



OPEN GOVERNANCE: The Case For Unregulated E-Commerce

By Mr Martin Wilcock
BEng, MSc(Eng), MSc, DIC, AMIChemE
Email: martin.m.wilcock@is.shell.com

Martin Wilcock is an SAP consultant for Shell Services International, based in London. He works for the Systems Integration section of the SAP practice providing support for SAP users wishing to integrate their implementations with external applications and the web. Views expressed in this article may be personal and do not necessarily reflect the views of SSI or Shell.

Abstract

Businesses and consumers alike face a problem of trust when making electronic payments over the Internet. The legal profession has so far failed to provide an answer to this problem largely due to the capability the Internet offers for instant advertising and selling products across legal jurisdictions. The UK is recognised as a key growth area for E-commerce yet the UK government have recently reduced the draft Electronic Communications bill, the ‘E-commerce bill’, from over 100 pages to around 6 (limited to tackling digital signatures). Is the UK moving to a model of self-regulation similar to that adopted in the US, or a temporary postponement designed to allow an infant industry to develop unrestricted. This article promotes an open self-regulating system structured around consumer choice and the establishment of ‘virtual legal zones’ through the mutual understanding of flexible guidelines, at least until sufficient case law can be developed.

The Internet in it’s current state represents a wild lawless frontier to large organisations afraid of liability risks but has proved to be a successful breeding ground for start up companies willing to face these risks in search of big rewards. The wealth of information and ease of use is proving to be irresistible to the consumer and larger organisations are keen to exploit this market but lack the legal framework required for protection.

Existing (UK) legislation covers E-commerce across three main areas: infrastructure (computer and communications law), information (data protection and intellectual property law) and commerce (contract law). These laws still present a large grey area to a business due to the question of jurisdiction; there is no uniform ‘Internet law’ rather local laws related to each trading location. This also raises the question of the definition of ‘trading location’, is this the country of product origin, country of destination, country of economic activity or of the server location.

Conventional laws in all countries struggle with issues such as the "jurisdiction question" largely due to the way in which legal systems (the world over) have developed. It has taken centuries for common law on contract to develop in England and Wales through disputes between aggrieved parties being taken to the courts and judgements then made providing legal precedent for future cases. Over time laws have been challenged and developed to reflect society's changing standards. The problem with regulating E-commerce law is that of growth rate, E-commerce may be a relatively small concern at the moment (hence there is little in the way of case law) but it is predicted to grow at an explosive rate. To provide a legal framework a number of judgements are required unless a break is made from tradition and a predictive legislation defined. At the moment however no one organisation or body is in a position to define this legislation, certainly the UK government has shirked from this task.

The problems associated with implementing and interpreting legislation have been mentioned but what of the timing of implementation. If regulation is adopted prematurely there is a distinct risk of creating a rigid framework with potentially harmful laws restricting the growth of E-commerce. If these laws are adopted on a local, UK or EU for example, rather than global basis there is a risk that governments (law making bodies) may impose uncompetitive conditions in their regions of influence. But what if policymakers wait too long. A plethora of cases may eventually arise or 'non-wired' countries may be left in the cold due to the reluctance of their governments to conform to western moral and legal standards.

In defining a legal operating framework a variety of different party interests must be balanced. Businesses require clarity, governments require the ability to adopt their own interpretations of law and judges require a legal reference. It is clear at the moment that no one policy maker can define laws in an unbiased manner that can apply the world over, so why try. The OECD and UNCITRAL (United Nations Commission on International Trade Law) have begun to define high level guidelines for international contracts but these should not be developed into rigid law, rather left as operating principles. An 'Open Governance' system is required rather than procedural regulation. Virtual legal operating zones of mutual understanding will develop over time between industries and it is the cases these industries bring to the courts which will clarify the guidelines at the virtual interfaces between countries.

So where does that leave the current situation and the doubts I may have as a consumer about trust with dealing with potentially untraceable virtual operators who may be able to take my digital cash and move server locations in seconds. The answer is simple and lies in the heart of open governance – autonomy and choice. Every decision involves risks and benefits and it is up to the buyer to choose whom to purchase from. If I have doubts about a virtual supplier's credibility then I may prefer to see evidence of their (products) existence, perhaps by visiting them and buying conventionally. If I would like more guaranteed legal protection then I may print of a 'hard copy' contract and have it signed physically not electronically. In doing so I would however incur the cost inconvenience and time wastage.

It is very easy to forget what business is taking place in the current hysteria surrounding E-commerce but both businesses and consumers must bear in mind that the Internet is merely a means of communication, the fundamental business transactions taking place have not been altered. The successful E-commerce businesses or suppliers of the next millennium will effectively answer both legal and consumer trust issues themselves by holding this principle to heart. Business to business trust will be built on open and honest communication as will effective consumer marketing strategies through the development of web links, recommendations and the exploitation of the Internet communication medium. Remember the words of one of Britain's most recognised scientists on being credited with revealing the molecular structure of DNA - 'Communication is the Essence of Science' and apply this to the E-business situation.

Further Information

[The Future of Law: Facing the Challenges of Information Technology, Richard E. Suskind](#)

[Internet Industry Concerned about New Investigatory Powers Bill, L. Kelly, vnunet.com](#)

[Electronic Commerce and Non Resident Aliens: The Internal Revenue Service Vs International Cyberspace Transactions, J. M. Ricci, Richmond Journal of Law and Technology](#)

[Electronic Commerce and the Law, I. Monaghan, @Masons](#)
