

Legal Risk Management in a Global, Electronic Marketplace

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What is?

Legal Risk Management

A global, electronic marketplace

The 'test-set-up'

The Business, the User and the law enforcer

Cross-border law enforcement

Public and private law enforcement

Traditional and alternative law enforcement

Risk mitigation techniques

Cross-Border Law Enforcement

Jurisdiction (prescribe, adjudicate and enforce)

Respect of other sovereign states

Applying foreign law

Tort, consumer contracts and parties autonomy

Recognition of foreign judgments

The dual-criminality principle

The 2005 Framework Decision (fin. penalties)

Committed partially in the executing state

The Brussels/Lugano System

The Karl Heinz Henkel case

The Internal Market

Free movement of goods and services

The 2000 E-Commerce Directive

Choice of law?

Unfavorable commenting and blocking

The direct effect of community law

Member States' obligation to control nationals

Freedom of expression

For the Business

For its critics

Directing a Website Activity

The overall impression (the 'economic reality')

The 'intention' behind the website activity

'Purposeful availment' (Zippo Dot Com - US)

Connecting factors

Access to the website

Magnitude and nature of business activity

The presentation and relevance

Marketing measures

Place of business and technical infrastructure

Risk Mitigation

Geographical delimitation

Geo-targeting

- Problems with anonymizers and proxies

 - Combination with query

- Discrimination on grounds of nationality

The effect of geographical delimitation

- Need for standards?

Choice of venue and applicable law

- Consumer contracts, tort and criminal liability

- The website as a service (terms of use)

Conclusions and Perspective

Risk of cross-border law enforcement

- Tort and financial penalties

 - The country of origin principle

- Consumer contracts

- Alternative law enforcement

 - Some limitations within the Internal Market

Risk mitigation

- Choice of venue and applicable law

- Technical delimitation

Perspectives in technical delimitation

Thank you for your attention!

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