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Considering legal requirements in electronic commerce

In the Communication on Electronic Commerce of 1997, the European Commission stressed that "in order to allow for electronic commerce operators to reap the full benefits of the Single Market, it is essential to avoid regulatory inconsistencies and to ensure a coherent legal and regulatory framework for electronic commerce". Indeed, the types of pitfalls that are facing any company or person wanting to set up an activity on the Internet, offering goods or services to consumers and businesses located world wide, are numerous, they vary according the type of relation you are considering and according the legal framework you are accustomed to operating in. Sometimes, the answers to legal issues are unclear, non existent or contradictory.

Nevertheless, it is particularly important to take into account the legal dimension and consequences of doing commerce on-line. A number of surveys, even the United States, have showed the reluctance of individuals to enter transactions on-line, which is principally due to a lack of confidence in e-commerce and to a fear that their privacy and consumer rights are not protected on the Internet. On the other hand, companies which disregard the regulatory framework, might be severely sanctioned. A few months ago, the US Federal Trade Commission has penalised Geocities for its privacy policy. Immediately, Geocities has lost a great part of its value on the

financial market. Therefore, launching e-commerce initiatives cannot be done by neglecting the legal considerations and constraints.

The objective of the present paper is to provide an overview of relevant legal issues you should take into account and to create a certain awareness of the types of questions that should be considered. This paper is limited, at a first stage, to raise the questions without trying to answer them.

When setting up your on line activity:

- What requirements must be met by an operator wishing to provide information society services?
- Where is your place of establishment if you offer goods and services on line?
- Can you create a virtual enterprise? How is it regulated?
- Where can you deposit a domain name? How is it protected? How can you avoid a conflict with a trademark?
- Is your website protected against illegal misappropriation?
- To what extent can you use texts, images and other material to create your website?

When communicating on line :

- What is the regulation of advertising, offers and marketing practices?
- What type of information has to be included in a web site?
- What information must be transmitted to consumers?

- Are hyperlinks to other websites authorised?
- Is it authorised to send unsolicited emails or other forms of messages?
- Can you collect information about users browsing your site?

When selling goods or services on line :

- How are the distance selling contracts regulated?
- What general or specific rules must be respected when entering a contract with a consumer?
- What is the validity of an electronic contract?
- What is the value of an electronic document and a digital signature?
- Where and when is the contract concluded?
- Are the electronic agents regulated?
- What are the existing regulations of electronic payments?
- Do banking regulations apply to issuers of cybercash or cyber credit cards? Does such electronic cash constitute legal tender?
- What is the nature of supplies on the Internet? Are the products delivered electronically goods or services?
- How can the VAT be calculated? How can the place and the time of the supply be determined?
- In case you offer copyrighted content, how is this content protected? Which rights are concerned when downloading, viewing or printing a protected work? How should licence agreements be drafted? Is it possible to detect a copyright infringement?

- Do you collect and process personal data on users? Is it legal? To what extent do they need to be informed?
- Can personal data be transferred to other countries?

When hosting or providing access to on line services :

- What type of liability could you face when hosting or providing access to litigious or infringing content?
- Under which conditions are you obliged to stop hosting or access to infringing content?

When resolving litigation:

- What are the competent jurisdiction and the applicable law to contracts, intellectual property rights, liability, marketing and competition law, electronic payments, privacy, consumer protection?
- How can a jurisdictional decision be enforced in another country?
- Is on-line litigation and arbitration in commercial cases relevant?

International, European and national legislators are starting to give answers to such questions, the analysis thereof might be the

topic of a future article. Simultaneously, technology provides more and more solutions to the threats or issues created by the emergence of Information Society. Lawyers and technicians can no longer consider each other as enemies but have to collaborate and to learn from each other. Technology and Law must develop along each other's progress and integrate mutual input.

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ECLIP Project

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The ECLIP project (Electronic Commerce Legal Issues Platform- ESPRIT Project DG XIII) seeks to set up a platform on the legal issues of electronic commerce with the objective of providing any ESPRIT or other EC-funded project whose scope deals with electronic commerce with a legal assistance so as to ensure the development of such RTD projects are made in accordance with the law. Such assistance namely consists of identifying a list of the legal issues raised by the projects, providing these projects with ongoing legal advice relating in particular to the specific field(s) of law and geographical area(s) concerned and helping the project to integrate legal requirements in the design and development of technology, thereby stimulating expertise and increasing general awareness of the existing or recommended legal framework of electronic commerce. To this end, the ECLIP consortium gathers five research centres specialised in information and technology law, each covering part of the European territory. Each research centre is in charge of carrying out research and legal assistance in a specific field of law with strong input from the other research centres.

The specific fields of law covered are: Intellectual Property Rights, Taxation, Liability, User Protection, Contract Law, International Private Law, Electronic Payments. In all these matters, ECLIP can help you to properly consider and integrate the law in your electronic commerce.

For further information please visit our homepage: <http://www.jura.uni-muenster.de/eclip/> or take contact with

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