

# Business Matters

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## TECHNOLOGY

## The Internet and Privacy

**W**hether you connect online infrequently or constantly, you need to be aware of the specific risks and benefits the Internet vehicles present and the ways that you can limit your risk. This article discusses safe practices when using e-mail and enrolling at member websites.

### *Can We Be of Service to Someone You Know?*



If you have friends or business associates who you think would like to receive our newsletter, please give us their names. We'd be happy to send the newsletter to them with your compliments.

The Internet is a vast, complex network of services, servers and information sources widely available and used by hundreds of millions of people around the world every day. It includes telecommunication carriers, Internet Service Providers (ISPs), enterprises, governments, universities and research institutes.... and you as a user.

When you are on the Internet, your online request is routed through the servers, routers and switches that form the electronic backbone of the worldwide Web (WWW). If you trace the routing of a message electronically, you may be surprised at how many unknown intermediary parties are involved as your information travels across the Internet.



### **Using E-mail**

E-mail gives everyone the ability to exchange and share information widely and quickly.... but not necessarily confidentially. E-mail can be read by anyone because you do not know how many intermediates or servers the e-mail passes through and where the content may be stored and retained.

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When deciding whether you should communicate certain information in an e-mail, the simple test is: Would you send this sensitive information on a postcard in the regular postal service to this person or organization? Would you expect the recipient to reply on a postcard?

If you use the Internet to send e-mail that includes family stories, comments on the weather and other like topics and occasionally attach a picture or a joke, you are a low-risk user. However, if you use e-mail to communicate with your financial services institution about your finances and investments or to provide sensitive information such as checking your credit record, your risk would range from moderate to high, depending on the precautions you take. Generally, e-mail is a low-risk activity if you take the proper preventative measures and have installed a virus scanner on your system.

If you must send sensitive information by e-mail, consider using encryption software. Encryption (also called encypherment) is the process of encoding data to prevent unauthorized access, especially during transmission over the Internet. The encrypted information or data is unreadable and meaningless until the person with the key (password) unscrambles (decrypts) it. Someone can only unscramble the information with the password/key and compatible encryption software.

When sending and receiving e-mail:

- Treat your e-mail like a postcard that can be read by anyone.
- Do NOT send e-mails containing sensitive personal, financial or private information unless you secure them by using encryption software.
- Delete all spam e-mail without opening it. Do NOT react or respond to it.
- Do NOT open attachments and e-mail from unknown or suspicious sources. They could contain viruses or other malicious code.

- Integrate your e-mail software and virus scanner to ensure all e-mail is automatically scanned.

### Enrolling at Websites

Some websites require you to enroll as a member, such as the websites of a hotel or car rental company, and may ask you for basic personal information relevant to the service they offer. This information may include your name, address and telephone number, credit card information and membership number to redeem rewards, such as air miles. While you may want to take advantage of member benefits such as faster check-in/check-out and special discounts, you need to be sure that these benefits do not entail risks to your identity and privacy.

When enrolling on some websites, you may be given options about whether you must provide certain personal information. This option may simply be presented in the form of a request as to whether you would like to be sent e-mails notifying you about products and special offers. A reputable website will ensure that your information, including your e-mail address, is only used for purposes to which you have agreed.

Secure websites are recognized with HTTPS before the site address instead of HTTP. The HTTPS indicates that the site is secured by SSL (Secure Sockets Layer). Depending on your browser, you may also see a closed padlock or key icon displayed that indicates the use of SSL.

When you complete your visit to a log-on website, these three simple practices can help protect your privacy:

- *Log Off*  
Always log off after you have completed your session at a log-on website, such as at the website of your financial services institution or web-based e-mail. If you do not

terminate the session properly, someone could take it over to perform actions as if you were still online.

- *Close the Browser*  
Always close down the browser software when you have finished a session. When you close the browser software, you prevent the next user from simply clicking on the back button in the browser to reload your pages from cache and potentially read your financial statement, investment records or other sensitive information you may have just used.
- *Shut Down Your Computer*  
If you are not going to use your computer for some time, either close it down or ensure that it automatically goes into sleep or hibernation mode. This protective step is particularly important where your computer is continuously connected to the Internet, i.e., by cable or DSL (high speed).

### Get Proactive

While the Information Age has brought new ways of performing day-to-day activities such as banking, shopping, and communicating, it has also created new opportunities for spying, theft, fraud and other crimes. Take proactive steps to protect your money, privacy and identity:

- Be cautious about what personal, financial or private information you disclose when giving information over the Internet.
- Only provide personal or financial information at websites of reputable, known organizations.
- Only rely on the security practices (i.e., SSL or more advanced security) of your financial services institution, government sites and well-known reputable companies and service providers. Be wary about providing personal or tax information at other websites. ■



# Non-competition and Tax

The purchaser of a business often pays a substantial sum for the business, clients, customers and goodwill of the vendor. To protect the business as a going-concern, the purchaser will usually want to ensure that the vendor does not start a similar business immediately after the closing of the transaction. For this reason, the purchaser will typically require the vendor, or the shareholder of the vendor, to sign a non-competition agreement.



Generally, the non-competition agreement is intended to prevent the vendor from opening a competitive business in any manner. The agreement may also include time and/or geographical limitations; that is, the vendor agrees not to compete for a period of time and/or within certain geographical parameters.

Among the many tax considerations in the transaction, the vendor must consider the income tax implications of payments received for entering into a non-competition agreement. Notably, the Federal Court of Appeal recently, in the *Manrell* case, held that a payment received by an individual, in connection with the sale of shares of a corporation, for a promise not to compete with the corporation, was not taxable.

Earlier, the Federal Court of Appeal held in *Fortino* that the amount received for signing a non-competition agreement was not income, eligible capital property or part of the consideration for the sale of shares of a corporation. The Court did not deal with the issue of whether the amount received was for the disposition of other property, which was the individual's right to compete.

## A Tax Victory

In the *Manrell* case, the issue was whether the definition of property includes a right to compete and that the non-competition payments were proceeds for the disposition of that property and would result in a taxable capital gain.

Initially, Mr. Manrell reported the non-competition payment as part of the proceeds for the dispositions of his shares of a corporation, which resulted in a higher taxable capital gain. However, based on the *Fortino* decision, the taxpayer later filed notices

of objection to reduce his taxable capital gain in relation to the non-competition payments to nil.

The *Income Tax Act* defines property to include "... a right of any kind whatever...." However, in *Manrell*, the Court held that in order to be property, a right must "entail an exclusive and legally enforceable claim...." While the taxpayer gave up his right to compete, this was a right shared by everyone else rather than an exclusive right, and hence it was not "property". Therefore, the amount received was not proceeds of disposition for property and did not result in a taxable capital gain. The amount received was a tax-free capital payment.

It is unlikely that this is the last word on non-competition payments. New legislation may be introduced to deal with the tax treatment of non-competition payments as well as clarify or expand the definition of "property".

Until legislation amends the *Income Tax Act*, non-competition payments made to the vendor of shares will not incur a tax liability.

## Protecting the Purchaser's and Vendor's Rights

In preparing a non-competition agreement, the parties want to balance the need to protect the purchaser with the need to ensure the livelihood of the vendor.

Consider also that if the non-competition covenant is excessively broad, it will not be enforceable. The courts have been loath to enforce covenants that prevent a vendor from earning a living, but have enforced covenants that are reasonable to protect the business. Even where non-competition provisions include geographic parameters and time periods that are necessary to protect the

business, they may also be ruled unenforceable if the courts view them as excessive.

### Each Agreement is Unique

Keep in mind that each purchase and sale agreement of shares or assets of a business is unique in view of its particular circumstances. An agreement will have to be carefully structured and

reviewed to ensure that intangible benefits or rights built into the agreement take advantage of the tax benefits made possible by the *Fortino* and *Manrell* cases.

### Get Professional Advice

The impact of these decisions also reinforces the need for professional advice in negotiating purchase and sale

agreements. If you are considering purchasing or selling a business, be sure to seek advice from both your chartered accountant and lawyer at the outset. ■

## MONEYSAVER

# Party Time

**W**hether your company is planning a holiday party, corporate event or a casual gathering for the team, setting up a successful staff get-together is hard work that demands careful planning to ensure the function is cost-effective and successful.



Here are some tips on how to make your company party a fun and memorable time for you and your employees.

### Establish a Budget

The first step is to establish a budget. If your budget is limited, do not consider skipping the event as it is important for employee morale. You could have the party at your office or plant and bring in food and decorations; however, keep in mind that a different environment allows people to shift from the work to relaxation mode and generally makes for a more memorable event.

There are many budget-friendly alternatives to the usual off-premises venue, such as having a night at a movie theatre, doing a sports activity, attending a special event or going to a family restaurant. You can also save a considerable amount if you book your event before or after the peak holiday weeks or hold it during an afternoon rather than an evening.

### Set out the Purpose

Set out the purpose of the function. Is the party a reward for a successful year, a traditional holiday gathering or a platform for making announcements about new initiatives the company will be taking? Will the party include all employees and their families, only employees or just a specific group, for example, a sales team that has

surpassed its quotas? The goal will also help you justify the budget for the event.

### Delegate

The owner/manager should take an active role in planning the party but should not do it alone. Usually a committee of three to five works well for organizing the various aspects of the event. Encourage the committee members to prepare an agenda for each meeting so that tasks are well organized and responsibilities are assigned.

Designate one person in this group to be the co-ordinator for the day or evening of the event. Make sure that the hotel or restaurant staff, as well as your employees, know that this person is in charge of the on-site arrangements. With large gatherings, consider hiring a party co-ordinator to help ensure the event runs smoothly.

The committee should also provide a final report of the costs of gifts, food, transportation, refreshments, and other items. This summary will help ensure that the function stays within the budget as well as provide a means of assessing the value of the event.

### Plan Early

Plan early to ensure you can hold your function at a time and place that will best suit the majority of your staff. A weekend evening is usually preferable to a weeknight so employees do not

have to be on the job the next day. Have a few dates in mind, as many places may be already booked. Generally, if you are holding an event for a large group, you will need to book the venue several months in advance.

### **Comparison Shop**

Plan to visit several locations to personally assess the offerings, function rooms, kitchen facilities, parking and public transit accessibility and other amenities that are important for your event.

Depending on the occasion, decorations and music may be appropriate. If possible, try to have these included in the package. Ask for a sample of the disc jockey's or band's music program and make sure the range of selections will appeal to the various ages and tastes of your group.

If you plan to make presentations or give out awards or gifts, you may wish to have a stage or platform area as well as a good audiovisual system.

### **Food and Beverages**

The food is an important aspect so aim to provide the best quality that you can afford. An all-inclusive buffet can help stretch the budget. The variety that a buffet offers is also helpful as some employees may be vegetarians or allergic to certain foods.

If alcohol will be served at the party, it is very important that the owner/manager ensures all staff will have a safe trip home. Consider designated drivers, taxis or buses. Be sure to provide alternatives to alcoholic beverages. If the venue is at a hotel, negotiate a special rate for those employees who would like to stay over.

### **Send Invitations**

Send invitations to all staff as early as possible. Assign someone to follow up on the RSVPs to ensure you have as accurate a count as possible so you can confirm the numbers attending in advance and control the budget. The invitation also contributes to the excitement of the event and harnesses the team spirit.

### **Presentations**

The owner/manager should plan to say a few words to thank everyone for their work throughout the year, recognize any milestones the company has achieved, and communicate the goals for next year. However, it is an evening for socializing and entertainment so keep the presentations short and fun.

Gifts or awards need to be ordered well in advance, particularly if you plan to give awards with company logos. It is also a good idea to ensure every guest leaves with a take-home gift, such as a T-shirt, mug, ornament, chocolates or

gift certificate. Consider asking your suppliers to donate gifts or gift certificates that can be used as door or dance prizes.

Plan to take as many pictures as possible to post on the company bulletin board or network or publish in your internal newsletter after the event. If the budget allows, have a photographer on site.

### **Keep a Party File**

Keep records of the contacts, quality of food and service, and any difficulties or cost over-runs encountered so you can use this information to help plan the next company event. However, while it is tempting to recreate a successful event the following year, try to have a different type of event every year to avoid predictability and raise the fun factor.

### **An Important Business Function**

The company party is an important business function that can contribute to the organization's morale and productivity. Whether you have a great budget or minimum resources, make sure your event is carefully planned, memorable and safe. ■

## **MANAGEMENT**

# **Hiring Skills**

**L**ooking for new employees or replacing employees who have moved on is no doubt one of the most difficult tasks confronting an owner-manager.

You have placed the ad and attracted job applicants that meet your criteria. Now the hiring process begins. As this can be a time-consuming and expensive task, make sure you are well prepared to select the right person for the job.

### **The Job Description**

An important first step is to ensure you and your employees have updated or developed a clear and concise

description of what the new employee will be expected to do on the job. This will help you select the most qualified candidate for the job as well as help the candidates themselves assess whether your company and the specific job are the right fit for them.

## Screening

Carefully review the resumes to pre-select the candidates that have the experience and background to perform the job as described. If other employees will be participating in the selection process, they should also review the resumes and provide their comments.

Consider narrowing your selection with preliminary telephone interviews or sending questions by e-mail for the candidates' responses.

Scrutinize the qualifications and work history provided in the resumes. Be wary of missing time periods or apparent contradictions. For instance, if the applicant attended a forestry management course at Dartmouth University in 1998 and also held a position with a local forestry company in the same year, ask how he or she was able to manage both responsibilities. Was the course full-time, part-time or a two-day seminar?

## The Interview

Turn off the telephone, close the office door and ensure the interview is not interrupted. You need to focus on the interview process and the candidates' responses. Consider also that interruptions could make a quality candidate feel that he or she was not deemed important enough to garner your full attention. Consider that the candidates also spend time, energy and money to improve their career opportunities by meeting with you.

To appropriately evaluate individuals applying for the same job, you should plan to ask a variety of questions but also similar questions of every

candidate. This consistency will help ensure that you have used similar data to match their qualifications to the job requirements. If you need to have additional interviews, you can then concentrate on those areas that require further discussion rather than revisit the same topics.

Avoid asking closed questions that can be answered with a simple "yes" or "no". Ask open-ended questions that invite them to provide more information. For example, "Tell me about your driving experiences at XYZ" will elicit more information than the question "Did you drive a truck at XYZ?"

Do not ask questions about information that is readily available on the resume. Focus on questions that ask candidates to expand on their work experience. Ask about the types of tasks they performed, their commitment to the job, the work schedule, the courses they attended and the types of projects they worked on. What were the most rewarding aspects of their previous positions? How did they interact with their supervisors and the members of their team? How did they deal with problems and challenges? What new ideas or innovations did they contribute in their previous position? What motivated them to seek a new job or leave the prior position? What are their career goals? What plans do they have for continuing their education? Be sure that you understand the questions that you may or may not ask in an interview situation.

Ask candidates why they are looking for a new position, what they find lacking in their current position and what they hope to find at your

company. Ask about hobbies and community involvement that might be relevant to the job.

When you ask questions, be sure to give interviewees sufficient time to reflect and answer the question fully. Try not to interject comments. If they stop talking, do not assume that they have completed their explanation. Waiting a few seconds before going on to the next question lets them consider whether they have adequately answered the question and gives them an opportunity to provide additional information.

## The Decision

Once you have narrowed your selection to a short list of two or three candidates, schedule the next interviews as soon as possible. Keep in mind that a quality candidate is likely having interviews at other companies and may have an offer pending.

If a candidate meets your requirements, be prepared to make a job offer. If you make the offer verbally, be sure to follow up with a written offer to ensure that all of the important matters are completely clear.

Ultimately, the hiring decision rests on your sense of whether this person is the right person for the job. Carefully defining the position requirements, pre-selecting the candidates to be interviewed and planning the interview process will help ensure your company finds the right people that will support the success of your company. ■

***Yes, we are accepting new clients.*** *We are often asked if we have time to serve additional clients.*

*We are a growing firm, and we'd appreciate your referrals. If you are pleased with our services, please mention us to your friends and business contacts.*



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