Chapter VII
Technical and Legal Concerns about Global Card Payments

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ABSTRACT

Well into the first decade of the twenty-first century, it is fair to say that card payments are the cyberspace payment method by definition and, therefore, in order not to deter 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 means of payment, which may both obstruct 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.

INTRODUCTION

Well into the first decade of the twenty-first century, it is fair to say that card payments are the cyberspace payment method by 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 dif-
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ferent 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.

The phenomenon of card use, its technological features, and its regulation, can be addressed from a vast array of points of view and with focus on different aspects of it, and for many of those aspects and points of views the present article borrows from the existing literature. It recognizes that there are far more technical and legal concerns that those that can be treated in a single book, not to mention the impossibility of doing it properly in one chapter of a book devoted to Cyberlaw for Global E-business. Accordingly, the chapter starts presenting different technologies used to facilitate credit and debit card payments and their use in different countries to then analyze the feasibility of global convergence in this matter. It does not, however, enter into the details of the information and communication technologies used to process different forms of card payments but it concentrates in different technologies used to make the payment possible, as for example, PIN and PIN-less credit and debit cards, and their implication in an online environment.

Card payments, in all their forms and manners, are subject to and allow the use of a myriad of regulatory techniques and methods, but this chapter concentrates in those that, it can be argued, generate greater disparities between jurisdictions and are in more urgent need of harmonization, referring to the type of card payments that make up the vast majority of transactions: credit and debit cards. One of those issues, and one that probably permeates most analysis of legal regulation on cyberspace, is represented by the unsolved problem of establishing jurisdiction in online transactions. The general topic of Internet jurisdiction has been the focus of previous work (Barrio, 2007) and here reference is made only to the difficulties arising from conflicting regulations or lack of within the specific realm of card payments. The same kind of divergence can be observed in privacy and personal data protection, which arguably has the potential to severely damage the card payment system because the essence and main advantage of it resides in a very efficient transmission and use of data (Mann, 2006).

The rise and growth of electronic commerce and the importance of information and communication technologies for trade, economic growth and development are both well documented phenomena (UNCTAD, 2006), to such level that it could be argued that they are already part of the common knowledge not needing reference or citation, and they complement the also acknowledged value and impact of information in the current global environment. From the multiple examples of the later, the way that Stetson Kennedy used information to successfully combat the renaissance of the Ku Klux Klan can be chosen as one that underlines information’s power in a colorful manner (Levitt & Dubner, 2006). The significance of information technologies per se can be assimilated to a new industrial revolution (Castells, 2000) and the broader impact on people, companies, and countries economic life can be explained in terms of increased productivity (van Ark, 2006), better access to markets (Kula & Tagotlu, 2003) and sophistication of marketing techniques, and product innovation (Davidson & Copulsky, 2006). In the same way, the importance of the existence and the expansion of electronic payments and its subtype card payments for the mentioned growth and diversification of electronic commercial transactions should not be underestimated.

In the United States, for example, the Federal Reserve reported that in 2003, electronic payments surpassed for the very first time check payments, and that card payments totaled more than 77% of those electronic payments (2004). It is important to note that in the U.S., due to historical and regulatory constraints, the paper check has had an unparalleled role as the preferred method of