

Legal Challenges for eCommerce in the Caribbean

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Legal challenges

- Electronic transactions
 - *Evidence*
- Data protection & privacy
 - *Consent & contract*
- Consumer protection
 - *Redress*
- Illegal content
 - *Intermediary liability*
- Information security
 - *Responsibility*
- Cybercrime
 - *Content & LEA powers*
- Intellectual property rights
 - *Private use*
- Telecommunications
 - *Net neutrality*

New challenges

- Social media
 - User generated content
- Cloud computing
 - Shared resources & location independence
- Big data
 - Algorithms & anonymization
- Internet of Things
 - Liability for ‘connected stuff’

Caribbean challenges

- Diversity of legal systems
- Regional organisations are still developing
- Small populations (more eCommerce with the US than each other)
- Greater harmonization with international standards
- Payment systems not sufficiently mature
- Judicial systems not able to cope

Role of law

- A negative view
 - The answer is no (*so what's the question!*)
 - Uncertainties & liabilities (*so do nothing*)
 - Which law applies (*and why are they all so different*)?
- A positive view
 - Promotion of....
 - Prevent harms & protect individual rights
 - Harmonisation (compatibility & interoperability)

What laws & regulation can do....

- Establish legal certainty
- Engender trust & confidence
- Encourage best practice & standards
- Effective regulatory oversight & enforcement
- Availability of redress

.....and what they cannot

- Picking technologies
- Generating innovation
- Starting businesses
- Ensuring inclusion
- Distributing the benefits of eCommerce

Actors

- State actors
 - Parliamentarians
 - Committee
 - Regulatory & law enforcement agencies
 - Judiciary
 - Public administration
 - Leveraging public procurement processes
- Non-state actors
 - Service providers
 - Supply chain intermediaries, e.g. postal service
 - Universities
 - e.g. as CERTS, domain name registries
 - Civil society
 - Industry as users
 - ...& their legal advisers

Regulation

- Regulation, co-regulation & self-regulation
 - Role of the private sector
 - Code & technical standards
 - Enforcement
 - Cost of compliance
- Building institutions
 - Capacity-building: knowledge, skills & resource
 - ‘Independent’
 - Convergence

Harmonization

- As inspiration
 - Embodying regional & international good practice
 - Generational evolution
- As formal instrument
 - Signatories, ratification & accession
 - Exemptions, reservations & options (‘may’)
- Interoperability & compatibility
 - Mutual recognition, non-tariff trade barrier
- International co-operation
 - Building a cultural of (informal) co-operation
 - Political and personal relations

International organizations

- Capacity building
 - More than ‘drive-by’ training
- Fostering networks
 - Beyond state actors & building momentum
- Focusing attention
 - Political agendas & ministerial commitment
- Engendering confidence
 - Lots of small steps....

Concluding remarks