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Overcoming Censorship, 'Geoblocking' And Hubris While Doing Business Abroad

Richard Levick Contributor

I write about the intersection of business and public affairs.

This is the final column in a five-part series on the special challenges facing foreign-based companies seeking to do business in the U.S. and for U.S.-based companies looking to expand their presence in foreign markets. The first three columns (I, II, III) explored the often-formidable obstacles that confront foreign-based companies as they operate in the U.S. The last two columns (IV) examine the hurdles that face U.S.-based companies looking to do greater business abroad.

As if headaches over language barriers, tax codes, export fees, evolving “transparency” rules, and litigation exposure weren’t enough, another set of rugged hurdles confront U.S. corporations looking to expand their presence overseas: a panoply of financial, operational, and environmental regulations so complicated that companies need scorecards to keep track of them all.

European and Asian countries are noted for imposing thorny regulations on foreign companies, especially those engaged in Internet commerce. Ask such Silicon Valley stalwarts as Netflix, Facebook, and Uber, all of which have found themselves caught in choppy regulatory waters overseas.

In Indonesia, Netflix ran afoul of the county’s film censorship board for disseminating “inappropriate” content. Telkom, Indonesia’s state-owned telecom company, blocked Netflix until it agreed to abide by local regulations. Ultimately, Netflix had little choice but to enter into a partnership where Telkom essentially dictates content.

Content licensing restrictions have also proven problematic for Netflix from Seoul to Brussels. Its video streaming platform has gotten crosswise with the European Parliament's recent actions on "geoblocking," where access to Internet content is restricted based upon the users' location, hurting Netflix's mobility within the European Union's single market and complicating its global integration strategy.

As if the withering criticism it faces in the U.S. over the Russia election scandal weren't enough, Facebook confronts formidable privacy and data sharing challenges across the globe. According to *The New York Times*, more than 50 countries have passed laws and protocols over the last five years aimed at censoring or curbing use of the Internet.

In late 2016, all 28 of Europe's national data-protection authorities called on Facebook to stop collecting user data from WhatsApp, a Facebook-owned messaging app that was helping the company tailor its ad targeting. Facebook's swift accommodation demonstrates the potency of European regulation.

Uwe Wolff, the head of German-based NAÏMA Strategic Legal Services, and a member of the Crisis and Litigation Communicators' Alliance (of which LEVICK is also a member) observes that, "The list of large American companies that have run into regulatory roadblocks in their attempted entry into the European and German markets is getting longer."

The "hubris" that Uber displayed in trying to crack the European market is a cautionary tale for American firms, Wolff notes. "Obviously, Uber had not done its homework and seemed oblivious to the fact that the taxi market in France and Germany is highly regulated with a whole list of local and national requirements. What works in the U.S. does not necessarily work the same way in Germany," Wolff cautions.

In Wolff's experience, cultural differences also pose major regulatory barriers for U.S. companies. "Germany's extremely strong data protection laws sometimes cause American executives to shake their heads. But there are historical reasons that Germans are so reluctant to share personal data with companies. They date back to Germany's unfortunate past. Control, surveillance, and personal data collection all remind Germans of the Nazi police state," he says.

Ann Longmore, a Managing Director within Marsh's Financial and Professional Liability Practice (FINPRO), believes that the BRIC countries (Brazil, Russia, India, and China) could pose tough challenges for U.S. companies operating abroad. For example, some attempts by governments to address corruption have left U.S. companies and executives at risk.

New Brazil "rules" have "taken 'transparency' to another level," says Longmore. "They've gone from zero to 90 in the last five or six years."

In the post-Panama Papers world, where virtually everything is considered fair game, U.S. companies and individuals are exposed in ways they've never been before.

"Even in striving to do the right thing, U.S. publicly traded companies could be caught in a compliance hard place," says Longmore. "For example, if local compliance rules are lower for those operating in other jurisdictions, it could be something of a surprise that U.S. authorities are still likely to insist that they maintain the higher U.S. corporate governance standards that are adhered to at home."

Wolff, Longmore, and other experts point to a company's capacity to immerse itself in a foreign culture as a critical factor in its success overseas. Starbucks' brilliant decision to embrace local partners and the "tea culture" ethos has been instrumental in enabling the company to open a store a day in China, with thousands more in the planning stages.

How can U.S. companies avoid getting entangled in regulatory complications overseas?

- **Leave your "attitude" on this side of the pond**. Don't repeat the mistakes made by Uber and numerous other American firms. Approach foreign dignitaries and business leaders with the deference they've earned. Listen. As simple as it sounds, local culture rules. Chinese restaurants are different in the U.S. than in China for a reason.
- **Do your homework – and don't do it solo**. Cracking overseas markets demands a sophisticated plan and local expertise. Emulate Starbucks in China. Retain smart legal, public affairs, and communications counsel who specialize in that locale to help you navigate the thicket.
- **Identify the biggest hurdles early in the process**. Come up with a targeted plan to overcome them. Do a risk assessment and map that zeroes in on your biggest vulnerabilities.
- **Recognize that America's view of freedom of expression and other rights does not necessarily jibe with the rest of the world's**. As Wolff notes, other countries are just as proud of their customs and rights as Americans are of ours. Reconcile your company's offerings to *their* view of censorship and what constitutes permissible speech.
- **Don't just appease local culture, embrace it**. Putting seaweed on a donut wouldn't work in Secaucus, but it does in Seoul for Dunkin' Donuts. The ubiquitous American chain has enjoyed considerable success in Asia because they've infused local tastes into their brand's positioning.
- **Double up on your corporate social responsibility (CSR) and public affairs outreach**. The most effective way for an American institution to enhance its stature among overseas officials is to demonstrate a genuine commitment to local communities. Johnson & Johnson's devotion to human rights causes has enhanced its stature across the globe.

- **Implement strong corporate governance, internal controls, and compliance processes**. Use peacetime wisely: it will help ensure that your foreign operations don't run afoul of foreign regulations that could create headaches for businesses back in the U.S.
- **Do appropriate due diligence on the people you hire to run your overseas operations and the third parties you engage with abroad.** Reasonable background investigations on all parties involved in your business overseas are required. More than three quarters of cases under the Foreign Corrupt Practices Act (FCPA) involve U.S. companies being held responsible for the conduct of third parties. Know who you are getting into business with. Remember, the standard on corruption matters is increasingly not what you know, but what you should have known.

There's no question that overseas markets can be lucrative for U.S. firms and integral to their long-term growth and success. There's also no question that the wrong approach to foreign markets can backfire, creating unacceptable risk and exposing the company to harsh setbacks in the courtroom and in the marketplace.

"Risk comes from not knowing what you are doing," Warren Buffett is fond of saying. That's doubly true when it comes to U.S. companies expanding their foreign operations. The key for American executives is to mitigate that risk through smart planning and hiring people in the know.

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Richard Levick (@richardlevick) is chairman and CEO of LEVICK, a global communications and public affairs agency specializing in risk, crisis, and reputation management. He is a frequent television, radio, online, and print commentator.

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