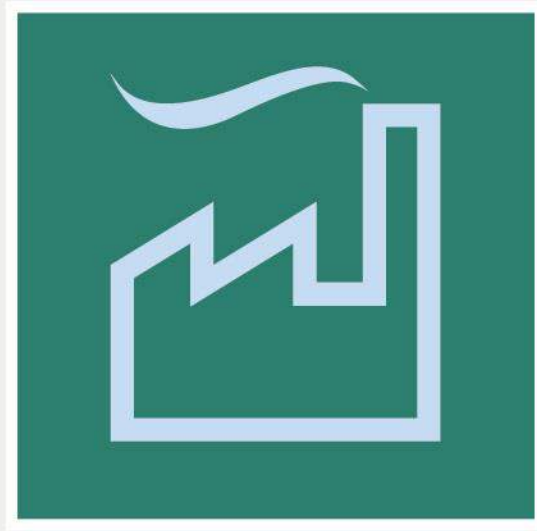
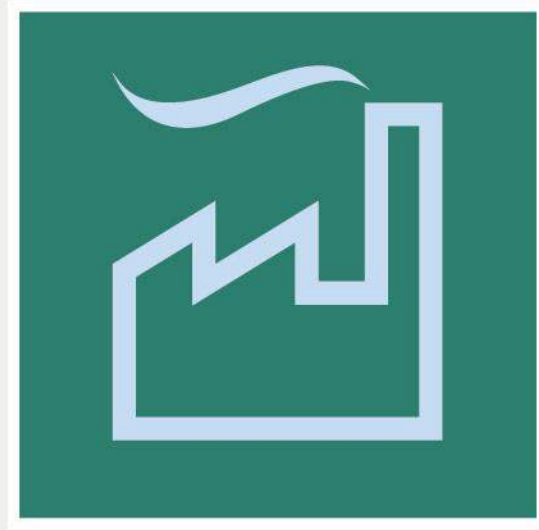


Hampshire Fare – 6 February 2018



Laura Trapnell – Partner
Emily Sadler - Associate

Intellectual Property



Protecting your brand

Laura Trapnell – 6 February 2018



Importance of Intellectual Property and intangible assets

- Intangible assets have been argued to be one possible contributor to the disparity between company value as per their accounting records and company value as per their market capitalisation
- Intangibles and brand are estimated to represent more than 75% of the value of a company





What is your brand?

- **Your brand** is the experience customers have when doing business with **your** company.
 - What's your superpower? What do you do better than anyone else?
 - Of course personal branding is a lot more than just being yourself, but without a solid foundation of authenticity, building your brand will be a truly challenging endeavour, and a less than fruitful one.
-





Trade Marks

- Protect your brand
 - Badge of origin which distinguishes the goods/services from those of another trader
 - Can be registered
 - ® - Denotes a registered trade mark
 - Renewed every 10 years – can last indefinitely
 - Territorial
-



Trade Marks (contd)

- Can be unregistered
 - TM - denotes unregistered trade mark and is *free!*
 - passing off
 - Show reputation
 - That someone is trading off that reputation
 - There is confusion in the market place
 - And you are suffering damage as a result
-



Examples of trade marks

- Brand names
 - Logos  Paris Smith
 - Colours
 -  In relation to cat food? Or cigarettes? Or chocolate?
 -  In relation to roadside recovery services
 -  In relation to mobile phone services
 - Sounds 
-





Create a distinctive brand

- “it does what is says on the tin”
- Be original
- Do not use words that are commonplace or which other traders may wish to use



How do I apply?

- The Intellectual Property Office
 - Classification conundrums
 - Right Start
 - Stage one – examination
 - Stage two – publication
 - Oppositions
 - Registration and monitoring
-





Think big!

- EU implications for trade marks of Brexit
- Brand strategy – consider expansion plans and freedom to operate
- Watching notices – keep monitoring your competitors



Copyright

- Protects the physical 'written down' form
 - Logos, documents, drawings, architectural plans, web content, images, databases
 - Arises automatically (no registration required in UK)
 - Prevents copying
 - Protection lasts for 70 years plus life of artist/creator or 50 years in the case of a company
 - Keep all records of your work e.g. drafts, sketches, tapes, notes etc.
 - Put copyright symbol on your work with your name and the date
© Paris Smith 1 November 2017
 - Owned by the person who creates it unless:
 - Employee acting in the course of their business or assigned in writing
-



IP audit

- An IP audit will help you:
 - Have clarity on what IP your business has;
 - Identify previously unknown IP;
 - Identify IP opportunities – through licensing or franchising;
 - Manage your IP effectively.



IP strategy

- Intellectual Property is of strategic importance to any business regardless of size.
 - Having an IP strategy helps you underpin your commercial and financial forecasts and protect your business in line with your commercial aims.
 - IP does cost money, so having a strategy will help you decide what to spend, when and where.
-



Data Protection and the GDPR

Getting to grips with the basics

Laura Trapnell – 6th February 2018



Getting to grips with the basics

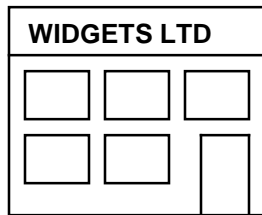
- General Data Protection Regulation (*GDPR*) (Regulation (EU) 2016/679)
 - The GDPR comes into force on 25 May 2018
 - It replaces the law that we have on data protection and gives individuals more rights and protections in how their personal data is used by organisations
 - It takes current Data Protection laws and gives them more teeth!
 - Implications of Brexit
-



Data Protection Act 1998 – Terminology

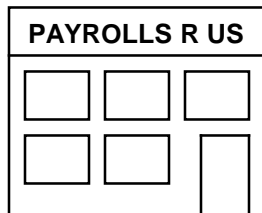
DATA CONTROLLER

determines purposes and manner of processing (may be more than one)



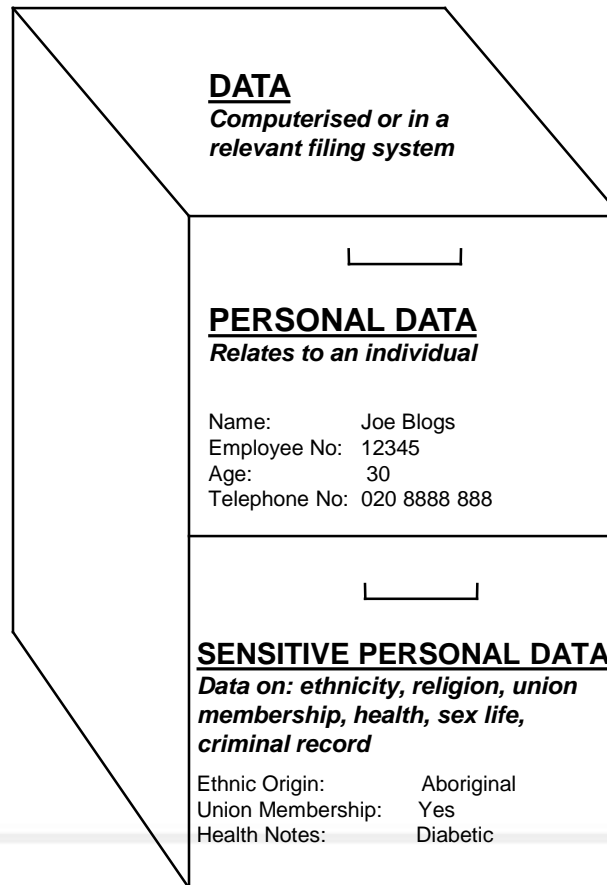
DATA PROCESSOR

processes on behalf of a data controller



PROCESSING

Anything you can do with data!



DATA SUBJECT





DPA 1998 – GDPR – Article 5

The 8 Data Protection Principles

Personal data must be:

1. Processed fairly and lawfully and only if one or more specified conditions are met.
 2. Processed for limited purposes and not in any manner incompatible with those purposes.
 3. Adequate, relevant and not excessive.
 4. Accurate.
 5. Not kept for longer than is necessary.
 6. Processed in line with data subjects' rights under the Act.
 7. Secure.
 8. Not transferred to countries that do not protect personal data adequately.
-



1st Data Protection Principle

- Personal Data shall be processed **fairly and lawfully**.

This means data controller must

- Provide fair processing information to Data Subject
 - identity of data controller (and any representative)
 - purposes for which data to be processed
 - other information required to make processing fair.
 - Meet one of the conditions in Article 6 of the GDPR.
 - Meet one of the conditions in Article 9 of the GDPR, if special category of personal data (“sensitive” personal data).
-



DPA 1998 – Schedule 2 conditions

GDPR – Article 6

- Processing of all personal data must satisfy at least one of the Schedule 2 Conditions, namely:
 1. The **consent** of data subject has been obtained.
The processing is necessary
 2. for the **performance of a contract** to which the data subject is a party.
 3. for compliance with any **legal obligation** (non-contractual) on the data controller.
 4. in order to protect the vital interests of the data subject.
 5. for the administration of justice or public functions.
 6. to pursue a **legitimate interest** of the data controller, except where such interest overridden by interests, rights or freedoms of data subject.
-



DPA 1998 – Schedule 3 conditions

GDPR – Article 9

- Processing of all personal data must satisfy at least one of the Schedule 3 Conditions, namely:
 1. The **explicit consent** of the data subject has been obtained.
 2. Necessary to perform **legal obligation** in connection with **employment**.
 3. Necessary to protect the **vital interests** of the data subject or another person.
 4. For legitimate activities of a **political, religious or trade union body** relating to a member.
 5. Personal data **made deliberately public** by data subject.
 6. Necessary for **legal proceedings**.
 7. Necessary for **administration of justice** or **public functions**.
 8. Necessary for **medical purposes** and carried out by **health professional**.
 9. Necessary to review **equality of opportunity**.
 10. Circumstances **specified** by Secretary of State.
-



What is valid consent?

Consent must be:

- Freely given
- Specific
- Informed
- Unambiguous
- Indicated by clear affirmative action

Other requirements

- Obtained separately
-



Withdrawal of Consent

- Data Subjects have the right to withdraw consent
 - Consent must be as easy to withdraw as to give
 - Is it always the best ground?
 - Not if you plan to rely on another ground
 - Not if it cannot be freely given (eg. employment context)
 - Not if it gives the illusion of choice that is not there
-



Changing

- **Data Controllers' duties:**
 - Accountability – demonstrating compliance, privacy by design
 - More precise rules – record keeping, breach notifications, DPOs
 - **Data Processor's obligations:**
 - MUST BE IN WRITING - setting out tasks, restrictions, liabilities & penalties, data destruction; security
 - Liability for own actions and legal action by data subjects
 - Data breach obligations
 - **Enhanced Sanctions** – 20m euro or 4% of worldwide turnover
 - **Notification abolished** and replaced with Record of Processing Activities – to include :
 - Name and contact details of controller and DPO
 - Purposes of processing – a description of the categories of data subjects and personal data involved
 - Categories of recipients – who will receive the data – both EEA and outside the EEA if appropriate
 - Envisaged time limits for erasure of the different data categories.
-



Communicating Privacy Information

- Data Subjects should know:
 - Identify of data controller and DPO
 - What data you hold
 - The purpose for which it is processed
 - To whom it is disclosed
 - How long it is held for
 - Whether it is transferred outside of the EEA
 - About their data subject rights and the right to withdraw consent at any time
 - How to lodge a complaint
- **ACTION: You should review your current privacy notices, employment and volunteer contracts, information given to donors and put a plan in place for making any necessary changes in time for GDPR implementation.**



Individuals' Rights

- Data subject rights:
 - To request **access** to a copy of all personal data held on them;
 - To require inaccurate data to be **corrected and rectified**;
 - Where consent is the lawful purpose for processing, to require **erasure** of personal data where:
 - the original purpose for processing has expired
 - consent is withdrawn
 - data is being unlawfully processed
 - To require **erasure** of personal data where the data subject objects to processing under the legitimate interest condition
 - To **Data Portability** – to port data from one controller to another without hindrance where processing is carried out by automated means
 - To object to processing for **direct marketing purposes** or personal profiling
 - To **restriction of processing** whilst disputes are resolved
 - **ACTION:** You should check your procedures to ensure they cover all the rights individuals have, including how you would delete personal data electronically and in a commonly used format.
-



Direct marketing - Privacy and Electronic Communications Regulations (“PECR”)

- “Direct marketing” means “the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals”.
- PECR restricts direct marketing by electronic means:
 - Email
 - Phone
 - Fax
 - SMS
- Requires consent when marketing to consumers (knowingly, freely given, clear and specific).
- Does not apply to:
 - Soft-opt in for your own previous customers to market similar goods and services.
 - Messages sent to business email addresses.
 - Postal mail or live voice calls (but note the regulator’s view on voice calls and the need to check the TPS).

ACTION: review your direct marketing practices and ensure you are conducting these activities lawfully.





Marketing to consumers

- When sending marketing communications to a consumer, the sender must:
 - Be responding to a request for marketing;
 - Or
 - Have CONSENT to be sending the marketing communications
 - Soft opt-in can apply to your own existing customers provided that you are marketing similar goods/services.
-



Marketing to businesses

- When sending marketing communications to an identifiable person within a business, you must:
 - Be responding to a request for marketing
- Or
- Have obtained the personal data lawfully and fairly and give the opportunity to opt-out

* We are awaiting the text of the new ePrivacy Regulation



Marketing to everyone!

- Regardless of whether the recipient is a consumer or business, the sender must:
 - Not conceal their identity
 - Be clear as to the marketing context of the communication
 - Give information as to the easy withdrawal of consent
-





And breathe!

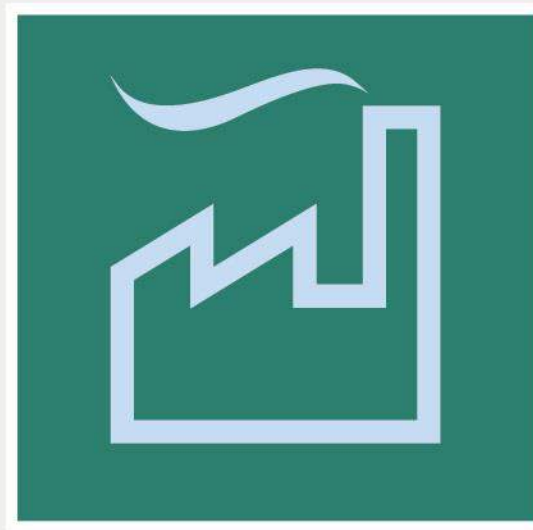
- Don't panic
- Break it down into do-able tasks
- Become friends with the ICO, the Fundraising Regulator and the IoF
- Seek advice if needed



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Terms and Conditions – Minimise your business risk

Emily Sadler, commercial contracts specialist
6 February 2018



Importance of standard terms

- Tailored terms reflect YOUR business and protect YOUR business. Beware copied terms!
 - You can limit your liability – minimise risk
 - Clarity around payment terms/late payment
 - Retention of title
 - Written contracts provide evidence and certainty as to agreement between the parties
 - Not relying on implied terms and exclude these where permitted (Sale of Goods Act)
 - Professional, should minimise disputes
-



How are you contracting?

1. On your standard terms and conditions for sale/purchase of goods/services (every time?)
2. On the other party's terms **OR**
3. Is there often NOTHING in place or perhaps just phone calls and/or a chain of emails...



Which sales channels?

- Trade sales (B2B) or consumer sales(B2C)?
Note impact of consumer protection legislation
 - UK only/international?
 - Face to face – retail, exhibitions/shows?
 - Phone orders/catalogue?
 - ONLINE?
 - Via distributors/sales agents?
-



Your contracting process

- Contract formation – back to basics
 - ☐ Offer
 - ☐ Acceptance
 - ☐ Intention to create legal relations
 - ☐ Consideration
 - Proper incorporation of terms is key
 - Avoid battle of the forms
 - Train staff on correct process – often disconnect between sales and compliance
 - Paper trail
 - Signatures?
-





Basic elements of standard terms

- How the contract is formed
 - Description of goods/services
 - Delivery
 - Quality
 - Title and risk – retention of title
 - Price and payment terms
 - Termination
 - Limitation of liability – note UCTA
 - Boiler plate
-





Online sales

- Are customers buying goods online? If so, need specific terms and conditions suitable for online sales
 - Are these customers 'consumers'? If so:
 - ☐ Certain pre-contract information required
 - ☐ Possible right of cancellation but note **rapidly deteriorating goods**. Contract for supply of goods liable to deteriorate or expire rapidly. E.g. food and drink with short expiry time limits, including those to be kept refrigerated
 - ☐ 'pay now' button – must be a clear obligation to pay
 - Terms of website use/privacy policy (GDPR!)/cookies policy
-



Thank you – any questions?

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