

Chapter 8.10

E-Commerce and Dispute Resolution: Jurisdiction and Applicable Law in a Dispute Arising from a Computer Information Transaction

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ABSTRACT

When a dispute arises from e-commerce involving parties located in different nations, the parties immediately face conflict-of-laws issues such as judicial jurisdiction, applicable law, and extra-territorial effects of judgments. Taking into consideration that there is no unified conflicts law rules in the global level and, if any, the conflicts rules are usually based on the traditional international transactions, this chapter tries to discuss the dispute resolution systems suitable for e-commerce, especially for computer information transactions. As the result of the discussion, it becomes clear that further enhancement of a worldwide dispute resolution system suitable for e-commerce is desirable. In establishing a new system, the 1999 Guidelines for Consumer Protection in the

context of electronic commerce, approved by the OECD, gives much inspiration. It is essential to balance between small-middle sized business entities and consumers, and between freedom and regulation.

INTRODUCTION

Along with the development and growth of information technology, electronic commerce (e-commerce), that is, transactions utilizing the Internet or cyberspace, has been increasing in number, quantity, and scale. Business-to-consumer (B2C) transactions are becoming popular these days as well as business-to-business (B2B) transactions. Besides conventional electronic commerce, in which only negotiations and conclusion of

contracts are done online rather than orally or in writing, there is a type of e-commerce that is completed entirely through the implementation of a contract on the net, such as by downloading and sending software on the Internet in exchange for a payment (computer information transaction). This chapter mainly focuses on the latter form of e-commerce.

In computer information transactions, conclusion and performance of a contract can be accomplished simply by visiting foreign Web sites in an instant on the Internet and clicking, without much awareness of national borders. However, when a dispute arises from e-commerce involving parties located in different nations, the parties immediately face conflict-of-laws¹ issues such as the following. First, in case a party located in Nation A files a civil lawsuit against the other party located in Nation B, the case is not necessarily heard by a court in Nation A. Judicial jurisdiction is a problem in an international civil case. Second, even if the case is heard at a court in Nation A, the law of Nation A is not always governing. In international litigation, it is first decided which nation's law is to be applied, and the final judgment is made based on the law of the relevant nation. This is the issue of selecting the applicable law. Third, even if the party in Nation A wins the case as a result of a trial in a court in Nation A, the opponent party does not always possess assets in Nation A. How can assets located in Nation B be seized? This is the issue of recognition and enforcement of foreign judgments or extra-territorial effects of judgments.

Those problems occur not only in e-commerce but also in general disputes. However, international e-commerce business dealings have aspects different from conventional cross-border transactions, and dispute settlement systems established on the assumption of conventional international transactions are not always suitable for the new type of e-commerce. This chapter discusses issues concerning private international law regarding computer information transactions, and then

examines dispute resolution systems suitable for those transactions.

B2B TRANSACTIONS AND SELF-GOVERNANCE

Take the following example as Case 1: Business entity X located in Nation A buys software from another business entity Y, which is located in Nation B, through the Internet.³ The software turns out to have a serious flaw, and X demands that Y return the payment. In case Y in Nation B does not agree to reimbursement, X in Nation A needs to file a civil lawsuit against defendant Y.

Laws of Japan

International Jurisdiction

An agreement on international jurisdiction between the parties concerned, which designates a court in a nation other than Japan as the exclusive jurisdiction, is regarded by Japanese courts as valid when the following four requirements are fulfilled:⁴ (1) Existence of such agreement is stated in writing, (2) The case at issue does not belong to Japan's exclusive jurisdiction, (3) The nation agreed by the parties has jurisdiction under that nation's law, but no mutual warranty of recognizing judgments between that nation and Japan is needed, and (4) The agreement is not excessively unreasonable or against public policy. By the same token, a jurisdiction agreement to choose a Japanese court can also be regarded as valid in principle unless it is irrational.

Japanese statutory laws have no provisions on criteria for determining cross-border jurisdiction in the absence of a jurisdiction agreement, except for a fraction of case types. Precedents⁵ have said that it is appropriate to determine jurisdiction rationally, based on the philosophy of ensuring fairness among parties and proper and speedy trial proceedings, and that, basically, placing a

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