

The logo for bwired, featuring the lowercase letters 'bwired' in a bold, italicized, sans-serif font. The background of the entire page is a vibrant red with several overlapping, semi-transparent, darker red curved shapes that create a dynamic, layered effect.

Duty of Care Online

White Paper

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“You owe yourself and your customers a duty of care online and therefore must protect your organisation with an adequate privacy policy and legally binding terms and conditions”.

Sam Saltis – CEO Bwired Group

Introduction

Essential reading for any online business; this whitepaper offers helpful hints for establishing comprehensive duty of care procedures.

When setting up an online business, it is important to consider the legal aspects required. Most importantly:

- An adequate privacy policy
- Legally binding terms and conditions

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Privacy

Privacy is a common concern among many online. Any website through which users engage, interact or transact have a responsibility to adopt and implement a [comprehensive privacy policy](#).

A privacy policy must include:

- **Choice and consent** - individuals must be given the opportunity to exercise choice regarding collection, use and distribution of personal information
- **What personal information is being collected** - Collection and transactions should always be done in a secured (https) environment, and the database protected by adequate technology.
- **Use of personal information** – The purposes for which you are collecting personal information.
- **Disclosure of personal information** – Whether or not you will be disclosing collected information with third parties.
- **Storage and security of personal information** - Making your customers aware of the security of your website will always offer added reassurance. Signage such as "you have now entered a secure area" is encouraged.
- In addition, the policy must be easy to find, read and understand; and be made available prior to or at the time that personal information is collected or requested. We recommend establishing a respective page on your website, linking to it from every page and abiding by it.

For more information on guidelines for online privacy policies, visit www.privacyalliance.org.au.

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Legally Binding T's & C's

In the context of website usage, the potentially million dollar question is “are your terms and conditions enforceable?”.

Not sure? Read on.

For protection from legal action, all online businesses must incorporate a website disclaimer.

A website disclaimer should protect both the organisation and the consumer and should include reference to:

- **Accuracy of information** – waive liability for accuracy, timeliness, suitability
- **Risk and responsibility** – waive liability for responsibility to ensure information/products/services meet specific requirements.
- **Copyright infringements** – prohibition of reproduction of content, design, graphics, layout and appearance
- **Unauthorised use** – may result in damages and/or criminal action, subject to the Australian court of law

Again, we recommend establishing a respective page on your website, linking to it from every page and abiding by it.

In the context of online transactions, terms and conditions must be clearly visible prior to or at the same time that the transaction takes place. It is not enough to have these terms and conditions listed – this does not qualify as acceptance and will not be enforced. The user must agree to comply with the terms and conditions before a legal agreement is formed. To do so, organisations must create either a “click-wrap system”, or a “browse-wrap system”.

A “click-wrap system” requires the user to scroll through the terms and conditions before accepting them.

A “browse-wrap system” refers the user to the terms and conditions by way of a hyperlink, but does not require the user to click on the link before accepting.

Regardless of the system chosen, to maximise the ability to enforce terms and conditions, it is recommended that they be:

- **Clearly visible, easily read and accessed**
- **Printable**
- **Accepted before use of the website or performance of the relevant act**
- **Explicit**

For more information on guidelines for terms and conditions, visit <http://www.nortonrose.com>