

June 30, 1999



SITE BLUNDERS: WHAT NOT TO DO

There are lots of e-commerce web sites that make common mistakes that could lead to trouble. Here is a list of some pitfalls you will want to avoid.

- 1. Don't build a purely passive site.** Users who find you on the web are looking for more than a phone book full-page ad. Let them interact with you (and, perhaps, each other).
- 2. Don't build a site that is hard to navigate.** Can you get to a site index from every page on your site? Is it easy for visitors to find what they are looking for?
- 3. Don't provide stale content.** Keep your site up to date.
- 4. Don't require the unnecessary provision of private information.** Users become nervous if a site requires registration for access, especially if the registration form requires extensive personal information.
- 5. Don't collect personal information from children without their parents' permission.**
- 6. Don't hide your privacy promises.** Make your privacy policy clear and display it prominently at appropriate junctures on your site.
- 7. Don't ignore your privacy promises.** Make sure you train your employees to follow the dictates of your privacy policy.
- 8. Don't provide a system that can't handle demands.** Make sure that your system can handle a large volume of visitors and orders at the same time.
- 9. Don't ignore the intellectual property rights of others.** Don't copy graphics and content from other sites. Don't forget to register an agent under the Digital Millennium Copyright Act who can receive notices of infringements occurring on your site.
- 10. Don't hide (I).** Consider providing an e-mail address for customer questions, comments, and complaints.
- 11. Don't hide (II).** Consider providing a street address and/or phone number.
- 12. Don't hide (III).** Don't forget to insert appropriate meta tags to provide information about your web page to search engines (such as keywords that represent the page's content).
- 13. Don't ignore your customers.** Respond to their questions, comments and criticisms in a timely fashion.
- 14. Don't ignore your delivery obligations.** Delivery of products should be timely and accurate.
- 15. Don't be a stranger.** Consider building a sense of online community with visitors through chat rooms, mailing lists, and personalized services.

16. **Don't hide the terms of the deal.** Make clear what terms and conditions govern access to and use of your site.
17. **Don't require a translator.** Don't require users to know a second "techie" language before using your site.
18. **Don't refer to information the user might not have seen.** Make sure you provide links and/or descriptions of all items to which you refer on a given page.
19. **Don't be afraid of external links.** Users will visit sites that provide interesting links. Don't make them prisoners of your site.
20. **Don't leave out limits for your offers.** To the extent any of your offers are limited, the site should make these limits clear (whether they are temporal, geographical, or otherwise).
21. **Don't allow inaccurate links.** Make sure your links aren't broken.
22. **Don't count on patience.** Make sure your site doesn't take forever to load.
23. **Don't miss a chance to inspire confidence.** Consider providing links to third-party consumer education sites. Consider obtaining a BBBOnline, TRUSTe, or WebTrust seal.
24. **Don't avoid providing a search engine.** Consider having an internal search engine, not just for products but also for information.
25. **Don't assume familiarity with your search engine.** If you have an internal search engine, make sure that you tell the user the rules for searching.
26. **Provide security (I).** Make sure you set up a firewall to prevent unauthorized alterations or access to ID, password, or credit card information.
27. **Provide security (II).** If you're collecting confidential user information (like credit card numbers), use the SSL (Secure Sockets Layer) protocol to encrypt the data.
28. **Provide guarantees.** Consider providing your users with "satisfaction guaranteed" warranties.
29. **Don't lose contact with users once the order is placed (I).** Provide online confirmation of orders so the user isn't left wondering whether or not the order went through.
30. **Don't lose contact with users once the order is placed (II).** Allow the customer to have access to order and shipping status information.
31. **Don't forget that your site is global.** If you want to limit physical deliveries to certain territories, make this clear. You may want to set up separate sites that are aimed at foreign users. In any event, make any choice of law or forum clauses clear.
32. **Don't ignore new business models.** Consider holding online events. Consider cross-supplying features to other sites. Consider allowing your users to create value (as in the EBay model). Consider hosting live chat sessions between and among users and customer service representatives.
33. **Find out what others think of your site.** Rating services, like bizrate.com, can help you see your site through the eyes of your users.

Winning e-commerce companies will be those that provide services that take advantage of novel Internet characteristics (like personalization, tracking, and asynchronous interaction) while responding to their customers' needs for privacy and security.

Summer associate Rebecca Ewing assisted in the preparation of this newsletter.

MONTHLY UPDATE

Cybersquatting. On June 21, Sen. Abraham introduced S. 1255, the *Anticybersquatting Consumer Protection Act*. The bill would establish penalties for criminal use of a counterfeit trademark as a domain name. Under the measure, using a company's trademark or its variant as the address of an Internet site would constitute criminal use of a counterfeit trademark if the defendant registered the address either knowingly and fraudulently or in bad faith. Bad faith could not be shown where the identifier is the defendant's legal first name or surname or where the defendant used the identifier in legitimate commerce before the earlier of either the first use of the registered trademark or the effective date of its registration.

"E-Contract." On June 23, House Majority Leader Dick Arney (R-TX) unveiled the "*e-Contract*," an agenda for high-tech America. Arney and other House Republicans pledged to keep the government off the backs of high-technology industries via a legislative agenda that includes tax cuts, removal of barriers to electronic commerce, Year 2000 readiness and protection from "frivolous lawsuits."

Electronic signatures. On June 24, the Subcommittee on Finance of the House Commerce Committee held a hearing on H.R. 1714, the *Electronic Signatures in Global and National Commerce Act*. H.R. 1714, recently introduced by Rep. Tom Bliley (R-VA), would facilitate the use of electronic records and signatures in interstate or foreign commerce. The hearing focused on Title 3 of the bill, which addresses the use of electronic signatures and electronic records in the securities industry. Rep. Bliley emphasized that H.R. 1714 does not endorse a specific technology or limit the types of companies that can offer electronic signature services. On June 23, the Senate Commerce Committee approved the *Millennium Digital Commerce Act* (S. 761), a bill that would give legal validity to electronic signatures and contracts entered into online.

Emerging Digital Economy II. On June 21, Vice President Gore released a new report called "The Emerging Digital Economy II." Among other things, the report noted that in early 1998 experts estimated that Internet retailing would reach \$7 billion by the year 2000; by late 1998, online retail sales reached between \$7 billion and \$15 billion.

Encryption. On June 23, the House Commerce Committee approved a bill providing export relief for encryption products (H.R. 850, the *Security and Freedom through Encryption ("SAFE") Act*). Also on June 23, the Senate Commerce Committee approved encryption legislation (S. 798, the *Promote Reliable On-Line Transactions to Encourage Commerce and Trade (PROTECT) Act*). S. 798 would promote electronic commerce by encouraging and facilitating the use of encryption in interstate commerce consistent with the protection of national security.

Privacy/financial institutions. On June 10, the House Commerce Committee marked up and approved its version of H.R. 10, the Financial Services Act of 1999, by a voice vote. During the full Committee's mark up, Commerce approved a privacy amendment by Rep. Paul Gillmor (R-OH) that would allow financial institutions to sell consumer information to unaffiliated third parties unless the customer opts out. This bill is still under consideration.

Privacy/medical records. The Health Insurance Portability and Accountability Act of 1996 requires Congress to pass medical privacy legislation by August 21, 1999, or defer responsibility to the Secretary of Health and Human Services to promulgate protection regulations by February 2000. Congressional leaders and the administration have stressed repeatedly that passing legislation by the deadline is preferable to regulations or to extending the deadline. It appears that Congress will not meet the August 21 deadline. A legislative markup of the Senate Health, Education, Labor, and Pensions Committee's medical records privacy proposal will not take place until September 1999.

Tax. The Advisory Commission on Electronic Commerce, created by Congress to recommend in April 2000 whether and how Internet commerce should be taxed, met for the first time on June 21. The meeting had been delayed since December 1998 because of controversies over the Commission's membership.

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