

E-Commerce Regulation and The World of Online Shopping

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The term E-Commerce encompasses all commercial transactions taking place over the internet. E-commerce includes everything from purchasing clothes from an online retailer to data transfer transactions between businesses. A typical e-commerce transaction utilizes the world wide web for at least some part of the transaction and may utilize other digital platforms, like e-mail, in another part of the transaction. For example, if you make a purchase through an online retail store you have participated in e-commerce. The e-mail containing the receipt or invoice for your order is also a part of the e-commerce chain. E-Commerce business transactions operate in three main ways: business to business, business to customer, and customer to customer. E-commerce occurs in three sectors: online retail, electronic markets, and online auctions. Online retail is a form of e-commerce where customers may purchase goods or services directly from a seller over the internet. Electronic markets are essentially commerce websites that allow buyers and suppliers to meet and trade with each other virtually. Lastly, online auctions are exactly what they sound like – auctions conducted over the internet.

The origins of e-commerce can be traced back to the early 1970s, to what is now referenced as the seminal act of e-commerce. In 1971 students of the Stanford Artificial Intelligence Laboratory organized a sale of marijuana with students of the Massachusetts Institute of Technology using ARPANET, an early network predecessor to the internet.¹ In 1989 the first internet-based system for e-commerce was introduced.² By 2017 global e-commerce transactions generated an estimated \$29 trillion in sales.³ With such rapid growth, regulation was not far behind.

The Federal Trade Commission (“FTC”) is the primary regulator for e-commerce activities in the United States. FTC oversight primarily concerns commercial emails, online advertising, and consumer privacy. The FTC Act prohibits unfair and deceptive advertising in any medium.⁴ The CAN-SPAM Act of 2003 governs commercial email and digital advertisements. It also establishes content requirements for commercial advertising emails and imposes criminal liability for certain violations of the Act.⁵ The Children’s Online Privacy Protection Act prohibits websites from collecting data from persons under the age of 13 without first meeting parental consent requirements.⁶ These laws apply to internet commerce generally, but there are also e-commerce laws applicable only to specific industries. For instance, e-commerce regulation for online pharmacies is housed in the Controlled Substances Act.⁷

¹ Ry'mone Griffin, *Internet Governance* (1st ed. 2018).

² *Id.*

³ United Nations Conference on Trade and Development, Press Release: Global E-Commerce sales surged to \$29 trillion (March 29, 2019) available at <https://unctad.org/en/pages/PressRelease.aspx?OriginalVersionID=505>.

⁴ Federal Trade Commission, Guidance, Advertising and Marketing on the Internet: Rules of the Road (Dec. 2000) <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-marketing-internet-rules-road#protecting>.

⁵ Federal Trade Commission, Guidance, CAN-SPAM Act: A Compliance Guide for Business (Sept. 2009) <https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business>.

⁶ Federal Trade Commission, *supra* note 4.

⁷ 21 U.S.C.A. § 831.

International e-commerce sites must also contend with the different regulatory schemes which vary from country to country. Countries such as Australia, China, India, and the United Kingdom have developed their own regulation and guidance for conducting e-commerce trade within their territories.

In addition to government regulations, there are also security standards developed by independent organizations designed to help protect e-commerce consumers. The Payment Card Industry Security Standards Council (“PCI Council”) consists of representatives from five major payment brands: American Express, MasterCard, Visa, Discover, and JCB. The PCI Council exists to develop security standards for credit card transactions.⁸ All online commerce sites must be in compliance with PCI standards when accepting credit card payments.⁹ The Organization for Economic Cooperation and Development, consisting of the United States and 36 other countries, also released Guidelines for Consumer Protection in the Context of Electronic Commerce, which provide core characteristics for consumer protection in online business-to-consumer transactions.¹⁰

On top of a complicated regulatory landscape, new and emerging regulations are quickly changing the way e-commerce sites interact with consumers. With the advent of the General Data Protection Regulation (“GDPR”), e-commerce platforms engaged in international transactions were forced to re-think the way they store, use, collect, and share consumer data.¹¹ Similarly, the recently effective California Consumer Protection Act is reshaping the way e-commerce sites do business in the United States.¹² Consumer data privacy is quickly becoming a point of contention and with the push for a federal privacy law becoming ever present, it is likely that e-commerce businesses will once again need to make changes to their business practices.

E-commerce today requires businesses to carefully navigate a complicated regulatory framework. Data privacy regulation in the United States has yet to be consolidated on the federal level, industry specific standards impose additional requirements for e-commerce companies operating in highly regulated areas, and regulation comes not only from government actors but also private organizations. When entering the world of e-commerce, businesses, and their counsel, need to be familiar with this regulatory framework to ensure effective compliance.

⁸ Payment Card Industry Security Standards Council, About Us https://www.pcisecuritystandards.org/about_us/.

⁹ PCI Compliance Guide, PCI FAQs <https://www.pcicomplianceguide.org/faq/>.

¹⁰ OECD, Consumer Policy, Guidelines for Consumer Protection in the Context of Electronic Commerce (2016) available at <https://www.oecd.org/sti/consumer/oecdguidelinesforconsumerprotectioninthecontextofelectroniccommerce1999.htm>.

¹¹ GDPR.EU, GDPR Checklist for Data Controllers <https://gdpr.eu/checklist/?cn-reloaded=1>.

¹² State of California Department of Justice, Privacy, California Consumer Privacy Act <https://oag.ca.gov/privacy/ccpa>.