Consumer Protection
and
Taxation in E-Commerce
and
Regulation of Financial Transactions

SIE 525 Information Systems Law

I. Online Consumer Protection

Massive numbers of financial transactions occur online

Opportunities for scams, fraud, and other illicit activities place consumers at risk

What are some of the laws enacted to address these risks?

Consumer Fraud and Abuse Act (1986)

(a) Crimes

• accessing a computer or computer network without the owner's consent (e.g. hacking, cybertheft, and destruction of private and classified information)
• theft of property in which a computer was used threat of damaging another person's computer eqpmnt
• stealing computer data
• publicly disseminating stolen data
• refusing to repair damage the offender caused to one's computer (e.g. ransomware)

(b) Civil Actions:

Under certain conditions, permits victims of computer fraud to bring actions against offenders for injunctive and compensatory relief

Telephone Consumer Protection Act (1991)

- addresses telephone-based fraud (prior to robocalling)

2003 amendments:

- established a **do-not-call registry**
  - telemarketers must remove from their call databases any numbers included on national list (lots of exceptions)
  - robocaller must identify organization that is calling and provide its telephone number and address

2012 amendments:

telemarketers must:

- obtain written consent from consumers prior to robocalling them
- provide automated, interactive ‘opt-out’ mechanisms consumers can use to immediately tell telemarketers to stop calling

2017 FCC regulation adopted:

- phone companies may preemptively block calls they believe to be fraudulent (i.e. numbers using non-existent area codes, don't belong to a service provider, no outgoing calls, etc.)

Effective? Pressure for companies to do more

CAN-SPAM Act (2003)

- applies to commercial content messages (i.e. advertisements or promotions of commercial products or services)

- transactional messages exempt (i.e. message pertains to a transaction a consumer made such as account information, warranties, changes in terms of agreement, etc.)

Act provisions:

(a) Prohibits false or misleading email subject headings
(b) Subject line must be accurate and message clearly identified
(c) Send must include postal address and notify recipients of their ability to opt out
(d) Opt-out requests must be honored within ten days & no charge for opting out

(e) No sale or transfer of recipients email address (exceptions apply)

(f) Ban on avoidance of compliance (i.e. using a third-party to send spam)

(g) Fines of over $40,000 per violation

Is the law or spam filtering more effective? Need both?

SAFE WEB Act (2006)
Undertaking Spam, Spyware, and Fraud Enforcement with Enforcement Beyond Borders Act

- goal to address global fraud issues to protect American consumers

- permits FTC to share its confidential data with foreign law enforcement agencies

- enables more comprehensive policing of international illegal activities

Federal Trade Commission (FCC) and Federal Trade Commission (FTC) Regulations

- the two federal agencies most involved with online consumer protection

- both deal with complaints against ISPs so formal coordination agreement created

FCC

- mandate to promote transparency in online communications

- reviews consumer complaints and performs investigations where appropriate

- Trump era following "light touch" to regulating Internet commerce

FTC

- mandate to prevent unfair and deceptive business practices in online commerce

- issued DOT COM Disclosures guidance doc (2002) (e.g. all required legal disclosures are clear and conspicuous, able to demonstrate all claims, advertisements, and communications are truthful, fair, etc.)

II. Taxation in E-Commerce

History:

National Bellas Hess v. Department of Revenue (U.S. Supreme Court 1967)
- Bellas Hess was a mail order house

Holding: complexity of requiring out-of-state sellers to comply with the sales tax requirements of every customer's jurisdiction would be an unconstitutional burden on interstate commerce.

Quill Corporation v. North Dakota (1992)

- similarly difficult for online companies to comply with the tax policies of every state to which they shipped, Bellas Hess upheld

- company must have physical presence in or nexus to the state before they can be taxed there

Finding: state residents could not be taxed for online purchases made out of state

Internet Tax Freedom Act (1998)

- e-commerce should grow without unnecessarily burdensome regulation and taxation

- three-year moratorium on duplicate or discriminatory taxes levied on e-commerce activities

- precluded state and local governments from taxing internet access (this provision made permanent by Trade Facilitation and Trade Enforcement Act of 2015)

- prohibits multiple jurisdictions from levying taxes on the same e-commerce transaction

- discriminatory taxes on electronic transactions banned, may be no higher than they would be for identical activities performed at brick-and-mortar businesses

... but creates discrimination against local sellers of same goods that must pay state and local taxes

South Dakota v. Wayfair (2018)

- South Dakota taxing large e-commerce retailers for sales to their state residents

Argument: times have changed, technical and economic challenges of complying with state and local sales taxes have declined (e-filing and readily accessible bookkeeping and tax preparation software)

- lost on appeals but succeeded at US Supreme Court: Quill Corporation overturned

State and Local Taxes on E-Commerce After Wayfair

- now some types of state and local taxes do not run afoul of constitution
- state law must prevent unnecessary burdens on interstate commerce
- tax rules must be designed for simple compliance
- Internet Tax Freedom Act must still be followed
- large companies complying with collection of state sales taxes but more resistance to collecting local taxes
- likely that large retailers will eventually comply

Online Auctions

- proceeds from any auction are taxable unless explicit exception applies

- if a regular business activity or hobby, seller must report profits to IRS

- IRS does not levy taxes on proceeds akin to an occasional yard sale

Sales Using Credit Card Companies, PayPal, Venmo, etc.

- any individual or company receiving funds through more than 200 transactions totaling $20,000 or more has this information reported to IRS by the credit card company

- has increased compliance with applicable tax laws

Cryptocurrencies

- taxed as property rather than as income

- capital gains tax applied

- whether made as payment for goods or as a revenue generating investment, every convertible cryptocurrency transaction must be reported to IRS

Summary Points

E-commerce will continue to play an important and expanding role in the U.S. economy

Compliance with Wayfair decision increases cost of retail e-commerce but unlikely to dampen growth