

NCCTP conference: Making Collaboration Pay

**Extranets in the construction sector:
legal considerations**

Anthony Lee, partner

Fladgate Fielder



Legal considerations

- Contractual issues
- Legal admissibility
- Security/confidentiality
- Intellectual property rights
- Defamation
- Limiting risk
- Anti-discrimination



Contractual issues

Master agreement

- Implement on time and within budget
- Specification/functionality
- Service levels: availability, responsiveness, helpdesk
- Security (see below)



Contractual issues

- Limitation of liability
- Reserve rights re content
- Data migration
- Exit strategies



Contractual issues

End user contract

- Online acceptance
- Electronic signature
- Signed hard copy
- Operator's liability



Contractual issues

- Ownership of inputs and outputs
- Controls over content
- Infringing third party rights
- Disclaimers (e.g. defamation)
- Freedom of Information Act 2000



Legal admissibility

Admissibility of electronic content

- Civil Evidence Act 1995
- Audit trail of contributions
- British standard: BSI DISC PD0008



Legal admissibility

Electronic signatures

data appended to other data, that performs similar functions to a hand written signature

- Electronic Signatures Directive 1999
- Electronic Communications Act 2000



Security and confidentiality

- **Appropriate level of security to minimise risk/unauthorised access**
- **External access introduces unpredictable security variables**
 - **practical/technical measures**
 - **scale security to reflect risks**
 - **contractual controls**



Security and confidentiality

- **Data encryption/passwords/digital certificates**
 - protects the information
 - establishes authenticity/identity
 - prevents repudiation
- **Viruses/trojan horses**
 - practical/technical measures
 - contractual controls



Intellectual property rights

Copyright

(in text, audio and visual images e.g. contractors drawings)

- Copyrights, Designs and Patent Act 1988
- Copyright Directive 2001/29/EC
- Copyright and Related Rights Regulations 2003 (SI 2003/2498)
- Enforcement Directive 2004/48/EC



Intellectual property rights

Database

- Database Directive 96/9/EC
- Copyright Designs and Patents Act 1988
- Copyright and Rights in Databases Regulations 1997
- British Horseracing Board Case



Intellectual property rights

- Licences for third party rights
- Removal of infringing materials
- “Deep linking” issues
- Copyright & Related Rights Regulations 2003 (SI 2003/2498)



Defamation

- Defamation Acts, 1952 and 1996
- Internet defence - common law
- Electronic Commerce Directive 2000/31/EC
 - effect on hosting services
- Godfrey case
- Notice and takedown procedures



Defamation

Reducing risk

- Include disclaimers
- Vet content before uploading
- Remove content promptly if informed
- Provide “hotline”/email address to report concerns
- Use reasonable care



Other liabilities

Other torts

- Negligent misstatement
- Fraudulent misrepresentation

Criminal liability

- Obscene Publications Act
- Public Order Act 1986 (racially inflammatory material)
- Data Protection Act 1998



Limiting risk

- Responsibility if site unavailable/
unresponsive
- Business criticality
- Storage of information
 - hosting
 - back up/archiving
- Insurance



Anti-discrimination

- **Disability Discrimination Act 1995
(visual impairments)**
- **Sexual harassment**



Questions & discussion

**Anthony Lee, partner
Fladgate Fielder Solicitors
25 North Row
London W1K 6DJ**

** DD 020 7462 2324
mobile 07802 283 990
www.fladgate.com**

