
Abstract

Electronic commerce is not a new phenomenon which has been rapidly expanding into a complex web of commercial activities transacted on a global scale between an increasing number of participants, including corporate, individual, and government. Within e-commerce mechanism, electronic payment (“e-payment”) plays a crucial role in the whole process and makes electronic transaction become reality. In recent years, due to the participation of internet, e-payment system continuously evolves with new actors and new models emerging. Online payment is one of the new methods to do business through internet and has been widely accepted by companies and consumers. While internet has provided more opportunities and conveniences to conduct transactions and make payment, online payment has also caused several legal challenges at same time.

This thesis mainly focuses on two significant challenges, namely liability issue and jurisdiction issue. As for liability challenge, apart from conventional actors, e.g., banks, clearing house, buyer and sellers, which have been bound by contracts and regulated by banking regulations or industry rules, new actor – trusted third party came forth and plays significant role in online payment system, e.g., certification authority (CA) and internet payment intermediary. For these non-bank independent entities, lack of clarified legislation and absence of comprehensive legislation have caused legal uncertainties for obligating their activities and allocating liabilities between trusted third parties and other actors. Concerning with jurisdictional challenge, choice of forum becomes a great concern since it’s the first issue to be dealt with during disputes and

also directly affects the applicable law and enforcement of judgment. Several questions have been brought up, e.g.,: whether traditional jurisdiction principles and rules could be applied to the “borderless” digital world in the same way as in the physical world; whether “forum selection clause” included in online “click-wrap” contracts is legally acknowledged; which court the damaged party should seek for if disputes occur during internet transactions.

Based on analyses of these two challenges, the thesis researches the legal responses and approaches towards these new issues from international and domestic levels. In addition to international organizations, United States and European Union have been targeted in this thesis due to the developing history and maturity of e-commerce and e-payment mechanism there. After that, the thesis reviews the recent development of e-payment system in China, studies existing legal framework and regulatory scheme, probes how Chinese legislative regulators and judicial authorities have responded to liability and internet jurisdiction challenges; and finally, proposes some recommendations with regard to Chinese legislation and judicial responses, in order to provide a better e-payment environment in China.

Key Words:

E-Commerce; Electronic Payment; Internet Payment; Trusted Third Party; Certification Authority; Internet Payment Intermediary; Duty of Care; Liability; Internet Jurisdiction; Click-wrap Contracts; Online Forum Selection Clause