
EU Internet Directives and Their Implications for US Internet Companies

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The European Union (EU) has adopted or proposed three directives that will have implications for U.S. Internet companies. Those U.S. companies which do not adjust their online contracting procedures in light of these directives run the risk of extending the time periods within which consumers can reject electronic contracts, and possibly subjecting themselves to civil liabilities for violating laws of the various EU member states which will be enacted in order to implement these directives.

The [Long Distance Selling Directive](#) was adopted May 20, 1997 and has to be implemented by EU member states through national legislation before June 4, 2000. The [Long Distance Selling of Financial Services Directive](#) was proposed November 19, 1998. Finally, the [E-commerce Directive](#), proposed November 18, 1998 and amended September 1, 1999, was the subject of a political agreement on December 7, 1999 by the Council of Ministers. It is to go back to the European Parliament for [second reading](#) shortly.

These directives are in addition to the European Union's Directive on Data Protection, which was discussed in an [earlier Internet Alert](#).

Long Distance Selling Directive

The Long Distance Selling Directive applies to Internet consumer transactions. "Long distance" refers to transactions in which the buyer and seller are not physically present at the same location at the time of the transaction. Its aim is to ensure a high level of protection for consumers and to provide a clearly defined legal framework for e-commerce sales and other types of long distance selling throughout the EU.

Articles 5 and 6 of the Long Distance Selling Directive require that consumers be given written confirmation of electronic contracts they have entered into online. A consumer may revoke such agreements without cause within seven days from its receipt of such confirmation. Should a consumer reject an online contract the only charge to the consumer is the cost of returning any goods delivered under the contract.

U.S. Internet companies will need to provide such confirmations. If they fail to do so, the consumer's right to reject will last for three months from: (i) their receipt of the goods; or (ii) conclusion of their contract for services, as the case may be.

The Long Distance Selling Directive also provides for limitations on the use of certain types of communications, such as "cold calling", where a consumer is contacted without his/her prior consent. In addition, it includes judicial or administrative procedures for the settlement of disputes between a consumer and a supplier. If a contract has a close connection with the territory of one or more EU member states, the consumer does not lose the protection granted by the Directive merely by accepting an electronic agreement which contains a provision choosing the laws of the United States or some other non-EU country.

Long Distance Selling of Financial Services Directive

The proposal concerning the selling of long distance financial services applies to retail services, such as banking, insurance and investment services. Prior to the conclusion of a contract, the supplier will be required to communicate all the contractual terms and conditions to the consumer in writing. The consumer will have the right to a period of "reflection" (that is, under U.S. legal terminology, rescission) of 14 days after the receipt of such information.

U.S. companies which do not follow these procedures, if enacted, will run the risk of extending the time period during which consumers can void their transactions. For example, if a consumer is not given the required information before concluding an electronic contract, then the consumer will enjoy a right to revoke that contract during a period of 14 to 30 days (depending on the particular service involved) after receipt of a confirmation in writing. The proposed Long Distance Selling of Financial Services Directive will not apply to foreign exchange services, securities, non-life insurance policies under one month and contracts whose performance has been fully completed before the consumer exercises his right to revoke.

E-commerce Directive

The proposed E-commerce Directive covers both business-to-business and business-to-consumer services, including those offered free of charge. Examples of industries and activities that will be affected include online newspapers, online financial services, online professional services (such as lawyers, doctors, accountants, and estate agents), online entertainment services (such as video on demand), online direct marketing and advertising

and Internet access services.

Following the country of origin principle, the E-commerce Directive will only apply to providers of e-commerce services established within the EU. A business, however, will be considered established wherever its operator actually pursues an economic activity through a fixed establishment, irrespective of where web sites or servers are situated, or where the operator may have a mail box or other business location. Having a subsidiary or branch in the EU will therefore be enough for a U.S. company to be covered by the E-commerce Directive.

The proposed E-commerce Directive would also require EU member states to remove any prohibitions or restrictions on the use of electronic contracts. Providers will be required to make available to customers and competent authorities in an easily accessible and permanent form basic information concerning their activities. The sender of unsolicited commercial e-mail ("spam") will need to be identified.

The E-commerce Directive, if enacted, will require Member States to require service providers to make available to consumers and authorities in an easily and permanent form some basic information regarding their activities (i.e., name, business address, VAT number and the like).

In addition, the proposed E-commerce Directive deals with the liability of service providers. An exemption from liability is made for intermediaries that play a passive role as "mere conduits" of information from third parties. There are also provisions in the proposed E-commerce Directive concerning codes of conduct, out-of-court dispute settlements and the role of national authorities. The proposal, however, does not deal with jurisdictional issues or questions of applicable law.

U.S. companies offering products and services online to EU consumers should continue to track both the development of these directives and the various industry techniques and standards that will be evolving in order to comply with them.