Lost in Cyberspace: Navigating the Legal Issues of E-Commerce

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ABSTRACT

Daily business transactions are affected by many aspects of the law, many unknowingly. When transactions occur in an e-commerce environment, merchants, consumers, and B2B should be concerned with protecting their interests when many of the parties involved are known only by a screen name, email address or website. Parties engaged in transactions through the Internet should be mindful that the same issues that arise in a brick and mortar environment exist in cyberspace; but protecting and enforcing the various rights a person may have in cyberspace is a different ballgame. In addition to the practical concerns of global and cyber commerce, many of business issues and practices are relatively untested in both the legislative and judicial branches of government. This article is a summary of the legal issues that can arise in the e-commerce.

Keywords: Commercial Transactions in Virtual World, Cybercrime, Cyberlaw, E-Sign, eContract, Intellectual Property in eCommerce, Internet Privacy, Internet Tax, Litigation in Cyberspace, On-Line Contract, Personal Jurisdiction in Cyberspace

JURISDICTION IN THE VIRTUAL WORLD

Information sharing, accessibility and efficiency are the true benefits of e-commerce. The ability to conduct due diligence, analyze a competitive market and make an informed decision in lightening speed is a hallmark of the cyber economy. What happens, however, if there is a problem with a cyber transaction? Where does a party seek redress if they have been wronged?

Procedural law in the U.S. is an established, yet complicated body of rules that must be followed to determine what will be the proper court to bring a legal action. Once the appropriate judicial system (e.g., state or federal courts) is determined to have jurisdiction, the appropriate venue is then established through another set of well-tested rules of procedure.

How do these questions get answered in cyberspace? If you try to determine where the wrongful act occurred or a party’s minimum contacts, could it not be possible that the wrongful conduct or contacts are everywhere AND nowhere? Determining where the defendant resides or conducts business can be complicated if the company does not have a “physical” presence within a particular jurisdiction. This can be problematic when dealing with companies over the Internet (Zippo Manufacturing Company, 1997).
Jurisdiction, Venue, and Choice of Laws

The easiest way to navigate the jurisdictional procedure is to answer the following questions: where did the alleged wrongful act occur? Where does the defendant reside or conduct business? Is there another jurisdiction in which the defendant established “minimum contacts” thereby making jurisdiction appropriate there (International Shoe Company, 1945)?

Each dispute must be analyzed using the U.S. Supreme Court’s standard that the non-resident defendant must (a) have had some minimum contact with the particular state, and (b) invoking that state’s jurisdiction will not offend the “traditional notions of fair play” and “substantial justice” (International Shoe Company, 1945; Helicopteros Nacionales de Columbia, 1984). In other words, did the defendant receive some benefit from the jurisdiction, such as engaging in sales with residents of the particular jurisdiction, advertising within the jurisdiction, having residents of the jurisdiction as members to its website (Helicopteros Nacionales de Columbia).

The fact that a party has its principal place of business and servers located in another jurisdiction does not insulate that party from another state invoking its jurisdictional long-arm statute (Zippo Manufacturing Company) (Lakin, 2003; Trintec Industries, Inc., 2005).

Jurisdiction – Parties’ Consent

One way to avoid being subjected to another state or nation’s jurisdiction is through a mandate as to what law will apply should there be a dispute related to the transaction. The “choice of laws” or “choice of venue” provision is a standard term in most contracts. In the event there is a breakdown in an on-line business relationship, next to the parties’ signatures, this should be considered one of the more important covenants in any eContract. Who will be presiding over the dispute, where will the dispute be resolved, and what laws will be applied are critical strategies in business.

Language to the following effect should be considered in any agreement between parties in an e-commerce transaction:

Choice of Law and Venue. This agreement has been entered into in the State of Michigan, United States of America. The validity, interpretation and legal effect of this agreement is governed by the laws of the State of Michigan applicable to contracts entered into and performed entirely within such state (without giving effect to any conflict of laws principles under the laws of the State of Michigan and regardless of the place or places of the actual execution of this agreement or the place or places of the actual performance of this agreement). The Michigan courts (state and federal), only, shall govern jurisdiction over any controversies regarding this agreement, and the parties hereto consent to and irrevocably and unconditionally agree to be subject to the exclusive jurisdiction of said courts located in Wayne County, Michigan, United States (and of the appropriate appellate courts therefrom).

Courts throughout the United States and treaty nations should honor the provisions of a valid and otherwise lawful agreement, including an agreement pre-determining the jurisdiction, venue, choice of laws, if these are terms negotiated between the parties (Hague Conference on Private International Law, 2005).

Alternate Dispute Resolution/ E-Dispute Resolution

An alternative to the traditional method of resolving commercial disputes in the judicial forum is the use of alternative dispute resolution (“ADR”). ADR are informal processes that are intended to resolve conflicts between parties without the necessity of prolonged litigation. The purpose of ADR is to offer aggrieved parties the opportunity to have an informal, impartial decision maker (e.g., an arbitrator or mediator) assist the parties in resolving their conflicts.
Viral Marketing and Its Implications for E-Commerce

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