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Should a company's website include a "Terms of Use" and Privacy Policy?

One of the big legal mistakes start-ups and small businesses make is not including a "terms of use" and privacy policy on their websites. A **"terms of use"** or otherwise known as **"terms and conditions"** is a great way to limit liability should a client decide to take matters to court for contents published on the website.

The clause may include a statement that states the company won't be held liable for any errors in the content of the website or any derogatory or offensive content posted by third parties. For user-generated content, the company may include a clause which allows the suspension, restriction or termination of an Account or use of the Website based on their sole discretion. This is important to regulate user activity and to remedy any complaints made by third parties.

Apart from limiting liability, it is advisable to state in the terms and conditions whether users may republish or use content from the site. This may include written content, music or video clips or images and logos. A permitted use statement helps to ensure that you preserve ownership and copyrights over the website's content. When a dispute arises, a website owner must be able to prove that there was reasonable belief that the user was aware and has consented to the terms and conditions.

One way to ensure that consent was obtained is to use the 'click-wrap method'. This is often done by having the user click on a box indicating that the user has read and consented to the online contract. Once the box is clicked, the user cannot go back and claim that consent was not given.

If the business collects, uses or releases any personal data from users or customers, they must publish and abide by a Privacy Policy agreement. This is essential to complying with the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

The privacy policy not only needs to set out what kind of data is being collected, the purpose for which the information is being gathered but also how the company will handle that information. Because consent must be given before personal information is collected and used, it is best if the privacy policy is stated in plain, precise and clear language.

Under Canada's PIPEDA consent must be both "meaningful and clear". Personal information that was collected should only be used for the intended purpose for which it was collected. Any other use will require further consent. Information must be deleted once it is no longer used or required.

In conclusion, these agreements are essential not only to protect your business against potential legal disputes but also makes customer feel safe and secure when using the website. Therefore, care and consideration should be given when drafting these contracts.

Official Sources

Office of the Privacy Commissioner of Canada - Privacy Guide for Businesses: https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda-compliance-help/guide_org/
Office of the Privacy Commissioner of Canada - Guidelines for Obtaining Meaningful Consent: https://www.priv.gc.ca/en/privacy-topics/business-privacy/collecting-personal-information/consent/gl_omc_201805/

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