

# The Rise of the Keyboard Shopper: Basic Legal Issues in Setting up E-Commerce Sites in the UAE

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June – July 2017

In 2016, the GCC was in the global top five for purchases via mobile devices. It is becoming clear that people in the UAE, and the broader GCC region, are increasingly e-shopping and entering into electronic transactions, whether it's for goods or services. Amazon's acquisition of souq.com, and the highly-anticipated launch of the noon.com e-commerce platform, shows that there is a lot of interest in e-commerce in the market.

But establishing an e-commerce business, whether on its own or as an extension of a retail business, is not a simple matter of acquiring a domain name and adding a payment process. There are many legal matters that must be considered and developed before an e-commerce site can be launched.

## **Trade Licence Requirements for E-Commerce as an Activity**

It is important that the operator of any e-commerce business is in fact able to undertake e-commerce activities as part of their current trade licence. If these activities are not listed (or cannot be considered to be a legitimate part of the activities that are listed), then it is imperative that the company extends its business activities to cover e-commerce. When adding activities, some authorities will make a determination as to whether the new activities are compatible with the activities already listed. If they decide that is not the case, then they may refuse to extend the trade licence to cover these activities; in this case a new trade licence may be required.

Many companies, even when e-commerce is permitted under their current trade licence, may nonetheless choose to set up a separate entity to own and operate their new e-commerce platforms. This has the advantage of centralising the e-commerce operations but also of ensuring that any risk associated with the new enterprise is contained within a separate entity.

## **Terms and Conditions, Privacy Policies**

It is common practice, both locally and internationally, to attach terms and conditions to the use of a website. These will then govern the way that the business and its customers will interact with each other.

The terms and conditions might include details relating to delivery, refund policies, termination of accounts, and interactions between the users. But more importantly the terms and conditions must contain any terms that are required by the operators of the payment gateway. Over time, we have seen an increase in the number and scope of these requirements but it is important to note that the payment gateway will not allow the e-commerce site to commence operations until it has seen the final version of the terms and conditions.

In addition, an e-commerce site must have a privacy policy that is appropriate for the countries in which it operates. The most important role for the privacy policy is to provide customers with the confidence that their data will be properly stored, used and protected.

It is important to note that the payment gateway operator will also expect that certain terms are included within that policy. One term commonly required is the provision that data (such as credit card details) will in fact be used by third parties that are assisting with the provision of certain services. In operating an e-commerce business, it is very important to have clear terms and conditions to reduce any ambiguity and increase customer trust.

## **Content**

Website content, including content on e-commerce sites, can fall broadly into three categories:

- content created by the operators of the e-commerce site – this will include the description of goods but might also include editorial content or reviews;
- content that is provided by third parties for use on the e-commerce site, such as press releases or articles about the products sold on the site; and
- content that is created by the customers, commonly known as user-generated content, which could include reviews or comments in forums.

It is important to recognise that, with all of these three types of content, the site operator is considered to be the publisher of the material, and so may be found liable for that content if it is found to breach the rights of another party, or breaks any laws or regulations. Whilst content regulation is quite a complex area of law that requires separate attention, note that Federal Law No 15 for 1980 (concerning Publications and Publishing) (“P&P Law”) contains a list of material that is unacceptable for publication within Chapter 7. In addition, Federal Law No 5 of 2012 (on Combating Cybercrimes) (“Cybercrimes Law”) contains other matters that are not permitted in relation to activities on the internet.

Not only does the operator of an e-commerce site have to consider these laws in the creation of its own content but also when using the content of others. More particularly, this becomes problematic when the site allows user generated content to be created and shared. Customer reviews and contributions to forums can become confrontational and may inadvertently constitute a breach of the P&P Law or the Cybercrimes Law. For this reason, many entities monitor user-generated content before they permit it to be published.

## **Copyright**

A person (or company) that creates content usually has the legal right to determine whether or not a third party can use that content. This position is generally the case across the world and certainly applies in the UAE and across the GCC. This means that, if the operator of an e-commerce site is commissioning a freelancer to produce content for the site, then it needs to enter into an agreement with that freelancer – the agreement will determine the ownership of the material created as well as the use that can be made of the material by both parties.

For ad hoc content, the operator should obtain a written licence from the owner of the material before using it. The only time that content could legitimately be used without a written licence would be for material that is clearly a press release or some other form of publicity – these are specifically provided in order to be used by third parties and therefore judicious use of that content (that is, within the expected usage and within a reasonable time from the date of the press release) will be unlikely to raise claims of copyright infringement.

Finally, be careful with the use of stock image libraries and music libraries. These libraries do have some limits on the use that can be made of their materials and it is wise to check the fine print in all cases. There have also been numerous cases of ‘bait and switch’ tactics with music libraries, where

“unlimited use of music” was advertised but was not reflected within the standard terms that are sent to, and signed by, the user.

## **Advertising Regulations**

As the e-commerce site will fundamentally contain promotions for goods or services, it will be considered to be advertising and as such will be subject to the regulations that apply to such content. The main advertising regulations are contained within Resolution No.35 of 2012 (on the Standards of the Media Advertisements Content) (“Advertising Standards”).

These Advertising Standards contain numerous conditions that will apply to advertising within an e-commerce site and, in that regard, it is important to note that they are broadly worded and address a wide range of issues. These standards cover false and misleading claims, and the need for advertising to be clear and unambiguous. They also include provisions about clearly determining the identity of the advertiser in each case, and separating editorial and advertising content. Most important however is the following:

*The advertiser, the product and the publishing means shall bear the legal responsibility and consequences of delivering as per the claims related to promises, guarantees, pledges and compensations mentioned in the advertising.*

This clearly notes that responsibility for the claims made in advertising can be attributed to the publisher – in this case, the operator of the e-commerce site. Yet not all operators of such sites will be in a position to verify the content of all advertising or classifieds that are contained within the e-commerce site. This means that they will need to set up documentation and processes that properly protect them from the inclusion of such content on the site.

## **Conclusion**

The establishment of e-commerce sites can be considered to be a logical extension of a retail brand or a simple way for a company to create and maintain a direct relationship with their customer base. However, e-commerce means extending usual business operations beyond the retail sector and into the publishing sector. As many retail operators are generally unaccustomed to considering matters such as liability for the publishing of content, or the management of data in accordance with a privacy policy, it is important that they not only set up appropriate documentation in each case but also establish protocols to ensure internal compliance with the various laws that will apply to their new business operations.

*Al Tamimi & Company’s Technology, Media & Telecommunications team regularly advises on establishing e-commerce sites as well as all issues relating to content, terms and conditions, privacy policies and data use. For further information about these matters, please contact Fiona Robertson (f.robertson@tamimi.com) or Amna Qureshi (a.qureshi@tamimi.com).*