Preface

Though Internet business is dramatically growing, the legal response to it is inadequate and trails behind actual development. Textbooks and reference books on laws give detailed explanations regarding older models of online business but do not handle new issues very well. On the other hand, it is difficult for business people and lawyers involved in the Internet business to solve problems newly arising from the Internet based only on conventional knowledge. Even for business people and researchers who are not directly engaged in legal matters, it is indispensable to understand trends of legal issues to some extent for business planning or researching social impacts of such issues. Also, it is clear that many government officials and consultants involved in making laws related to Internet business must understand the latest legal issues.

In this book, experts and lawyers well versed in Internet business explain the latest topics, starting from the basic concepts in an easily understood way. This book focuses on fields that are very fundamental and that involving many legal issues including e-finance, e-payment, e-commerce, and dispute resolution. Legal issues related to Internet business are diverse and naturally involve intellectual property rights, antimonopoly laws, tax laws, and other regulations, detailed analysis of which, however, exceeds the limited space of this book. Yet, knowledge and concepts you will obtain from this book will be a resource to help you analyze those issues on your own. Most of the writers of this book are Japanese and many Japanese cases are cited, which may provide many cases interesting to readers from other nations, as few results of legal study in those fields in Japan have been published in English.

A. DEVELOPMENT OF THE CYBER LAWS

A variety of international and domestic standards have been created to deal with global development of Internet business. The United Nations Commission on International Trade Law (UNCITRAL) adopted the UNCITRAL Model Law on Electronic Commerce in 1996, which stipulates basic rules concerning electronic commerce, and the UNCHIMAL Model Law on Electronic Signatures in 2001, which provides rules on legal effectiveness of electronic signatures, and is used as a model that member nations can refer to when establishing domestic laws. The United States (U.S.), the European Union (EU), and Asian nations, have regarded e-commerce promotion as an important national policy while competing with each other. The U.S., where e-commerce is most developed, was active in legislation from the start, adopting in 1999 the Uniform Electronic Transaction Act (UETA) and the United Computer Information Transaction Act (UCITA), advising each state to establish relevant laws, and establishing the Electronic Signatures in Global and National Commerce Act (E-Sign Act). The EU issued EU directives regarding e-commerce and e-signature about the same time as the U.S. to unify e-commerce legislation in the EU territory.
Preparation of legislation is also being promoted in many Asian nations, including Singapore, Malaysia, South Korea, and Japan. For example, for consumer protection, the Organization for Economic Cooperation and Development (OECD) Guidelines for Consumer Protection in the Context of Electronic Commerce (1999) and the OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders (2003), both stipulated by the OECD, are observed among the member nations. Efforts continue to establish international standards for intellectual property rights and international taxation concerning to e-commerce. Methods for handling e-commerce and Internet business have also been kept in mind in drawing up conventional international standards, such as for general rules of contracts, financial regulations, and dispute resolution.

Still, such efforts have been inadequate, and preparation of legislation always lags behind the diverse development of Internet business. To cope with elements that do not have adequately-prepared legislation, online business specialists and lawyers should attempt original interpretation of laws, prepare contracts coping with risks, or prompt the government to draw up fresh legislation.

An actual example that has already been resolved is cited. For online shopping, it is more efficient to prepare a system selling through account settlement independently than to seek assistance from a bank. However, in Japan, creating such a system has been considered difficult until recently because banks exclusively handle account settlement business. As a result of urging by online businesses, the Financial Services Agency deregulated account settlement, and since 1999 it has become easy for online businesses to obtain licenses related to Internet banking business. As for controversial issues about banks’ demand to be allowed to enter into commerce, as a result of commercial businesses being allowed entry to banking, please refer to Chapter III of this book, in which situations in Japan, the U.S., and Europe are compared.

There are also problems that have begun to see clues to resolution but are yet to be resolved. In such an instance, in 2007, the Japanese Ministry of Economy, Trade and Industry (METI) started considering drawing up rules on a point-accumulation service system operated by a variety of businesses including discount stores, shopping malls, and airlines, as perks for their customers. METI believes that approximately one trillion yen worth of points have been issued in Japan, but such rules as to stipulate how to deal with points in case the company that issued the points has gone bankrupt, and how to protect consumers and personal information, have not been established and requires serious and urgent attention.

On the other hand, there are unresolved problems yet for which no solutions are in sight. One example is regulation of real money trade (RMT), exchange of virtual currency earned in online games for actual currency, such as dollars and yen. Though RMT is against the rules in many online games, many traders who exchange game currency for legal tender exist. There are many criminal groups gaining profits by earning game currency in China and other areas, with a market on a scale of over 15 billion yen. Existing laws, including criminal rules and taxation rules, are applicable to real space but not to virtual space. Thus RMT, which is not under control of established legislation, has gone underground and become a hotbed of fraud and money laundering. If the market scale continues to expand, the RMT problems may be big trouble for consumer protection and financial policy. Under those circumstances, an online game entitled Second Life appeared in the U.S. and about 10 million people have taken part in it. Exchanging game currency to real currency is officially approved under the rules of the game, which draws attention to the game as an attempt to pull RMT out of the underground. Development of Second Life may influence future decisions on policy regarding whether RMT should be made illegal or legal by regulations. Meanwhile, continuous deliberation is necessary regarding how to apply existing laws, which have been established to suit to real space, to virtual space.

Those points and game currency can be regarded as a form derived from cyber cash, which used to be discussed as electronic money. Many other forms of electronic money keep popping up everywhere
in the globe, and extensive study on such money is required. Therefore, some chapters (VII through IX) in the second section elaborate on developing forms of electronic money while money laundering is covered in Chapter I.

**B. STRUCTURE OF THE BOOK**

Each of the three sections are explained very briefly. The detailed summary will be shown subsequently.

**E-Finance**

E-finance means e-business with wholesale or large value financial transactions except funds payment systems that are dealt with as e-payments. The legal concern is how to secure the stability and soundness of the rapidly growing market. E-finance includes not only the online activities of banks, securities firms, insurance companies, and others, but also the paperless transactions of securities. Without adequate supervision or standard rules, a huge systemic risk may arise.

The most important topics now in the global e-finance laws include: cybercrimes (Chapter I), cyber risk management (Chapter II), lifting the separation of banking and commerce (Chapter III), and electronic securities trading (Chapters IV and V). Cyberspace is now a hotbed of frauds, larceny, and money laundering. It is an urgent issue of criminal law study to shed light on its mechanism and to hammer out countermeasures. Financial institutions have risk management issues about how to cope with cyber risks while conforming to standards of the exchange rate mechanism (ERM) and Basel II. Further, there are some moves to revise the separation of banks from commerce in accordance with development of e-commerce, which is an issue for bank laws in Japan and the U.S., among other nations. As securities exchange has also been computerized, regulations on the alternative trading system (ATS) and international paperless account settlement are actively debated. The first section focuses on those latest issues.

**E-Payments**

E-payment means e-business with retail or small value financial transactions, but this book also covers large-value funds payment systems. E-payment is an element essential for almost all the online businesses, and it is indispensable for success in business to fully understand the latest legal issues regarding e-payment. The legal concerns are from both sides: consumer protection and the industry development or systemic risk perspectives. Traditional means include online credit cards, debit cards, e-money, and bank transfer. New types of money have emerged such as “point mileage banks” not run by banks and without supervision. Point mileage banks deal with points, not money. Thus we need to consider how to regulate it: the same as banks or as other ordinary business. On the other hand, the existing bank transfer system is not always consumer-friendly. Japanese banks did not care about the deposits stolen through the ATM network (Only recently Japan adopted the U.S. style $50 rule). The Japanese government is currently considering credit card payments, with adequate technical support like e-scott offered by SONY International, to be more effective measures against Internet auction fraud.

This section includes the most important recent topics: wholesale funds payment systems (Chapter VI), global card payments (Chapter VII), new types of e-money (Chapter VIII), commodity based digital currency (Chapter IX), bank transfer by errors (Chapter X). Large account settlement systems between banks are now facing big changes. Studying the moves of the changes is important for financial
management of online business. Meanwhile, technical and legal issues of account settlement of credit cards, which plays a vital role in cyberspace, should be examined. Various types of e-money and commodity-based money, such as e-gold, have been developed all over the world, and how to comprehend them in terms of law is important both in the practical and academic phase. In addition, legal analysis of erroneous money transfers is a major issue for bank business rules. The second section focuses on those latest issues.

**E-Contracts and Dispute Resolution**

Internet business always entails electronic contract conclusion and cannot avoid being involved in dispute settlement in cyberspace. Different from regular contracts written on paper, contracts sealed in cyberspace are usually regulated under special legislation drawn up by each nation. While information on such legislation of the U.S., European and Asian nations are relatively easy to obtain, that of India and other newly-emerging nations is actually hard to get. Also in cyberspace, there are many cases in which it is unclear which country’s law should be applied, or which country’s courts should have jurisdiction, even if existing international private laws and international court jurisdiction rules are applied. Though many legal debates have taken place, the number of documents that sorted out those debates straightforwardly is not necessarily large.

This section includes useful guidance of most important topics as follows: doing international business online for the small and medium enterprise (Chapter XI), consumer protection in the cross-border e-commerce market (Chapter XII), cyber contracts and Indian law (Chapter XIII), e-commerce and private international law and jurisdiction (Chapter XIV), and cross-border court jurisdiction and economic law application in e-commerce (Chapter XV). Internet business is a field in which small and medium sized companies have more entries than large companies. Guidance about specific legal issues involved in launching an international online business for mid and small-sized companies is essential. Meanwhile, it is a little surprising that it has been unclear what kind of relief measures are available for consumers caught in trouble related to international Internet business. In this book, the most progressive experts offer specific advice regarding the matter. Also, e-contract laws of India, which is said to be an IT power but whose whole picture has not been unveiled compared to that of developed nations, is explained. In addition, international private laws and jurisdiction, and how much control regulations of a nation can have in cyberspace are logically discussed.

**C. SECTION I: E-FINANCE**

**Chapter I: Cybercrime, Cybersecurity, and Financial Institutions Worldwide**

While the benefits of the Internet and other forms of computer networks are streamlining financial institutions, the same institutions are often among the first institutions to be affected by cybercrime and cybersecurity issues due to the financial incentives as well as their strategic place in each nation’s infrastructure and economy. We must look not only at the efficiency, but also at the negative aspects of the use of technology by financial institutions. Consumers as well as business must be well informed about conducting transactions in the safest manner possible. The nature of the Internet is cross-border, and thus cybercrime and Internet Security issues involving financial institutions should be made known by international organizations, regional organizations and when there have been cross-border law enforcement collaborations in investigations, extraditions, and so forth. At present, due to the fact that law
is generally written at the national (or even state level, as is the case of Identity Theft law in the U.S.), there is a need for reporting of cross-border cases in the literature if such data can be obtained from law enforcement officials by scholars.

Chapter II: Enhancing Cyber Risk Management with the Framework of ERM and Basel II

Information technology (IT) has been rapidly developed to provide financial services with customers by the Internet. This service is available for 24 hours a day, 7 days a week beyond the boundary. On the other hand, technology-oriented financial services may face various cyber risks such as disruption caused by natural disaster and terrorist attack, impersonation and other events stemming from unauthorized access, and theft or alternation of data. Once these events occur, they could affect not only companies such as financial institutions but also their stakeholders such as customers and financial stability. These events lead to indirect effects such as lawsuits and bad reputation losing sound customer base immediately. Thus, it is critical to enhance cyber risk management in advance before nightmare in order to enjoy the benefits of IT. This chapter introduces the practical methods of enhancing cyber risk management efficiently and effectively with the framework of enterprise risk management (ERM) and Basel Accord II (Basel II). It aims to learn how to enhance cyber risk management as well as efficiency so that sustainable growth is achieved with the balance between risk and return or risk-adjusted return on equity.

Chapter III: IT Development and the Separation of Banking and Commerce: Comparative Perspectives of the U.S. and Japan

Unlike the UK, Germany, France, and some major countries that permit entries from banking to commerce and vice versa (“two-way” regulation), the United States and Japan have maintained a policy of separating banking and commerce out of concern that the mixing of the two activities would result in the misallocation of credits, anti-competitive effects, exposure of the deposit insurance and taxpayers to greater risks from commerce, and additional supervisory burdens on banking and antitrust regulators. However, this separation is now being reconsidered both in the U.S. and Japan. With IT development, linking online banking and Internet commerce may increase profitability through operating synergies between the two firms, and reduce average costs and information costs. Future changes in the financial environment may produce other synergies and the degree of separation should be suitable for such business development. This chapter introduces current laws and discussions in both countries and considers the future of the separation policy in Japan.

Chapter IV: Laws and Regulations on Proprietary Trading System (PTS) in Japan

In order to improve convenience of investors through competition among stock exchanges, operation of proprietary trading system (PTS) was authorized as one of the securities businesses under the Securities and Exchange Act. The Japanese PTS is equal to ATS (alternative trading system), ECN (electronic communications network) of the United States and MTF (multilateral trading facilities) of MiFID of EU. In 1998, ATS and ECN already started in the United States and PTS of Japan followed the U.S. model. Telecommunication and information technologies and computer technologies realized PTS and PTS is making the border between the market and brokers ambiguous. Traditional regulations on broker-dealers and stock exchanges will be inevitably reviewed and the regulations on securities markets will be unable to avoid reform.
Chapter V: The Holding and Transfer of Interests in Securities in England and Japan Compared with the Holding and Transfer of Funds

The purpose of this chapter is to compare indirectly held securities systems with funds transfers systems in order to examine whether the similar related risks and legal issues can be solved in the same way in the field of private commercial law. Under the indirectly held securities system, securities certificates are “immobilized” or “dematerialized,” so that transfers of interests in securities are implemented through the adjustment of balances in relevant accounts instead of through the physical delivery of certificates. Such a system appears similar to the system relating to the holding and transfer of funds through bank accounts although interests in securities have been regarded as proprietary rights whereas monetary deposits amount to mere personal rights enforceable against banks. In addition, this chapter aims, in comparing the legal systems of relevant countries, to harmonize the relevant in order to avoid the inconsistency of laws in cross-border securities transactions. In comparing national legal systems, Japanese law and English law (including applicable EU law) will be mainly considered. Furthermore, as the need arises, consideration will be given to U.S. securities systems and relevant international trends.

D. SECTION II: E-PAYMENT

Chapter VI: Global Trends of Payment Systems and the Next-Generation RTGS Project in Japan

This chapter investigates the evolutionary process of the payment system with the background of the structural changes. At the early stage, most of the payment systems were the Designated-Time Net Settlement (DTNS) systems. Then, the Real-Time Gross Settlement (RTGS) systems were introduced, which had the merit of reducing the settlement risks. This first trend was followed by the deployment of the Hybrid Systems and the Integrated Systems. The Bank of Japan (BOJ) proceeds with the Next-Generation RTGS (RTGS-XG) project. This project is regarded as a typical enhancement of payment system following the global trend. The features and benefits of the RTGS-XG are closely analyzed.

Chapter VII: Technical and Legal Concerns about Global Card Payments

Well into the first decade of the 21st century, it is fair to say that card payments are the cyberspace payment methods per antonomasia and, therefore, in order to not imply a deterrence to the development of commercial transactions carried out by electronic means, they should be accepted globally in the same or similar manner, which also means that the technology and rules applicable to them should be the same or closely harmonized. However, as this chapter tries to explain, while there are some characteristics that have made cards’ acceptance truly global in scope, there have been historical, economic, and regulatory forces that resulted in different jurisdictions favoring the use of different technologies and different legal architectures for the deployment and control of cards as a mean of payment, which may both confabulate with the possibility of extending the benefits derived from the use of card payments and avoid the extension of the negative features associated with their utilization.
Chapter VIII: The Regulation of New Forms of Electronic Fund Transfers in Japan Focusing on Electronic Money

In this chapter, after surveying existing Japanese public laws that regulate the transfer of funds via the Internet, and focusing on Electronic Money in particular, how these existing regulations may apply to new electronic payment methods that may not have been accounted for when these regulations were established will be discussed, whether the regulations are sufficient to both a provide convenience to the user and protect their safety, and whether these regulations are desirable as business conditions for developing Electronic Money. Through these discussions, certain objectives which should be taken into account when developing regulations in Japan on the transfer of funds via the internet will be developed. Also, this chapter discusses anti-money laundering regulations applicable to transfers of funds on the Internet, focusing on Electronic Money, and will examine how Japanese money laundering regulations may apply to cross-border transfers of funds using overseas Electronic Money services. Through this examination, this chapter will attempt to suggest desirable money laundering regulations on domestic Electronic Money in the near future. Furthermore, this chapter discusses real money trade and point-rewarded program in viewpoint of function of payment or transferring funds electronically in the extended research sections, and predicts the future research directions at the end of this chapter.

Chapter IX: Commodity Based Digital Currency: A Legal Analysis

Financial innovations bring new challenges and new risks besides advantages to the world of finance in cyberspace and in the real world. These innovations evolve alongside the development of cyberspace creating more e-business opportunities. One such innovation is the digital currency. As cyberspace develops, this financial innovation allows more and more players into a formerly closed market of providing intrinsic purchasing power medium which was generally supplied by a nation’s central bank in the form of money. What is then this digital currency legal status in a nation?

Chapter X: Mistake in Remittance to Account

Some courts have recently ruled in Japan with regard to mistake in remittance to account. While the Supreme Court held that the recipient has become a depositor of a savings deposit as much as the remitted amount of the receiving bank as a result of a remittance, and the recipient obtains a bank deposit in the amount equivalent to the transferred amount even where there was no legal relationship which could be used as a legal basis for the remittance between the person who requested the remittance and the recipient, it held that the person who made a demand for repayment of a bank deposit while knowing that there was a remittance to account made into its bank account by error and received the repayment shall be guilty of fraud. In addition, some lower courts held that it is fair and equitable to interpret that the receiving bank must directly refund to the originator with regard to the originator’s claim to refund as much as the amount of the erroneous remittance as unjustified enrichment. Thus, the position of Japanese courts is still in disarray in respect with the legal consequence of mistake in remittance to account.
E. SECTION III: E-CONTRACTS AND DISPUTE RESOLUTION

Chapter XI: Doing International Business Online for the Small and Medium Enterprise

This chapter is designed to address the primary difficulties small and medium enterprises face when doing business online with international partners. The guidance provided in this chapter is primarily for owners of small and medium enterprises rather than legal professionals. The two main problems inhibiting online transactions are a lack of trust between the parties and the risk inherent in the transaction. This chapter analyzes ways to address these problems. Many of the practical suggestions in this chapter are inspired not by million dollar deals but by playground transactions between children. Often the simple solutions are the best ones.

Chapter XII: Consumer Protection in Cross-Border E-Commerce Markets

Due to the development of the Internet, global e-commerce markets are largely growing. From the viewpoint of consumers, cross-border transactions involve some difficulties to get redress against problematic businesses. In e-commerce markets, consumers have also experienced another kind of difficulties. To increase consumer protections in global e-commerce markets, various attempts have been made by private sectors and public sectors. This chapter overviews current attempts, and considers possibility of future methods to realize effective consumer protections in cross-border e-commerce markets.

Chapter XIII: Cyber Contract and Indian Law

The usage of cyber contracts has increased exponentially in the recent times. However, the framework for this has not been clearly defined. The jurisdiction is also a major issue. In this chapter, the electronic contacts of various types and the cyber contract in the Indian content have been revisited and an effort to find out a uniform framework for this has been made.

Chapter XIV: E-Commerce and Dispute Resolution: Jurisdiction and Applicable Law in a Dispute Arising from a Computer Information Transaction

When a dispute arises from e-commerce involving parties located in different nations, the parties immediately face conflict-of-laws issues such as judicial jurisdiction, applicable law, and extra-territorial effects of judgments. Taking into consideration that there is no unified conflicts law rules in the global level and, if any, the conflicts rules are usually based on the traditional international transactions, this chapter tries to discuss the dispute resolution systems suitable for e-commerce, especially for computer information transactions. As the result of the discussion, it becomes clear that further enhancement of worldwide dispute resolution system suitable for e-commerce is desirable. In establishing a new system, the 1999 Guidelines for Consumer Protection in the Context of Electronic Commerce approved by OECD gives us much inspiration. It is essential to balance between small-middle sized business entities and consumers and between freedom and regulation.
Chapter XV: Cross-Border Court Jurisdiction and Economic Law Application in Electronic Commerce

The purpose of this chapter is examining international jurisdiction and choice of law at e-commerce involving economic legal issues. International jurisdiction and choice of law will be determined under the private legal principles, but as e-commerce involves economic law as a law to ensure national economic stability, the court may consider economic law with both private and public legal functions. At that time there may be some conflict of law involving state economic policy, and then it must be considered how to coordinate the conflict and create universal legal structure according to the non-territorial cyberspace. This chapter will propose the three layers of legal structure for e-commerce; private law layer, economic law layer, and criminal law layer, all of which have the viewpoints for the borderless cyberspace.

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