

Olivera Medenica Doing Business On-line

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that information. As these agreements should be tailored to your business, copying and pasting a TOS and Privacy agreement from another website may inadequately address your business objectives and fail to comply with applicable laws in the jurisdiction where you offer your goods or services.

TOS Agreements vary from site to site, but there are a number of standard provisions that are usually included:

- **Information Accuracy** It is common industry practice to disclaim the accuracy of the information offered on a business' website. Nobody is above typographical errors, and you don't really want to obligate yourself to sell a good or service with a market value of \$5,000 for \$5 because your summer intern forgot a few zeros. Accordingly, you want to preserve your right to correct data that may have been incorrectly entered, even after someone has relied upon it.
- **Intellectual Property** Just like you may be tempted to copy and paste someone else's TOS and Privacy agreement, someone may be similarly tempted to replicate all the content on your website. Your TOS Agreement should clearly state your ownership rights regarding your intellectual property. This may include the content, organization, graphics, design, compilation, trademarks, logos, page headers, button icons, scripts, service names, or trade address included in your website. You may not own all of this, so it is important to identify what property properly belongs to your company before claiming ownership.
- **Limited Use of Website** Although you are prohibiting users from using your intellectual property, you are granting them a limited license to access your intellectual property on their computers. This limited license should expressly exclude the right to frame the contents of your site or use your company's trademarks within hidden codes or meta-tags.
- **Linking In and Out** Your TOS Agreement should address potential liability issues that come up with sites linking to yours and your site to theirs. For example, your TOS agreement may require that an outside website use only noncommercial links,

that it cannot have obscene or offensive materials and that your site cannot be portrayed in a misleading or derogatory manner. Similarly, when providing a link on your website to an outside party, users browsing your site may not even realize they have left your site once they click on such links. Accordingly, your TOS Agreement should address potential liability issues in the event of a dispute with respect to such third party's products or services.

- **Purchase Related Policies** If you are selling goods and services online, your TOS Agreement should include language governing policies for user purchases. This includes cancellations, returns and processing of user payments.
- **General Liability Issues** Language limiting your liability and disclaiming warranties will probably be one of the most important sections in your TOS agreement. To the extent permitted by state law, your TOS should disclaim warranties of all kinds (generally in bold and capital letters) and disclaim any representations regarding the services and/or goods provided on the site. You should also provide a limit on potential damages against you by providing a dollar amount ceiling (e.g., \$100).
Your Privacy agreement should reflect your current practice of collecting information from users and should also address potential future use of such information. Common provisions include:
- **Active Information Collection** Identify exactly what, when and how you plan on collecting information from users and state it in your privacy agreements. Your users should know who is reading this information and whether providing this information is a prerequisite to using the site. Also, you will want to inform users that you may disclose information if legally compelled to do so (i.e., through a court order or subpoena).
- **Passive Information Collection** Users should be aware of passive information collection through the use of "cookies" or other similar technologies. If your site uses it, disclose it to your users, tell them why you're collecting it and whether you will

disclose this information to third parties.

- **Opting Out** If your site collects information from users to custom-tailor advertisements and solicitations for products and services, give users the option to opt out from such future communications.

It is important to remember that TOS and Privacy agreements are contracts between you and your site's users. It does not serve you to hide them—place them conspicuously on your website in an area that does not require users to scroll down to see them. Alternatively, and probably better practice, require users to click on language stating they have read these agreements before purchasing your goods or services. Finally, always consult an attorney before launching into e-commerce and lower your legal bills by coming prepared with an accurate outline of your business practices. Remember, they may seem like boilerplate language, but these two tiny links are incredibly important to your online business and should be tailored to you, not somebody else. ●

Olivera Medenica is a partner at Wahab & Medenica LLC and a faculty member at Brooklyn Law School and the World Trade Institute at Pace University. A graduate of Manhattan School of Music and Brooklyn Law School, she practices primarily in Business Transaction and Intellectual Property; representing small business owners and entrepreneurs. She is fluent in French, Serbo-Croatian, and English. She can be reached at Omedenica@wrlawfirm.com

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Honoring

Rita Levine Lovato



Rita Levine Lovato of Albuquerque, NM, a leading historian, lecturer, writer, and chronicler of Native American jewelry, and national treasure, died on 05/24/06 in Albuquerque, NM. Her company, Silver Hills, is one of the country's leading American Indian jewelry resources. An authority and historian on jewelry made by the Navajo, Zuni and Hopi tribes, her concentration and passion was focused on the Santo Domingo tribe. Lovato was also—the first woman to study ceramics as a Fulbright Scholar in Japan (1962-63) and a National Endowment for the Arts Grant winner where her primary focus was sculpture.

A professor of Fine Arts at UCLA, as well as other west coast universities she was—at one time—one of LA's leading avant-garde artists with many one-man shows, environmental installations and gallery exhibitions. Her work remains in many public venues and private collections. In addition, her sculpture was collected by the actor, Eddie Murphy and was featured in the film, Beverly Hills Cop (1984) in which he starred.

Lovato was the founder of the Museum of Southwest Native American Jewelry of Albuquerque, originally housed in Bernalillo, NM. She played an important role in the recent show, Totems and Turquoise, which recently moved to LA after a nine month stay at the New York Museum of Natural History. Many pieces from her vast collection are on loan to that show. At the time of her death, Lovato was working with the National Cowboy and Western Heritage Museum in conjunction with the PBS Craft in America television series to develop a three part series that will be aired April 2007.

For more than 25 years, Rita Lovato brought commerce and work to native Americans and was instrumental in facilitating development of their craft enabling them to make a living from their art while keeping it alive.

A college scholarship fund in her name has been set up by her sister Bambi Levine of New York and her husband, Martine Lovato of New Mexico, to assist aspiring Santo Domingo Pueblo college students. Donations can be sent to: Rita Levine Lovato Scholarship Fund, 332 Los Ranchos NW, Albuquerque, New Mexico 87107 ●