

MPRA

Munich Personal RePEc Archive

Legal aspects of electronic commerce

Carmen Radut and Licuta Petria

6. April 2010

Online at <http://mpa.ub.uni-muenchen.de/22313/>

MPRA Paper No. 22313, posted 29. April 2010 00:50 UTC

Legal aspects of electronic commerce

Carmen RĂDUȚ, PhD., Assoc. Prof. / Senior Lecturer

Faculty of Management Marketing in Economic Affairs, Rm.Vâlcea, The “Constantin Brâncoveanu” University, Pitești, România

Licuța PETRIA, PhD. Lecturer

Faculty of Management Marketing in Economic Affairs, Rm.Vâlcea, The “Constantin Brâncoveanu” University, Pitești, România

Abstract: *The emergence of new communication methods that allow transfer of information in real time and with great precision resulted in their use and trade. Expanding market - which has become an international - did these modern means of communication to be included in trade, by increasing their speed of termination lawful business. Thus, the establishment of commercial relations by computer or other modern means of communication has become in recent decades, and our country. These are very diverse media: telex and fax - which can transmit at a distance and soon words and pictures, and information storage means and acts done by traders - tapes, microfilm, compact discs, which can be used at any time, occupying a small space. Most information that may have a role in resolving trade disputes are not written on paper, but are stored in computer systems or computer available in different forms.*

Keywords: *lawful business, e-commerce, cyberspace, business, Commercial Code*

JEL classification: *K40, M19, P37, P48*

1. General aspects of electronic commerce.

In a broad sense, electronic commerce is an electronic information exchange between a business and its customers. This can be done by fax, phone, voice-mail, e-mail, Extranet or Internet. In the narrow sense of electronic commerce is a complex solution that provides Internet technology. This means that a multitude of applications and Internet service providers must work together in perfect synchronization as an ecommerce site can operate.

The concept of electronic commerce, although previously unknown 2000, was legislated in Romania until the advent of electronic commerce Law no. 365 / 7 June 2002. No project of this law. 277 / 7 June 2000 was prepared in accordance with UNCITRAL on electronic commerce Directive, adopted by the United Nations by Resolution. 51/162 of 16 December 1996 with amendments adopted in 1998 and Directive no. 98/0191 of 13 May 1998 EU electronic signature.

Electronic commerce involves the use of computer networks for purposes such acts and acts of trade. The two main types of e-commerce transactions are business to business (from merchants) and business to consumer (between traders and consumers). The former requires, first, formalized contractual arrangements commercial value, while the latter must be enacted, particularly the elements needed to run the shop.

To understand the concept of trade act must start from the notion of legal acts, legal facts, to reach the legal act of trade, which trade or commercial transaction. Moreover, to analyze the two main types of transactions in electronic commerce must be established notions merchant (natural or legal person), non-consumer.

Electronic commerce is based on electronic signature, regulated by Law no. 455/2001 and acceptance of standards for transmission security and data storage (Law no. 365/2002). In these types of transactions are more general patterns of activity Internet business such as stores, electronic supplies, Store, Electronics, electronics companies, the market of a third party service providers etc.

2. The concept of trade and traders act.

Juridical act is an expression of will be made with the intention of producing legal effects, namely to give birth, modify or extinguish a juridical relation to concrete. To determine the relationships that

form the subject of commercial law, commercial code listed in Art. 3 some legal acts and transactions that qualify as - Trade-facts, which are born by the commission legal relations regulated by legal rules of trade. Name given to the Commercial Code is inappropriate, having regard to the distinction between civil and traditional and facts, and examine the facts of commerce doctrine, although listed under that name and business legal documents. The fact that, unlike the French Commercial Code or the Italian, Romanian Commercial Code governing the conduct and acts of trade, Romanian legislature passed under rules of commercial law regulating not only the obligations arising from legal acts but also those arising from legal actions illicit (unjust enrichment, unlawful payment, business management) or illicit activities, which the trader commits about his normal activities, professional.

Acts of trade are those acts, acts or operations through which the production of goods, execution of works or services or an interposition in the movement of goods by a trader, person or entity, or even by a non-in for gain. Even where a party has a legal relationship clearly commercial feature, if the offense committed is listed in Art. 3 Commercial Code will be commercial and trade law will apply even in the non-dealer, except the rules relating to individual dealer. Thus the Supreme Court (now the name of the supreme court is the High Court of Cassation and Justice) Commercial Division in December. no. 174 of 23 January 1997 ruled that the contract consists of building a place of worship for the defendant is commercial art. 3 Commercial Code section listing 8 construction companies. These provisions, read together with art. 56 Commercial Code that we are in the presence of a commercial dispute, both in objective and subjective aspect - the plaintiff being a trader, in which case the court properly invested with substantive dispute resolution, not the court.

Facts listed in Art. 3 commercial code are considered trade objective facts, since the notion of their business resulting from lege²⁴, which is why it believes that Romanian legislation envisages mainly on the marketing objective conception. However, it is considered to be that all trade - contracts and bonds - to conclude or assume that a dealer in its trade performance, Art. 4 Commercial Code establishing a presumption that their merchantability. This presumption is a relative and because of this character, in case of divergence, supporting the civilian character of a particular legal act of a retailer has the burden of proof and must prove that the obligation is civil in nature or that non - the commercial resulting from that act.

Also, Art. 5 of the Commercial Code provides that no trade is that the purchase of products or goods for supply or demand comparator (if dealer) or his family, their resale or sale on the owner or tenant has acquired the land he cultivated it or not. Therefore is entitled to conclude and foreign legal documents for his business, the operator may, through his own act will print its commercial character. Article 6 Commercial Code provides that insurance settlements are not things or trade facts and life insurance are the insurer's only trade and current account and trade facts do not check for non only if they have a question commercial. Therefore is entitled to conclude and foreign legal documents for his business, the operator may, through his own act will print its commercial character. Article 6 Commercial Code provides that insurance settlements are not things or trade and are facts of life insurance business for the insurer and the current account and trade facts do not check for non only if they have a commercial question.

Therefore, although the Commercial Code adopted the term objective of trade theory, one admits alternative and the subjective.

In the category Trade objective facts can be distinguished two subcategories, namely acts which form of trade resulting from the act itself, such as for example bills of exchange, promissory note or check and commercial acts which result from the nature activity or subject, including all those acts which are generally defined specifically as acts of trade.

The problem that arose in the doctrine is that of determining the scope of trade events not listed in Art. 3 of the Commercial Code and are not committed by a trader in mind that the list is not exhaustive trade facts.

Such an act not listed in Art. 3 Commercial Code and the subjective theory did not fit the concept of commercial or exception to this would be commercial if it is an act of speculation, a movement or an enterprise. We discussed whether the characteristics of the three theories must be found together, the doctrine is unanimous in considering that none of these criteria is not alone sufficient to characterize the act of commerce. For this reason it adopted a fourth theory, the mixed, giving preference to several criteria, notably the profits and circulation.

Another category of acts of trade is related to those that are legal acts or transactions which are of merchantability because they have close connection with acts or transactions considered by law as acts of trade.

It is those acts or transactions which are not according to their commercial nature, thus becoming only because of their connection with acts or transactions which they consider commercial law and are in this category: contracts relating to debt securities, purchases or sales of shares or the shares of companies, business operations intercession, navigation operations on deposits for the issue of trade, current account, checks, contracts mandate, commission, consignment, collateral, guarantor.

It also follows from other points of the same article that the legislature had intended to incorporate real estate transactions in the category of acts of trade. However, doctrine and jurisprudence considers that the list contained in art. 3 Commercial Code is merely illustrative and not exhaustive, which is why this case raises the question whether it is an omission or a deliberate disposal of property transactions in the sphere of trade events. Indeed, recent doctrine states that the list has a declarative character, the Commercial Code was established as the most frequent acts of trade and transactions constitute legal acts, on the Code based business.

In relation to legal provisions there are a number of issues such as:

- There is no code of conduct or proposals in this regard.
- There is no organization which represents only providers of information society services.
- There is alternative methods of dispute resolution.
- Not no specific effort was made by the competent authorities in this regard.
- Differences between legislation and reality are quite high.
- There should be more interest for a correct implementation of relevant laws and especially for coherent effects.
- Providers of information society services should be informed about their rights and obligations imposed by law.
- It requires a coherent private associative organization.

3. Getting computer crime.

Typology of cybercrime involves the following aspects:

1. Offences against the confidentiality and integrity of data and information systems: access, without right to a computer system is a criminal offense, interception, without right of computer data is not public and is intended for a computer system, the interception, without right of electromagnetic emissions from a computer system containing computer data that are not public.
2. Act to modify, delete or damage data or to restrict access to data without right.
3. Unauthorized transfer of data from a computer system.
4. Act to disrupt seriously, without law, a software system through the introduction, transmission, modification, deletion or damage to data or by restricting access to such data.
5. Act of production, sale, import, distribute or make available under any form, without right of a device or software designed or adapted for the purpose of committing an offense.
6. Act to produce, sell, import, distribute or make available under any form, without right of a password, access code or other such computer data allowing total or partial access to a computer system in purpose of committing a crime.
7. Offenses.
8. Act to introduce, amend or delete, without right of computer data or restrict, without right access to data, resulting in inadequate data truth, in order to be used in the production of legal consequences, a crime.
9. Causing loss of property to a person by the introduction, modification or deletion of computer data by restricting access to such data or in any way preventing the operation of a computer system in order to obtain a benefit for oneself or for another, a crime
10. Pornography through computer systems.
11. An offense and is punishable by imprisonment from 3 to 12 years and disqualifications to spread production, providing or making available, distribution or transmission, obtaining for himself or another of child pornography through computer systems or detention without law of child pornography in a computer system or computer data storage means.

Cyber-crime is an illegal act committed using a computer network (especially internet). Cyber-crime is a subset of cybercrime.

Conclusion

Information security and the system can be understood as the ability to withstand the computer system, with a degree of safety, accidental events or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted and services offered by or accessible by these networks and systems. Security involves the following characteristics: authenticity, confidentiality, integrity, availability, access control, managing keys, non-repudiation, security management.

- **Authenticity** is the confirmation of the alleged identity of entities or users. Authentication process should also include anonymous user can, for some cases of electronic transaction services. Authentication can take place for parties in communication and / or data source.
- **Confidentiality** is the protection of communications or stored data against interception and reading by unauthorized persons (the information is not available or disclosed to persons, entities or unauthorized processes). This feature is strictly related to privacy and ensure privacy.
- **Availability** is defined in that data is accessible and services are operational, despite the disruptive events (supply interruption, natural disasters, accidents or attacks). Availability is a vital feature especially in a context in which faults and disruption of communications network may lead to disruption of other critical networks (air or power).
- **Access control** is critical feature in preventing unauthorized use of a resource, including the use of an unauthorized resource.
- **Management is key** feature that encryption keys are generated, stored, distributed, deleted, archived and apply under with a security policy once.
- **Non - repudiation** refers to ownership of messages or commands to their authenticity. This feature is important for contracts between companies via electronic messages, the meaning of a contract / order must not be subsequently repudiated by one party (in the sense that it is eliminated that possibility).
- **Security Management** is the feature used to implement security policies in a communications network or computer system.

Data security is the organization through development and implementation of security policies implemented by specific security mechanisms. A security policy is a rational form of what is and what is not allowed within an organization. Policies are administrative directives established goals and responsibilities and also how to understand and resolve underlying disputes that may occur.

Referemces

Năstase Floarea, Timofte Carmen *Internet Business Technology*, Editura ASE, Bucharest, 2004.

Oprean Dumitru, Racovițan Dan M., Oprean Victoria, Rusu Lucia: *Managing Internet business*, Editura Risoprint, Cluj-Napoca, 2007.

Popescu Dorin Vicențiu, Manoela Popescu: *Electronic commerce versus traditional commerce*, Amfiteatru economic, Nr. 21, februarie 2007.

Roșca Ion Ghe., Bucur Cristina-Mihaela, Timofte-Stanciu Carmen, Paiu Octavian, Vișean Mirela: *E-commerce concepts, technologies and applications*, Collection Information Society, Editura Economică, Bucharest, 2004.

Stanciu-Timofte Carmen: *Databases support for electronic commerce on the Internet*, Oscar Print Publishing House, Bucharest, 2002.

Electronic Commerce Act - 365/2002.

Government Ordinance. 130/2000 on the legal regime of distance contracts.

Electronic Signature Law - 455 / 2001.

Order no. 218 of 14 June 2004 on the procedure for approval of payment instruments with remote access applications such as Internet banking, home-banking or mobile banking.

Regulation no. 4 / 2002 of the NBR on transactions made through electronic payment instruments and the relationship between participants in these transactions. Law on protection of personal data processing and free movement of such data - 677 / 2001