Module 4: E-Commerce Law – spring 2009

Module aims and content

The growth and widespread use of the Internet has spurred the development of electronic commerce. People are buying and selling goods and services online, either directly or with the help of agents, including electronic agents. Firms are increasingly doing business online and new forms of commercial co-operation are emerging. These transactions have or may bring about legal consequences for the parties involved as well as third parties such as online intermediaries. The aim of this module is to identify and discuss the principal legal issues that emerge from Internet transactions such as the formation of electronic and web contracts, the creation of virtual enterprises, intermediary liability, the requirement for system and transactional security, and cyberspace crime.

The module also seeks to analyse key private international law questions that arise from the international and borderless nature of e-commerce, such applicable law and jurisdiction in Internet disputes, dispute resolution and self regulation.

The module concentrates on the current European Union (EU) instruments and policy to regulate different aspects of electronic commerce. Where appropriate, reference will be made to the legal position in countries outside the EU such as the United States, for comparative purposes.

The themes taken up in this module may be summed up with the following key words: electronic commerce, electronic contracting, web contracting, electronic agents, virtual organisations, intermediary liability, encryption, digital signature, private international law, cyberspace jurisdiction, proper law, self regulation, cyberspace crime.
Module structure

Introduction to course

Overview of the course: (i) contract and intermediary liability; (ii) private international law and self-regulation; (iii) security and cyberspace crime.
What is electronic commerce? International and “borderless” trade & transactions.
Distinction between business to business and business to consumer transactions.

Relevant regulatory instruments:
- UNCITRAL Model law on electronic commerce

I. Contract and Intermediary Liability

➢ Electronic and web contracting

Generally on electronic contracting - distinguished from “traditional” computer contracts.
Electronic & web contracts: nature, evidential status.
Formation and validity of electronic contract: What constitutes an electronic offer and acceptance, communication of offer and acceptance, acknowledgment of receipt, accessibility, risk allocation, time and place of dispatched and received? Contractual terms and conditions: advertisements, declarations, promotions, etc. Distance selling. Consumer protection in electronic and web transactions.
Contracting through electronic agents: status of electronic agent.
IT and new ways of doing business: Virtual organisations, networks, etc. Legal identity and characteristics thereof, actors involved.

Required reading:

Relevant regulatory instruments:
- 1996 UNCITRAL Model Law on Electronic Commerce

Optional reading:

Liability of online intermediaries

The position of content providers.

Required reading:

Relevant regulatory instruments:
Optional reading:

➢ Digital Signatures and Trusted Third Party Services

The need for security in open networks; confidence-building technologies.
The legal framework for electronic signatures and encryption.
The legal framework for trusted service providers.

Required reading:
- European Commission, "Towards a European Framework for Digital Signatures and Encryption", COM (97) 503

Relevant regulatory instruments:
- 2001 UNCITRAL Model Law on Electronic Signatures

➢ Electronic Payment Systems

From traditional electronic payment mechanisms (credit cards & debit cards) to digital cash payment mechanisms. What is ‘electronic’ or ‘digital’ cash?
Distance selling of financial services
Contractual relationship between the issuer of electronic money and the consumer

Required reading:

Regulatory instruments:
- 97/489/EC: Commission Recommendation of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder (Text with EEA relevance), OJ L 208, 02/08/1997 pp. 0052 - 0058

Optional reading:

II. Private International Law and Self Regulation

- Cross-border disputes: EU Jurisdiction

Introduction: the relevance of this topic – Internet transactions & the “death of distance”. Which court has jurisdiction to hear a particular dispute? Relevance of the Lugano Convention to e-commerce transactions; EU Regulation on Jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Consumer protection issues.

Required reading:

Relevant regulatory instruments:
Cross-border disputes: Applicable Law

The proper law of online contracts.
The proper law of tort: Liability of misleading information, advertising, effect on third party of malfunction of of system.

Required reading:

Relevant regulatory instruments:

Optional reading:

Self regulation: Codes of conduct, labelisation and alternative dispute resolution.

Pros and cons of self-regulation: effect on the consumer.
Site labelling & Code of conduct: legal effectiveness.
Role of alternative dispute resolution in resolution of online disputes.
III. Security and cyberspace crime

Cyberspace crime

Nature of cyberspace crime. Emergence of new forms of criminal activity: hacking, computer viruses. The Internet as a new arena for “traditional” crime: computer fraud, blackmail, piracy, defamation obscenity, indecency and pornography.

The problem with enforcement.

Required reading:

Relevant regulatory documents/instruments:
- Council of Europe Recommendation No. R (89) 9 of the Committee of Ministers to Member States on Computer-Related Crime, adopted by the Committee of Ministers on 13


Course literature/pensum

_topics:

- **Regulatory Instruments**


97/489/EC: Commission Recommendation of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder (Text with EEA relevance), OJ L 208 , 02/08/1997 pp. 0052 - 0058


UNCITRAL Model law on electronic commerce
2001 UNCITRAL Model Law on Electronic Signatures

### Reading List

#### Required Reading


European Commission, "Towards a European Framework for Digital Signatures and Encryption", COM (97) 503 (24 pages)


Thornburg, “Going Private: Technology, Due Process, and Internet Dispute Resolution” (2000) 34 U.C. Davis L. Rev. 151—218, also available at [http://faculty.smu.edu/ethornbu/Thornburg%20Macro.doc](http://faculty.smu.edu/ethornbu/Thornburg%20Macro.doc) (68 pages)

#### Optional Reading


