



## E-ADVERTISING

Widely used forms of electronic advertising, using the internet, include sending advertisements via email – from typing services to get-rich-quick schemes - and the more obvious form of placing advertisements (or banner advertisements) on a website.

Persons sometimes authorise the sending of emailed advertisements; for example by joining a mailing list to be notified of store sales or new releases of books or movies. In many cases, however, the advertisement is part of a general mass marketing scheme, the unsolicited presence of which causes the viewer much annoyance. In order to reduce the nuisance factor, many persons have invested to varying degrees in filters to weed out these unwelcomed messages when received; usually diverting them to the recipient's "Junk" folder. It is noted that many countries, including Jamaica, have legislation to address "spam". The common feature in these laws is that the recipient viewer be allowed to "unsubscribe" from the receipt of similar messages in the future.

Banner advertising represents the more palatable medium in which to use the internet to advertise. It is common to see a number of third party advertisements on major websites. In fact, one need look no further than the home page Observer's website for an example of this!

It is usually advantageous for businesses to advertise their products by placing an advertisement on another website which is well-trafficked and which would allow users to be directed to the business's website. Not only is this direct publicity of the business, but it increases traffic to the website of the business which, in turn, increases the internet and favourably aids visibility of the products of the merchant when persons use search engines. One useful tool offered by advertisers on whose website the link is placed ("the advertiser") to persons who purchase advertisement ("the Purchaser") is information on the number of "hits" that have been made to the Purchaser's website from the advertiser's website.

It is prudent for both the Purchaser and the advertiser to capture the terms upon which the advertiser will allow the Purchaser to place a link on its website. These terms are encapsulated in an internet advertising agreement or a linking agreement. The more important of the provisions in such agreement include ones covering:

- 1) Price – this may range from a standard periodic linking fee to a more complex computation representing a stated percentage of the Purchaser's revenue derived from the traffic directed by the advertiser;
- 2) Location of the link – the "prime" spots are usually on the home page of the advertiser. In any event, the Purchaser should know where the link is to be placed on the advertiser's website and know whether the advertiser will rotate the advertisements on its website;
- 3) Link size – the parties should agree size. The Purchaser may wish to ensure that certain visibility requirements are met by stating the pixel size of the link;
- 4) Representations/warranties – an important representation that the advertiser should be able to give to the Purchaser is that the website is duly registered and that the content on the website does not infringe any intellectual property rights. The Purchaser, similarly, should be in a position to give similar intellectual property rights representations relating to the link graphics

The agreement should also cover provisions to address the advertiser's obligation to provide traffic information to the Purchaser and use by the parties of any user information from traffickers.

Once on the Purchaser's website, legal issues may arise relating to content. Such possible legal issues are of particular relevance if the business is marketing and selling its products globally as it may unintentionally subject itself to laws of other countries. In this instance, use of disclaimers is important.

You are advised to use the services of an attorney when drafting or reviewing linking agreement to ensure that the document correctly captures the understanding of the parties as well as ensuring that website content does not expose one unintentionally to liability.

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