



Mobile sellers face technological and legal challenges

By Gonzalo E. Mon

Currently, most mobile commerce in the United States involves sales of content via premium charges. This may soon start to change as companies experiment with new technologies to facilitate sales of goods and services through phones.

The challenges aren't all technological, though. Companies also need to pay attention to various legal issues.

Premium charges

Over the past few years, a number of lawsuits have been filed against companies that sell content through premium charges.

Recently, the Florida attorney general also challenged AT&T over offers made by a third party. The attorney general alleged that ads touted "free" services but buried disclosures about costs in fine print.

As part of the settlement, AT&T agreed to pay \$2.5 million and to provide an estimated \$10 million worth of rebates to consumers.

More importantly for sellers, AT&T is required to include various provisions in contracts with sellers.

Among other things, AT&T must require sellers to disclose costs at the outset of an offer and provide specific disclosures on various parts of the order flow.

AT&T must also prohibit sellers from requiring consumers to receive text messages unrelated to the purchased content and from using pre-checked boxes for acceptance of terms.

The Florida attorney general is pushing other wireless carriers to agree to similar terms.

The attorney general's office is also developing a "zone system" that would dictate where and how terms must appear on a mobile flow.

For example, price disclosures will have to appear within a certain number of pixels from a submit field, in a minimum font, and in a color that contrasts with the background.

Mobile sellers would be well-advised to review the terms of the AT&T settlement and ensure their campaigns are in compliance.

Other payment methods

Some retailers have launched mobile Web sites where consumers can make purchases using their credit cards.

These sites are likely to become more popular as phone technology improves. Fortunately, to the extent these sites are simply mobile versions of Internet sites, the legal issues are similar to those on Internet sites.

The next frontier in mobile payments involves using Near Field Communications technology to enable consumers to make payments by swiping phones over special readers.

Although there is no widespread use of NFC in the U.S., there have been several small-scale trials with positive responses.

According to the Pulse's 2008 Debit Issuer Study, 56 percent of card issuers are exploring the possibility of implementing some type of mobile payment system, so we may see more companies use this technology in the near future.

Because this technology is so new, there are no clear legal guidelines yet. Expect regulators to pay close attention as the technology develops, though.

In fact, in July, the FTC hosted a meeting to explore consumer protection issues related to the use of "contactless" payment systems such as NFC.

Mobile marketers must remain vigilant so that they can identify changes to the legal landscape and quickly adapt their marketing campaigns accordingly.

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