

The State of E-Compliance for U.S. Retailers in Global Markets

Kenneth Saban

Duquesne University, USA

Stephen Rau

Duquesne University, USA

INTRODUCTION

The advent of the Internet coupled with advances in information technology has dramatically changed the competitive landscape by allowing retailers to market products to consumers around the globe. This point is reinforced by Forrester who found that 75 percent of U.S.-based online retailers ranked international expansion as either “very important” or “somewhat important” to their overall business strategies (Spethman 2003, Sandler, Travis & Rosenberg, 2014 and Davey 2014). As a result, e-commerce sales in Europe are projected to reach €171.9bn (£145.8bn) a year by 2016 (Internet Retailing 2012).

A critical factor in stimulating on-line sales is consumers must then have confidence in this platform (Peeples 2002, Mukherjee and Nath 2007). The propensity to have confidence hinges on the fact that the Internet has both protective legal and technological structures which insure that web transactions can be conducted in a safe and secure manner (Lui, Marchewka, Lu and Yu 2001, McKnight, Choudhury and Kacmar 2002, Lee, Kang, and McKnight (2007).

While consumer confidence has increased overall, there is a growing concern with data security and consumer privacy (Internet Retailer 2010). These concerns have been accentuated by the rash of computer intrusions (e.g. Target, Home Depot, Bank of America) reported by the media. In an effort to bolster consumer confidence, governments are stepping up their efforts to protect both consumer and national interest for legal and ethical on-line activity (McVey 2005). As a result, on-line retailers with Web sites that are not compliant with e-commerce laws and regulations are more likely to be sanctioned by local jurisdictions.

The purpose of this research is to review the current state of compliance with e-commerce laws among U.S. firms. More specifically, it investigates the compliance of U.S. retailer Web sites when selling in the EU. Finally, this research discusses the potential ramifications of a company if they are non-compliant.

BACKGROUND

The act of complying with e-commerce laws and regulations is referred to as e-compliance (Gasser and Haeusermann 2007). E-compliance is the management of the risks at the intersection of law, technology and the market that have emerged through and in reaction to computerization and digital networking. To be e-compliant retailers must: 1) know what laws, statutes and directives apply to various customer interactions; 2) decide to comply with the laws and regulations; and 3) make a good faith effort to modify their Web sites accordingly. For the purpose of this paper, e-compliance is defined as the degree to which a company's Web site complies with the e-commerce laws and regulations of the targeted marketplace.

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Rugman and Verbeke (1998) argue that a company's decision to comply with international policy is often driven by the expected economic benefits derived from that decision. According to Rugman and Verbeke, businesses can employ one of four strategies: 1) a performance-driven strategy that accepts international regulation because it is a proven way to do business abroad; 2) an enforcement-driven strategy that avoids costly sanctions such as fines and lawsuits; 3) a non-compliance strategy where management sees no value in following the laws; and 4) a conditional non-compliance strategy where management realizes that the governing body has limited means to enforce the laws and regulations.

While a non-compliance or conditional non-compliance strategy may save money in the short-term, these strategies can create a legal minefield over the long-term (Quelch and Klein 1996, Murray, Vick and Worley 1999, Zugelder, Flaherty and John 2000, Baumer and Poindexter 2002). For example, the German government sought to prevent violation of its laws against pornography by ordering CompuServe to disable access by German residents to certain global newsgroups. CompuServe was also ordered to pay a fine of more than \$56,000 (Johnson and Post 1999). EBay was fined 1.7 million EUR in relation to an injunction that prevents French eBay users from buying or selling LVMH Group perfumes and cosmetics on any eBay website (PR Newswire 2009). Most recently, three Google executives were convicted for violating privacy laws as the company did not act fast enough to remove from its Web site a video posted in 2006 showing a group of teenage boys harassing an autistic boy (Canberra Times 2010). These cases underscore the risks businesses face by adopting a non-compliance or conditional non-compliance strategy.

Costs Associated with E-Compliance

Most companies are drawn to e-commerce for the following reasons: access to the global markets; a means to more quickly respond to customer requests; lower transaction costs; and ease in employing their marketing strategy. While there are many economic benefits derived by utilizing the Internet, there are also a number costs and risks. Costs include maintaining a broader knowledge of e-commerce laws and making adjustments to Web site accordingly. Other costs include possible consumer backlash and sanctions by authorities. Reinsch (2005) suggested that the legal environment should be a major concern for any business because the legal environment of cyberspace is relatively unknown, and as such companies can be conducting e-commerce illegally which can lead to them being sued by customers and/or governments.

The Current State of E-Compliance

A number of articles (Caudill & Murphy, 2000; Zugelder, Flaherty & John, 2000; Harrison-Walker, 2002) and textbooks (Mann, Eckert & Knight, 2000; Farhoomand & Lovelock, 2001; Pink, 2001; Canton & Millar, 2003; Lauden & Traver, 2003; Turban & King, 2003) discuss the importance and history of e-compliance. For example, Vickers (2000) found that only 37 percent of U.S. Fortune 100 companies modified their Web sites in global markets. Frynas (2002) reviewed eleven litigation cases filed by or against Internet companies. He concluded that due to the variance of political and legal uncertainties across markets, Internet companies are largely at risk for being non-complaint with local Internet law. IDC (2005) found that more than 55 percent of U.S. companies did not customize their Web sites for non-U.S. markets. Peslak (2006) examined the Forbes 100 international companies in order to determine privacy policy characteristics of the largest companies' Web sites. Fourteen variables were tested including the existence of a privacy policy and fair information practices. Peslak found that only 73 of

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