

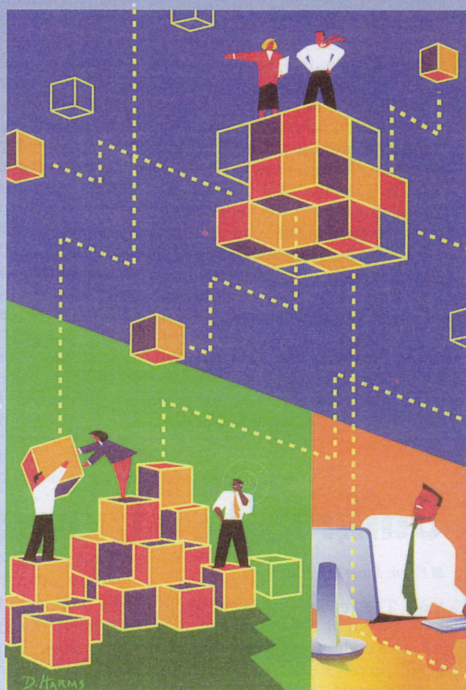
## TECHNOLOGY

## E-Commerce

## A tangled Web

*Legal issues must be addressed before building an online business, experts say*

BY ANDREW DIETDERICH  
Crain's Detroit Business



DENNIS HARMS/IMAGES.COM, INC.

## BEFORE GOING ONLINE

Steps for protecting your online business:

- Don't be sure you can legally do what you are planning, even if you see others doing it. Many examples exist in which the laws haven't caught up to the violators. A good example is the online horse-race betting industry, which is legal in several states but not in Michigan.
- Check the patents. Amazon.com's One-Click Checkout and Priceline.com's reverse-auction method are patented business practices. You need to make sure you aren't infringing on a patent when venturing online.
- Make sure you maintain the rights for the technology developed for you. Will you own what's developed for you? Can your competitors contract with your developer and use the same methods?
- Register variations of a domain. For example, Company X may want to consider registering the domain www.companyxsucks.com.
- Get a contract. Disclaimers, policies, licenses and other legalese associated with traditional lines of business also apply to online commerce.
- Consider security. In a business where credit card and other important personal information could be had easily by hackers, the need for security speaks for itself.

When it comes to e-commerce, the biggest question used to be "when?"—as in, when should a business consider moving at least some of its business transactions online.

As more businesses move toward adopting some form of e-commerce, the most important question may be "how?" Specifically, how can a company considering online commerce legally protect itself and its clients?

E-commerce is short for electronic commerce, or business transactions conducted via computer.

## INSIDE

E-mail can be legally binding. See story, Page 12.

Attorneys say online commerce is a potential legal minefield filled with intellectual property and patent issues. Companies that hire an outside vendor to support their online endeavors need to move carefully and read their contracts thoroughly.

"This is definitely a situation where the technology has outstripped the legal thinking of the technology providers," said Donald Kunz, partner at Detroit-based law firm Honigman Miller Schwartz and Cohn L.L.P.

Common pitfalls include not establishing who owns the rights to the technologies used, such as checkout methods, and failure to determine what might happen if a company decides to use another vendor.

Susan Kornfield, partner and chair of the intellectual property practice group at Ann Arbor-based Bodman, Longley & Dahling L.L.P., warned that some vendors design contracts to keep clients captive, meaning that the clients are obligated to stay with the vendor for one reason or another.

For example, she said, she has one client who tried to move its Web site to a different vendor and service provider.

However, the vendor that developed the site two years ago said her client couldn't move the site because its didn't have the license rights to the design or software

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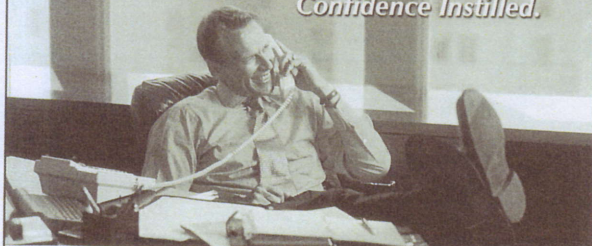
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**TECHNOLOGY: E-COMMERCE**

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# Click here for trouble

## E-mail, voice mail may be legally binding

BY GARY ANGLEBRANDT

SPECIAL TO CRAIN'S DETROIT BUSINESS

Laws passed in recent years mean that those quick e-mails you routinely dash off to a client, and possibly your voice mail messages, could be held to be legally binding agreements.

Courts already are setting the boundaries for what does and does not constitute a binding "electronic signature."

The federal government passed laws in 2000 that make electronic messages, be they "sound, symbol or process," potentially binding agreements. Those leaving messages must include a statement that the e-mail is not binding if they wish to avoid being held to their words in court.

Taken to a logical but possible extreme, a deal to sell a house could be sealed based on the seller agreeing to the sale in a voice-mail message, said Steve Tupper, a lawyer at the law firm **Dykema Gossett P.L.L.C.** in Detroit. This has never been tested in court, but it is

### *A Massachusetts court allowed a plaintiff to use e-mail as evidence in a home-sale dispute.*

technically possible, he said.

Courts have put some aspects of e-mail to the test.

A Massachusetts court last December allowed a plaintiff to use an e-mail message as evidence in a dispute over the sale of a home. The plaintiff sued the seller after the seller backed out of the deal for a better deal. The seller had only agreed to the sale in the e-mail.

In August, the **District of Columbia Court of Appeals** threw out a class-action suit against **Verizon Communications Inc.** because the agreement between the plaintiff and Verizon had specified that any disputes must be handled in Vir-

ginia courts. The agreement in this case was a "click-through" agreement, which most people recognize as those pesky "I accept" buttons they have to click when installing software on their computer. The court let the click-through agreement stand just as a signed paper document.

To protect himself against such interpretations, Dykema Gossett's Tupper has added the following to e-mail he sends: "Neither this information block, the typed name of the sender, or anything else in this message is intended to constitute an electronic signature for purposes of the Uniform Electronic Transactions Act or the Electronic Signatures in Global and National Commerce Act ("E-Sign") unless a specific statement to the contrary is included in this message."

Another protection Tupper suggested is including electronic authorization information in initial written agreements. This information would spell out who is allowed to authorize transactions.

## Online: It's a tangled Web

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tools. The vendor even went so far as to demand her client pay for training on how to operate the site.

"Businesses need to be careful because most vendors don't grant customers broad license rights," Kornfield said. "And if that's the case, the move to a new vendor can be very expensive and very inefficient."

"Customers used to not even think about legal issues. It was an entire area that went overlooked," said Jacques Habra, president of Ann Arbor-based **Web Elite Inc.** "They are definitely being more proactive and asking more questions now."

Some companies such as **Web Elite** that provide back-end tech support draw up lengthy contracts and review them with clients, while others, like **Clinton Township-based Web Information Technologies Inc.**, operate on a work-for-hire basis.

The difference? Companies that work with **Web Elite** know up front exactly what they have the rights to in terms of software and method patents, while companies that work with **Web Information Technologies** have more freedom to go to other vendors if they choose.

"Most of our clients contract us

on a work-for-hire basis. ... They can go to another company anytime they want," said Quaid Saifee, director of Internet services at **Web Information Technologies**.

However, Saifee said that in the seven years he's been in business,

he's never encountered a situation where the legality of any work or components of work he's done has been an issue.

But that doesn't keep attorneys from warning those involved or soon to be involved in e-commerce to be on the lookout for potential problems.

"There are a lot of creative people

**"There are a lot of creative people providing technical solutions that have to deal with many legal issues beyond their capacity."**

Donald Kunz, Honigman Miller

providing technical solutions that have to deal with many legal issues that are beyond their capacity," Kunz said. For example, he had a client who had worked with a developer to come up with an extremely creative and different e-commerce site. However, problems arose when the developer laid claim to the design and started trying to sell it as part of his toolbox of offerings to other companies.

"That's just one of the things to consider before contracting with a company to develop its e-commerce business," Kunz said.

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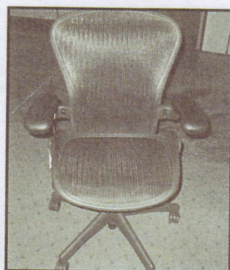
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