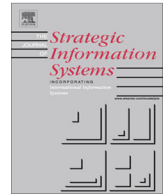




Contents lists available at ScienceDirect

## Journal of Strategic Information Systems

journal homepage: [www.elsevier.com/locate/jsis](http://www.elsevier.com/locate/jsis)

# The paradoxical effects of legal intervention over unethical information technology use: A rational choice theory perspective

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## ARTICLE INFO

### Article history:

Received 6 November 2014

Accepted 26 May 2016

Available online 23 August 2016

### Keywords:

Unethical information technology use (UITU)

Rational choice theory (RCT)

Intervention

Visibility

Interpretive and case study

## ABSTRACT

While the IS literature offers rich insights into the kinds, causes and consequences of unethical information technology use (UITU), we know little about the degree to which legal intervention may mitigate UITU. Our research aims at understanding how legal intervention could mitigate UITU by influencing the *cost-benefit analysis* in determining the decision to commit such unethical use of IT. Our contributions are twofold. First, we provide testable propositions on the role of legal intervention. Second, we offer an innovative take on intervention – conceived as a multi-mechanism process that adapts to UITU as well as to the way IT users negotiate the IT artifact.

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## Introduction

While IT<sup>1</sup> use has provided huge economic and social benefits, these advantages have been tainted by unethical information technology use (UITU). Research suggests that UITU causes harm (Chatterjee et al., 2012) and leads to losses for business and society (Leonard and Cronan, 2001), not to mention challenges for managers (Bush et al., 2010). This calls for the IS community to find a solution and explains why the topic of ethics has such importance for the Strategic Information Systems (SIS) literature, as acknowledged by senior Information Systems (IS) scholars (Desouza et al., 2006; Mingers and Walsham, 2010). Notwithstanding this importance, our knowledge on the way to address UITU remains limited.

Accordingly, IS and ethics scholars have called for a clearer understanding of how to address UITU (Bush et al., 2010; Chatterjee et al., 2012; Stylianou et al., 2013). One of the solutions envisaged is intervention in the form of codes of conduct (Oz, 1992). However, there is evidence that management – or third-party-implemented codes of conduct – is inefficient in regulating UITU (Harrington, 1996; Healy and Iles, 2002). Despite such evidence, there is still a dearth of empirical research exploring the extent to which other forms of intervention can remedy the problem. In particular, Gattiker and Kelley's (1999) call for the study of legislative intervention remains unanswered. Since intervention has been deemed effective (Jasperson

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<sup>1</sup> We abbreviate the following terms in this paper: information technology (IT), unethical information technology use (UITU), rational choice theory (RCT), and online reverse auction (ORA).

et al., 2005) and shown to influence the ethics of decision-making (Bommer et al., 1987; Leonard et al., 2004), we pose the following research question:

How can legal intervention mitigate UITU by influencing the *cost–benefit analysis* that determines the decision to commit UITU?

For this purpose, we build on Gray (2008), and contend that intervention is a formalized enactment that a commonly agreed-upon third party develops in order to influence the behaviors of IT users in such a way as to ensure a specific course of action in line with the ethical norms of the larger community.

To pursue our aim, we borrowed the theoretical lens of rational choice theory (RCT) from the field of criminology. RCT provides a valuable framework for analyzing deviant behaviors such as UITU since it explores the contexts that inhibit or foster such behavior (Cornish and Clarke, 1986; McCarthy, 2002; Paternoster and Simpson, 1996). Given the exploratory nature of our investigation, we opted for a qualitative design rooted in an interpretive epistemological stance.

We purposefully selected the case of the ethically controversial technology of ORAs. Beall and colleagues define an ORA as an “online, real-time dynamic auction between a buying organization and a group of pre-qualified suppliers who compete against each other to win the business to supply goods or services that have clearly defined specifications for design, quantity, quality, delivery, and related terms and conditions. These suppliers compete by bidding against each other online over the Internet, using specialized software by submitting successively lower priced bids during a scheduled time period” (Beall et al., 2003, p. 7). The technology provides a sensitizing empirical setting for our research question. Indeed, ORAs have been identified by academics (Charki et al., 2011; Emiliani, 2005), practitioners (Atkinson, 2003) and legal experts (Van Eecke and Skouma, 2006) as the technology that has led to the most serious unethical usages of IT.

Our study offers two main theoretical contributions to the IS literature. First, we provide testable propositions regarding the role of legal intervention, and discuss its expected complex and paradoxical effects on UITU and IT use more generally. According to the intervention being investigated, we also offer an innovative take on it as a dynamic, multi-mechanism process that can adapt to UITU as well as to the way IT users negotiate the IT artifact.

## Theoretical background

In this section, we further elaborate on the research gap by detailing why legal intervention might be an effective mode of intervention in relation to UITU and then presenting RCT, our theoretical lens for the empirical study.

### Intervention and UITU

Jones (1991) provided one of the most widely used definitions of unethical behavior: “a decision that is either illegal and or morally unacceptable to the larger community” (p. 367). The specific concept of UITU was first introduced in the IS literature by Chatterjee (2005), who drew on the seminal work of Mason (1986) to suggest that UITU refers to the violation of one or more pillars associated with ethics in the information age: privacy, accuracy, property, and access. However, IS research deals with a broad range of UITU that falls within Jones’s (1991) broader definition and includes computer abuse (Straub and Nance, 1990), software piracy (Moores and Chang, 2006), unethical use of sales technology (Bush et al., 2010), breaches of privacy and intellectual property (Stylianou et al., 2013), deceiving suppliers (Charki et al., 2011) and computer abuse in organizations (Straub and Nance, 1990). Accordingly, we define UITU as technology use that is either illegal or morally unacceptable to the larger community. This is consistent with definitions that describe unethical IT behaviors as abuse related to the use of IT (Straub and Nance, 1990).

In the context of organizations, intervention with respect to UITU often takes the form of business codes.<sup>2</sup> In the case of IT use, business codes are seen as a necessary intervention to promote good business practices (Payne and Landry, 2005). Issued by IT managers and/or other senior managers, they aim to clarify responsibilities (Johnson and Mulvey, 1995; Oz, 1992) and influence behavior (Leonard and Cronan, 2001). However, despite initial enthusiasm (Oz, 1992), research has indicated that they have a limited impact on UITU. Harrington (1996), for example, found that both generic codes and specific IS codes in nine US-based organizations had no impact on computer abuse: employees lacked awareness of the codes or the codes were in conflict with sub-group norms. Healy and Iles (2002) concluded that business codes were ineffective in regulating UITU because ethical IT use was considered by users to be secondary to efficient operations.

However, while business codes have been shown to have a limited effect on UITU, we contend that the potential of legal intervention is more significant. Indeed, Gattiker and Kelley (1999) called on legislators to find ways to enforce intervention, notably in situations where UITU is not perceived by perpetrators as abusive. Indeed, legal intervention has been depicted as an important determinant in many ethical decisions (Bommer et al., 1987). Here, the power at the source of the intervention is also a key factor in its effectiveness (Jasperson et al., 2005). At the same time, legal intervention has been portrayed as particularly *influential in determining ethical actions* (Leonard et al., 2004) and unethical decisions (Bommer et al., 1987) through the rules and norms it enunciates.

<sup>2</sup> The literature uses different terms, such as “code of conduct,” “code of ethics,” and “business code.” In line with Kaptein and Schwartz (2008), we refer to this intervention mechanism as a “business code.”

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