

Your eCommerce Activities Could be *Criminal*

Flurry of new laws affect email, site visits, processing payments, more

The online world is an interesting place today for many reasons. Remember the old western movies when the cowboys came into town for several days of mischief? After weeks on the range, they would often decide on their own what laws to follow with predictable results leading to mayhem and murder. Lynch mobs and posses were the response by many townfolk. Lawmen, lawyers, and judges would one day play the proper role in attempting to lasso both the cowboys and the vigilantes, but for many years a state of transition existed within a relatively lawless society. Today, the online world is in a similar state of transition. Let's consider some analogies.

Cowboys might witness a shootout in a town and assume that assault, brandishing a firearm, and murder are all permitted. The entrepreneurs of today often make a similar assumption. I can't tell you how many times our clients tell us that they have no criminal risk because other sites are doing the same thing they want to do. Or they point us to a site that incorrectly explains why something is legal. And, they continue, even if it is illegal, under the theory that no one is going after these sites. My response: It is one thing to assume civil risk, but you need to make a fully informed decision on all risk factors, and going to jail is not a mere inconvenience. Ask the young man who recently got a jail sentence of nine years for sending spam how he feels as he dines on the exquisite cuisine each morning at 5am!

"Wild west" renegades understood geography and legal jurisdiction. Think about it...they knew which towns to avoid by the reputation of the sheriff and his crew. The safest towns back then were the ones with the gunslinger extraordinaire as sheriff. Of course, it's not that simple today. An online business is typically subject to the laws of every US state and you rarely have the ability to select the laws you want to follow. There are some techniques, tactics and strategies to try to manage the risk involving the location of your corporation, servers, and offices, but you cannot solve a criminal exposure problem by geographic "cherry picking".

Lawlessness in the west was met by the passage of tough laws and stiffer penalties, with a "hanging judge" ready to dispense quick and swift justice. Steal a horse today, and you could die tomorrow. In a short period of time, lawlessness subsided and "justice" prevailed in towns across the west. We are at this stage today in the online world. It seems that every time there is a problem in cyberspace, a new law or regulation makes it a crime. At the same time, prosecutors and police are applying laws to the online world in a manner not previously contemplated. Criminal risk must now be considered in almost every endeavor.

SENDING COMMERCIAL EMAIL Can-Spam criminalizes sending

commercial email unless you follow certain precise requirements. Note that the definition of "sending" would likely apply to co-conspirators, so the conduct of affiliates acting on your behalf could put you in jail.

VISITING COMPETITION Federal and state laws prohibit "unauthorized access" to another site. Running an automated program to get your competitor's pricing, or even visiting a competitor's website, can open you up to criminal exposure. Read those terms of website use very carefully!

OFFERING A BUSINESS OPPORTUNITY Both federal and state laws require certain business opportunities to be licensed as franchises and state laws limit certain multi-level marketing websites (pyramid schemes in the eyes of the prosecutor).


PROCESSING PAYMENTS Issuing refunds to international entities, or acting as a forwarder or clearinghouse for funds, used to be fine. Post 9/11, thanks to the Patriot Act, it may not be okay.

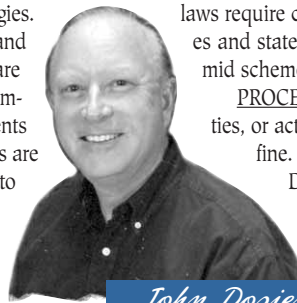
Depending upon your practice and the records you keep, you may be violating federal money changing laws.

SELLING PRODUCTS/SERVICES Do you sell anything? Make sure you live up to your end of the bargain. State fraud and larceny laws are being applied to what most would consider civil disputes. If there is a reason you got paid for a

product, but did not ship, make sure you document it and have ample legal basis for your actions.

How far fetched are the risks? Well, all of these scenarios are real investigations, real police raids, or real prosecutions! Our commercial email client got raided by a dozen FBI agents. Our "unauthorized access" client had both of its offices raided simultaneously by the FBI. Our business opportunity client was arrested and prosecuted. Our payment processor was raided by the FBI, and our merchant is under investigation by police in two states. Almost all of these problems did not arise from intentional violations, but from ignorance of the law by our new clients.

In closing, understand that the pursuit of violations of criminal laws is increasing dramatically as cyber-crime units are added to local, state and federal law enforcement. The trend will continue. The Department of Justice has just recently issued regulations requiring all kinds of legal notices on websites carrying "adult" content and is building a special unit to prosecute violators. Whatever your personal belief is about such content, you have to really wonder whether a misspelled word on a website notice should result in a felony conviction, up to five years in prison, and the branding of a website owner as a "sex offender". Bring on the lynch mob, the hanging judge, the posse, and the vigilantes. Let's get this transition period behind us and move on to a more balanced perspective on criminal conduct. Until that day happens, make sure you hitch your wagon to the right horse! 



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