

# e-commerce



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## E-COMMERCE GENERALLY

### Internet's profound impact on society

- Information
- Communication
- Social networking
- Business to consumer relationships
- B2B relationships
- Global

## INTERNATIONAL NATURE OF E-COMMERCE?

IT'S EVERYWHERE



CLIENTS AROUND THE GLOBE

ALL TYPES OF BUSINESS

DIVERSE LAWS


NEW LANGUAGE

ALWAYS CHANGING

## THRESHOLD QUESTIONS

*In conducting business online, how do you overcome practical barriers and protect against legal risks on a global scale?*

*If a business does not focus on international business, do risks still exist?*



## WORLD WIDE WORRIES?



### INT'L LEGAL CONCERNS

- Jurisdiction
- Choice of Law
- Validity of online contracts
- Data protection and security
- Personal rights (privacy, free speech, etc.)
- Consumer protection laws
- Harmful behavior (torts, crimes, etc.)
- Dispute resolution

### PRACTICAL BARRIERS

- Infrastructure
- Language
- Culture
- Trust

## INTERNATIONAL BARRIERS





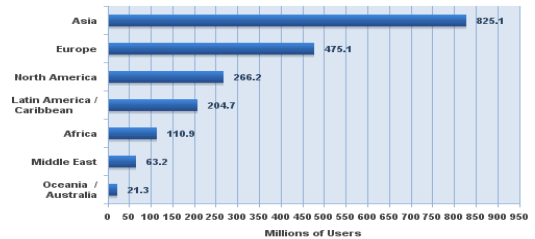
## INT'L BARRIERS: INFRASTRUCTURE

The single most common concern small businesses raise with regard to Web site localization is deciding which languages and countries will yield the greatest return on their investment.

Businesses need to determine how big the potential online audience is in a given country. Even if a country's population is large, the people reaching the Internet might be small. There spending power might be low too. The top 10 countries ranked by Common Sense Advisory's report entitled "Countries That Matter Most Online in 2009" were: U.S., Japan, Germany, UK, France, Italy, Canada, Spain, China and Australia.

## INT'L BARRIERS: INFRASTRUCTURE

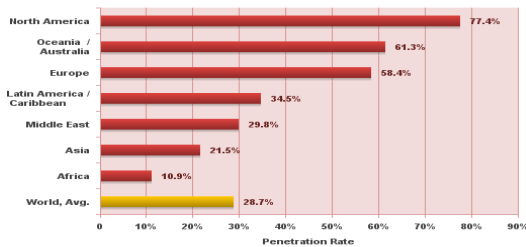
Internet Users in the World by Geographic Regions - 2010



Source: Internet World Stats - [www.internetworldstats.com/stats.htm](http://www.internetworldstats.com/stats.htm)  
 Estimated Internet users are 1,966,514,816 on June 31, 2010  
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## INT'L BARRIERS: INFRASTRUCTURE

World Internet Penetration Rates by Geographic Regions - 2010



Source: Internet World Stats - [www.internetworldstats.com/stats.htm](http://www.internetworldstats.com/stats.htm)  
 Penetration Rates are based on a world population of 6,845,609,960 and 1,966,514,816 estimated Internet users on June 30, 2010.  
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## INT'L BARRIERS: LANGUAGE ISSUES

### Reaching International Customers

Internet consumers are more likely to buy products and services from web sites in their own language,

even if they understand English

Many more Internet users outside of the U.S. or other English speaking countries

### Website translation?

Potential language blunders  
 Humans versus machines

## INT'L BARRIERS: LANGUAGE ISSUES

### Hurdling Language Barriers

**Technology:** using information about the default language of the browser to direct visitors

**Links:** Create different versions of the website and place clearly labeled links on the page directing visitors to the appropriate language.

### Multiple language web site

Keep some pages in multiple languages such as the home page, product information page, and any page related to marketing and branding.

Employment, news and other pages can remain in single language.

## INT'L BARRIERS: CULTURE & TRUST

- An important element of trust in online commerce stems from anticipating how the other party to a transaction will act in specific circumstances.

- Culture:

Combination of language and customs  
 Varies across national boundaries

- Methods of doing business



## INT'L BARRIERS: CULTURE & TRUST

### "Transcreation" or Cultural Customization

International blunders can arise from different cultural standards and expectations. Cultural mistakes can reduce trust and damage a company's reputation. Some factors include the following:

- Word selection
- Color patterns
- Users finding your Web site unfamiliar and strange
- Inability to view or use website



## LEGAL CONCERNS



## PREDICTABILITY & THE LAW



### CERTAINTY

- Laws give people certainties about their rights and responsibilities.
- Laws make life more predictable. Without predictability, business will not be able to act efficiently, or price services effectively.

### INTERNATIONAL

- There is no comprehensive set of laws or regulations that govern international electronic commerce.
- It is difficult to establish uniform worldwide laws for e-commerce.
- However, international guidelines and legislation within individual countries do exist.

## BORDERS & JURISDICTION

- Territorial borders in the physical world provide notice that culture and laws may be changing.
- The relationship between geographic boundaries and legal boundaries deals with four elements:
  1. Power to control and regulate
  2. Ability to enforce the law
  3. Legitimacy
  4. Notice
- **BUT**, the Internet is everywhere . . .

## JURISDICTION ON THE INTERNET

Determining who has jurisdiction can be difficult. For example, a Canadian customer dealing with a firm from Denmark, hosted by a U.S.-based web site, and maintained by a programmer from India.

- **Breach of contract:** violation of an agreement between two or more legal entities that provides for an exchange of value (goods, services, money).
- **Tort:** Improper an action taken by a legal entity that causes harm to another legal entity.



## DO WE NEED BORDERS?

*Digital Equip. Corp. v. Altavista Tech.* (D.Mass. 1997)  
 “To impose the traditional territorial concepts on the commercial uses of the Internet has dramatic implications, opening the Web user up to inconsistent regulations throughout fifty states, indeed throughout the globe.”



## LIMITATIONS ON GLOBAL REACH?

1. Should an Internet merchant or user have to know the laws of all countries?
2. Isn't complying with the laws and regulations in all nations part of the “fair cost” of doing business?



Associates with a known tax evader

Laundered \$\$\$ through charities



Manipulated U.S. stock prices

*Gutnick v. Dow Jones & Co.* [2001] V.S. Ct. 305



## SOLUTIONS

- ▶ Limit scope of commercial and other activities
- ▶ Contracts with users
- ▶ Regard as a cost of doing business



## CONTRACTUAL CHOICES

Legal rules cause intractable problems for business planners if they can't contract around them.



## INTERNATIONAL CONTRACT ISSUES

1. What law applies?
  - a. Can you select the law?
  - b. Does it matter?
    - (i) Rights
    - (ii) Obligations
    - (iii) Validity of contract



## CHOICE OF LAW: IT MATTERS

### European Union Unfair Contract Terms, Art. 3

1. A contractual term which has not been individually negotiated shall be regarded as *unfair* if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer. . .
2. A term shall always be regarded as not individually negotiated where it has been drafted in advance and the consumer has therefore not been able to influence the substance of the term, particularly in the context of a pre-formulated standard contract. . .

## INTERNATIONAL CONTRACT ISSUES

1. Online contracts
2. Enforceability of digital signatures
3. Browserwrap
4. Clickwrap



## JUDGMENT ENFORCEMENT

### *State courts: U.S. Constitution, Art. IV, Section 1*

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

*International / Cross-Border: Comity*

## COLLECTION OF INFORMATION

### PRIVACY

The right to be left alone and the right to be free of unreasonable personal intrusions

### COLLECTING INFORMATION ABOUT INDIVIDUALS

- Voluntarily (Web Site Registration, etc.)
- Cookies
- Spyware and Similar Methods
- Privacy of employees, patients, and children
- Cyber-terrorism

## DATA & PRIVACY ISSUES

- Are you aware of the data being collected?
- Do you have a choice?
  - opt-out clause**  
Agreement that requires computer users to take specific steps to *prevent* the collection of personal information
  - opt-in clause**  
Agreement that requires computer users to take specific steps to *allow* the collection of personal information
- Did you volunteer information in exchange for access?
- How secure is your data?
- What happens if there is a breach?



## INTERNATIONAL DATA COLLECTION

- Because international privacy and data collection laws are strict and extensive, any organization or individual may be subject to civil liability, criminal penalty, or government fine even if it cautiously handles data collected from potential or actual customers, if personal data is hacked, stolen, disclosed without authorization, or otherwise carelessly cared for by an employee or third party.
- In 2009, over 223 million individual records containing personally identifiable information were lost, stolen or compromised in the U.S. alone. Globally, many more records were stolen. The average cost of a data breach to a business was \$202 per record lost.
- An international study in 2009 showed that 88% of all data security breaches resulted from insider negligence, and 44% of data breaches involved a third party such as a contractor or outsourcing agency

## INTERNATIONAL CONCERNS

- In response to concerns about data collection, governments around the world have implemented laws and regulations designed to combat unauthorized disclosure or use of personal information.

## INTERNATIONAL DATA COLLECTION

### Privacy Protection in Other Countries

- In 1998, the European Union passed a privacy directive (EU Data Protection Directive). In May 2003, Japan passed its Personal Data Protection Law.
- These laws and others reaffirm the principles of personal data protection in the Internet age.
- They also aim to regulate the activities of any person or company that controls the collection, storage, processing, or use of personal data on the Internet

## INTERNATIONAL CONCERNS

- In response to concerns about data collection, governments around the world have implemented laws and regulations designed to combat unauthorized disclosure or use of personal information.
- One area of heavy regulatory activity relates to data security breaches. Over the past decade, the European Union, Japan, Canada, and various other countries have expanded governmental oversight over the private sector's collection, processing, and disclosure of personal data.
- In the U.S., forty-four states have adopted laws requiring public disclosure of security breaches. Also, Congress is currently considering several proposals that would create new rules for websites collecting personal data.

## RESOLVING INTERNATIONAL PRIVACY CONCERNS

- Structuring a privacy compliance program
  - Developing a data breach response plan
  - Implementing adequate privacy policy
  - Issuing accurate public statements about the organization's treatment of customer data.
  - International "best practices"
- OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data.*

## RIGHTS ON THE INTERNET

Some parts of the world do not openly welcome all aspects of e-commerce. Instead, these countries:

- Deny access to citizens
- Restrict access
- Limited personal rights
- Make some activities a crime

The information provided on the Internet may be seen as objectionable or threatening to the culture or traditions of the country.