Global E-Laws for E-Promoting, E-Branding and E-Marketing of Innovative Technologies
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Abstract:
Globalization and advent of innovative technological advancements has blurred the borders in trade. The strategies for effective, efficient and competitive trade are fast emerging and evolving. The buzz words today are “global economies”, “global climatic changes”, “global strategies” and “global trade”. The need of the day is a “global law” to promote and provide for measures of regulation of e-technologies being innovated and used through e-marketing strategies. The paper is an attempt at identifying the lacunae in the regulations and rules for implementing laws in the cyber/electronic world in the context of convergence of media. The laws for cybercrimes have made headway but much needs to be decided on the regulations and policies globally in an era of diversified national economies with the developing world differentiated from the developed and equitable responsibility is being opted to equal responsibility by the former.

I. INTRODUCTION

The number of guidelines, rules, regulations and policies to adapt to and follow while operating in the e-commerce world is not only magnanimous in scale but also variant. The laws of the internet are not yet globally formulated promoting the nature’s principle of the “Big fish eat up the small fish” thereby making it immensely difficult to compete with the global market. This is not an assumption but a reality when one has to address the concerns of the information technology laws especially with the advent of advances in cloud computing and network security. The illustration to this effect is the variation in the Cyber and Information Technology laws of the US, India and Hong Kong for instance which are stringent, in a state of constant amendments and non-existent respectively. The laws of the electronic world, such as the Cyber laws & IT Act, as mentioned earlier do not have international dimensions and are in infancy if formulated and the global economic and primarily the creation of the technologically advanced giants with biased rules for functional use of the world users. The various national and international Acts and Regulations governing the Bio-medical sciences, stem cell research and therapy, the Patent’s Act and the regulations governing the patenting of processes are a indicative testimony to this effect. Online promoting, branding, marketing and selling are all dependent on the e-commerce laws, primarily having the flavor and essence of the commercial laws of transaction, including, Law of Contracts, the Company Law, Laws of Investment and Security, Law of Foreign Transactions and the Export-Import laws besides related statues depending on the functionality of the internet or online business as illustrated the case of many online trading firms, for instance, E-Bay. The policies on e-contracts, e-transactions and e-agreements so to say are not holistic and all-encompassing for the practice of fair trade. Online promotion and marketing of products, online trading firms and business ought to be flexible so as to incorporate the frequent changes in the laws and adjust to the amendments to the global laws. The online business requires an understanding of not only the technological regulations and laws but also the commercial transaction and mercantile laws. As Warren Keegan rightly puts it, “a company that fails to go global is in the danger of losing its domestic business to competitors with lower costs, greater experience, better products and, in a nutshell, more value for its customer.” Inflation, global economy and networking technological advancements make the e-laws versatile and in a constant fluid state. Profitability of a shopping cart company, the parlance for any online company, is subject to the adaptability to the change and incorporation of the e-survival tactics with a thorough understanding of the principles of law governing any commercial transaction. Gordon Moore predicted that “every 18 months chip processing power would double while the costs to purchase would stay the same” The simple e-law or rather, the e-principle is held to be true in the context of the impact of cost to company and the business on the internet and e-commerce online stores. The cost of the e-business therefore increases as the cost of computers being constant, absorbing the maintenance costs, the real cost of running the business is actually falling given the economy of inflation, thereby making the online e-business accessible, affordable, profitable being technologically advanced, owing to the increased speed of functioning of the systems and their ease of access. The e-business gives a boost to e-sales as the buyers online are open to a quicker and reliable technology based buying market. It is no exaggeration that “E-commerce has been created by the buying and selling power of e-business” and therefore, the virtual corporations and online businesses must utilize the available speed of technology. The second most crucial aspect of e-business is the value of a network, usually measured by its utility that can perhaps be roughly estimated based on the extent of use of the network. The adaptability and constant up-gradation to faster networks is very important for an e-business with the increased number of users, products and awareness through e-promotion thereby making it...
extremely important to keep in tune with the increased demand of the rush of the internet users thus necessitating the requirement of a functional and implementable online supply chain management system so as to enhance the e-brand image and the face value of the e-company, reflecting on the significant growth and profitability of the business. The third most important law of the e-commerce world is the 20-80 Rule applicable worldwide to a variety of e-products on e-sale. The Rule says “20% of the population actually tries a variation of products online during its introduction and the remaining 80% follow behind after a true product is created.” This philosophy or rather the behavior of e-customers necessitates a thorough research of the e-business and substantial risk assessment and analysis of the e-market need, purpose and reason. Strategies adapted and implemented by other virtual players have to be keenly observed and understood.

II. GLOBAL E-COMMERCE REGULATIONS

E-commerce, simply, the selling of goods over the internet is subject to regulations and legislations which are not only complex but extremely transient and versatile. Promotional e-mails, online newsletters, sale of e-goods, marketing of e-goods and promotion of e-goods is a recent trend in virtual business and this as are any transactions is subject to the local laws of the land of production and also the laws of the land of consumption. Trade restrictions, particularly import controls, are a very important problem which an international market faces.

The issue is even is transaction is done online, delivery requires custom clearances for goods and thus prohibited and restricted goods to international destinations should be identified by the e-marketer failing which as unintended and unassuming criminal charge may be levied.

The emerging competitive environment depicted in the Figure 1.0 shows the competition faced by the local, national and international firms in an emerging competitive environment which has a direct and indirect impact on the laws governing the trade

E-commerce is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means. The Asia Pacific Economic Co-operation (“APEC”) has adopted a wider definition of e-commerce to include all business activity conducted using a combination of electronic communications and information processing technology. The United Nations Economic and Social Commission for Asia and the Pacific (“UNESCAP”) has also defined e-commerce as 'the process of using electronic methods and procedures to conduct all forms of business activity.' Over the past few years, global trade has expanded due to the explosive growth of electronic commerce. Projections indicate that the volume of e-commerce will be approximately US$ 2 to 3 trillion in 2003-2005. While e-commerce is still at a nascent stage in India, certain estimates indicate that the total transaction volume of e-commerce in India is expected to grow rapidly to Rs. 195,000 crore by 2005. Though at the outset, the prospect of conducting e-commerce may seem uncomplicated and economical, there are a variety of legal factors that an e-commerce business must seriously consider and keep in mind before commencing its activities. The
importance of dealing with these complex legal issues has already been highlighted in light of the recent “Napster.com” and “ToysRUs” cases. While governments across the globe have been grappling with these issues, it seems a long way before any concrete solutions may be reached. The set of issues that arise may be bifurcated into “CORE” legal issues that are relevant to all forms of businesses and "OTHER" legal issues, whose relevance may depend upon each particular industry. The dot-com bubble is long behind us, but online commerce is finally red-hot again. In the late 1990s, the conventional wisdom was that the transformation from “bricks to clicks” for retailers would happen almost instantly. Yet over the past ten years, it’s become clear that the shift to the Web was not a two- to three-year revolution, but a 15-20 year evolution. According to comScore, non-travel/auto/gas/food e-commerce sales represented just 7.1% of total retail sales in the US in Q2 2010. But, significantly, online sales have grown at an annualized rate of 9.7% since 2006 (vs. the 2.3% annualized decline in total retail sales over that same period, which includes the Great Recession). Leading online retailers, like Amazon.com, are growing even faster—30% per year for the past several years. This growth in e-commerce should only accelerate. Companies like Zappos, Bessemer portfolio company Quidsi (operator of Diapers.com and Soap.com), VentePrivee, Netflix and others are creating new online-retail categories and pulling offline dollars onto the Web. But a lot has changed since the heady—and money-losing—days of eToys and Pets.com. Today’s successful e-commerce sites don’t just throw products up on a Web site and spend tens of millions of dollars on traditional brand advertising to promote them. The rules of the game today are much more complex and, in many ways, scientific: They involve astute use of targeted, direct-response advertising, for instance, and careful calculations about the lifetime value of each customer. Those leading the e-commerce pack today also display a laser-like focus on customer service, including offering fast and/or free product delivery. (Consider Zappos which ships customers their shoes overnight.) The crucial and tricky aspect of the e-laws in e-promoting would be the territorial rules of the land, giving a geographical indication to the dependency on the laws of land of origin, land of promotion and land of final consumer. An understanding of the intricate web of which e-product may be e-promoted over the internet, which e-product may be e-branded or e-purchased using a variety of browsers becomes a crucial security concern for the networking industry. For a fine example, e-marketing or e-promotion of alcoholic beverages is strictly prohibited in the middle-east, e-promotion of lingerie and nude photographs is banned in some conservative nations and e-branding of non-European products is not permissible in the European nations. The reason for imposition of such restrictions is as varied and variant as the culture and local laws prevalent. The e-laws and regulations globally are not restricted to computers or their use but to the other electronic devices inclusive of telephones, fax machines, modems, software and related devices. These are supplemented by the distance selling regulations and provisions of service regulations. The other most crucial aspect of the impact of globalization on business is that it necessitates continuous productivity improvement because of the survival of the fittest environment. In a globalized business environment, Indian firms face global competition even in the domestic market. Foreign firms may compete in the Indian market by goods manufactured by them in India or imported from abroad. If the Indian firms are not able to compete with them on the basis of price, quality, features, etc. which determine the product choice by consumers, their chances of survival are very bleak. This necessitates stringent local laws in favor of the national market thereby not satisfying the customer needs if imposed especially in era of globalization and free trade policies. In light of the global value chain of product components, as depicted in Figure 2.0 below, adapted from the UNCTAD, World Investment Report, 2002, the concerns of technology transfer through the procurement and e-advertising may be said to be in an infancy.

![Figure 2.0 -The Global Value Chain of Product Companies (Adapted from UNCTAD, World Investment Report, 2002)](http://ijesc.org/ijesc.org)
The global laws for establishing the connect between managing the electronic or online business, the virtual world and managing the e-business has become a crucial and essential ingredient of the various aspects of work place etiquette and ethics irrespective of the nature of the firm being a start-up or a public enterprise or a multi-national corporation. The most important aspect of any business being finance and grants is another area of concern requiring a fine understanding of the nuances of financial management and its legal implementation in the e-world of business for the concerns of tax, payroll, commercial transactions, and contractual agreements besides the human resource aspects of workplace health, safety, skills and employment incentives. The virtual business world also needs to comply with the workplace concerns of environmental efficiency and protection. An understanding of the preference of virtual branding, promoting and advertising leading to marketing on the internet is very important to understand the paradigm shift in the business trends from physical to virtual. The implication of the relation between the laws promoting e-trade and the strategic management of the virtual market necessitates a global platform for international virtual trade and transactions.

III. CHALLENGES IN E-TRADING OF INNOVATIVE TECHNOLOGIES

The advent of innovative technologies has blurred the borders in internationals trade with the globalization of economies. International trade calls for effective, efficient and economical strategies in the utilization of technologies that are fast emerging and the regulation of the use of these is very crucial yet cumbersome. The challenges of e-business include the concerns of uniform laws formulated for the purpose of standardization of world economy and uniformity in the GDP of nations, concerns of climatic changes owing to e-waste disposal and the intellectual property issues in the digital era of creation and the concerns of technology licensing and patents for the various software processes, products and middle ware created for faster and reliable business. The biggest challenge in the implementation of global e-laws is primarily the formulation of new regulations, rules and policies of universal applicability followed by the prudent use of existing laws of trade that can be adapted by the virtual trade industry. The various Acts, Regulations and Policies that are drafted are wanting in the applicability and enforcement in the changing global scenario, more so in the light of the entire gamut of e-transactions. The aspects illustrative of such lacunae may be in the laws governing

1. Offer and Acceptance
2. Click-Wrap Contracts
3. Online Identity

The Information Technology Act, 2000 (“IT Act”) deals with contractual aspects of use of electronic records, such as attribution, acknowledgement, time and place of dispatch and receipt. Being an enabling Act, it is to be read in conjunction with the Contracts Act (the Indian Contracts Act, 1872) and its basic provisions of offer, acceptance and consideration within the definition of its various sections while applying to e-contracts.

The issues or challenges would arise on various aspects, which include serious queries such as

1. How do we know on the acceptance of the offer?
2. The transmission of message is en-route, and does not establish a direct line of communication, and hence, how to ascertain the exact time of communication?
3. How to determine the rights of the parties?
4. Does a person who has not read the terms of the contract or who has is not being able to negotiate, as in the case of click-wrap contracts, be bound by the terms and conditions of the contract? (As in the case of the Subscriber’s Contracts available online.)
5. How does one legally address, on a global platform transactions on the internet, particularly consumer related, that often occur between parties who have no pre-existing relationship arising out of concerns pertaining to a person’s identity in terms of capacity, authority and legitimacy to enter a contract? (Digital Signatures is perhaps the closest we can get in terms of a viable solution, the regulatory framework of which is governed by the provisions of the IT Act.)
6. How do we handle the different legislations regulating the digital signatures in terms of Authentication aspects on a global e-regulatory system?

The next big concern is the Security over the internet, especially to promote e-commerce that is safe and devoid of unauthorized intrusion internally and externally from hackers, viruses, Trojan horses and internal technical staff, which may partly be addressed through different modes of encryption, firewalls, access codes, passwords, virus scans and biometrics. The enforcement of these requires an e-legal policy, well documented and made mandatory for all the users and stakeholders. An example to illustrate the case is that in 2011, a person decided to sue Nike because the Nike’s website was hacked and the contents of the domain were re-directed through the person’s web servers in the U.K., bogging them down and costing the web hosting company time and money. Internet does eliminate the need for physical contact but, it does not do away with the fact that any form of contract or transaction would have to be authenticated. Different authentication technologies have evolved over a period of time to ensure the identity of the parties entering into online transactions. However, there are some issues that need to be considered by companies, especially those in the e-marketing and e-commerce business. Some of the technologies that need to be implemented include Use of digital signatures as authentication tools: The Indian IT Act stipulates that the digital signatures should be used for the purposes of authenticating an electronic contract. The digital signature must follow the Public Key infrastructure (“PKI”). This acts as a limitation on the use of any other technology for authentication purposes. If Indian e-commerce companies use some other form of authentication technology, it could be said that there has been no authentication at all.

Innovating and evolving inter-operable technology standards:

Laws of different countries provide different authentication standards, sometimes specifying a clear technology bias. These different authentication standards need to be inter-operable so as to facilitate cross-border transactions. This would need a high degree of co-operation between countries and the technology providers. For example, an e-commerce company that uses PKI authentication technology for online contracts with Indian consumers may use different / other forms of technology while entering into online contracts with consumers in other countries.
In such a case, these contracts with foreign consumers may not be recognized in India as the authentication technology used is not PKI. However, such contracts may be enforceable in the foreign jurisdiction depending upon the laws of the foreign country. Ensuring privacy of the users: Use of innovative technologies and lack of secure systems makes it easy to obtain personal and confidential information about individuals and organizations. For instance, in July 2001, a dozen privacy groups filed a complaint in the US about the privacy issues in Microsoft’s Windows OS. Some features of the Operating System store personal information such as passwords and credit card data so that users are not required to constantly re-enter this information as they surf through websites. Another illustration to the effect is the risk of extinction faced by the Web Cookie under a proposed European commission directive, which may actually not take off if the initiative of the Interactive Advertising Bureau of UK lobbying effort “Save our Cookies” takes off as statistics reveal that British companies could lose approximately US$ 272.1 million if the directive were passed. Privacy concerns have also been raised regarding the Internet Corporation for Assigned Names and Numbers (“ICANN”) "Whois" database, which is a publicly searchable resource used to determine the identity of domain name registrants. The database includes the name of the individual or company that registered a given domain name, as well as the owner's address, the dates on which the domain was created, when it expires and when it was last updated. Privacy groups criticized the company for selling information about its registrants, arguing that many of them are individuals who never agreed to having their information sold as a commodity when they signed up for the service.

The major privacy concerns on the internet that need immediate address and redress include
1. Dissemination of sensitive and confidential medical, financial and personal records of individuals and organizations
2. Sending spam (unsolicited) e-mails;
3. Tracking activities of consumers by using web cookies;
4. Un-reasonable check and scrutiny on an employee’s activities, including their email correspondence

Moreover, when an e-commerce company caters to consumers in foreign jurisdictions, the foreign jurisdictions may have laws that could make the e-commerce company liable for violating the foreign consumer’s privacy rights. For example, Company A in India, that receives some personal data from a consumer in the European Union, and disseminates the information to companies in the US, may be liable for invasion of privacy rights of the consumer. Intellectual Property Rights One of the foremost considerations that any company intending to commence ecommerce activities should bear in mind is the protection of its intellectual assets. The Internet is a boundless and unregulated medium and therefore the protection of intellectual property rights ("IPRs") is a challenge and a growing concern amongst most e-businesses. While there exist laws in India that protect IPRs in the physical world, the efficacy of these laws to safeguard these rights in e-commerce is uncertain.

Some of the significant issues that arise with respect protecting IPRs in e-commerce are:

a. Determining the subject matter of protection
b. Ascertaining novelty/originality
c. Enforcing IPRs
d. Preventing unauthorized hyperlinking and meta tagging
e. Protection against unfair competition

The laws against cyber-squatting, have been made very stringent as in the recent “.info” top-level domain that was opened for registration and the WIPO (World Intellectual Property Organization) had to handle two cases for dispute settlement. Further, another US Company, NeuLevel Inc. who had been restrained from distributing the “.biz” domain names, has now been allowed to do so as the plaintiffs declined to post a bond that would have prevented the company from handling out new domain names. Moreover, the ICANN recently confirmed that it had finalized a contract with Museum Domain Management Association whereby “.museum” has also been included as a generic top-level domain in the global domain name system. The other major concern in e-commerce and the formulation of global e-laws is the jurisdiction of the corporate structure thereby requiring determination of the extent of any liability that may arise against the website. According to the traditional rules of private international law, the jurisdiction of a nation only extends to individuals who are within the country or to the transactions and events that occur within the natural borders of the nation.

8. Liability

The e-marketing strategies are dependent on the economic strength of a nation, the factors for implementation of laws and regulations for higher profitability by the strong nations thereby rendering the chances of e-marketing highly non-profitable or extremely difficult in the developing nations. The grievance is being addressed by most of these under privileged lands by accepting to provide cheap training and labor for the outsourced e-business projects in all the service sectors including telecommunications, information technology, legal and medical field through telemedicine practices besides other online businesses to meet the never ending demands of employment escalating proportionally with population growth. The second world nations to meet the local demands of social pressures, monetary benefits and a dire need for any kind of employment are ever ready to consent to the strategy of the first world super powers thereby knowingly consenting to higher profitability. Perhaps, as an after-thought, this could be one of the reasons why richer nations become richer and poorer one poorer. The second biggest challenge is the rules for implementation of cyber or electronic laws in the context of media convergence where by the borders between the telecasting, telecommunications and internet are merging. The regulations for these convergent e-communications are in infancy and differ from nation to nation, thus creating a barrier for global e-trade and e-transaction. Cyber laws, transmission laws, spectral laws and broadcasting laws world-wide have to be re-structured so as to create and impose global e-laws for media convergence to promote global e-trade. The third identifiable challenge to e-marketing and e-promoting is the security levels of individual nations, the personal laws that are restrictive in nature being globally variable and the reach of the internet to remote and rural sectors. In the high density rural populations of the world, with special focus on the developing lands, the accessibility to internet and thereby e-trade and e-transactions are highly infeasible and therefore, the e-trade is not profitable in these

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sectors. The implementation of e-marketing strategies in these nations would therefore be highly non-profitable and organizations have to balance the demand-supply curve in these sectors. The fourth challenge is the technology licensing issues in e-transactions. The intellectual property that needs ample protection is the processes and products of software design and development. These source codes have to be protected and are subject to grant of patent. The specification and drafting of software patents is again variable as the permission for process patent is not universal wherein the grant for product is. This paves way for new concerns of network protection and anonymity as e-trading especially, in situations that require submission of online attendance. The final challenge to global e-laws is a common platform for formulation of the laws that do not compromise with the statues of the individual lands and yet provide for the freedom of e-trade to all nations on the same level of laws implementation.

IV. CONCLUSION

The global e-laws for e-branding, e-promoting and e-marketing in the world market are not existent, and if present are not uniform in their implementation. The lacunae in the regulations and rules have to be firstly analyzed and then enforced. The lacunae as identified above create room for implantation of the laws globally thereby promoting safe and protected transactions. Much has to be researched upon and deliberated effort for the global laws decided on the regulations and policies globally in an era of diversified national economies with the developing world differentiated from the developed and equitable responsibility is being opted to equal responsibility by the former.

V. REFERENCE


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