

## Articles

### "E-Commerce: A Sticky Legal Arena"

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#### **A Digital Age Shifts the Framework of our Economy**

The economy has changed fundamentally and permanently as a result of e-Commerce. E-Commerce is defined as: the process of procuring and distributing goods and services, and managing supply and distribution chains, through computer information transactions. Exploiting the opportunities provided by this new world of business with increasingly powerful information tools is the framework for this digital economy. While opportunities may be rewarding, they also pose very difficult legal problems, most of which may be overcome by forethought and careful planning.

#### **Four Issues that are Critical to your E-Business**

**"Your" E-Commerce Platform.** Suppose you engage a development firm to create software for "your" unique e-Commerce platform. Absent a specific written agreement providing otherwise you will likely find that the developer owns the software. This could be troublesome when you find that your developer replicated a comparable platform for a competitor or when you decide that you: want to sell your business. A development contract should address not only ownership, but also include: quality assurances concerning the finished product and acceptance procedures, terms addressing the types of uses and number of users, and provisions for enhancing the software. Remember that litigation is an expensive alternative to planning.

**Regulation (and Privacy).** Governmental officials are quickly addressing the many challenges of e-Commerce -- not the least of which are the challenges to their tax revenues. Moreover, as the capacities of information tools are becoming more apparent, regulators are evaluating whether new or more stringent regulations would be appropriate. Privacy provides a timely example. Unlike Europe, the United States does not have an overarching set of privacy laws and regulations. While in some cases privacy laws in the United States are very liberal, others are exceptionally strict. Unfortunately, a spotty and incoherent approach in addressing privacy issues is a great haven for lawyers.

**Enforcement of Electronic Contracts.** While those engaging in e-Commerce believe that their electronic contracts work legally; this belief has been based more on habit and custom than law—at least until recently: Even now as various laws are enacted, they are often inconsistent and, even worse, sometimes contain surprising impediments. One characteristic of this type of commerce is that sometimes it is not apparent with whom you are dealing and whether they have the authority to bind. A "click" alone might not be sufficient.

**Terms and Jurisdiction of Your Contracts.** Do you expect that "Terms of Use" buried behind a hyperlink will be enforced? Contract law is based on assent, and designing e-Commerce platforms to ensure that your terms will be enforced requires some advanced planning. Also, be prepared: contractual arrangements perfectly acceptable in the United States may be unenforceable elsewhere. Since e-Commerce moves across state and national boundaries, you may subject yourself to jurisdiction in various courts depending on how you design your site.