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How is Electronic Commerce Changing Global Business?

Presented at *Wired Into Asia*

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I. International legal rules for electronic commerce are uncertain.

There is no single set of legal rules that apply to electronic commerce in Asia or internationally generally. There are some laws and technical standards that may be applicable (such as the United Nations Convention for the International Sale of Goods) but no comprehensive set of laws or regulations exists or can be expected in the near future.

Rather, many electronic commerce transactions are governed by contract, both business-to-business and business-to-consumer transactions. Contracts of some type are possible because the trend of electronic commerce on the Internet is toward more structured business environments rather than single, isolated sales transactions. These more structured and secure on-line sales environments (such as those being created by *Asia Connect* and those involving the Secure Electronic Transaction standard for credit cards in Asia) are, in essence, virtual malls. The SET environment will also include agreements between merchants and card issuers just as in the traditional credit card environment.

The virtual mall provides a shared cost environment with a degree of security, authentication, potentially more business “traffic” and a set of legal rules that allocate risks. Many vendors are seeking virtual mall space rather than trying to individually create and fund their own storefront environment with the same features.

The degree of security is not the same for each virtual mall. Both potential tenants and customers must evaluate such features as well as shopping “traffic” on a mall-by-mall basis.

The first step in the structured approach is customer registration of some type. This is done in both business-to-business and business-to-consumer environments. Registration establishes a continuing relationship and provides a more comfortable sales environment for both

the vendor and its customers as to security, payment, authentication and other risks. This is when a digital signature is issued. For example, the emerging electronic sales environments in Asia which will use the SET environment will require the prior issuance of a digital signature to a credit card customer.

Most virtual malls are divided into areas which may be “window shopped” and other areas for which registration is needed. A potential customer may window shop in a mall but may not buy anything in the mall until the registration process is completed. When the potential customer clicks on a store’s sales pages, he first must provide his digital signature in order to be admitted. Encryption is used to secure the transmission of the user’s digital signature and credit card information.

As part of registration, which can be repeated when a customer enters the sales pages, or as part of the ordering process, the customer can be led through a set of screens containing contract terms or click on an icon to review them. The customer must affirmatively respond that he agrees to the contract terms, or he is transferred out without agreeing to anything. The legal purpose is to allow the prospective customer to review the terms of the contract before agreeing to them, and the choice to accept or reject the terms. The purchase can be closed on-line or credit card payment made off-line. Delivery of the purchased item is made on-line or off-line depending on the nature of the item procured.

II. The software industry is an ever expanding user of electronic commerce and is a pioneer in contracting issues on the Internet.

Web sites for software vendors make available trial versions and even full-featured versions of software products in some cases. More and more of these Web pages are in multiple languages. From a legal point of view, these Web sites are the pioneers of the so-called “click” license. For example:

- Is clicking on download and then downloading software a “reasonable manner” of acceptance of a software license?
- Does a clicking on a “Yes” or “Buy” icon constitute acceptance of a license?

III. Consumer transactions may require additional legal planning.

While business-to-consumer electronic commerce is in the very early stages in Asia, there may be different allocations of risk to consider in a business-to-consumer situation than in a business-to-business relationship. Some countries have laws which protect consumers in a sales environment, particularly in the U.S. and Europe.

For example, many Web sites look and feel like a sales catalog. In the U.S., consumer protection regulations require specific disclosure requirements for catalog sales. Catalog sales are defined as “any offer for sale, or any solicitation for an order for a consumer product with a written warranty, which includes instructions for ordering the product which do not require a personal visit to the seller’s establishment.” On-line vendors using a “catalog” to sell goods should fall within this definition.

Note that Internet commerce can actually facilitate compliance with disclosure requirements through icons and linkages. The disclosures can be as close to a consumer as a “click” on an icon.

The legal environment should evolve as electronic commerce evolves rather than being prematurely regulated. Laws which facilitate the building blocks of electronic commerce, such as recognizing the validity of digital signatures, should be enacted sooner rather than later.

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