

David Weslow Discusses Best Practices for Websites' Terms of Service Policies

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David E. Weslow, a partner in Wiley Rein's Intellectual Property Practice, was featured in a July 11 *TechRepublic* column on best practices that can help small- and medium-sized businesses develop effective Terms of Service (TOS) policies for their websites.

In a "Q&A" with *TechRepublic* blogger Ryan Boudreaux, Mr. Weslow said TOS agreements should address proper use of a company's website, including provision of a license for limited site usage and a prohibition on non-approved site uses. The agreement should include rules for any user-generated content, along with provisions that protect the site owner, operator and host from legal claims such as copyright infringement and defamation based on content or comments submitted by visitors.

Other topics that should be considered for all TOS agreements include any age limitations or other access restrictions, intellectual property policies and complaint processing protocols, data collection and privacy policies and a limitation of liability for technical problems, Mr. Weslow said.

"The TOS itself should be displayed in a manner that is most likely to be read by visitors including, ideally, a requirement that visitors scroll through the TOS and click an 'I accept' button before obtaining access to the site," he said.

While many TOS agreements allow site owners to change or add to the terms whenever desired, Mr. Weslow said businesses should always consider the practical implications of any significant TOS changes.

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Practice Areas

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"Communication with customers is very important when contemplating TOS changes that will impact customers," he said. "If, for example, a TOS change is needed to clarify copyright issues because the site is encountering increased unauthorized copying of content, an email to customers or site 'splash screen' may explain the need for the TOS change as well as the potential impact to customers."