



Australian Government



# Digital Enterprise

*Helping your organisation succeed online*

## Security and Legal



# Security and Legal

## Security:

- Keep your computer clean
- Keep your system / website safe
- Keep backups
- Using cloud technology

## Legal:

- Privacy
- Ownership of content
- Terms and conditions
- Consumer laws
- Spam
- Social media

# Additional information

[www.diveintodigital.com.au](http://www.diveintodigital.com.au)

[www.digitalbusiness.gov.au](http://www.digitalbusiness.gov.au)

[www.staysmartonline.gov.au](http://www.staysmartonline.gov.au)

[www.macdonnells.com.au](http://www.macdonnells.com.au)

# Keep your computer clean!

- Viruses
- Malware

# Keep your system / website safe

1. Secure your wireless network
2. Protect your website from hackers
3. Protect your data from theft
4. Be aware of credit card fraud

# Keep your system / website safe

Be aware of scams:

- Auction & shopping scams
- Domain name renewal scams
- Spam (junk mail) offers
- 'Free' offers on the internet
- Modem jacking
- Spyware & key-loggers
- 'Nigerian 419' scams
- Transferring money for someone else
- Ring tone scams
- Up-front payment scams

# Keep your system / website safe

- Keep a look out for suspect online orders
- Secure your e-commerce website.
- Use strong passwords and change them regularly.
- Don't store private customer data and credit card details on a public e-commerce server.
- Regularly monitor and test your e-commerce systems.
- Human Testing
- Use 2-factor authentication.

# Keep backups - data

- Daily incremental backups to a local server, portable hard drive, CD, DVD or cloud storage service
- End-of-week server backups—in-house and offsite
- Quarterly server backups—offsite
- Yearly server backups—offsite.
- Automate as much as possible



# Keep backups – website

- CMS (content management website)
- Web hosting service backup

# Using cloud technology

- Storing data and information off-site in data centres (“clouds”) located anywhere around the World
- Fast, efficient, cost effective
- In 2013 the International Data Center reported 86% of Australian companies are using cloud computing in some way.

However...

# Using cloud technology

- Control is questionable
- Security is questionable
- Latency and lag time
- Risky if storing confidential or personal information

# Using Cloud Technology

**Table 1: The pros and cons of cloud computing solutions**

Pros	Cons
<ul style="list-style-type: none"> <li>▪ <b>Your files and software can be available everywhere.</b> You just need a web-enabled computer or mobile device to access them.</li> <li>▪ <b>There are typically no up-front fees.</b> Instead, you may be able to pay for software on a monthly basis.</li> <li>▪ <b>You don't have to worry about software updates.</b> Cloud providers typically update their software systems for free.</li> <li>▪ <b>You do not have to handle your own data security.</b> Keeping your data safe is often a part of a cloud computing company's service to you.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>Your access is only as good as your internet connection.</b> You may lose access to your cloud-based files and software when you are not online.</li> <li>▪ <b>Over time, it can become expensive.</b> Paying for software on a monthly basis could begin to cost you more than buying software outright would have.</li> <li>▪ <b>You do not get to handle your own data security.</b> You need to review the security measures that your cloud computing service uses and be confident you can trust them to keep your data safe.</li> </ul>

# Using cloud technology

Your obligations:

- Comply with privacy legislation
- Beware that transfer to the cloud provider may be considered disclosure
- Ensure the cloud provider, if outside Australia, is subject to comparable privacy regulation or contractual terms or the individual has consented to the transfer
- Track multiplication and backups
- Consider the applicable jurisdiction and enforceability issues

# Privacy

- Privacy Act 1988 was reformed on 12 March 2014
- Reformed obligations are more proscriptive and impose a higher standard of protection
- Protects “personal information” and “sensitive information”
- Creates the Australian Privacy Principles (APPs)
- Administered by the Office of the Australian Information Commissioner

# Privacy

“Personal Information” is:

- *information or an opinion about an identified individual, or an individual who is reasonably identifiable:*
  - *(a) whether the information or opinion is true or not; and*
  - *(b) whether the information or opinion is recorded in a material form or not.*

Examples: names, contact information, photos, etc

# Privacy

“Sensitive Information” is:

*Information or an opinion about an individual’s*

- *Racial or ethnic origin*
- *Political opinions*
- *Membership of a political organisation, trade union*
- *Religious/philosophical beliefs or affiliations*
- *Sexual orientation*
- *Criminal record*
- *Health, genetic, biometric information*



# Privacy

An “organisation” is:

*an individual, a body corporate, a partnership, any other unincorporated association or a trust or any other entity that “opts in”*

But not if:

- The entity carries on a small business and meets the test to be a small business operator (including turnover less than \$3million).
- The entity is a registered political party.
- The entity is a Commonwealth Government 'agency'.
- The entity is a State or Territory authority or a prescribed instrumentality of a State or Territory.

# Privacy

The Australian Privacy Principles are not prescriptive but offer principles which cover:

1. Consideration of personal information – APP 1 and 2
2. Collection of personal information – APP 3,4,5
3. Dealing with Personal Information – APP 6,7,8,9
4. Integrity security of personal information – APP 10, 11
5. Access to and correction of personal information – APP 12 and 13

# Privacy

Particular obligations to be wary of:

- Organisations must have an updated privacy policy and practices, procedures and systems to ensure compliance with APP's and APP codes and ensure complaints or enquiries are dealt with effectively (APP1);
- Organisations must take reasonable steps to notify individuals:-
  - regarding access to and correction of personal information and complaints process; and
  - likelihood of disclosing information to overseas recipients (APP5)
- Increased accountability for disclosure of personal information to overseas recipients (APP8)

# Privacy

What you can do:

- Only collect personal information that you need
- Have a Privacy Policy
- Don't disclose or upload personal information if you don't need to
- Remove, delete or destroy personal information if you no longer need it
- If a breach occurs, involve the OAIC  
<http://www.oaic.gov.au/>

# Ownership of content

Content is protected by laws and must be owned or duly authorised.

- Laws protect intellectual property rights (“IP”) - as creative and intellectual efforts
- Some IP rights are automatic while others are granted only after application and examination against the relevant criteria

# Ownership of content

There are several kinds of IP:

- Trade Marks
- Patents
- Designs
- Copyright
- Confidential Information
- Plant Breeder's Rights
- Circuit Layout Rights

An IP Audit will identify your IP

# Ownership of content

## Trade Marks

- Trade Marks Act 1995
- A letter, word, name, sign, numeral, device, brand, heading, label, ticket, aspect of packaging, shape, colour, sound or scent which is used to distinguish the goods and services of one trader from another
- Require registration
- Legally enforceable and gives the owner exclusive rights to commercially exploit
- Ownership vests in the applicant

# Ownership of content

Trade marks in the real world

- *Nestle and Shell Oil v Greenpeace*
- *Lush v Amazon*
- *DRH Holdings (Australia) Limited v David Reid Homes Australia Pty Ltd*



# Ownership of content

## Copyright

- Copyright Act 1968
- Original literary, dramatic, musical and artistic works, and also sound recordings, films, radio and television broadcasts, and published editions of work (not ideas)
- Does not require registration (free and automatic)
- Legally enforceable and gives owner certain rights
- Ownership vests in the author

# Ownership of content

Generally, the owner of copyright in a work is its 'author'.

- The 'Author' is not defined in the *Copyright Act*, other than with reference to photograph.
- The 'author' is the person who exerts skill and labour to reduce a work to its material form.

There are exceptions (which may be excluded or modified by agreement);

- Employees
- Commissioned works

# Ownership of content

Copyright in the real world

- *Tylor v Sevin*
- *AFACT v iiNet*
- MP3s4Free
- Technological Protection Measures
- Electronic Rights Management Information



# Terms and conditions

Your website should have:

- Legitimate words and images
- Terms and Conditions to control conduct and use
- Policies to control conduct and use

# Terms and conditions

## Terms and Conditions

- Licence to access site
- Prohibitions on use
- Limitation of liability for advertising and links
- Limitation of liability for operation and content
- Limitation of warranties of operation and content (to the extent permitted by law)
- Confirmation of ownership of intellectual property
- Terms regarding accounts, ordering, paying, etc
- Terms regarding jurisdiction, disputes, etc

# Consumer laws

- Passing Off
- Australian Consumer Law
- Corporations Act

Facebook: “Pages must not contain false, misleading, fraudulent, or deceptive claims or content”

# Consumer laws

Passing off – a common law action to protect goodwill

- Plaintiff must have a relevant reputation;
- There must be a misrepresentation by the defendant; and
- There must be damage to the plaintiff's goodwill.

# Consumer laws

Passing off examples:

- **Hogan v Pacific Dunlop** – use of “Koala Dundee” misrepresented that Paul Hogan endorsed the products
- **Rihanna v Topshop UK** – use of Rihanna’s image on a shirt in circumstances where she regularly had dealings in the fashion industry implied an association between them





# Consumer laws

Australian Consumer Law – statutory protection

- Schedule 2 of the *Competition and Consumer Act*
- Key provisions
  - S18 Misleading or deceptive conduct
  - S29 False or misleading representations about goods or services
  - S236 Damages from ‘any person involved’
  - S248 Disqualification from managing corporations
  - Chapter 4 Offences (\$1.1M or \$220K)

# Consumer laws

## Australian Consumer Law

Misleading or deceptive conduct requires

- A corporation;
- It's engagement in conduct answering the description of “misleading or deceptive”; and
- The occurrence of that conduct in “trade or commerce”.

# Consumer laws

## Australian Consumer Law examples:

- **Seafolly v Madden** – Facebook posts
- **ACCC v Allergy Pathway** – Representations regarding product and false testimonials

Leah Madden's Photos - The most sincere form of flattery?  
Photo 2 of 3. Click to view Leah's Photos | Leah's Profile



[Nelly by Leah Madden]



[English Rose by Seafolly]

# Consumer laws

## Corporations Act 2001

- S1041H Misleading or deceptive conduct in relation to financial products and financial services

**Citrofresh** – The director approved an ASX announcement regarding "landmark" laboratory test results. Citrofresh's share price rose from \$0.23 to \$0.70. ASIC took action for misleading and deceptive conduct. The Court concluded:

- a breach of the duty of care and diligence under section 180
- contravention of section 1041H of the Act
- director to pay a pecuniary penalty of \$20,000 and be banned from managing corporations for seven years.

# Consumer laws

Business owners beware:

- ASIC and ACCC are on the lookout
- Well resourced companies are expected to remove misleading or deceptive content within 24 hours
- Liability may be imposed whether infringing content is posted by directors, employees or users
- The laws extend to reviews, testimonials, marketing claims, celebrity endorsements etc

# Spam

- A popular and successful way of marketing your product or service;
- Impressive speed and variety of methods and styles.

However,

- Unsolicited e-marketing comprises over 50% of world-wide emails;
- Costs businesses over \$2Billion a year in lost time and bandwidth;
- Leads to lost productivity.

# Spam

## Relevant Legislation

- *Spam Act 2003* (Enforced by the Australian Communications and Media Authority)
- *Privacy Act 1988*;
- *Competition and Consumer Act 2010*;
- *Fair Trading Act 1989*;
- *Telecommunications Act 1997*;
- *Electronic Transactions Act 1999*;
- *Consumer Credit (Queensland) Act and Code*;
- *Defamation Act 1889*;
- *Australian Securities & Investments Commission Act 2001* (in relation to financial services).

# Spam

The Spam Act applies to commercial electronic messages with an Australian Link that are not designated commercial electronic messages.

Compliance requires:

1. Unsolicited commercial electronic messages with an Australian link must not be sent;
2. Commercial electronic messages must include information about the individual or organisation who authorised the sending of the message;
3. Commercial electronic messages must contain a functional unsubscribe facility.



# Spam

## Obtaining Consent

- Expressed consent
- Inferred Consent
  - Inferred by existing relationship
  - Inferred by conspicuous publication of address
  - Silence as consent

# Spam

## Identity of the Sender

- Correct legal name
- Australian Business Number
- Contact address (phone, email, street address)
- Must be accurate for 30 days



# Spam

## Unsubscribe facility

- Must remain functional for at least 30 days after the original message was sent;
- Must provide instructions to unsubscribe in a clear and conspicuous way (eg by reply email or website);
- Must ensure that any request to unsubscribe is sent to whoever authorised the sending of the message (if the sender was a third party).



# Spam

## Consequences for breach

- Maximum fines of \$1.1 million per day of breaches for repeat offenders;
- Compensation to be paid to victims suffering loss or damage;
- Financial benefits obtained to be repaid to the Commonwealth;
- Formal warnings;
- Infringement notices;
- Injunctions;
- Undertakings.

# Spam

## Practical Tips as a sender:

1. Do not rely on the exemptions to get you out of trouble – ensure your standard format emails always address all of the *Spam Act* criteria
2. Create and implement an email policy and train your staff
3. Obtain consent, preferably in writing
4. Always assume there will be an Australian link
5. Do not conduct indiscriminate email marketing campaigns
6. Regularly review your marketing tools for compliance with all of the applicable legislation
7. Create a list of all people who have unsubscribed and maintain it in a central register

# Spam

8. State your registered business name, company name and your Australian Business Number prominently
  9. Include your physical business address and contact details;
  10. Protect privacy;
  11. Provide accurate and truthful descriptions of your goods and services;
- Practical tips as a receiver:
12. Use anti-spam filtering software;
  13. If your email address is published, consider inserting a statement to the effect that spam is not welcome.

# Social media

1. Social media platform terms and conditions
2. Australian Advertising Standards Board
3. Defamation laws
4. Tort of injurious falsehood
5. Issues with employees

Also keep in mind ownership issues, confidentiality and laws regarding consumer rights, privacy and spam.

# Social media

1. Social media platform terms and conditions
  - Usually include a wide limitation of liability clause
  - Usually include a worldwide royalty free licence to use intellectual property rights in uploaded content
  - Non-negotiable

*Facebook: “you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook”*



# Social media

## 2. Australian Advertising Standards Board

- Social media posts and comments will generally fall under the definition of ‘advertising’.
- Be familiar with the various codes (including the Code of Ethics) and ACCC Guidelines (including for reviews)

Examples: Wicked Campers, Smirnoff and VB and Euro Solar and Worldwide Energy and Manufacturing Pty Ltd

# Social media

## 3. Defamation laws

- Defamation occurs when person A communicates to person C material that conveys a defamatory imputation which damages the reputation of person B in that person C would think less of them.

Example: Mickle v Farley; Dow Jones Co v Gutnick

# Social media

## 4. Tort of Injurious Falsehood

- Similar concept to defamation but to protect business reputation

Example: Adam Kaplan v Go Daddy Group Inc

# Social media

## 5. Issues with Employees

- The business is responsible for posts (including by employees)
- Have policies for personal use

Examples: *Stutsel v Linfox Australia Pty Ltd* and *Bradford Pedley v IPMS Pty Ltd*

# Social media

- If an issue arises on social media, have a strategy for dealing with it quickly.
- Enforce rights
- Maintain business reputation

Examples: Jack Daniels Whiskey, Hungry Jacks v Wombie Whopper

# Security and Legal

For further information on this topic, please contact



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