

# **Legal Risk Management in Cross-Border e-Commerce**

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## **E-commerce status (1/2)**

### **Realities**

- .com died
- E-commerce survived

### **Megatrends**

- Mobility
- Bandwidth
- Convergence

### **Uncertainties**

- Timing of public approval

# **E-commerce status (2/2)**

## **From a legal perspective**

- Media-neutral legislation
  - Reached a level of reliant construction
- Introduction of media-specific legislation
- Still unsolved international legal issues
  - Still enforcement difficulties
  - The principle of country of origin

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# **Why this project?**

## **Cross-border e-commerce is economically attractive**

- Legal Risks are a barrier to full deployment
  - Risk management tool can limit this barrier

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# **What is a Legal Risk?**

**“Potential financial loss due to infringement of a legal norm or entering unenforceable contracts”**

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## **Purpose**

1. Develop a model for managing Legal Risks
  - Legal Risk Management (LRM)
2. Elaborate tools for LRM
  - Guidelines (application of model)
    - Taxonomy of Legal Risks (including cases)
    - Management and benchmarking tool
3. [Discuss public enforcement strategies]

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# **Methodology (1/2)**

## **1. Develop model**

- Literature studies
  - Economic/strategic theory
  - Law & economics
  - Game theory

## **2. Elaborate LRM Tool**

- Traditional legal method (comparative law)
  - Legislation, literature, case law, guidelines etc.

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# **Methodology (2/2)**

## **3. Test and improve model and LRM Tool**

- Explorative approach
  - Structured interviews
    - Businesses
    - IMSN members
  - Workshops (focus groups)

## **4. Conclude**

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# **Delimitation (1/2)**

**Business [and government] perspective**

**B2C relations**

**Technological scope**

- “The Internet”
  - ...and as it will be

**Geographical scope**

- OECD

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# **Delimitation (2/2)**

**Substantial scope**

- Positive delimitation
  - Contact to the market
    - Marketing
    - Privacy
    - [IPR]
  - Consumer contracts (distance selling)
    - Pre-contract obligations
    - Conclusion of contracts
    - Performance (delivery and payment)
    - Defects and after sales service
- Negative delimitation
  - Competition law and tax law
  - Formation of business and establishment of websites

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# LRM model

## Legal Risk Management

- Elaborate and implement a LRM Strategy
  - Identify Legal Risks
  - Evaluate Legal Risks
  - Mitigate or eliminate Legal Risks
    - Modifying marketing material
  - Handle Legal Conflicts

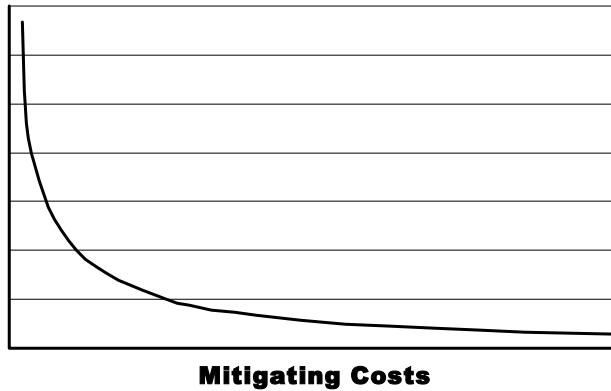
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## Equation

**Identifying Costs**  
**+ Evaluating Costs**  
**+ Modification Costs**  
**= Mitigating Costs**  
*<optimum>*  
**Expected Loss**  
**= Probability for Legal Conflict**  
**x (Potential Loss + Handling Costs)**

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# Expected Loss



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# Identifying Legal Risks

## Possible states

- Target group
  - Choice of law
    - Active or passive approach

## Possible infringements

- List of Legal Risks
  - Marketing
  - Contracting

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# **Evaluating Legal Risks (1/2)**

## **Possible enforcers**

- Authorities / organisations / groups
- Other businesses or private persons

## **Possible enforcement**

- Architecture (code)
- Market
  - Information (or incentives)
- Law
  - Private or public enforcement

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# **Evaluating Legal Risks (2/2)**

## **How to assess Legal Risks**

- Probability and magnitude of potential loss
  - Understanding the strategic situation
    - Sensitivity to different Legal Conflicts
  - Analyzing enforcement strategies
    - Public or private
  - International litigation
    - Choice of forum
    - Enforcement

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# **Mitigating Legal Risks (1/2)**

## **Mitigating by limitation on access**

### **Mitigating by compliance**

- Obtaining legal information
  - Country- or region-specific
  - Guidelines
  - Hallmark schemes
- Advance approval
  - Negotiation

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# **Mitigating Legal Risks (2/2)**

## **Preparing for Legal Conflicts in contract**

- System for handling approaches
  - ADR and ODR

### **Insurance**

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# Handling Legal Conflicts

## Handling actual or intended lawsuits

- Negotiation / discussion
- Reply in the affirmative
- Out-of-court settlement
- Litigation
  - Assessment of litigation costs

## Handling damaging information

- Newsgroups, websites (“suck”-pages)
  - Potential targets
  - Possible means
- PR strategies

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# Thesis framework

- Introduction

## Part I – Legal Risk Management

- Identifying Legal Risks
- Evaluating Legal Risks
- Mitigating and eliminating Legal Risks
- Handling legal conflicts

## Part II – LRM in cross-border e-commerce

- Contact to the market
- Consumer contracts

## Part III – Conclusions and perspective

- LRM strategies in cross-border e-commerce
- [Optimizing public enforcement]

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# Status and next steps

## Status

## Next Steps

- 15-20 page working-paper on LRM and the project
  - Model, methodology and examples
  - Including abstract
- Prepare interviews and workshops
- Prepare stays abroad
- Improve thesis framework

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# Questions and comments

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