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*Website Agreements and
Privacy Issues*

Drew Larson
BrownWinick
666 Grand Avenue, Suite 2000
Des Moines, IA 50309
Telephone: 515-242-2485
E-mail: larsen@brownwinick.com

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Website Terms of Service


- The contract with your users regarding the use of a client's website or service.
- Mix of customer contract, vendor contract, IP license agreement.
- As varied as the business that have websites.



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What is Usually Covered

- Generally covers permitted uses, prohibited uses, fees and refunds, maintenance and customer support, IP rights, limitation of warranty, choice of law/venue, amendment process.



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Specialized Terms and Topics

- Uptime Guarantees and Minimum Service Levels
- Updates and Error Correction
- Dealing with Third Parties (vendors on ecommerce, etc.)



What is a Privacy Policy?

- A written expression of a company's data collection, use, and sharing practices.



What Rules Cover?

- US - No Single Set of Rules
 - FTC
 - Children's Online Privacy Protection Act (COPPA)
 - States - California (CalOPPA) and Massachusetts
 - HIPAA
 - GLB Privacy Notices / FDIC
- Most Other Countries Have Significantly Higher Requirements for Consumer Data
 - i.e. EU Privacy Shield



Why Have a Privacy Policy?

- Customer Relations
- Regulatory
- Industry Specific



FTC Unfair Trade Practice

- Deceptive Practices
 - Violating your published privacy policies
- Unfair Practices
 - Failing to implement reasonable safeguards to protect privacy of consumer information.
- Practical Impact
 - If have a policy, follow it.
 - You should have a policy.



Children's Online Privacy Protection Act (COPPA)

- Governs collection of information from children under 13.
 - Must get verifiable parental consent.
 - Must provide notice of collection and use.
 - Must collect only reasonably necessary information.
 - Maintain reasonable security measures to protect.



CalOPPA

- Requires commercial website operators that collect PII about CA residents to conspicuously post their privacy policies.
 - Req's disclosure of do not track signal responses.
- Covers Mobile Applications



What Does a Privacy Policy Cover?

- What Data Collected?
- How is the Data Collected?
- How is the Data Used?
- How is the Data Shared?
- How is the Data Protected?



What Data Collected?

- Personally Identifiable Information (PII)
 - Digital and Physical
- Website Data (Google Analytics)
- Machine or Electronics Telematics
- Financial Account Information



How is the Data Collected?

- Specifically Requested
 - Account Creation
 - Transactional
 - Subscriptions
- Passive Collection
 - Google Analytics (link tracking)
 - Software Usage Data
 - Telematics



How is the Data Used?

- Transactional Purposes
- Delivery of Services
- Marketing of Services
 - Specific rules governing certain uses. CAN-SPAM, text messaging, telemarketing.
- Improvement of Services
- Sale of Data
- Anonymized Data, Reports



How is the Data Protected?

- Is there data that is personally identifiable?
 - If so, make sure protecting for data breach notification. Discussed later.
- Encryption
 - In Transit
 - At Rest
- Reasonable administrative, technical, and physical safeguards.



How is the Data Shared?

- Anonymized and Aggregated
- Third Party Vendors
 - Data Centers
 - NDAs
 - Other Protections
- Sold for Marketing Purposes



Bottom Line

- You should have a privacy policy.
- It should reflect your actual practices and values.
- It should be a living document, changing with your practices.
- It can be used to help review and improve practices.



Additional Resources

- FTC - <https://www.ftc.gov/tips-advice/business-center/privacy-and-security>
- NCSL - <http://www.ncsl.org/research/telecommunications-and-information-technology/state-laws-related-to-internet-privacy.aspx>





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Website: www.brownwinick.com
Toll Free Phone Number: 1-888-282-3515

OFFICE LOCATIONS:

666 Grand Avenue, Suite 2000
Des Moines, Iowa 50309-2510
Telephone: (515) 242-2400
Facsimile: (515) 283-0231

616 Franklin Place
Pella, Iowa 50219
Telephone: (641) 628-4513
Facsimile: (641) 628-8494

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