

Website Terms of Use

All website owners/operators should include terms of use (“Terms of Use”) that set forth the agreement between the website owner/operator and any user about how the website is to be used. Terms of Use vary widely from website to website and the specific terms of the agreement will largely depend on such things as: who the targeted user is; the kinds of goods or services offered over the website; whether the website offers password protected e-commerce activities or publishes content for free to users; whether subscription services are offered or whether the user is able to provide content to the website via chat room or bulletin board postings. Typically, the agreement constituting the Terms of Use are provided as a companion to the website’s obligatory Privacy Policy and are often found on the same page with links to specific sections that correspond to the “Terms of Use” and “Privacy Policy”. There have been cases regarding the enforceability of Terms of Use located on websites. Where the user is required to click a button to signify agreement with the Terms of Use (a “Click Wrap Agreement”), the courts have generally held that the Terms of Use are enforceable. This has not always been the case where the Terms of Use are located on another page linked through a button on the home page or elsewhere but the user does not expressly indicate agreement by clicking. Consequently, where the user will be joining a chat room, providing content on a bulletin board, or providing personal information by entering a contest, joining as a member of an online club, conducting e-commerce or providing creative content to be exhibited on the website, it is highly recommended that a website owner/operator construct the website in such a manner that the user is required to positively indicate that he/she is in agreement by using some mechanism like a Click Wrap Agreement in order to ensure the Terms of Use are enforceable. This is even more crucial with the introduction of new privacy laws in Canada that require website owners/operators obtain the meaningful consent at the time that personal information is provided by users for the specific purpose identified by the website owner/operator. Therefore it is prudent that the website owner/ operators construct the website to accomplish a Click Wrap Agreement for both the Terms of Use and the Privacy Policy. Furthermore, there are some potential users, such as children, who lack the legal capacity to give consent to the use of personal information or enter a binding agreement. Therefore, website owner/operators who are creating websites that target children or others who lack legal capacity must formulate a plan and a mechanism to obtain the consent and agreement of the legal guardian or parent of that child or person. It is also recommended that the Terms of Use for websites that offer chat rooms or bulletin boards or some other forum where users communicate with each other should include a code of conduct for participants that users are required to comply with or lose the privilege of participating.

The following document is a sample of Terms of Use for a website that is assumed to be hosted on servers independent from the broadcaster and therefore the producer is responsible for the Terms of Use. The Website is intended for use by adults and is not targeting children. Producers of websites that target children or other potential users that may not have the legal capacity to consent or agree to a Privacy Policy or Terms of Use should be very careful to consult an experienced lawyer to assist in the development of its online Terms of Agreement, the Privacy Policy and the mechanism used to obtain authorization of parents or legal guardians in a legally enforceable form.

This sample Terms of Use agreement assumes a certain fact scenario and is not meant to be representative of, or intended to create standards for, every online Terms of Use

agreement. Both Terms of Use and Privacy Policies are by nature customized for the specific design of the website, the services and content offered on the website, the targeted users and the particular use contemplated by the company collecting any personal information. The sample Terms of Use and comments provided herein are for educational purposes only and should not be construed as providing any legal advice whatsoever. Anyone contemplating using this template Terms of Use is strongly advised to consult an experienced lawyer for advice and guidance. It should not be used as a substitute for consulting with legal counsel and receiving advice based on the circumstances of a particular website. Due to the pace of technological change, business practices, distribution methods and the law applicable to the Internet is constantly and rapidly changing. The legal principles discussed are subject to exceptions and qualifications that may not be mentioned and case law and legislation may vary from jurisdiction to jurisdiction.

Website Terms of Use

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Visitor Content and Indemnification: Any Visitor Content provided by you to NMPI on its billboards, chat rooms or other means shall become the property of NMPI throughout the universe in perpetuity and NMPI shall have the right to publish, reproduce, disseminate, exhibit or otherwise distribute and use the Visitor Content in all media now known or hereafter devised. By submitting Visitor Content to the Website, you agree to represent and warrant that such Visitor Content shall not contain any libelous, defamatory, obscene, illegal, threatening or abusive materials and shall not infringe any intellectual property right or any other right of any person or entity and shall not breach any law. By visiting and using this Website, you signify your agreement to save NMPI, its affiliated and related entities, its officers, directors and employees harmless from any and all damages, legal actions or causes of action that may now or hereinafter arise as a result of your use of the Website and your breach of these Terms of Use and/or any representations and warranties related to the Visitor Content. NMPI monitors the use of its billboards, chat rooms and any posted materials and reserves the right to remove any Visitor Content and block access to any visitor for any reason at its sole discretion.

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