources to develop the website. In determining this, the SME needs to take into account the level of functionality required for the website. It is generally recognised that website development

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