



Chapter 3

Some Internet and E-commerce Legal Perspectives Impacting the End User

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INTRODUCTION

Not too many years ago, hardly anyone had heard the terms “Web browser,” “Web,” or “electronic commerce.” Today, the World Wide Web, often referred to as simply the Web and as the Internet, offers almost limitless opportunities for end users to do research, obtain comparative information on different products or services, and conduct business online. Many users today, for example, have experienced the opportunity to visit competing web travel sites, e.g., Travelocity.com and Expedia.com, to price airline fares, obtain car rental information, and make a hotel reservation. More often than not, it seems, end users are also intrigued by the fact that prices for the same flight or car are not necessarily the same at the sites searched; in a way, users have become much more savvy in their selection of products and services. In general, end users can become much more efficient and effective as they conduct business online, and both consumers and businesses can participate in unrestricted buying and selling. Consequently, the Web is changing the way businesses do business, and, of course, it is changing the way many end users conduct their business as well.

Electronic commerce (e-commerce) mainly consists of business-to-business (B2B) and business-to-consumer (B2C) types of transactions. According to an e-commerce survey (Survey E-Commerce, 2000) B2B transactions accounted for 80% of all e-commerce and added up to \$150 billion in 1999. Further, B2C

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transactions in the US amounted to about \$20 billion that same year. Although there continues to be a “shaking out” period involving dot.com organizations, questions and decisions about whether to develop Web-based storefronts along with the traditional brick and mortar outlets, e-commerce will most likely continue to expand. But while e-commerce grows, maintaining control over on-line transactions and business risks creates challenges that may not be apparent to unsophisticated end users. One of these challenges pertains to the various and assorted legal issues that confront end users as well as the e-commerce businesses where end users shop. Whether buying or selling on the Web or even just establishing one’s home page, legal issues, in addition to providing protection, can also present pitfalls to the unwary.

This paper discusses briefly two of the legal issues that can confront today’s end users as they do business over the Web. They are matters dealing with contract law and jurisdictional questions.

CONTRACT LAW ISSUES

Many of the issues dealing with software-related contracts that end users will confront exist because existing contract law is based on the Uniform Commercial Code (UCC), which was written for a goods economy rather than for an economy that is energized by information. In a sense, technology and its use, such as the Web and e-commerce activities, have outpaced the existing contract law perspectives found in the UCC. Zain (2000) suggests that consumer, i.e., end user, protection in e-commerce is needed because of four reasons. First, on-line consumer transactions need facilitation. The lack of regulation in e-commerce has affected on-line purchases and will most likely continue to do so. Examples include concerns over on-line security and privacy, and the enforceability of existing forms of on-line contracts. Second, there is increased ambiguity and risk associated with online sales. In a traditional setting, the end user can visit a retailer and is allowed to browse, see, feel and even smell some merchandise. However, online purchasers lack the certainty and assurance as to what is being purchased and from whom. This type of arrangement was not envisioned with respect to traditional contract law. Zain (2000) also indicates that existing online contracts are inherently unfair to consumers. The reasons include limited or denied warranties, limited remedies, allocating risks to the purchaser who is the least able to absorb such risks, and defining sellers’ rights in a very broad and non-reciprocal manner. And, fourth, Zain (2000) suggests that consumers’ interest in the enactment of relevant legislation must be safeguarded. Many countries have already proposed and enacted legislation affecting online purchases, and it is important that consumers’ interests be represented in the enactment of legislation.

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