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Denied Party Screening (DPS) & The Rise of the Mega Fine

Beyond Export Compliance to Modern DPS, Ecommerce & Enterprise Resource Planning (ERP) Connectivity

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Electronic transactions, business integration and the continued rise of ecommerce are linking companies with information and driving growth. With increased connectivity comes a certain degree of risk and a greater probability that business may be transacted with denied, sanctioned or restricted parties.

A review of denied, sanctioned and restricted parties, also referred to as Denied Party Screening or DPS, is required to minimize risk and to lessen the potential of substantial fines. The scope of DPS has expanded beyond traditional export compliance to include a range of factors and expanded complexity such as:

- Continuously shifting catalogs of DPS data
- An increasing number of global lists and entries
- The inefficiency of manual screening
- A potential for 'false positive' matches
- The requirement to screen historical data
- A need to review large warehouses of data housed in ERP and other systems
- Large penalties levied for non-compliance
- The importance to demonstrate reasonable care and maintain an audit trail of reviews
- The need to screen financial interactions, including those involved in ecommerce
- And more

Market leaders are countering the above challenges and are adopting the task of DPS systematically, minimizing risk, enhancing efficiency and deploying cost-effective solutions. Leading companies are implementing systems that can handle traditional export-related concerns and modern DPS challenges. They are incorporating customized and dynamic screening processes, reviewing data within ERP systems and reducing the potential of penalties and fines.

In a Rush? Read This:

Deploying processes that can handle both **traditional export compliance and systems connectivity** are critical to minimizing risk.

Countering Misconceptions

There are a number of common views regarding DPS that frequently enter the discussion. Without fully addressing these concerns, businesses may be at increased risk. Some misconceptions and counters include:

#	Misconception	Response
1	*I am aware of the business transactions that occur within my company, and I **keep a close watch on sanctions through the news**.*	While monitoring media outlets and feeds to review sanctions is vital, this approach cannot include the minutia of detail required for an effective DPS program.
2	*My company **operates domestically**, so DPS does not apply to my business.*	A comprehensive DPS initiative applies to all companies, even if business is not transacted globally.
3	*I coordinate my shipments through a **freight forwarder**, so screening these export transactions is not my responsibility.*	The U.S. Bureau of Industry and Security (BIS) states that the Export Administration Regulations (EAR) place legal responsibility on all persons or entities that have data, authority, or functions relevant to export transactions.
4	*My company **screens all vendors** when each on-boards, so I am in the clear.*	While initial screening of vendors and other parties is critical to compliance, DPS must be periodically applied to be effective.
5	*I recently **acquired a company**. As a result, my DPS history begins from the moment of acquisition.*	When acquiring or merging with a business, companies often inherit the compliance history of the acquired entity.
6	*The **products I sell are not sensitive**, so DPS is not applicable.*	From dual-use goods to Export Control Reform to World Customs Organization (WCO) Harmonized System (HS) updates, products must be intermittently reviewed.
7	*One fiscal year is adequate for **recordkeeping** of my company's DPS.*	In the U.S., exporters and agents must maintain records for 5 years from the date of export. In the EU, retention dates can vary by country and may range up to 10 years.
8	*I am not liable as an **individual** for DPS.*	Governments have been placing increasing importance on the individual liability on DPS violations and have been levying fines against persons as well as businesses.
9	*In order to be efficient, we use the **same logic** for all our DPS internationally, so this should be adequate.*	DPS rules can vary greatly between countries. A location, party or entity that is sanctioned in one country may not be sanctioned elsewhere and vice versa.
10	*DPS is a **cost center**, and may be cut to reduce expenditures as needed.*	The view that DPS is sunk revenue, or an expense that can be eliminated as needed to reduce costs, should be adjusted. The potential for fines is too great for companies not to screen.

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The Rise of the 'Mega Fine'

Fines are increasingly applied to transactions and business activity as well as to the sale of prohibited items. In general, average penalties are on the upswing and include the rise of the 'mega fine', as exemplified in the U.S. Office of Foreign Assets Control (OFAC) Civil Penalties and Enforcement trends shown below:

U.S. OFAC Fines: Trended Average Over Time, Highlights & Projections

The Age of the '*Mega Fine*'
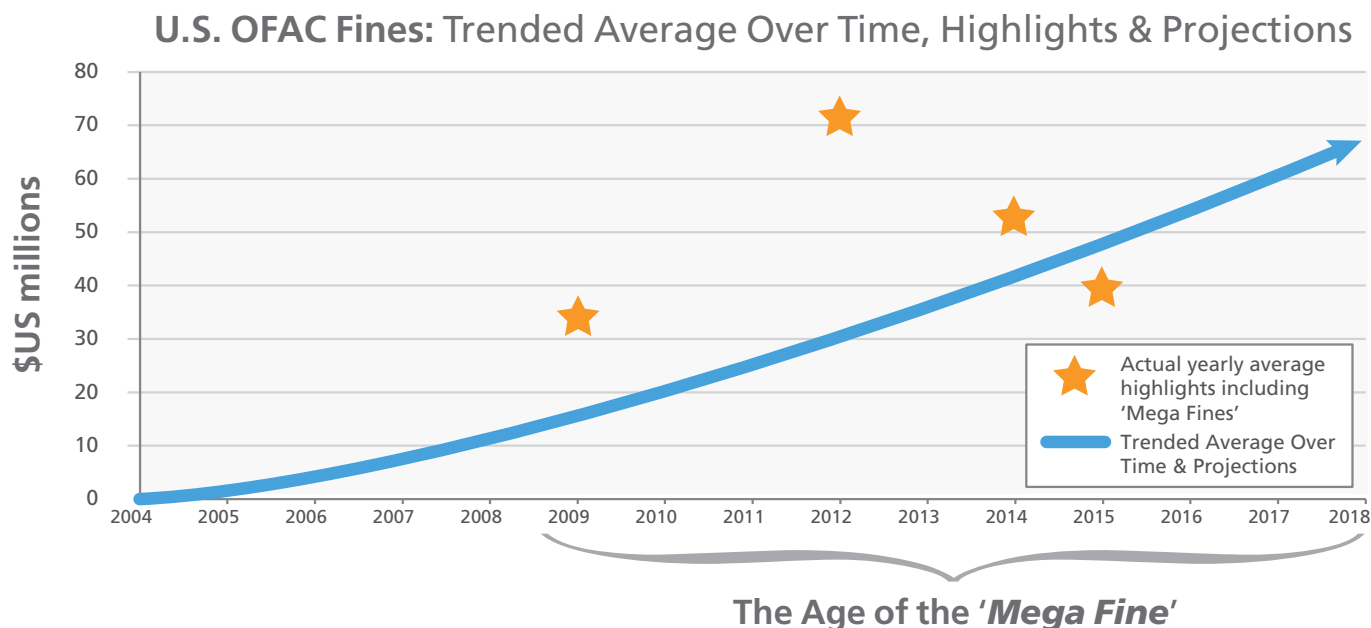
Some 'mega-fine' highlights in the above averages include (in US$):

• **$7,617,150 (2016)** – Export of medical end-use surgical and pharmaceutical products from the U.S. to distributors located in Iran and Sudan without OFAC authorization

• **$329,593,585 (2015)** – Processing of transactions to or through U.S. financial institutions that involved countries and/or persons (individuals and entities) subject to sanctions

• **$963,619,900 (2014)** – Processing of thousands of transactions to or through U.S. financial institutions that involved countries, entities, and/or individuals subject to sanctions

With possible penalties such as the above, implementing systems to reduce the potential of DPS fines has reached a new level of urgency.
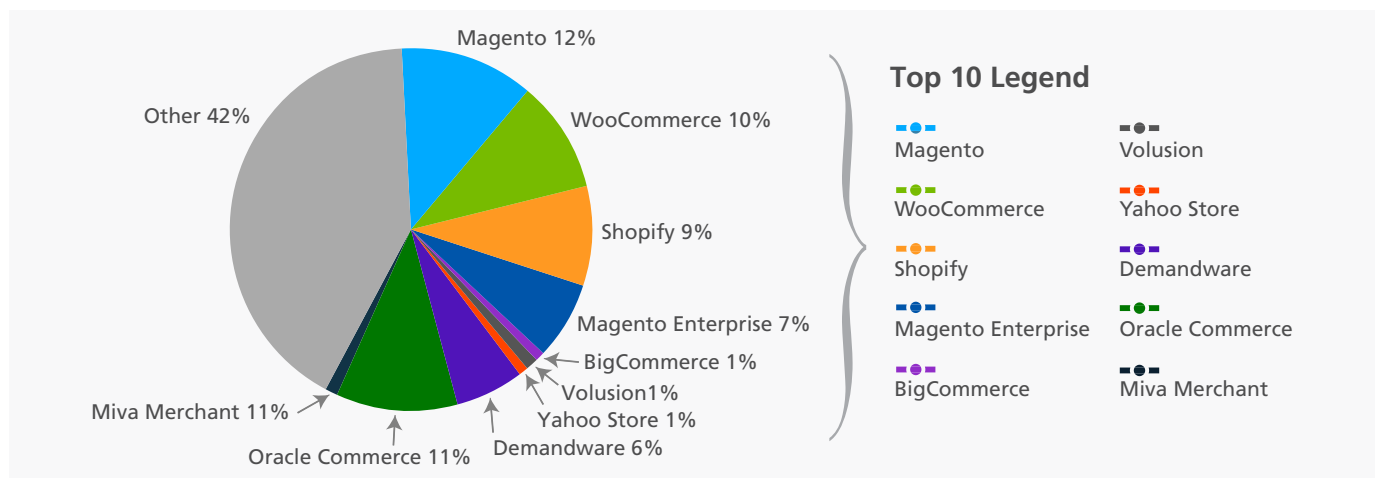
In a Rush? Read This:

Fines are on the rise. **All companies, not just those in the U.S., are subject to the above fines.** For example, two of the three highlighted penalties were placed on EU companies by U.S. authorities.

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The EU, DPS & Ecommerce

Implementation and enforcement of sanctions in the EU is primarily the responsibility of member states. In the EU as elsewhere, the difficulty arises as a matter of data accessibility. For example, in regard to a parties of concern list called the European Union Sanctions List (EUSL), additional due diligence is required before proceeding with any transaction. Since government websites do not always keep pace with the hundreds or even thousands of modifications to the list, an alternate solution is required that aggregates updated entries.

Aside from the need to consolidate sanctions lists such as the EUSL, the EU is a prime case to bring ecommerce into the discussion of DPS. As with other markets, online sales are increasing with more and more transactions moving to ecommerce as a percentage of total sales. However, the EU market has a unique combination of ecommerce platforms that makes the region a prime candidate for better DPS management.

EU Ecommerce Platform Usage: September 2016

Top 10 Legend

Magento	Volusion
WooCommerce	Yahoo Store
Shopify	Demandware
Magento Enterprise	Oracle Commerce
BigCommerce	Miva Merchant

Pie chart labels: Magento 12%, Other 42%, WooCommerce 10%, Shopify 9%, Magento Enterprise 7%, BigCommerce 1%, Volusion 1%, Yahoo Store 1%, Demandware 6%, Oracle Commerce 11%, Miva Merchant 11%

According to the most recent statistics (Source: Builtwith.com), the use of ecommerce technology significantly varies in the EU. The 42% 'Other' statistic shown in the above chart includes a substantial range of ecommerce platforms as well as home grown technology. In contrast, world markets are more homogeneous in the number of ecommerce solutions deployed.

In addition, given the changing sanctions compliance landscape and the difficulty of accessing consolidated lists in the EU, it is essential that systems are implemented to perform various DPS checks and balances on ecommerce platforms. Each deployment requires a review and an interface that can connect with the technology. The added complexity of the EU ecommerce landscape presents a need for expert systems integrators to unite ecommerce technology with the right DPS data.

Web Services: End-to-end Data Flow to Maximize Flexibility
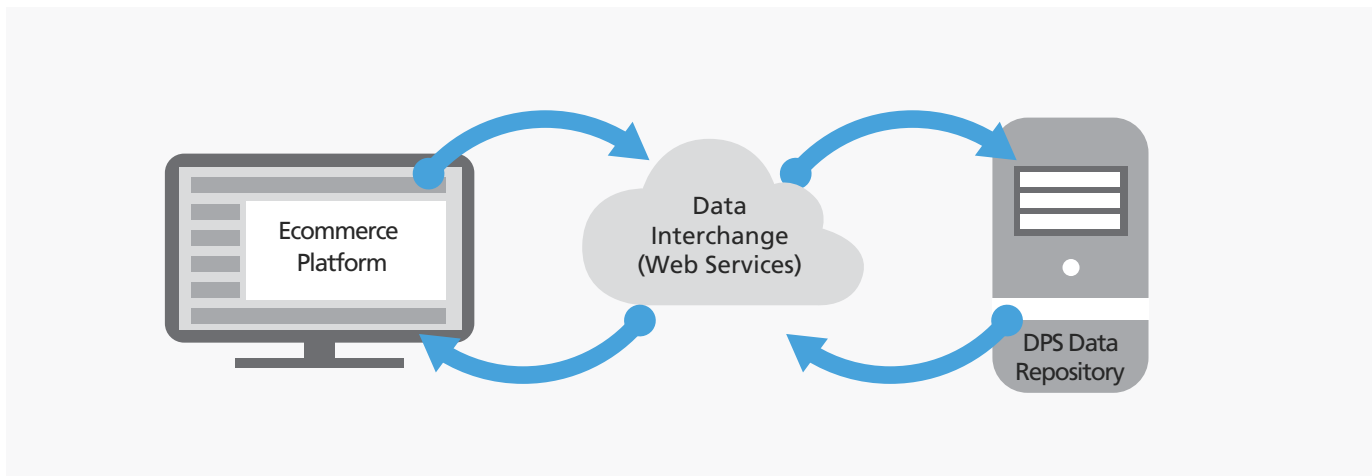
Web services, for example, can offer a type of connectivity where a 'call' flows through a data transfer methodology to a DPS data repository. Critical here is that information housed in the DPS database is accurate and up-to-date in order to be effective in the EU marketplace and worldwide.

Without an integrated solution, manual processes and steps performed outside of the system could create a potential slowdown of fulfillment processes and a slower delivery speed.

DPS & ERP Systems

Similar to ecommerce systems, data accessibility is an essential prerequisite to a successful DPS strategy within ERP solutions. While an ERP can help maximize productivity and standardize processes throughout global operations, the information contained within it can become 'locked' within complex relational databases. It is only by incorporating the two below criteria in tandem that businesses can reduce potential penalties:

1. The ability to screen new data before it enters an ERP platform

2. The ability to screen existing data within ERP systems

ERP systems can be costly to deploy. Businesses that have heavily invested in an ERP do not want to sink valuable existing IT resources into DPS. As a result, leading businesses are looking to expert content providers to help them seamlessly integrate DPS data into an ERP using a 'turnkey' architecture without over-tapping current IT personnel.

However, ERP systems and installations can vary greatly. From robust solutions such as SAP Global Trade Management (GTS) and Oracle Global Trade Management (GTM) to customized deployments and more, no two ERP installations are the same. In addition, the methods needed to integrate to an ERP can vary region-by-region.

Market leaders are seeking DPS solutions that are powered by an expert team of professionals who can map existing fields to even the most complex ERP installations and offer flexible options to connect to continuously updated DPS data. In addition, ERP systems often include options that range from financial services, global trade solutions to human resources.

For example, an ERP financial deployment might include:

- Payment transactions
- Business partner integration
- Vendor and account management

And a human resources installation could feature:

- Recruitment management
- Subcontractor coordination
- Payroll

An effective DPS system should include in-depth screening of the data behind multiple ERP modules. For example, it should include synchronous checks of subcontractors within an HR module, as well as screening of payment transactions. A missed screening opportunity could result not only in penalties but also in potential damage to a company's public image or financial standing.

In a Rush? Read This:

The ability to screen new data before it enters an ERP platform and within a varied ERP deployments **without a large IT effort** is critical to minimize costs and increase compliance.

"Fuzzy" Logic & False Positives

With respect to DPS and data management, it is clear than an electronic solution is required to reduce risk. The need for technology is two-fold: (1) Since many names on DPS lists are similar, there is a higher potential for missed results, and (2) or too many incorrect matches.

False Positives

One component of effective DPS compliance is minimizing false positives without exposing businesses to the added risk of increased false negatives. DPS lists may include hundreds of thousands of entities at any point in time. When incorporating multiple names, languages and different alphabets, there could be billions of search criterion and combinations. Too many results can add layers of administrative work, consume resources and add to expenditures. Businesses require systems to minimize false positives to increase efficiency, enhance workflow and focus operational bandwidth.

Fuzzy Logic and the Need to Locate Close Matches

Conversely, a missed match can result in steep penalties. Exact and inexact matching must be included within an effective DPS strategy. Flexible search parameters need to be available to accommodate misspellings, inaccurate or missing information. The use of fuzzy logic search structures is especially useful in one-off or ad hoc searches. Due to the unique nature of global DPS lists and screening at a practical level, an effective tool should include options for a fuzzy logic algorithm to locate close as well as identical matches.

Traditional Export Compliance

Much of this piece so far has involved newer models and applications of DPS such as ERP screening, logic parameters and practical applications to the marketplace. However, what can be called "classic" DPS still applies and is of critical importance to cross-border traffic and to compliance professionals involved in international trade.

Exports often present a particular challenge, especially in regard to licensure and the export of dual-use items. For example, with export controls, both in the U.S., the EU and elsewhere, it can be daunting and complex to review all of the applicable export-related laws, rules and regulations. Companies require centralized access to export compliance regulations to keep pace with their dynamic nature.

For the layman, it is essential to understand the basics of export compliance at only a high level, and to appreciate its importance in international trade. In the U.S., for example, key topics include the Export Administration Act (EAA), The Arms Export Control Act (AECA), International Traffic in Arms Regulations (ITAR) and Export Control Reform (ECR). A solution is required that can keep pace with changing regulations and provide a baseline to reduce the risk of exporting controlled goods.

The EAA

The EAA is the statutory authority for the Export Administration Regulations (EAR), which are administered by the U.S. Department of Commerce Bureau of Industry and Security (BIS). These regulations establish the framework for regulating dual-use exports including sensitive commodities, software, computers, technology and other goods. Under the EAA, exports are restricted by item, country and recipient entity.

In a Rush? Read This:

Export compliance is **highly complex,** and ranks among the more challenging topics in international trade. Mechanisms to keep pace with export-related regulations, **both in the U.S. and in the EU**, can be highly beneficial.

$1 million
In criminal penalties for willful violations on restricted items

$250,00
Potential administrative penalties

Potential U.S. DPS Fines

Prison
Up to 20 years per violation

Revocation
of export privileges or debarment

$11,000
in civil penalties

In a Rush? Read This:

Penalties specifically for export regulation infractions may include up to the following:

AECA and ITAR

Like the EAA, the AECA of 1976 is involved and offers a variety of challenges for business. The ITAR implemented provisions of the AECC, described in Title 22 (Foreign Relations), Chapter I (Department of State), Subchapter M of the Code of Federal Regulations. Delving into the AEC or ITAR in-depth would take a great deal of time; however, it is important to understand that the goal of ITAR is to safeguard national security. The AECA and ITAR are somewhat ambiguous, which creates challenges for businesses that operate in the international arena. Technology or systems are required to keep pace with this dynamic aspect of export regulations as well as ECR.

ECR Simplified

To summarize ECR, the previous export control system was overly complicated and outdated. As a result, the ECR initiative was launched to modernize the system. Simply stated, the aim of U.S. ECR is to relax some specific export-related regulations, strengthen others and modernize trade. The ECR Initiative is now well underway with many items that were once on the more restrictive ITAR list moved to the Commerce Control List (CCL). As with other topics in the export control arena, ECR is a challenging and dynamic topic. Many of the moves from the ITAR to the CCL are still in queue and will require businesses to systematically review the 'jurisdiction' of their items.

Handling Changing Export Regulations

How a company chooses to roll out its export compliance strategy is of key importance. With ECR and other export-related changes in the U.S, the EU and elsewhere, shippers are faced with a steep learning curve that could drain resources. Since many export-related procedures are still enmeshed in disparate and labor-intensive processes, the cost of export compliance has the potential to greatly impact the bottom line.

Bringing It All Together

From traditional export compliance to modern DPS, companies must unite old and new challenges as they transact business across borders or domestically. With the rise of the mega-fine to penalties for violating export regulations, ecommerce, and ERP data management, a continuous review of a global compliance strategy is critical to keep goods flowing and to ensure better compliance.

Market leaders are bringing clarity to compliance by merging the tasks of modern DPS and traditional export compliance via one systems provider. Smart companies are keeping an eye of the bottom line and looking to reduce risk with enhanced efficiency. The most cost-effective method to achieve these goals is through the implementing systems that can handle classic export-related challenges and address contemporary DPS questions.

Leading companies are incorporating customized screening, reviewing data within ERP systems, reducing the potential of increased penalties, and are better equipped to compete in today's competitive marketplace.

Descartes MK Denied Party Screening™ (Descartes MK DPS™)

The Descartes MK DPS™ solution provides organizations of all sizes with easy-to-use options that quickly and efficiently screen customers, suppliers and/or trading partners against a comprehensive database of international restricted and denied party lists, and offer comprehensive export compliance reviews. Customers can tailor screening processes to fit their unique risk parameters and flag potential compliance issues for prompt resolution.

- *Descartes MK Denial.com™* – As a web-based offering, Descartes MK Denial.com delivers highly-sophisticated capabilities on-demand. Some of the largest businesses in the world use Descartes MK Denial.com to access one of the industry's most comprehensive databases of consolidated denied and restricted parties.

- *Descartes MK Content™* – Our content powers global trade by streaming data into leading business applications. Our expert team of IT professionals can work with businesses to map existing fields and databases to ensure that information seamlessly powers systems via a number of electronic methods and protocols.

- *Descartes MK Bulk Screening™* – Customers are better able to expand and jumpstart new business with our advanced Descartes MK Bulk Screening. This solution can simultaneously screen thousands of customers or prospects against a selected range of denied and restricted parties.

- *Descartes MK Dynamic Screening™* – In order to ensure the highest level of compliance, leading businesses are leveraging the Descartes MK Dynamic Screening solution to screen proactively. This solution is ideal for companies with repeated sales to the same set of clients and can be used as a standard process as businesses expand and add new clients.

About Descartes

Descartes (Nasdaq:DSGX) (TSX:DSG) is the global leader in providing on-demand, software-as-a-service solutions focused on improving the productivity, performance and security of logistics-intensive businesses. Customers use our modular, cloud-based solutions to route, schedule, track and measure delivery resources; plan, allocate and execute shipments; rate, audit and pay transportation invoices; access global trade data; file customs and security documents for imports and exports; and complete numerous other logistics processes by participating in the world's largest, collaborative multimodal logistics community. Our headquarters are in Waterloo, Ontario, Canada and we have offices and partners around the world.

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Uniting the People & Technology
That Move the World.

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*Descartes offers one of the most comprehensive DPS platforms available in today's marketplace. **Ask Us More**.*