Chapter VIII

Electronic Contracting
for Open EDI

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Open EDI is a concept appropriate to address the needs of commercial business-to-business relationships in an open environment. While open EDI, an open electronic commerce technology, can be used for ad hoc commercial transactions, delivering it over public open networks poses a challenge that contains a substantial legal component. How can the pre-transaction delay time be shortened in a way that allows for the speedy conclusion of the commercial part of the deal? Legal shortcomings can pose a potential danger for trading partners if not properly underpinned before initiating business transactions. Dynamic contracting procedures preceding the endorsement of an interchange agreement are a viable alternative to face-to-face negotiations. Recon is an on-line system to make available such a functionality over an open network by means of a repository of negotiated legal terms.

INTRODUCTION

Electronic commerce has created the need for new arrangements in commercial practices in a way that can addresses adequately the regulation of emerging business relations. In the past, replacing the manual ways of business transactions gave rise to legal issues that sometimes threatened to destabilise the legal relations of the parties. The answers to the legal questions should fulfill two basic requirements, that is, security of the transactions and flexibility to accommodate the changing business needs of the trading partners. On one hand security of the transactions means that parties can maintain good long-term business relations. On the other hand, flexibility can allow the parties to negotiate freely and pursue their market goals. In light of open electronic commerce applications, it

is essential to discuss the role of bilateral contractual arrangements within trading communities. Interchange agreements for closed Electronic Data Interchange (hereunder, EDI) have been criticised as static for the transactions they are used. Turning interchange agreements to dynamic applications and automating the contract-making process are essential to the deployment of open EDI.

The absence of mutually recognised contracting practices between the trading partners can be an inhibiting factor for electronic commerce. This has been a typical problem of EDI where although the legal and technical complexities have always been alarming many users unaware of the risks opted to operate in an informal manner without using any interchange agreement prior to initiating commercial transactions. It is now known that as far as EDI relationships are concerned, the interchange agreements are the best way to address the legal problems of EDI (TEDIS 1994, 1996).

To address the shift from closed transaction networks to open user communities it is necessary to provide basic legal safeguards that render electronic transactions legal and safe. Transacting in an open electronic trading environment means that a transaction is as legal as the weakest national legislation or the bilateral contractual arrangements of the trading parties allow it to be. Relying on an open electronic commerce transaction network often means that obligations undertaken by any party at any stage of the transaction may reflect on the relationship this party builds further with its business counterparts. Users of public open networks, like the Internet, often underestimate the effect that national legal regimes that are often unfit for bilateral arrangements may have on their business relationships. Fragmented national legislation may undermine electronic commerce users' efforts to reach out to a global user community. In light of the tidal shift towards World Wide Web (WWW) based transactions such questions may also reflect on commercial users. Improving the means to deliver contractual arrangements between trading parties is an issue that requires further attention. In business-to-business relations, paper-based interchange agreements can give way to agreements negotiated over a computer network to improve the trust of the trading parties to the legal framework of electronic transactions and overcome the often-observed legal shortcomings of electronic commerce.

As an electronic commerce application that facilitates the swift conclusion of commercial transactions open EDI may miss out its expected goals if hampered by lengthy negotiations to endorse an interchange agreement. In this chapter we propose a legal repository to dynamically effect on-line negotiations and conclude an interchange agreement with a view to use it as a component in open EDI procedures. We claim that information technology if used in structured contracts, can assist in curbing part of the downside of interchange agreements, such as the lengthy negotiation periods. The remainder of this chapter discusses open EDI as an electronic commerce application, the legal concerns of open EDI, and interchange agreements, and introduces Recon, a repository of legal terms to effect on-line negotiations.

ELECTRONIC COMMERCE TECHNOLOGIES AND OPEN EDI

Applications of electronic commerce can be divided in two broad categories, namely free form and structured. E-mail, the communication of electronic messages between computers, composed as unstructured or free format text may be suitable for humans to

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