

ECD's: the legal answer to a global medium

The problem with important contracts over the internet

If we sign important contracts in the real world we usually consider it necessary to meet our counterpart personally, to visit its premises and possibly even to run some background checks on it. The reason behind these checks is usually to know if the (financial) situation of the party is solid enough to trust in it and if the legal framework of it is one that allows us to execute a judgement if necessary. Of course one could behave in the same manner in the virtual world of the internet. However, by doing so one loses the most important advantages of this medium: efficiency. The internet would be reduced to a simple phone line.

What we really need before we risk to handle our important contracts over the web are trusted tools. And to motivate everybody to join this way of doing business the tools have also to be easier to handle and hopefully cheaper.

ECD's as a possible solution

A solution for the described needs could be electronic contracting domains. ECD's intend to provide services for all periods of a business contract, offering in cyberspace what national laws are in the real world: a secure contracting framework.

The author is aware of two projects whose aim is to develop such frameworks. One called SEMPER is funded by the European Union, the Swiss Government and powerful partners such as

IBM, Europay and France Telecom. A demonstration can be downloaded from their homepage and run locally. The other one is a Swiss project called SeCo, sponsored by the Swiss National Science Foundation and driven by the Universities of St. Gall and Zurich, the Electronic Mall Bodensee and the Zurich Chamber of Commerce. An intermediary report of the SeCo project is available for download.

Both projects have not only the intention to create a trustworthy framework for contracting but also to offer additional tools which make contracting online much easier and cost efficient than offline. Reason enough for a lawyer to think about the elements and functionality of a useful ECD.

Necessary elements and functions of ECD's

The following is solely the opinion of the author. However, a lot of it is based on the more detailed findings of the SeCo team, published in the mentioned intermediary report.

The following elements and functions seem to be necessary for a useful ECD: *Domain* First of all the framework needs an internet domain which includes validity rules, an arbitration procedure and also powerful enforcement procedures.

Access to the domain is only given through trusted third parties which check the identity and credibility of new participants as well as the compatibility of their countries' legal framework with the rules of the domain. To get access a new participant has to sign -

digitally if the law allows it - all the necessary terms to become subject to the legal framework of the domain. This procedure ensures for the participants of the domain very high security about the trustworthiness of a contract party.

Templates Instead of inventing for every standard contract a new wording the provider of an ECD offers its participants several templates for standard agreements which correspond to the legal framework of the domain. The templates should be platform-independent and be open for the infrastructure of every participant.

Negotiating tools Not only the common forms of negotiations but also several forms of auctions and brokerage should be possible. Especially auctions (including reverse auctions) happen to be a very attractive form of negotiating in a global and highly efficient medium like the internet.

Validity check Once negotiated a contract has to be checked for its validity. This service can be provided by a so-called contract validator, a trusted third party who has the specific knowledge of the respective type of agreement. This would usually be a lawyer or a notary.

Performance monitoring As the parties have entered into a valid agreement their performance can be monitored not only by themselves but also by specified representatives or trusted third parties.

Enforcement If a party does not perform she ought to be requested by the representatives of the other

party or the trusted third party to correct or conform her services and to pay a compensation if applicable. Like in the real world also the termination of the contract is possible if one party does not perform.

If a party does not perform for several times it could even be black-listed within or excluded from the domain.

Arbitrating If disputes arise between the parties an electronic arbitration court should be available to settle them within due time.

According to such judgements electronic payments can be finally executed or cancelled.

Opportunities for lawyers

The more clients get used to ECD's the less will they ask their lawyers for standard agreements. This means of course a certain loss of traditional business. However, if lawyers start to offer their services as trusted third parties or representatives within ECD's the opportunities of new business and new forms of doing it will by far outweigh the possible losses.

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