

# Commercial and Legal Aspects

*Just before you implement that live, online application, stop for a moment and consider the non-technical aspects of the scheme. This module introduces the legal requirements for the United Kingdom, and many commercial aspects too.*

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### **13.1 Why discuss this on a technical course?**

If you're going to be providing a web site for the world to see, there are certain aspects beyond the technical competent operation of the site that need to be considered. Although decisions on these matters will typically be taken by the original specifiers of the system, the software authors and deployment staff also need to be aware of the commercial and legal framework in which they're working so that they provide a finished product which is excellent for the purpose for which it was designed and very clearly operates within the law. In this module, we'll look at aspects that everyone with web site responsibilities should be aware of.

Legal aspects mentioned in this module relate to English law as we understand it. We are not legal experts, so we can accept no liability for information contained herein. We provide it in good faith; you must check with an appropriate solicitor or other legal authority if you require an authoritative view. The law elsewhere in the UK varies in some areas, and further afield it will vary even more. Many countries now have their own laws looking to combat similar problems to those experienced in England.

The Internet and the Web are very recent developments which, in many areas, have overtaken the law. Some laws that were in force many years ago happen to cover the Internet because of how they were worded, and others do not. As yet, there is little case precedence on many matters. There are also fascinating international questions, such as if a British company uses a web server in Germany, which country's law applies? If a British company commissions a company in India to send out bulk emails to prospective British clients, does the British or the Indian law apply?

### **13.2 Data Protection**

#### **Data Protection Act, 1998**

The Data Protection Act, 1998, says that data must be:

- fairly and lawfully processed
- processed for limited purposes
- adequate, relevant and not excessive
- accurate
- not kept for longer than is necessary
- processed in line with your rights
- secure
- not transferred to countries without adequate protection

Any organisation holding personal data is required to appoint a data controller and (with certain exceptions) register with, or notify, the Data Protection Registrar. This involves completing a form and paying an annual fee of £35.00 and is not subject to VAT.

If you hold personal information about anyone, they have a right to see that data, and have inaccurate data rectified, blocked erased or destroyed. Compensation can be awarded by the courts to someone who has suffered damage or damage and distress as a result of such inaccuracies. There are certain exceptions on what you can see, for example, where national security is involved. Individuals also have a right to request in writing that a data controller does not use your personal data for direct marketing by post, phone or fax.

#### **Freedom of Information Act, 2000**

The Freedom of Information Act 2000 is intended to promote a culture of openness and accountability amongst public sector bodies by providing people with rights of access to the information held by them. It is expected that these rights will facilitate better public understanding of how public authorities carry out their duties, why they

make the decisions they do and how they spend public money.

The Freedom of Information Act facilitates access to information held by public authorities in two ways:

- By requiring public authorities to adopt and maintain publication schemes, which should have the effect of improving the amount and quality of information routinely made available to the public.
- By creating a right to make a request for information.<sup>1</sup> Anyone, including people living abroad, non-UK citizens, journalists, political parties, lobby groups and commercial organisations, has the right to ask public authorities for any information they hold.

The information Commissioner's Office, with further details on these two acts, is at <http://www.informationcommissioner.gov.uk>.

**Important to note:** Scot's law differs due to an extra 2002 law which affects information sought from local authorities amongst others

### 13.3 Privacy and credit card security

The Data Protection Act (and other laws) requires you to take steps to maintain the security and privacy of your customers and other data subjects, and you should include an easily accessible privacy statement on your web site.

If you are accepting credit card details on line (whether it's for automatic payment, reservation guarantee, or manual processing), your credit card company will impose security restrictions on what you can and cannot do, in a similar but extended way to those restrictions imposed on "card holder present" and telephone orders.

Of particular relevance here to web site designers...

- Use a secure link if people enter credit card details
- Be aware of the security of those details after they arrive at the server
- Do not automatically charge a credit card for an out-of-stock item (you shouldn't normally charge until something is ready to be shipped but there are exceptions with deposits, and date-based products such as concert tickets, airline flights and holidays).
- Ensure that the total being put to the credit card is clearly and unambiguously displayed
- Ensure that your user doesn't double-order if he hits the "stop" button on his browser and re-submits
- Clear the user's shopping cart once the order has been placed
- Provide a confirmation payment page and a confirmation payment email that do not include the full credit card number.

### 13.4 Unsolicited commercial emailing and mailing lists

Do not bulk email people who have expressed no interest in hearing from you. It's now against the law in the UK. It's usually pretty bad for your business too as it gets you a very bad name, and will quickly get you onto spam-generator lists. Your service provider will probably become very unhappy with you as other users of his service get tarred with the brush you've chosen for yourself.

Is it alright to regularly email someone who's asked to be kept updated then, has filled in a form and has not checked the "don't pass my name on" box, or has subscribed to a service? Yes...BUT. People get very tired of receiving emails out of the blue. And they forget that they've subscribed to a service or asked to be kept informed and will often think, wrongly, that you're sending them unsolicited mail. As a legal requirement, you must offer people an unsubscribe link. In addition, it's good practise to:

- Clearly state on sign-up screens what people are committing to (e.g. "If you check this box we will email you news about four times a year")

<sup>1</sup> effective from 1 January 2005

- Let people know why you're emailing them
- Keep emails to a minimum and send them out only with good cause (or send them at a regular interval that was stated when they signed up)
- Give them a contact in addition to the unsubscribe link
- State that something is a one-off mailing if it truly is (e.g. we have moved our service from where you were previously a customer)

### **13.5 Page content**

#### **Copyright**

The law of copyright applies to web sites just as to the printed page. Our understanding is that this means that you can't simply copy someone else's page, or large parts of it, without their consent, but you are allowed to copy small parts for comment or critical review. Copyright extends to the look and feel and layout of a web page, graphics, moving images, sound, etc., as well as the text and is cross-media. In other words, you can't take a chapter from a book and put it online without the permission of the book's copyright holder.

As well as copyright, consider trade marks, registered trading names, patents, etc.

Although trade marks, patents and designs are afforded government sanctioned protection through registration procedures, in the UK no such official register exists for copyright. Nevertheless copyright is a vital link in the intellectual property shield. The Act in question is the Copyright, Designs and Patents Act 1988. It covers original written, artistic, musical, dramatic, broadcast and film works and lasts for 70 years after the death of the creator.

The Trade Marks Act of 1994 deals with registering trademarks with the trade marks registry within the patent office. Registration is for 10 years, renewable for further periods of 10 years indefinitely. For international registration, see the Community Trade Mark Registry (for the EU), and/or the Madrid Protocol which gives registration for around 60 countries and is administered by the World Intellectual Property Organization

Trade Marks Registry: <http://www.patent.gov.uk/tm/>

Madrid Protocol: <http://www.wipo.int/madrid/en/index.html>

#### **Advertising standards**

The ASA administers the British Code of Advertising, Sales Promotion and Direct Marketing for advertisements on the Internet. The ASA's remit covers advertisements in paid-for space on line, including banner and pop-up ads, sales promotions anywhere on line and commercial e-mails. It does not cover general product information on home pages. Advertisers who want to publicly commit to keeping their on-line advertisements legal, decent, honest and truthful can join the admark scheme. See <http://www.asa.org.uk> and <http://www.admark.org.uk>.

#### **Other content issues**

If you publish information on a web site that defames or harms the reputation of some living person (other than yourself), that's libel and you can be taken to court.

If you publish pornographic content on your web site, personal details of people without their authorisation, etc., you can also be in trouble just in the same way that you would if you published them in another form.

In the same way, if you're advertising for staff on your web site, sex and racial discrimination law applies just as if you were advertising in a newspaper. And this is not a complete list. You're also bound by the Official Secrets Act, company law affecting confidential information that would affect share prices, agreements you've made as part of your employment not to disclose information gained as a part of your employment, and so on. The list is seemingly endless!!

## Who is the publisher?

If you upload a static web page onto a server that's public facing, then you're publishing the content of that page and it's your responsibility to ensure that you meet the publication laws. If the server is owned by an ISP, it's still your responsibility not theirs, although if they're alerted to illegal content there may be times that they can be required by law to remove it from their servers.

The situation gets more complex when you provide a user forum, chat room or similar service on your web site. Although the web site is yours, information posted by your users is probably their responsibility. Standard practice is to make sure that people sign up before they can post and provide an email address. A part of that sign-up procedure is agreeing to take responsibility for their input, and indemnifying you as the site owner in the case of any problem. Here's the agreement that you must accept if you sign up for our opentalk forum:

*"You agree, through your use of this forum, that you will not post any material which is false, defamatory, inaccurate, abusive, vulgar, hateful, harassing, obscene, profane, sexually oriented, threatening, invasive of a person's privacy, or otherwise in violation of ANY law. This is not only humorous, but legal actions can be taken against you. You also agree not to post any copyrighted material unless the copyright is owned by you or you have consent from the owner of the copyrighted material. Spam, flooding, advertisements, chain letters, pyramid schemes, and solicitations are also inappropriate to this forum.*

*You remain solely responsible for the content of your messages, and you agree to indemnify and hold harmless this forum, and any related web sites to this forum. We at this forum also reserve the right to reveal your identity (or any information we have about you) in the event of a complaint or legal action arising from any information posted by you."*

With forums, you have to be aware that content is published from your web site<sup>1</sup> even though it's not content that you have placed there. You need to have a system of administrators and/or moderators in place, and you need to make it very clear from the initial sign-up that you are not offering unlimited free speech. You can be sure that sooner or later, someone will say that you are censoring them and you'll need to draw their attention to the following in the agreement:

*"Please remember that we do not actively monitor the posted messages and are not responsible for their content. We do not warrant the accuracy, completeness or usefulness of any information presented. The messages express the views of the author, not necessarily the views of this forum. Anyone who feels that a posted message is objectionable is encouraged to notify an administrator of this forum immediately. We have the rights to remove objectionable content, within a reasonable time frame, if we determine that removal is necessary. This is a manual process, however, so please realize that we may not be able to remove or edit particular messages immediately. This policy goes for member profile information as well.*

*Use of this forum is at the discretion of the Administrator, and that any use may be terminated by the Administrator at any time."*

### **13.6 Registration agencies – the shady dealers**

If you register:

- Under the Data Protection Act
  - Under the Madrid system for International Registration of Marks
  - Your domain name with the appropriate registrar
- your name and address will appear<sup>2</sup> on the public registers.

<sup>1</sup> i.e. with your name on it

<sup>2</sup> a few exceptions on domain names

There are a number of organisations that make a living out of approaching registered individuals and bodies with official-looking letters and inviting them to renew or risk losing their registration, for a fee that's well in excess of the fee charged by the official registration body. It seems that some of the Data Protection approaches are also being made in person now!

#### A statement from Madrid Protocol

"On several occasions, the attention of the International Bureau has been drawn to the fact that certain organisations are sending letters to the owners of international registrations, inviting them to register their marks in publications which appear to be of an official nature. The International Bureau warns the owners of international registrations and their agents that such a publication has absolutely no legal effect in regard to the protection of the said marks and is therefore unnecessary."

#### A statement from the Data Protection Registrar

"It has come to our attention that individuals posing as 'collectors on behalf of data protection' are attending business premises requesting payment for Data Protection Registration. These 'collectors' produce identification cards and receipt books.

There is no connection between the Information Commissioner and such individuals. The Commissioner advises those approached in this way not to make any payment and to notify the local police.

The following link lists the companies that have been brought to our attention. These listed companies are in no way connected to the Information Commissioner.

The Information Commissioner, Richard Thomas is concerned about the volume of telephone calls and correspondence received by his Office in relation to the activities of the above businesses.

The Commissioner is keen to make clear that there is no connection between his Office and these businesses. He has been disturbed that a number of people have been confused and troubled by the wording and tone of some of the correspondence issued by these businesses. His Office is cooperating with other relevant authorities, who are exploring what action might be taken.

Speaking from his Office in Wilmslow, Cheshire, he said

'I advise data controllers to ignore any approach made by these businesses, who appear to be charging up to £95 plus VAT for notification. Other than paying the annual statutory notification fee of £35, on which no VAT is payable, there is no charge made by this Office to any data controller wishing to notify.'

#### Domain name registry

As there's no central register for all top-level domains, there's no one place to refer you to. But have a look at <http://www.google.com/search?q=EU+Registry+Services> and you'll find plenty of alerts.

Although there are good agents out there who will help you through copyright, trade mark and domain registration, the organisations highlighted in this section are grossly overpriced, provide a service of doubtful value<sup>1</sup> and present themselves in a way calculated to frighten and make them appear official.

Some of the Data Protection agencies have been stopped by injunction under the The Control of Misleading Advertisement Regulations (1988), but as well as the five sites so listed, the Registrar's site also lists 35 further organisations that are simply "under consideration" at the Office of Fair Trading.

### 13.7 Accessibility

The parts of the Disability Discrimination Act of 1995 relevant to web sites came into effect on 2nd December 1996 and 1st October 1999, and the code of practice<sup>2</sup> was published on 27th May 2002. Additional requirements from 1st October 2004

<sup>1</sup> and you have no guarantee that they will provide the service when you pay

<sup>2</sup> in a 660k .pdf file on line

relate to physical access to premises and do not add any extra issues relating to web sites. From the law:

"From 1st October 1999 a service provider has to take reasonable steps to change a practice which makes it unreasonably difficult for disabled people to make use of its services."

"For people with visual impairments, the range of auxiliary aids or services which it might be reasonable to provide to ensure that services are accessible might include...accessible web sites."

Here's a link to the Disability Rights Commission's web site:

<http://www.drc.org.uk/open4all/law/code.asp>

A great deal of this law hinges around the term "reasonable". We suggest you take advice as to what's reasonable in your particular circumstances.

With the Well House Consultant's web site, we have elected to:

- Provide a single larger font version of all of our pages for the hard of seeing
  - Not rely on images to get across content or for navigation purposes
  - Not use frames so that our whole site is as accessible as possible from specialist web access devices for the disabled
  - Make no use of sound on our web site so that it's accessible to the hard of hearing
- What better way to see best practise than to look at the DRC web site?

Figure 22 Front page of DRC's web site





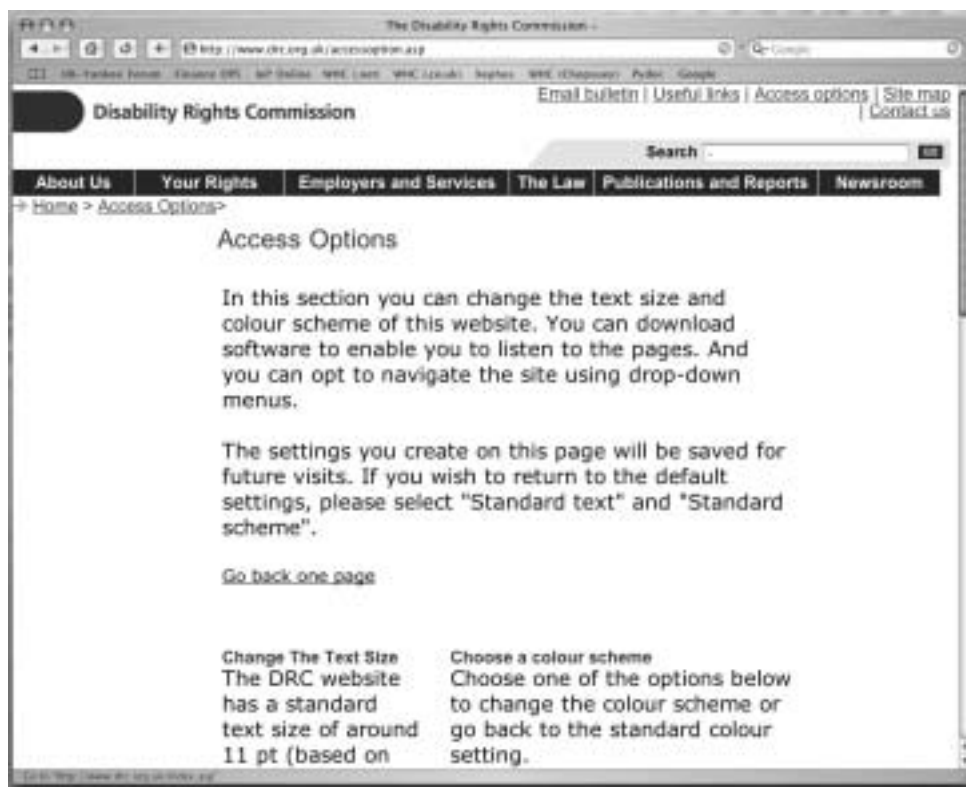
Figure 23 An easy-read page from the DRC web site



Figure 24 Setting your look and feel on the DRC web site



Figure 25 The same page in a larger font



### 13.8 Backups and security

Moving slightly away from the legal requirements and more towards the commercial ones, your web site and applications need to be designed with a backup scheme that will allow you to restore it in the event of anything from a hardware failure or fire in the computer room through to hacker attacks to accidental deleting of files by the administrator! Remember that you don't only need to back up the application deployment directories, you also need quick access to operating system files, data files, SQL database backups and so on. And please make sure that the backups are readable by doing the occasional test restore, preferably on a different physical device to that which wrote the backup!

### 13.9 Attracting customers

Having met the requirements of limits and constraints, the real purpose of your site is to inform and further your business.

#### **Ease of use**

Make your site is user-friendly! Pages should be clear and consistent, and navigation obvious and easy to follow. Try to place all the important links in such a location that the user won't have to scroll to find them, and devise a scheme in which a minimum of user inputs and pages give a maximum of effect. Where you're running a multi-page application, tell the user about each page as you go through it. Everyone else uses "step 2 or 6" type notation, why? Because it works!

#### **Marketing and visibility**

Nice, catchy URL? Good? Correct top-level domain – should you be a *.co.uk*, a *.com*, or a *.net*?

How are people going to find you? Perhaps through marketing campaigns, but perhaps also by links from other sites. Encourage people to put links on their sites to yours, join web rings. If there are listings in your market place, see if you can get place-

ment on those. You'll find Well House Consultants listed under Python, PHP and Tcl/Tk directories, for example.

For some businesses, Internet searches now bring a large proportion of their new business. How do you get people to find you?

- Put your complete web site on line
- Visit and search engine<sup>1</sup> and look for the "add URL" link and complete the form(s)
- A while later,<sup>2</sup> the search engine browses your site and indexes it
- If the search engine considers that you have relevant original content, it will add you to its indexes
- You then start getting visitors

Search engines are there to make money, but also have to keep users coming by offering as many sites as possible. It may be worth paying for quicker scanning of your site, or for advertising on pages of search results when certain terms are used. Some search engines will categorise paid advertisers above everyone else in the main listing. You'll need to make business decisions on what to spend on placement; there's even a paid subscription e-zine telling you how to do it.

Some recommendations to get a good ranking:

- Provide lots of good, original content
- Update your web site regularly and modify content slightly as you do so.
- Provide pages with meta tags<sup>3</sup> for those search engines that use them
- Provide plenty of links with meaningful text to elsewhere on your site and others
- Encourage people to link in to your site
- Provide each page with a good title
- Use a thesaurus to choose words. (ie, "We offer courses, training, seminars, lessons and classes.")
- Keep working at your ranking. It's not an overnight thing.
- Do not try to outsmart the search engines. The above are legitimate but if you get a black mark for using white text on a white background or for having a scripted site that sends a totally different page to known robots and live visitors, it'll take a long time to get back up the ladder.
- Provide a *robots.txt* file in the top-level directory of your web site to tell the robots where they can't go.
- Write your pages to be w3c compliant – see <http://www.w3.org/MarkUp/> and test out your pages via <http://validator.w3.org/>

Sample robots.txt file:

```
# robots.txt file for www.wellho.net
#
# we encourage robots to visit and index ALL documents
# but not any executable scripts.
#
User-agent: *
Disallow: /cgi-bin/
```

Sample keyword and description tags; vary them for every page:

```
<meta name="keywords" content="training courses lessons perl php mysql java tomcat deployment
programming tcl expect melksham uk england python ruby">
<meta name="description" content="Training courses in Perl, PHP, Python, Tcl, MySQL, Apache,
Tomcat and Java at our training centre in Melksham, Wiltshire or on your site">
```

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<sup>1</sup> Google, Yahoo, etc.

<sup>2</sup> perhaps weeks!

<sup>3</sup> description and keywords