

**SAFE SALES - OR LEGAL LANDMINES:
INTEGRATING QUALITY AND LEGAL RISK MANAGEMENT
IN GLOBAL ON-LINE SALES**

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*'It usually costs less to avoid getting into trouble than to pay for getting out of
trouble.'*

(Louis M. Brown, Preventive Law, 1950)

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1. INTRODUCTION

Let us assume you work as in-house counsel. Your company wants to secure trouble-free transactions with predictable profits. Your goal is to identify legal opportunities in time to take advantage of them, to detect and avoid legal problems, and to prevent negative surprises. If problems do arise, you want to resolve them quickly, and minimise the losses. Your approach is proactive preventive law.

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2. *GETTING STARTED IN E-COMMERCE*

As in-house counsel you know that even small transactions can expose a company to a large overall risk. The global reach of on-line stores automatically involves new customer and legal requirements. Mistakes here can be expensive - contractual mistakes can be fatal. Automated processes and forms can multiply the hazardous impact. Instead of profits, your website store may be generating problems at internet speed. On your website, somebody might publish things that would never get published offline. Poor content management, unclear forms, and low contract quality are surprisingly common in on-line stores, leading to customer dissatisfaction, unmanaged risks, and sometimes legal problems. If something goes wrong, foreign laws and unexpected liabilities may enter the picture, and unpredictable, often unwelcome results may follow. Such problems can and should be prevented at source.

Many of these issues can be resolved through effective inter-professional collaboration in the planning, design, and management of on-line stores and the transactions they automate. Your on-line storefront can help you minimise legal risks and make quality an integral part of your on-line sales. You can embed proactive preventive law in your on-line store structure, so that your virtual storefront helps you to prevent misunderstandings, claims, and disputes and to eliminate or reduce their impact. For those risks that cannot be fully controlled or eliminated, you can build in transactional steps and contractual language that seek to resolve problems quickly, minimise losses, and preserve business relationships. You must stay alert. You need a managed process through which new content is reviewed before it is added to your website. Materials need to be reviewed for assurance that no excessive promises or warranties are inadvertently made. Your internal hyperlinks need to be tested to see that vital information cannot be missed by just not accessing the right hyperlink.

What makes legal sense offline usually makes legal sense on-line, too. You want to provide truthful and accurate information about your products, prices and terms, and make sure that your customers do not miss vital information. Simultaneously, you want to be self-protective and allocate risks fairly. There is no point in selling, if you do not get your price right, or if you do not get paid. You want to make sure the orders you receive from your customers result in revenue-generating commitments that are valid

and binding on your buyers. In B2B sales, a well-drawn contract is the roadmap to successful transactions and relationships. As you are familiar with the CISG, you know the differences between domestic and international dealings, consumer and business transactions, and those between sales of goods, sales of services, and sales of computer information. Without your help, your e-business team might be quite happy with *any* small print, *any* warranties and disclaimers, *any (or no)* choice of law and dispute resolution forum, etc. You know that contracts must be tailored to the type of transactions they cover and the law that applies, and can act accordingly.

3. THE SAFE SALES CONCEPT

The concept of 'Safe Sales' embodies proactive planning towards integrating quality, legal risk management, and preventive law into your on-line store structure and e-sales. The concept was originally introduced by Helena Haapio and Anita Smith in *Safe Sales in Cyberspace*, an article which appeared in the July/August 2000 issue of the American Corporate Counsel Association's Magazine *ACCA Docket*. Most of the issues discussed here are not new. While established businesses have addressed them in a non-web site context, the people facing them in e-business may be first-timers.

The article can be viewed under 'Essays' at <<http://www.preventivelawyer.org>> and under 'Bibliography' at <<http://www.cisg.law.pace.edu>>.