

Starting a Company:
New Legal Problems Posed by
the New Economy

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Princeton InterNetworking

Inaugural Entrepreneurial Conference

Competing in the New Economy

May 25, 2000

HALE AND DORR LLP

Overview

- Registering your domain name
- Applying for (or defending against) e-commerce patents
- Click and accept agreements
- Terms and conditions of use
- Privacy policy

Registering Your Domain Name

- Registering corporate name is not enough
- Registering your trademark is not enough
- Register in other countries
- Register in other TLD's (top level domains)
- Federal Anticybersquatting Consumer Protection Act
- ICANN Uniform Domain Name Dispute Resolution Policy

Registering (or Defending Against) E-commerce Patents

- Business methods are patentable; increased about 100% from 1998 to 1999
- Single click of a mouse patent: a customer orders an item over the Internet using a single action (not a shopping basket)
- Web referral methodology: a referring web site contains one or more links to a merchant web site
- Obtain patents to have something to cross-license when you are attacked

Click and Accept Agreements

- Why use agreements at all?
- Why use click and accept agreements?
- Enforceability of click and accept agreements outside the United States

Why Use Agreements At All?

- Disclaim Implied Warranties
- Limit Direct Damages to Purchase Price of Product
- Exclude Indirect Damages
- Choice of Law; Choice of Dispute Resolution; Choice of Forum
- Limit Uses (e.g., only for internal purposes; not to be used to conduct service bureau for benefit of third parties; etc.)
- Prohibit decompilation and reverse engineering
- Protect non-copyrighted material

Why Use Click and Accept Agreements?

- Given the volume of transactions (hopefully!), it is impractical to have separately negotiated agreements
- Given the nature of the Internet, both buyers and sellers want the convenience of “agreeing to terms” online
- Using click through agreements discourages even large buyers from insisting on separately negotiated terms

Special Issues Affecting International Enforceability

- Translate terms into local language
- Comply with localization requirements
 - Spain: all packaging in Spanish
 - France: documentation and on-line help in French
- Variations in consumer warranty requirements
- European Union Distance Selling Directive (Articles 5 and 6): buyer must receive written confirmation or confirmation “in another durable medium”; 7-day right of return runs from receipt of confirmation

Terms and Conditions of Use

- Use of web site = acceptance of terms
- Caution against relying on information for professional advice
- Not responsible for accuracy and modification of content
- Qualify for safe harbor under Digital Millennium Copyright Act
- Securities law safe harbor for forward-looking statements
- Links to other web sites not an endorsement
- Ownership of submissions

Privacy Policy

- FTC focuses on Fair Information Practices
 - NOTICE about online information collection
 - CHOICE regarding uses of that information
 - ACCESS to ensure that information is accurate, complete, and up-to-date
 - SECURITY and integrity of information collected online; and
 - ENFORCEMENT to provide effective recourse for improper breaches of personal privacy.

Privacy Policy

- Childrens' Online Privacy Protection Act: parental consent before collecting identifying information from under 13's
- Special concerns about online profiling: opting-in vs. opting-out
- Voluntary safe harbors permit transfer of personal data from the EU to the United States
- New Canadian federal legislation

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