



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

Safe Sales in Cyberspace

How to Avoid Becoming Entangled in the Web

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"Today the fate of companies large and small may depend on how swiftly and skillfully they exploit the technologies and opportunities of e-commerce. Instead of occupying acres of real estate, e-storefronts and marketplaces consist of lines of computer code, clever algorithms, and powerful databases residing on computer servers connected to the Net. The changes have given technologists greater power and left executives in a precarious position. Ponytailed programmers and propeller-heads can determine the success or failure of a company."

(Setting Up Shop, Fortune Technology Guide by Time Inc, Summer 2000)

Ponytailed Takeover: Who Really Runs Your Virtual Store?

Early e-commerce projects started as technology projects. The first commercial websites were electronic versions of printed sales brochures. Next, corporate issues were added: investor relations, mission statements, and messages from the CEO. As the use of the Internet became more sophisticated, websites changed to meet new needs. Interactive databases and services were added. With new software, customers could now not only examine catalog information, but also check whether the desired items were in stock, select them for a "shopping cart", make a purchase, and pay before checking out. Voilà! In a matter of months, websites developed from online brochures into virtual storefronts.

The website designers competed to create more accessible, more attractive, and more exciting sites. The application developers concentrated on presentation, navigation and database aspects. Very few designers or developers were interested in the strategic issues or business of selling, the ordering process, or the related forms or terms. Many sites and storefronts were constructed without the active involvement of management, never mind legal counsel. Speed was key. Web address, access, and architecture were often arranged without adult supervision.

Looking back, no wonder the outcome of the early e-commerce projects is not always optimal. Looking forward, with a legal mind devoted to preventing problems before they arise, some of the early virtual stores look worrying. Some even look alarming — particularly if one aims at Safe Sales.

Do you know how your virtual store is run — and by whom? How much of the fate of your company have you entrusted in the hands of "ponytailed programmers and propellerheads"? This paper provides you with the questions to ask to avoid becoming entangled in a cyberspace web.

The Safe Sales Concept

As in-house counsel, you want to maximize your client's business opportunities and minimize potential

pitfalls, claims, and litigation. Your company wants to have all transactions completed correctly and all relationships to be successful. That is what Safe Sales is about: sales with built-in quality assurance, risk management, and preventive law. Safe Sales in Cyberspace is about applying the Safe Sales approach to your virtual store and electronic sales. The goal remains the same: to secure solid business transactions with predictable profits, first time and every time. The Safe Sales concept was originally introduced in the attached ACCA Docket article "Safe Sales in Cyberspace".

Your website can make ensuring Safe Sales easier — provided it was designed and built the right way. If it wasn't, your site could soon add to your problems and increase your liability exposure. Does your site help you or hurt you?

Safe Sales — or Not?

Finding out whether your website helps you or hurts you need not be complicated or expensive. As is customary in the good old risk management process, you begin by identifying the risks and potential problems together with their causes. First you need a quick snapshot of your present situation. A self-assessment can be both easy and effective, when you know what you are looking for. You can do your assessment any time anywhere — surprise, surprise! — on the Internet, without leaving your office (or home). Key areas to review should include your virtual

- presales and sales information; commitments and contracts
- markets: contractual and statutory limitations
- store address: domain names
- store location: servers and service providers
- regulatory and other industry specific requirements

Once you know what, why, and how problems may arise, your findings become the basis for your further analysis and treatment. With your legal training and in-house experience, you can then install appropriate architecture into your storefront to secure Safe Sales on an ongoing basis.

Safety has many sides to it, and this paper does not purport to cover them all. A lot of media attention has been devoted to hacker attacks, denial of service attacks, viruses, and cybercrime, and how to fight them. Secure networks, firewalls, encryption, digital signatures, privacy concerns, tax, and intellectual property issues are all important, but they are not the main concern of this paper. Instead, other areas are discussed — low-tech and less trendy, maybe, but very well worth counsel attention.

In the following, exercises and site-seeing on the Internet are suggested to assist you in your review. The questions and suggested steps obviously need to be customized to fit your company's business, operations, and markets. If you are engaging in a regulated activity such as offering insurance or securities, you want to make sure that the rules and regulations applicable to that activity are followed. A key element also is what you actually provide over the Internet, whether goods, services, or computer information, etc., to whom: whether consumers or non-consumers, and where: whether territorial restrictions apply (or should apply).

As you know, in e-business and on the Internet, things change rapidly. Every effort has been made to keep the suggested destinations and resources current as the paper goes to print (July 2000). Any or all of them may change. New creative ways may develop in which well-meaning application developers, programmers, and web site designers can jeopardize the safety of cyberspace sales.

Virtual Presales & Sales Information; Commitments & Contracts

Sales are about promises. If transactions and relationships are to be successful, promises need to be kept. If you breach your promises, virtual or real, you will lose customers, future sales, profits, and much more. Legal

minds immediately think about liabilities and remedies. Even non-lawyers should be familiar with the very basics: not to overpromise and not to underdeliver. In cyberspace, the basics can invite as big — or bigger — risks than the more attention-grabbing aspects.

In B2B sales you are accustomed to contracts being formed on the basis of Purchase Orders and through the exchange of email or other correspondence. These often involve the parties' small print, easily leading to a battle of forms. In such situations, your terms might or might not be applied — in the international B2B marketplace you must be prepared to the "knock-out": in some jurisdictions, both terms might be set aside and the applicable default rules, such as the CISG, might enter the picture. Your B2B website can help you eliminate this problem. Its virtual storefront will stay alert, and you can make it see to the fact that battles of forms are history and virtual sales are made based on your terms only. Unlike your human sales force, your virtual store does not forget to address important issues and to alert somebody in the know; provided that it was designed and built to do so. This will not happen, if your e-commerce team paid insufficient or no attention to the required steps, terms, and safeguards.

In the attached ACCA Docket article questions related to gap-filling laws, the CISG, and contracts for B2B sales of goods are discussed in more detail, and a systematic approach is suggested to managing electronic presales and sales processes and documents. In the following, the focus is on other key elements contributing to — or endangering — the safety of your sales in cyberspace.

Virtual Shopping Exercise

Do you know whether and how well your company keeps its virtual promises? Or how you master your virtual presales promises and sales steps? Do you have a picture of what shopping at your virtual store is like? Maybe it's time to carry out a hands-on shopping exercise.

Go to your company's website and visit your virtual store as if you represented a customer making a purchase. Depending on what you provide and which markets you serve, you may want to play the roles of a consumer and a business buyer, domestic and foreign, and repeat the exercise trying out different countries in your shipping, billing and home/office address. In this way, you will get a feel for different consumers' and business customers' experiences — and find necessary facts for later review.

On your way to your virtual store and while doing your shopping, you want to pay attention to and record what you see — and what you don't. What questions are asked? Does the virtual store differentiate between consumers, business customers — or dogs, as the saying goes? Can you find a statement that your company virtual store only wants to trade with certain customers from certain geographic areas? You are the expert on the special requirements and restrictions that apply in your business, so you know what to look for. You want to evaluate the clarity of the information given and note the options, notices, terms, and warnings — or the lack of such safeguards. Areas deserving special attention include information your virtual store provides on the

- parties, particularly the virtual storekeeper (i.e. your company in this exercise)
- prices and payment options, time and terms
- products and services provided, and how your website promotes them
- delivery times and terms, and other important information
- steps to follow to place the order and conclude a contract
- applicable law, jurisdiction, and other important contract provisions

One could add a number of other areas such as privacy, security, digital signatures, and encryption that are important for the safety of your sales — and a safe shopping experience for your customers. Those areas are not within the scope of this exercise, however — we'll stick to the basics.

Level 1: Checking In — Do You Know Who You Are Dealing With?

When in your virtual store, are you provided with details of your company's, i.e. the supplier's identity and location? Can you find the full name and geographic address of the company? Are you sure you can tell what State or country the supplier is located or registered in? Can you find a phone number or an e-mail address you can contact if necessary?

If your virtual supplier company operates in an EU member state, this information will soon be mandatory. The new Directive on electronic commerce requires Member States to ensure that you render it "easily, directly and permanently accessible" to your on-line shoppers and the competent authorities. Additional information requirements apply to for example regulated professions and activities subject to VAT. The OECD and various other bodies, national and international, have made similar recommendations, especially in the field of consumer protection. Even if it is not a legal requirement in your case, why would you give reason to think you've got something to hide?

For the purposes of the new EU Directive on electronic commerce it does not matter where your website or server is situated or where you may have your mailbox. Where the entity providing the electronic purchasing opportunity is established is the decisive factor. If that entity is established in an EU Member State, the virtual store is covered and the information requirements apply.

Level 2: Looking for Products and Prices — Accurate Information or Guesswork?

When browsing through your electronic catalogs and prices, do you find the information you need to make an informed buying decision? Do you get all the necessary details before you have to give your confidential payment information? If you play the part of a foreign visitor and the currency is given in Dollars, do you have to guess whether it is US, Canadian or, say, Singaporean currency? Are the prices inclusive of shipping and handling? What about tax, where applicable?

If your virtual store trades with consumers in other countries, you may be subject to their consumer protection laws. This applies to the price and other information you put up on the Internet regarding your products, and to the consumers' rights in respect of products sold. If your website is covered by the provisions of the new EU Directive on electronic commerce, there is a specific requirement concerning prices: where prices are referred to, these are to be indicated clearly and unambiguously and must indicate whether they are inclusive of tax and delivery costs. Again, it makes sense to provide your customers with this information, even if not required by the law. You want to get your price right and avoid disappointments, claims and disputes.

You want to provide truthful, accurate and clear information about your products on your website, too, and be prepared to back up the claims you make about them. As for product information in general — and warranties and instructions in particular — be prepared to encounter some surprises on your virtual shopping tour. On the Internet, things may get published to the whole wide world that would never appear in your printed sales literature. Why? Because the people in charge of web publishing did not know, and nobody told them how to do it right. If your company has a reviewing procedure for your marketing materials and advertisements, you want to put your future website content through the very same process before it gets to the Web.

Level 3: Placing the Order — Do You Know Who Is Committing to What When?

When you are about to place your order and while you are doing it, you again want to pay attention to and record what you see and what you don't, and the order and clarity of the information given. You want to know exactly when each party is making a legally binding commitment and what that commitment entails. In addition to the identity and other details of the supplier (your company) and a clear indication of the products

and prices discussed above, the areas to pay special attention to include:

- payment options, time and terms
- delivery options, time and terms, where applicable
- steps to follow to place the order and to conclude a contract
- acknowledgement of receipt of the order and what is stated on it
- at which point you (the buyer) and your company (the supplier) commit to a contract
- information on the contents of that contract and whether it will be filed and accessible

- what contract terms and general conditions are shown and at which point
- can you store and reproduce the contract terms and general conditions
- disclaimers, limitations of liability, and limitations of remedies
- applicable law, jurisdiction, and other important contract provisions

- information on means for identifying and correcting input errors

- information on complaints, returns, and warranties
- languages offered for placing the order and concluding a contract

Knowing your business you know in what sequence and on what terms you want your commitments and contracts to be formed. Knowing the law you know that domestic and international sales require a slightly different approach, that sales of goods are different from sales of services, etc. You know that in B2B dealings you can specify your obligations and limit your liabilities through your contract, and do not want to rely on the default rules of applicable laws only. When reviewing your findings you want to make sure the architects of your virtual store took the appropriate steps, terms, and requirements into account and built them into your store structure.

Future developments in the e-commerce regulation arena may add to or change the applicable requirements. Even if the EU Directive on electronic commerce does not cover your website sales, you might want to review which of the areas listed above will become compulsory for EU-established storekeepers, and what you can agree away in B2B dealings. This may give you indications as to how you want your contract formation steps designed and your contract terms drafted for the future.

Consumer protection laws do not allow much freedom, particularly not much room for limitation of liabilities or remedies. Even in areas where freedom of contract prevails, you need to make sure that your customers do not miss vital information. You may or may not see disclaimers on your shopping tour. If you do, where are they located? Are they compulsory viewing for all shoppers, or in small print, accessed via a link at the bottom of a page? When you do your shopping exercise, you want to test your virtual store's internal hyperlinks to see whether you can skip vital information by just not accessing the right hyperlink. If your disclaimers and qualifying information are not appropriately emphasized, they are unlikely to give your company the intended protection.

Your customers want to be kept informed. This is particularly true of your first-time and occasional shoppers. They want to know whether their order was successfully received, whether the products they wanted were available, whether and when the products have been shipped, etc. To the extent such information is mandatory in your business and market, you want to make sure it is given. If estimates are meant, make sure they do not look like obligations. If dates are used, remember that dates — for example 4.10. — may be interpreted differently in different parts of the world. For a non-US shopper, CIF and FOB may not mean what you think they do. Using words for months in dates, referring to Incoterms 2000 for the proper interpretation of CIF, FOB, and other trade terms, and other simple mechanisms can help you. They will make trouble-free transactions easier — provided you choose the appropriate methods and make them part of your virtual sales contracts and terms.

Level 4: Payment and Delivery — Were Promises Kept?

Your customers — and the consumers' associations and corresponding bodies making similar shopping exercises — will measure whether you kept your promise as to price, cost, delivery times, etc. How well you keep your promises and how well you handle problem situations is valuable information for your exercise and later review, too. Knowing what actually happens after the order is placed, will help you identify and remove potential causes of problems, claims, and litigation. At least the following areas count at this level:

- was the total price with costs what you expected it to be
- when was your account debited
- did the products arrive — and did they arrive in the time agreed or estimated
- were the products what you expected them to be or were there problems
- were instructions provided, where appropriate, also on how to return the products

Making the actual purchase and payment, and checking out from the store may not be practicable in all cases. If for example your site only sells chemicals or heavy metal, registration or checking into the virtual store, or accepting delivery might cause problems. In some cases, you might be able to arrange somebody, maybe a fellow ACCA member, who works for a virtual customer of yours, be your "phantom shopper" and provide you with the information you are looking for. In exchange, you might be able to return the favor and provide corresponding information for him or her.

Level 5: After-Sales and Support — How Good Are You at Fixing Problems?

You might want to have a chance to find out how your organization handles a problem situation, too. Typically, if you are playing the role of a consumer, you want to have information available about

- returns procedure and restrictions
- costs incurred in returning the products and who is going to pay them
- how to obtain a refund and how long it takes
- warranty services

Mandatory rules of law may require you to, e.g., accept returns at your cost, give certain instructions, and follow certain procedures. Within the EU, the Members States have implemented or are in the process of implementing the Directive on the protection of consumers with regard to distance contracts, aimed to secure consumer protection in online and other distance contracts. If these are mandatory requirements in your situation, you want to make sure they are followed.

After the Virtual Shopping Exercise: How Do You Compare to Others

If after collecting your findings you want to know how you compare to other virtual sellers, you can study the results of the international web survey the FTC staff conducted in 1999, together with the materials of the FTC Workshop held in June 1999 entitled "U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace". FTC Business Alerts can be of value here, too, particularly the one called "Electronic Commerce: Selling Internationally. A Guide for Business" (March 2000), all available through <http://www.ftc.gov/menu-internet.htm>. Further materials for comparison are provided by "Consumers@shopping. An International Comparative Study of Electronic Commerce" by Consumers International (1999), available at <http://www.consumersinternational.org>.

Even if you work in the business-to-business (B2B) sales environment, the above comparisons — while not directly applicable — might still be worth your while. At a minimum, they prove one point: if you do not want to give up your freedom of contract in B2B sales, having one common virtual store serving consumers and businesses might not be such a good idea. The extensive protection offered to consumers and the potentially

limitless liabilities and remedies you encounter in such transactions are not commonly (or knowingly) accepted in B2B dealings. If you only want to trade with businesses, or businesses from and deliveries to certain countries, you should build appropriate instructions and safeguards into your website to exclude and redirect others — bearing in mind what your company can and cannot do within the scope of applicable antitrust and competition rules.

Virtual Markets: Contractual and Statutory Limitations

The global reach of your website storefront can cause new business and legal headaches, even in the B2B arena. The issues as such are not necessarily new, but the people meeting them might be first-timers. Let's take a simplified example of exclusive distributorships. You might have granted exclusive territories to your distributors. Now, through your website store, if nobody pays attention, you might suddenly start supplying the same products to others in those territories. Are your distributors mad? You bet! Do they have rights against you because of your breach of contract? They certainly do. — Just because nobody remembered to plan ahead, find out about your existing commitments, and work out a solution acceptable to you and your distribution network. Similarly, your company may have inbound distribution rights or licenses with geographic limitations, which your virtual sales can cause you to breach. After the fact, you have more limited options.

European distributorships offer some further challenges. Let us assume that you have exclusive distributors in EU Member States, one for each. One of your EU distributors now wishes to establish a website. Your other distributors and your company do not like the idea. Maybe you have decided to reserve all sales and advertising over the Internet to yourself. Let's assume for this scenario, that your EU Distribution Agreement prohibits active sales from one EU country to another, but allows passive sales. Can you prohibit your distributor from proceeding with its plans to sell and market your products at its website? Are websites considered a form of active or passive selling?

The answer to these questions will develop with case law. Two basic rules are stated in the Guidelines on Vertical Restraints: every distributor must be free to use the Internet to advertise or to sell products, and a website is not generally considered a form of active selling. There are exemptions, and if this question is of importance to you, you might want to study the Guidelines.

Compliance with other EU requirements may also pose both a technical and a legal challenge. Let's assume your company B2B virtual store is open, and its worldwide offerings include machinery. You supply new markets, some in the EU. Are you sure the machinery you supply to the EU meets the essential health, safety and other requirements that apply to it? Is it CE marked? What if it should be, but is not, and an injury occurs to a user, or astronomical losses of production and profit are caused to your customer who cannot put the machinery into its intended use?

These are just but a few examples of things that can go wrong, if insufficient attention is paid to the basic principles of compliance with pre-existing contractual commitments or legal and regulatory requirements. A company might have procedures in place to prohibit such problems and to promote compliance with antitrust, export control, and other legislation — and yet leave itself wide open for the same risks in cyberspace. There are techniques to combat these kinds of problems, but the potential problems must be identified first.

Established companies have for ages had knowledgeable people in charge of their B2B and consumer marketing and sales. These people are expected to know or take the trouble of finding out what they need to about exports, products, brands, market areas and agreements. In online sales, the corporate memory must have a blackout; so often these people and their traditional wisdom seems to have been completely forgotten. It is up to you to refresh the corporate memory and help bridge traditional and new business wisdom.

Virtual Store Address: Domain Names

Your Domain Name is your address and identity on the web. It is also your business symbol, with plenty of marketing value attached to it. It is important that you protect it. You've probably registered your name in the .com top-level domain. Many have found it a good idea to register their name(s) in the .org and .net domains, too. Getting these domain names now does not cost much, about 35 USD or less a year each. If somebody else registers them, it is likely to cost you much more if you want them later. If you have not been involved in the registration process, here's what you can do:

Go to <http://www.whois.net>, or one of the Registrars, for example Network Solutions at <http://www.networksolutions.com>, and do a whois search. Type in the name of your company. This you can do for free, for as many names as you like. You want to check the name with .com, .org, and .net. Then do the same with your key product names or trademarks. If you have not done this before, be prepared for a surprise or two.

If you do find your company or product name(s) taken by somebody outside your Group, you are not alone. Fortunately, traditional intellectual property law offers you remedies against infringers of your trademarks or tradenames. If you do not like the cost, lengthy proceedings, and other drawbacks to litigation, a new form of dispute resolution may come to your rescue: some quite comforting decisions can be found at the World Intellectual Property Organization Arbitration and Mediation Center at <http://arbitrator.wipo.int/domains/decisions/all.html>.

If you want to begin with the good news, you can read decisions listed as "transfer", such as Inter-IKEA Systems B.V. v. Avi Chekroun (Case No D2000-0478; ikeaworld.com) and Scania CV AB v. Leif Westlye (Case No. D2000-0169; scaniabilar.com, bilar being the Swedish word for cars). But you will encounter some not-so-good news, limitations, and less comforting decisions, too, such as Fuji Photo Film Co Limited and Fuji Photo Film USA Inc v. Fuji Publishing Group LLC (Case No D2000-0409). In the latter case, although the Complainant claimed prior trademark rights to FUJI, the Respondent, in the Administrative Panel's view, rightly contended that the Complainant's trademark FUJI did not encompass Internet services, point of sale software, or bulletin board services, all services that were offered by the Respondent.

If you are active in foreign countries, you might want to register your domain name in those countries, too. You can start with a free do-it-yourself study to see if your domain name is available through worldwide domain name management providers, such as IdNames from Network Solutions, at <http://www.networksolutions.com/catalog/idnames>. You can then proceed if you like, and are prepared to accept the fee, to find out detailed Whois information — and even register your name worldwide in some 200 countries. The fees and requirements for country domains vary. So do your other options, such as the possibility to trademark your domains. There being so many country domains, it is worth to consider in which countries you need or want to register.

Even if you are reasonably happy with the domain and other name protection you enjoy now, somebody might cause you concerns tomorrow. You may be using trademark watch services already — maybe also domain watch services. If not, you will be pleased to know that there are services out there that can help you do just that, and watch your domain for you. Some of these services are free. You can find name watch service providers through Internet search engines and at various Internet Service Providers' and Domain Name Registrars' sites.

ICANN, the Internet Corporation for Assigned Names and Numbers (see <http://www.icann.com>), coordinates the assignment of the identifiers - including domain names — that must be globally unique for the Internet to function. One thing you will want to add to your department's to-do list is to follow up the development of new top-level domains, such as .banc, .news, .shop, .tel and .travel by ICANN. The first new domain names are expected to appear by the end of this year, but right now no one knows for sure what the new names will be. If you have operations in Europe, you will most likely be interested in the development of the new domain name .eu by the European Commission.

When you register a domain name, you use a Registrar, a registration service provider. Each time you do so, you also make a contract. Do you know which Registrar(s) your company has used? How much do you know about them and their policies? Has somebody read you contract(s) with them? Do you know what happens if you reorganize your company and want to transfer your virtual store to a new keeper? What if you want to sell your Web shop, or move it to a new address?

If you are interested in these questions or the true nature of your rights to your domain name, you will find an increasing number of judgments and materials on the Internet. Even if you do not care too much about whether what you've got is considered assets, ownership, intellectual property, or contract rights, you might want to check whether your registration agreement meets your needs and protects your rights. It is not difficult to change Registrars, should you find reason to do so.

Virtual Store Location: Servers and Service Providers

By now, you have run a safety check inside your virtual shop and around its address, the domain name. There is a lot more to the safety of your sales and your store. How about actual geographic location: do you know where your store with all its contents is located and maintained? Do you know whether the location is yours or somebody else's? How much do you know about the connections, routes, and access to and from that location, and who maintains them?

Somewhere out there is a server, the computer on which your virtual store is placed, connected to the net. Your virtual store may but it need not reside on the same server as your website. The server(s) may be yours, located in safe offices, the access to which your company controls. You may host your site and virtual store yourself on a server computer that may also support your company's internal network. Or, which is more likely, you have outsourced these functions or part of them to a hosting firm. Whichever the case may be, and whoever your host is, you will want to know exactly. If your server is not safe, your sales are not safe. Again, there are risks and contract terms you need to manage.

You and your customers need continuous, uninterrupted, easy access to your store. If your network or lines are down, your sales are down. You may risk losing critical data. Simultaneously, you may risk losing your customers and your reputation. If the management and administration of your virtual store is out of your company's control, your contract must obligate the hosting firm to provide acceptable level of security and protection, both physical and electronic. You want to keep the information, user data and credit card information included, within your site, protected and confidential.

If you wonder who your Internet Service Provider (ISP) is and don't know whom to ask, you might be able to track it the same way you can track domains, namely through <http://www.whois.net> or one of the Registrars' sites. After going to the Whois Lookup and keying in the domain name you are interested in, you will find an administrative contact, technical contact, and domain servers. Are they familiar, people you know and trust? Do you have a contract with them? Or do you find names or places you never heard of, maybe people who left the company years ago, some remote student's home computer, or some firm that has been acquired and changed names several times since? You may also find that no contract with the ISP can be found — or if one can be found, nobody reviewed it to ensure you get what you need. If so, you might want to step in and study the situation and contract(s) more closely.

If you decide to review the contract yourself and are new to the area, you may want to discuss your needs — and those of your customers — with someone experienced in these areas. Before that, if you are not familiar with the vocabulary already, you might want to check a few online and technology terms in a dictionary or <http://whatis.com>, so you have a basic understanding about bandwidth and the various abbreviations, such as ISDN and ADSL (types of lines). Equipped with this information, you can better analyze the present services, uptime standards and obligations of your host, including the guaranteed levels, if any, provided by them. As you know, no guarantees or promises alone will help you continue to make sales when the server or

connection is down with technical problems. You want to have problems fixed, and you want to have them fixed rapidly. You want to have an effective contingency plan and disaster recovery plan in place. If your host cannot provide you with adequate guarantees and practical and contractual safeguards at a reasonable cost, you might need to start looking for a new host.

It typically takes a legal mind to ask at the beginning of a relationship what happens at its end. For counsel, it is natural to think about and provide for the expiration of the hosting service at an early stage. Not necessarily so for the early website building team. Your existing contract might not provide you with what you would like at the expiration of the service. You might be unhappy with the service or terms, and want to move your store to a new host. Even if you are pleased with the service and terms, your hosting company might get acquired, or decide to merge or close its hosting operations. Now what happens to your store and the materials and information in it? Again, a well thought-out contract with adequate protection would make your position stronger. So would a well thought-out relocation plan. While no contract can eliminate the risks completely, you will be much better off having the potential causes of problems identified and addressed early rather than later.

Conclusion

Your rights to your virtual store depend on the decisions and contracts your company made when acquiring the related resources and hiring the designers, developers and solution providers. Your profits from your e-sales depend largely on your presales and sales steps and on your contract terms. So do your risks and liability exposure. Those decisions may have been made, those steps determined, and those contracts drafted a long time ago — especially if you count in Internet years. Your offline sales documents and terms may have been copied, with little or no updating, when making the move to e-sales. Your company probably did not know then what it knows now. Within a year from now, your company and all other cyberspace actors will know much more than any of us know today.

Cyberspace sales are not only about algorithms, databases, digital signatures, or data protection — they are about business and sales. A multitude of complex processes, systems and networks are involved, and they need to operate in alignment. E-commerce projects and cyberspace sales are about contracts, too — contracts, requirements, and specifications. In B2B website sales transactions, solutions to most of the legal difficulties raised by varying laws and jurisdictions can be provided by contracts. In both B2B and B2C sales, well planned contracting steps and a well-drawn contract are your roadmap to successful transactions and relationships. They — along with managing and keeping your promises — are your key to ensuring Safe Sales.

Whatever the impact of your earlier decisions and contracts, it is never too late to review the safety of your sales in cyberspace, and add more safety features where needed. The risks and potential problems must be identified so that their causes can be removed. Many unnecessary problems in the legal architecture of website storefronts are due to the fact that the territories of presales, sales and contracting have not been very well explored or mapped. In some cases, insufficient attention has been paid to simple domain name protection — or the very basic principles of the law of sales. With your legal training, you have a panoramic view of the business of virtual selling that others may lack.

For organizations wanting to prosper, it is crucial to spend time and resources in reaching goals and improving performance, not litigating. By being proactive, you can embed quality, risk management, and preventive law in your website store structure. In this way, your virtual storefront helps you reach business objectives, prevent claims and disputes from arising, and eliminate or reduce their impact. One should not expect technology, business or legal professionals do the job alone. Everybody benefits from these professionals working together, integrating or aligning their efforts.

Together as a team — and only together as a team — we can secure and maintain Safe Sales in Cyberspace.

Asking some well selected questions tailored to your business can be the important first step towards this goal. Initiating action now can save you severe business and legal headaches later.

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