**An Investigation into Features of E-commerce and Their Challenge to Traditional Regulation in Zimbabwe**

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**1.0 Introduction**

E-commerce is the use of electronic networks as a means of making transactions either between businesses or direct to customers (Howell 1999, p. 5). What is interesting is the emergence of the Internet and the ICDT model. ICDT stands for Information, Communication, Distribution and Transaction. In other words the multifaceted nature of internet services emerges. It is a virtual information space (VIS), virtual communication space (VCS), virtual transaction space (VTS) and a virtual distribution space (VDS) (Currie 2000, p.21). E-commerce implies, on the one hand, a shift form physical (tangible) products and services to virtual (intangible) products and services. On the other hand, it replaces traditional (indirect) channels of distribution and procurement by electronic (direct) channels (Currie, p. 28). In other words, e-commerce creates mobile and online markets (Norris & West 2001). Thus, a virtual electronic marketplace supplants the traditional physical marketplace. In other words, e-commerce focusses on digitally enabled commercial transactions between and among organizations and individuals. (Laudon & Traver, 2009). The Internet is considered as the mature stage of an evolution in management thinking that started in the 1980s and is still going on. Wendy Currie (2000) has noted that an overview of business drivers for change from the 1980s to the present suggests a shift in management thinking, enabling technologies, human resources practices, supply chain management and many more. For example, TQM and JIT, once popular in the 1980s, have now become eclipsed by the concepts of knowledge management and virtual organization. Two decades ago, CAD/CAM and robotics seemed to be the focus of much attention. Today it is the Internet and the WWW (Currie 2000:3). Internet services were first introduced in Zimbabwe for academic purposes in 1991 according to a report published by International Telecommunication Union (ITU) in 2009. Commercial service providers were gradually introduced using leased lines through South Africa. In 1997, the then Posts and Telecommunications Corporation (PTC) launched an Internet hub connecting directly to the USA paving way for e-commerce growth. The rapid growth in both the number of people who use the internet and its commercial applications has been stimulated by technological innovations and their diffusion. (Economic Outlook Issue: 67 OECD - 2000). A sector performance report published by POTRAZ recently reported that internet penetration rate was 30.6% in 2012 up from 19.3% recorded in 2011.The growth in the internet/data market segment from 2011 to 2012 may be attributed to international internet connectivity bandwidth that rose from 4674Mbps to 6200Mbps. The internet penetration rate although does not directly translate to increase in e-commerce, however it plays a pivotal role in its growth. The trend of internet penetration over the last five years is illustrated in the graph overleaf.

**Zimbabwe internet penetration trend 2007 - 2012**

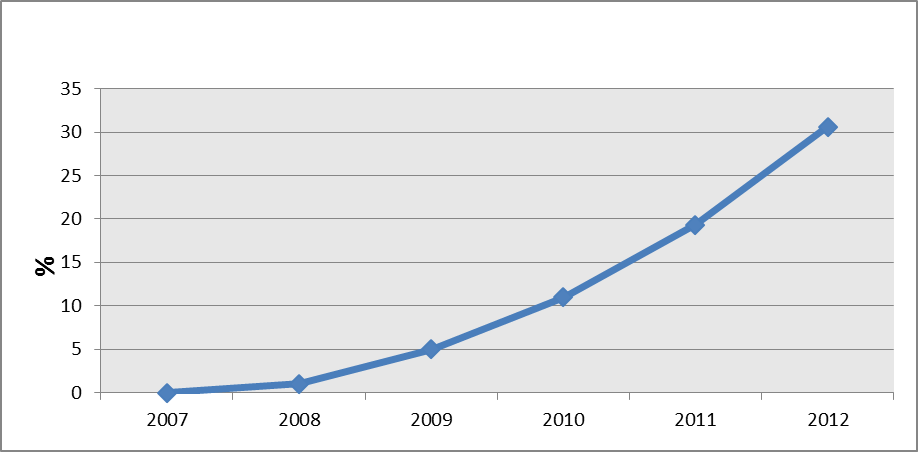


Figure 1.1 Source: POTRAZ (Sector performance report 2012)

**2.0 Research Problem**

The study attempts to identify the challenges that e-commerce features and practices bring to existing policies and regulations. There are some provisions in the existing laws that are currently being used to address some of the issues on e-commerce and e-transactions although they have been conceived in a context dominated by the traditional paper based businesses. (HIPSSA Project, B.K. Mafusire – July 2013). For example there are four separate pieces of legislation that have a bearing on the regulatory environment for the ICT industry in Zimbabwe. These are Postal and Telecommunications Act of 2000, the Broadcastings Services Act of 2001, the Access to Information and Protection Act of 2002, and the Interception of Communications Act of 2007. (POTRAZ Post Vol 5 - 2013) These laws were originally designed to facilitate commerce in a context that requires the use of printed documents and manuscript signatures. (Bridget K. Mafusire – 2013). What are their relevance and significance in a context of rapid technological growth and e-commerce?

**3.0 Literature Review**

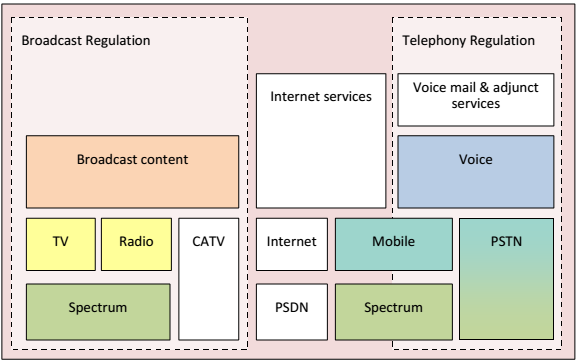
Laudon and Traver (2009) have identified seven features of e-commerce which have transformed society, culture, politics, business and the economy. These features include:

**3.1 Global reach:**

The ability to transact globally without any geographical, political or cultural boundaries. Nevertheless this has rendered cross border trade regulation obsolete. For example the Customs and Excise Act, Chapter 23:02 of 2001 provides for the control of export and importation of goods in Zimbabwe. The Act does not have a provision to cater for import or export of intangible goods or services which can be transacted online. Highly valuable transactions such as software trading, cloud computing services and many others are being transacted across nations but not being subjected to any duty or tax. The Act is only confined to physical goods which pass through traditional ports of entry, where resident customs officials enforce the regulations. The global nature of e-commerce also propagates the flouting of the Exchange Control Act [Chapter 22:05]. The Act confers powers and impose duties and restrictions in relation to gold, currency, securities, exchange transactions, payments and debts, and the import, export, transfer and settlement of property. Precisely subsection 2 (d) of the Act prohibits or restricts any dealing in relation to any property with person’s resident outside Zimbabwe. The researcher notes again a loophole in the Act which restricts properties to physical goods without acknowledging the existence of remote services and intangible goods such as software programs, which are traded across nations online without attracting any duty. Furthermore issues of jurisdiction are difficult to determine and also weakens the ability of nations to control their information destiny and to collect revenue.

**3.2 Ubiquity**:

The ubiquitous nature of e-commerce confronts some sections of the Broadcasting Service Act [Chapter 12:06]. The Act stipulates that no person shall provide a broadcasting service or operate as a signal carrier in Zimbabwe except in accordance with a broadcasting licence or a signal carrier licence, as the case may be. However, the innovation of computer-mediated broadcasting service (webcasting) has posed challenges to the Act. The historical distinctions between radio-communications, telecommunications, broadcasting and the internet have been blurred. Convergence, which is the merging of the previously distinct platforms by which information is communicated has caused policy concerns. The availability of internet signals anywhere wherever connectivity is possible has weakened the Broadcasting Services Act. Operators are able to use for example webcasting or streaming technology either locally or remotely without necessarily obtaining a licence from Broadcasting Authority of Zimbabwe, thus rendering the Act obsolete. Webcasting, podcasting and streaming are good examples of technology which emerged from convergence of radio and television broadcasting and the internet.



**Fig 2.1 Conceptual diagram of traditional regulatory coverage**

Source: Caribbean Telecommunications Union

Traditional radio has always been bound by technology used to transmit radio waves. This is the essence of broadcasting were radio waves are transmitted within a limited geographical area. This geographical limitation of broadcasting radio waves makes regulation easy to manage unlike the ubiquity nature of internet which makes the converged technology difficult to regulate. (Kwesi Prescod, 2010) In 2011 J.D Candidate of Boston University School of Law 2011 acknowledges that the application of the Digital Copyright Act of 1998 (“DMCA”) to the internet radio industry has proven problematic. As with many other industries, the internet has drastically changed the landscape of broadcast radio. Candidate further asserts that radio stations have traditionally been capable of extending their listening area only as far as the surrounding geography would allow, today anyone can listen to any number of stations broadcasting from anywhere in the world, at any time.

**3.3 Richness:**

The richness of internet or e-commerce lies in its ability to deliver video, audio and text messages using various multimedia features. For example contracts are now being concluded remotely as a result of the richness of e-commerce and the possibility of global connectivity. Richness coupled with connectivity and raises several policy concerns. The Consumer Contracts Act [Chapter 8:03] provide relief to parties to consumer contracts where the contracts are unfair or contain unfair provisions or where the exercise or non-exercise of a power, right or discretion under such a contract is or would be unfair; and to provide for matters connected therewith or incidental thereto. This Act only deals with consumer contracts arising from the offline world. According to the Act “consumer contract” means a contract for the sale or supply of goods or services or both, in which the seller or supplier is dealing in the course of business and the purchaser or user is not. However it is worth noting that the consumer is no longer just limited to a physical person. The consumer has been transformed to ‘bits and bytes’ (digitisation) and are now able to accomplish various transactions online (Negroponte 1995). Conclusion of contracts of sale, shopping, meetings, conferences, and several commercial activities are no longer controlled by distance. Paragraph (c) of subsection (4) of section four, this Act provides relief against unfair consumer contracts by (i) cancelling the whole or any part of the consumer contract; or (ii) varying the consumer contract; or (iii) enforcing part only of the consumer contract. Any of the actions above is difficult or impossible to administer in a virtual environment involving supply of intangible goods or services. The scenario is even exacerbated when the contracting parties are located in different countries with different jurisdiction. Consumer protection initiatives become obscured.

**3.4 Information Density**:

Information density represents the total quality of information accessible to all market players. The costs of information collection, storage, processing, and communication is lowered by e-commerce technologies. At the same time, information increases in accuracy, and timeliness becoming more important than ever. As a result, information becomes more plentiful, less expensive, and of higher quality (Laudon & Laudon 2006). With the increase in information density, a consumer’s past purchases and behaviour can be stored and used by on-line merchants. Information asymmetry among e-traders has been eliminated. This has significantly facilitated formation of e-contracts since consumers and merchants are now closely knitted with information density. Contracts which would ordinarily be formed in the off-line world involving paper documents are now being concluded on-line. Information gaps or misunderstandings which would impede remote contracting have faded away as a result information density. However the challenge still remain with the judicial system in administering e-contracts as well as the admissibility of e-signatures in courts.

Whilst the courts recognises the use of paper documents and manuscript signatures, it is still a concern to note that records stored electronically and e-signatures still command less weight as evidence in court than original paper-based evidence. In some cases electronic evidence is not admissible in Zimbabwean courts. The Civil Evidence Act [Chapter 8:01] paragraph (1) of subsection (2) of section one, defines a document as any record of information made in a permanent form. Subsection (4), chapter 11 paragraph (b) further denies admissibility of copies of documents unless the court in its discretion permits the production of the copy, being satisfied that the original document has been destroyed or is irretrievably lost. This statute arguably restricts evidence to paper based documents, creating a legal vacuum in the on-line world. Electronic evidence is only partially and conditionally recognised in paragraph (1) of subsection (11) of section four which states that a document produced by a computer shall be admissible as evidence of any fact stated therein if direct oral evidence of that fact would be admissible. The phrase ‘document produced by computer’ may also side-line electronic documents in their original form and restrict the definition to computer printouts.

Another Act which lags behind innovation is the Signatures and Powers Delegation Act [Chapter 10:24]. The Act was first adopted in 1950 and faced a number of amendments until 2005. The Act provides for the delegation to Vice-Presidents, Ministers or officers in the Public Service of the power to sign, or to sign and affix the public seal of Zimbabwe to, certain warrants, permits, documents and other instruments on behalf of the President. Obviously this Act was crafted in such a time when the official use of e-documents and e-signatures were never envisaged. The Act confines the definition of the words document, permit, signature, licence, notarial deed, mortgage bonds and any other instruments to physical paper based documents. There is no provision of documents or signatures in their electronic form. Second schedule (Sections 3 and 8) of the Act describes Instruments which Ministers may authorise public servants to sign and seal. Technology has allowed authorities to delegate, authorise, or authenticate e-documents electronically. However, legislation concerning authorisations and delegation confines these activities to paper and pen. Information density together with richness as attributes of e-commerce has paved the way for use of electronic documents and e-signatures to be acceptable and admissible in courts in countries which have embraced cyber laws. That is not the case in Zimbabwe for the moment.

**3.5 Universal Standards**:

The internet is rapidly becoming the infrastructure of choice for electronic commerce because it offers businesses an even easier way to link with other businesses and individuals at a very low cost. It provides a universal and easy-to-use set of technologies and technology standards for all organizations, no matter which computer system or information technology platform the organizations are using (Laudon and Laudon 2006).The internet pierces through geographical and political boundaries and transcends to every country in the world. That universality is a great part of its strength as a tool for e-commerce. The internet standards together with other features of e-commerce have promoted global communication, regardless of technology being used. The internet standards has therefore empowered the public to organise virtual meetings without physically going to a public place.

This development defy The Public Order and Security Act (POSA) [Chapter 11:17] which prohibits public gatherings unless the organiser notifies a regulating authority of intention to hold public gathering. The Act restricts the definition of “public place” to the physical world, yet virtual technology has reduced the entire world to a global village. Large number of people can now gather virtually by conducting very powerful meetings online, which arguably match and surpass the traditional physical gatherings. In some cases combination of interactive boards aided with video conferencing tools can bring geographically spaced persons closer in a single virtual room. The Act defines a “public meeting” as any meeting in a public place or meeting which the public or any section of the public is permitted to attend, whether on payment or otherwise. Once again online gatherings such as webinars, video conferencing and social network platforms can literally be turned into virtual public platforms with unlimited access. The on-line public platforms unlike the traditional public gatherings may have restricted logical access through use of passwords administered by the organisers. Such developments does not only expose POSA but also makes the duties of law enforcement agents difficult. Such virtual public gatherings are difficult to regulate and pose serious holes in the classic regulation.

Internet standards, global reach and ubiquity as attributes of e-commerce which have jointly undermined AIPPA [Chapter 10:27] of 2000 and its subsequent amendment in 2003. The ACT establishes and empowers the Media and Information Commission to control mass media services. Among other services the Commission is vested with powers to register mass media in paragraph (p) of section 39, part 7 of the Act. However e-commerce has facilitated on-line mass media institutions whose publications cover the entire globe without being restricted neither by geographic nor legislative boundaries. For example the New Zimbawe.com is an exclusive on-line publication which commands a huge following both in Zimbabwe and abroad, but it is not controlled by the Media and Information Commission. The New Zimbabwe.com and other similar online ventures have eluded paragraph (1) section 46, part 7 of the Act which compels every mass media owner to pay annual levies, by registering their domains outside Zimbabwe. Issues of jurisdiction once again stand against any legislative efforts by the GoZ to resolve any disputes which may arise with such on-line mass media companies.

**3.6 Personalisation**:

Technologies oriented to e-commerce allows customisation: merchants can personalise marketing messages to specific individuals by adjusting the message to a person’s name, interests, and past purchases. The technology also permits customization changing the delivered product or service based on a user’s preferences or prior behaviour (Shapiro andVarian, 1999; Tversky and Kahneman, 1981). The great innovation that instead of supplying standard products, manufacturers such as Dell Computers achieve customisation by allowing the customers to configure they own products online. As Turban and al. (2002) note, “today you can configure not only computers but also cars, jewellery, gifts, and hundreds of other products and services.” Economies of scale are realised and inventory is reduced to almost zero by the introduction of build-to-order systems. Build-to-order is a manufacturing strategy according to which production is made only once an order is received (Turban and al., 2002:877). As pointed out earlier, the manufacturing function is not isolated from other elements of the value chain. For instance, the knowledge directories created in computers and supplemented by the fact that networking functions across the organisation allow “real-time access by R&D to online sales and service information” (Turban and al., 2002:64). This is an initial integration of the manufacturing function with the sales and service functions.

The GoZ headed by the Ministry of Information Communication and Technologies embarked a Government to Citizen (G2C) project which ushered in an on-line platform where citizens or the public can at least obtain government information resources over the internet. Several government ministries and departments have at least a website which provides the public with basic information about policies. Other departments such as the Research Council of Zimbabwe have gone a step further in providing an interactive website were the public can post their personal details and their research works. Whilst on-line interactivity is a positive development, it opens up challenges in the protection of information relating to personal privacy. The Access to Information and Protection of Privacy Act (AIPPA) [Chapter 10:27] of 2000 and its subsequent amendment in 2003 provide members of the public with a right of access to records and information held by public bodies; to make public bodies accountable by giving the public a right to request correction of misrepresented personal information; to prevent the unauthorised collection, use or disclosure of personal information by public bodies; to protect personal privacy; to provide for the regulation of the mass media; to establish a Media and Information Commission and to provide for matters connected therewith or incidental to the foregoing.

However, as long as the GoZ and its citizens (G2C) interacts over the internet the personal privacy is not guaranteed. The internet is a global platform infested with hackers even if security measures are put in place. The AIPPA [Chapter 10:27] paragraph (1) of subsection (25) of part three stipulates that the head of a public body shall not disclose personal information to an applicant if the disclosure will result in the unreasonable invasion of a third party’s personal privacy. Personalisation as an attribute of e-commerce, derails this statute as much as the public bodies try to keep in confidence personal information belonging to third parties. Sophisticated technologies are used to intercept online data communication thereby compromising privacy of both the government as well as the public.

**3.7 Interactivity**:

The most known brought by the Internet is direct-marketing. Direct marketing is achieved through interactivity. According to Turban et al. (2002: 96) “formerly, direct marketing referred to mail order catalogue sales, supported by telephone interaction with the customer. Direct market bypassed the traditional retail store and took orders directly from consumers. The direct marketer may have purchased the products directly from the manufacturer, bypassing traditional wholesale distribution.” The Internet offers opportunities of direct marketing through mail-order business or electronic catalogues. Moreover, as Turban et al. (2002: 96) note, “direct sales by manufacturers are gaining popularity and it is done by thousands of manufacturers worldwide (e. g. see lego.com, sumsung.com, ge.com,)”. This phenomenon which is a form of direct marketing is called by Turban et al. (2002:96) “click-and mortar”. Before development of the telecommunications classic commerce mainly involved physical exchange of goods and services. Traders visited brick and mortar stores without leaving any traceable personal information. Interactivity in the offline world did not compromise any privacy of the consumer until the introduction of telephones and recent e-commerce and web-based technologies. Interactivity which makes e-commerce and internet superior than other innovations has also opened doors for invasion of privacy and fraud risk to its users.

The Interception of Communications Act No. 6/2007 [Chapter 11:20] compels telecommunication service provider in relation to customer obtain; (a) the person’s full name, residential address, business address and postal address and his or her identity number contained in his or her identity document;(b) in the case where the person is a business organisation, its business name and address and the manner in which it is incorporated or registered;(c) any other information which the telecommunication service provider deems necessary for the purpose of enabling it to comply with the Act. Several telecommunication service providers have abused this privilege to keep the personal information for consumers. Some have gone to the extent of sending adverts mainly to their subscribers without the consent of the consumer. The Act however gives powers once again to the telecommunications service providers to install interception devices but does not have a provision to deal with consumer protection regarding personal information.

All in all, the challenges that features of e-commerce poses to traditional regulation systems can be represented in the diagram on the next page:

The diagram shows a linear causal link between electronic commerce and classic commerce. The diagram is aggregated into three levels which are interconnected with various variables. The middle level is comprised of features of e-commerce which pose challenges to brick and mortar oriented regulation. The research focusses on policy issues in the area of jurisdiction, contracting and consumer protection.

# Causal link diagram showing the implications of e-commerce features on traditional regulation. Figure 1.2 Source: primary data

**4.0 Research Methodology**

**4.1 Research Design**

This study was a descriptive survey.

**4.2 Population and Sampling Techniques**

The researcher selected probability and non-probability sampling techniques. The sample size was a strategic design factor because it was important in ensuring adequate quality statistics to detect and measure reasonable data to fulfil the objectives of the study. About 22% of total sample was drawn from regulators with the remainder spread across other key stakeholders. All institutions involved in e-commerce or ICT regulation were systematically selected.

**4.4 Data Analysis and Presentation**

Data triangulation was used through a combination of qualitative and quantitative techniques. Findings have been summarised in tables, graphs, and descriptive statistics. The data was discussed comprehensively with the motive to reveal the effects of e-commerce features on traditional legislation/regulation. The research problem was targeting the drawbacks of traditional regulation propagated by e-commerce features, concepts and internet practices, hence the need to focus on highly technical respondents in the ICT and legal field.

**4.5 Research Instruments and Data Collection Methods**

**4.5.1 Stakeholder survey**

Stakeholder survey involved identifying key institutions directly involved in regulating e-commerce transactions such as POTRAZ. An online survey tool automatically sampled computer literate respondents and attracted those who had higher chances of understanding e-commerce and related concepts.

**4.5.2 Focus Group Discussion**

POTRAZ and the Ministry of ICT were visited to access relevant materials. It was during the visit to POTRAZ when the researcher was afforded an opportunity to attend a workshop on draft legislation bill covering cyber-crime, electronic transactions and data protection. The workshop which was held on the 15th and 16th of July created a platform where the researcher met and interviewed e-commerce and legal experts attending the workshop. The delegates of the workshop became the focus group. The researcher constantly initiated debates in line with the objectives of this study during proceedings of the conference as well as during lunch breaks. After the ICT Bill review conference, questionnaires were sent and follow up telephone interviews were undertaken with each key informant. During the follow up interviews, the researcher emphasised on unstructured oriented type of questions which aimed to establish ‘why’ certain pieces of legislation were chosen to be mostly affected by e-commerce features and lagging behind technological innovation. This approach ensured that results of the investigation were consistent with objectives of the research.

**4.5.3 Interviews**

Qualitative data was collected through semi-structured interviews. Face to face interviews were held with the following delegates of the ICT Draft Legislation Workshop; (Eng Kundishora –MICT), (Ms P. Chetty –ITU expert), (MR B. Mutengwa POTRAZ - IT expert), (Prof T. Pretorious – UNISA Legal expert), (Ida Jallow – HIPSSA Senior Project Coordinator) and (Mrs Sveto-Mukuruba – POTRAZ Legal expert).The researcher took advantage of these delegates and they became the key informants. In-depth Interviews were also directed to other key informants who had a bearing on the current policies such as The Ministry of ICT and The Ministry of Transport and Communication. During the research, several systematic telephone interviews were conducted using mainly semi-structured questions guided by the discussion framework indicated earlier. Other respondents included lectures, lawyers, government officials responsible for law reforms and non-governmental officials dealing with ICT matters. Law and I.T students from various universities were also targeted.

**4.5.4 Desk research and Documentary Analysis**

This method was designed principally as an informative study to provide baseline information on the existing e-commerce policies locally and internationally. A combination of field and desktop review approach was employed. During the desktop review several pieces of statutes and literature on jurisdiction, e-contract, and consumer protection were read and analysed. These are Broadcastings Services Act of 2001, the Access to Information and Protection Act of 2002, the Public Order Security Act, the Interception of Communications Act of 2007. Other pieces of legislation which lagged behind innovation were also explored and major issues cited. The British Council Library and the Research Council of Zimbabwe virtual library has provided several relevant pieces of literature on jurisdiction, e-contracts and consumer protection. Internet sources formed part of desktop review. This helped the researcher in getting recent information for this study from different academics and experts in e-commerce policing. Current statutory instruments were accessed online through the recently launched website of the Parliament of Zimbabwe. ([www.parliazim.gov.zw](http://www.parliazim.gov.zw))

**5.0 Findings**

**5.1 Awareness of e-commerce features and regulation.**

Generally levels of awareness of e-commerce features and regulation were very low among the generality of the respondents. The researcher had to illustrate by examples to shade light on the problem under research. Nevertheless about 90% of e-commerce experts and legal experts were quite aware about the issues under discussion. Although the experts were aware about the effects of e-commerce features on regulation, quoting specific sections of the statutes was left to the researcher.

All legal experts were aware of some statutory instruments which were undermined by e-commerce features including those Acts cited by the researcher under literature review.

Figure 4.2 Distribution of respondents by Sector (Source: primary data)

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**5.2 E-commerce Challenges to Jurisdiction**

Approximately 65% of the respondents indicated Jurisdiction and e-commerce laws to be very important variables in day to day operations of their businesses. The other 23% of the respondents recognises the importance of internet jurisdiction, but 13% indicated that their businesses were not affected by jurisdictional issues. More than 80% of respondents who answered in their own individual capacity indicated that Jurisdiction was an issue especially when trading with international merchants whose physical addresses are not disclosed on their websites.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Q12 of Questionnaire** | **Very important reason** | **Somewhat important reason** | **Not one of your reason** | **Total** |
| Government/Regulators | 6 | 1 |  | 7 |
| Banking | 2 | 1 |  | 3 |
| Travel & Tourism | 3 |  |  | 3 |
| Manufacturing |  | 2 | 1 | 3 |
| Education |  | 3 | 1 | 4 |
| Consultancy/Legal | 6 |  |  | 6 |
| NGO | 3 |  |  | 3 |
| Other |  |  | 2 | 2 |
| Total | 20 | 7 | 4 | 31 |
| Percentage | 65% | 23% | 13% | 100% |

Table 4.6 Jurisdiction and Law Importance to Individuals and Organisation- (Source: primary data)

Question 9 of the questionnaire which requested respondents to give the features of e-commerce and internet which posed challenges to traditional regulation proved to be difficult for the majority of the respondents. One respondent even jokingly said, “this question even require me to carry out a research to answer this”. About 60% of the e-commerce experts cited global reach, virtual nature of e-commerce, and interactivity as the major features of e-commerce which frustrated traditional regulation.

Question 10 which requested respondents to cite statutes which were undermined by features of e-commerce was also not easy for many respondents including legal experts. About 55% of the legal experts positively identified the Exchange Control Act, Copy Right Act, Income Tax Act and others but without specifying the relevant chapters and sections. The researcher then refined these responses by quoting the relevant chapters and appropriate sections which were affected by e-commerce features.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | | | | | |
| **Statutory Instrument** | **Chapter** | **Section** | **Description** | **Ecommerce feature** | **Policy challenge** |
| Customs and Excise Act | 22:05 | Part 3 (16) | Prohibition of importation or exportation except through appointed ports or by defined routes | Interactivity and Global reach | Import and export of virtual goods render the use of appointed physical ports useless. |
| Exchange Control Act | 22:05 | 2 © | The prohibition or restriction of any dealing in or in relation to any property with person’s resident outside Zimbabwe. | Global reach and Interactivity defies all restrictions to trade. | The trade in virtual products defies all regulation to prohibit dealings of persons in and outside Zimbabwe. |
| Income Tax Act, 17/1999 | 23:07 | 3 (a) | A tax payer shall be deemed to have received remuneration liable to employee’s tax, if it has accrued to him or his favour. | Global Reach. Trading is no longer bound by geography. The choice of tax regime to use is not clear | E-commerce has facilitated e-traders to accrue revenue which is not accountable by tax authorities. Payments can be done online. And traders may have offshore accounts. |

Table 4.7 Summary of Statutory Instruments cited by respondents- (Source: primary data)

**5.3 Regulation of E-Contacts**

Email based contracts emerged the most frequently used method of online contracting, attracting 41.86% of total responses. Electronic Data Interchanged lagged behind with 23.25% of total responses. Web based contracts recorded the least response of 13.95%. The low usage rate on web based contracts were attributed to issues of connectivity, admissibility of electronic documents in courts among other reasons. Some respondents did not even use online contracting and preferred the traditional paper based contracts, which they believed is the most reliable and not affected by the ongoing power cuts in Zimbabwe.

The issue of electronic signatures was also discussed and it emerged that most respondents did not fully understand the concept. Other respondents thought that e-signatures were a scanned image of a manuscript signature which could be easily duplicated, thus causing security concerns. A few respondents with a strong IT background were aware of the operations of e-signatures and cited the absence of local issuing authorities, cyber legislation as well as their lack of recognition in Zimbabwe courts as the major hindrance affecting their usage.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | | | | | |
|  | Electronic Data Interchange (EDI) | Email based contracts | Web based contracts | None of the above | Total Responses |
| Government/Regulators |  |  |  | 7 | 7 |
| Banking | 3 |  |  |  | 3 |
| Travel & Tourism |  | 3 |  |  | 3 |
| Manufacturing | 2 | 4 |  |  | 6 |
| Education | 3 | 4 | 4 |  | 11 |
| Consultancy/Legal |  | 3 |  |  | 3 |
| NGO | 2 | 2 | 1 |  | 5 |
| Other |  | 2 | 1 | 2 | 5 |
| Total Responses | 10 | choice18 | 6 | 9 | 43 |
| Percentage | 23.25% | 41.86% | 13.95% | 20.93% | 100% |
| **NB: Multiple responses allowed** |  |  |  |  |  |

Table 4.8 Summary type of online contract usage-(Source: primary data)

The results of the 31 respondents indicated that the choice of website based contracts were unlimited. Therefore multiple responses were allowed on question number 20 of the questionnaire which produced results shown on figure 4.3 below. Terms of sale including return and refund policy attracted the highest usage rate of 29.85% among e-tailers.

Figure 4.4 Contract governing use of websites (Source: primary data)

Disclaimer of responsibility for material posted at linked web sites recorded the lowest percentage usage of 5.95%. Respondents however emphasized that these web based contracts were not very effective. The following are some of the reasons cited by respondents as a stumbling block in the uptake of web based contracts.

* Customers often never read the terms but clicked the check box without fully understanding the legal implications
* The litigation cost in the event of breach of contract often surpassed the value of e-transactions.
* Tracking and tracing online users in a remote environment is difficult and costly.
* Users accused e-tailers that terms of web contracts were usually not visible, and beside the issue of meeting of minds between offer and offeree was often not observed thus prompting several disputes.
* Some website designs were not user friendly, for example they deprived customers of the option to opt out in the event that they wished a premature termination of contract.
* Law enforcement in the online world is paralysed by e-commerce and internet features and practices such as global reach, ubiquity, and interactivity among others.

**5.4 Consumer Protection**

Out of 31 respondents 29 have bought something online. All respondents were in agreement that privacy is an important issue when using e-commerce. They also agreed that the characteristics of e-commerce such as interactivity opened doors for invasion of privacy. Respondents reiterated that they want more transparency and control over what personal information is collected and how it is shared. About 36% respondent have refused to disclose personal information in fear of fraud issues. The issue of privacy is the major concern when using e-commerce applications, attracting a response rate of 43%, followed by security (28%); identity tracking (16%); and sharing information with or without permission (13%).

This survey clearly confirms the literature review findings that privacy concerns are a big threat which blocks consumer usage of e-commerce applications over the internet. The table below shows the responses for reasons why consumers have refused to disclose personal information.

|  |  |  |  |
| --- | --- | --- | --- |
|  | Number of Responses | | |
|  | Very Important Reason | Somewhat Important Reason | Not one of my Reasons |
| You are unfamiliar with the company/individual running the site | 27 | 2 | 1 |
| You don't trust the company/individual running the site | 31 |  |  |
| The site does not disclose how they plan to use your information | 20 | 6 | 4 |
| The value you will receive from the site is not worth the information you give | 18 | 8 | 4 |
| You generally prefer to be anonymous | 21 | 8 | 2 |
| They asked for particularly sensitive pieces of information | 31 |  |  |
| You are concerned that the information will be intercepted or stolen | 25 | 5 | 1 |
| It takes too much time to fill out the forms | 23 | 7 | 1 |
| You are concerned you will receive junk mail if you give your home address | 14 | 6 | 11 |
| You are concerned you will receive junk e-mail if you give your e-mail address | 14 | 12 | 5 |
| Other - Specify: |  |  |  |

Table 4.9 why consumers don’t disclose personal Information - (Source: primary data)

Despite having strong concerns over privacy issues, 86% of respondents do not subscribe to the use of litigation to seek re-course of any online infringement of their privacy. High cost of litigation, time frame and the difficult laborious process were some of the reasons cited by respondents as to frustrate regulation efforts. Some of the respondents said they would expose the website/s or e-tailers through the media while a significant number of respondents would do nothing about it.

This paper presents some findings from a study investigating the features, concepts and e-commerce practices which pose regulatory concerns in Zimbabwe. The study was confined to three key research areas, which are Jurisdiction, e-contracting and consumer protection. From the investigations it is discovered firstly that, advancements in e-commerce and internet driven technology has rendered some sections of Zimbabwe statutes obsolete. The virtual nature of e-commerce, its features and practices such as ubiquity, global reach, and universal standards among others creates regulatory challenges and cause legislation to lag behind.

The study has revealed that Individuals and businesses have conservatively embraced the opportunities embedded in the features of e-commerce due to an inadequate conducive legal environment. The study indicated that not only businesses are affected by the issues of jurisdiction and e-contracting but Individuals as well. However the escalation of mobile technology has facilitated a significant number of individual consumers to actively use mobile commerce despite the absence of specific cyber laws in Zimbabwe. The study also revealed that the legal vacuum which has been created by e-commerce features has limited e-commerce users to fully exploit the benefits of e-commerce. The responses from businesses and individuals indicate that the traditional banking system is preferred for transacting large value transactions were as personal internet transactions are used mainly for low value transactions and mainly intangible products which can be delivered online.

1. **Conclusion**

The common features of e-commerce which cause problems to policy regulation were confirmed by respondents as global reach, ubiquity, richness, universal standards, and personalisation and interactivity. Other e-commerce characteristics which undermined traditional regulation are the virtual nature of e-commerce and internet. From the study it is discovered that, Zimbabwe e-commerce transactions are increasing despite the forces of technological innovation which frustrates the legal environment. The study reveals the need for legislators to revisit some statutes which were meant to regulate practices in the offline world. Some of the statutes include but not limited to POSA, AIPPA, Broadcasting Services Act and many others. It also emerged that the conception of e-commerce and internet technologies now require appropriate policy which is technology neutral. The researcher recommends that policies should not chase innovation, rather legislation should be designed to contain non-specific forms of technology and rather deal with behaviour of users. It also came into view that consumers should not be afforded any less protection in electronic commerce than in other forms of commerce. Consumer protection provisions should be designed to achieve the same results whatever the medium of commerce.

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