PAMUN XVII RESEARCH REPORT— (THE QUESTION OF THE REGULATION OF ELECTRONIC COMMERCE AND ELECTRONIC BANKING)

Introduction of Topic

Electronic Commerce, commonly referred to as eCommerce, involves any type of commercial or business transaction occurring online. This type of commerce has become increasingly relevant over the last few decades with the advent of the internet. Before the creation of the World Wide Web, there existed different networks and systems for computerized data transfer for twenty years but they were generally not accessible to the average consumer or citizen. As late as the 1980s, research universities were the ones with greatest access to computer technology. In fact, the very first online transaction took place in the early seventies and was a C2C transaction (Consumer-to-Consumer) between students at Stanford and students at MIT: a sale of marijuana.

During this time, more and more networks and companies were introduced which offered an array of services, including online retail, however it wasn't until the internet was made accessible for commercial use in the United States in 1991 that these services started to find true commercial success. In 1994, a program by the name of Secure Socket Layer (SSL) was introduced, allowing people on two sides of an online transaction to encrypt information. This opened the door for ePayment Solutions, or online payment methods, to exist and facilitate electronic commerce for future services such as Amazon or eBay that would come out the following year.

eBay was founded in 1995; it was called AuctionWeb at the time and, as the title suggests, it allowed people to bid for items sold by other people. This was innovative given that it allowed interaction between consumers (C2C) rather than only allowing companies with online platforms to sell items. A little over a decade later, eBay was making over US$50 billion from auctions. Amazon, similarly founded in 1995 by Jeff Bezos found itself right at the start of the so called "Dotcom Bubble" during which online services and retailers like eBay or Amazon would experience tremendous growth. Amazon at the time, had a very consumer friendly interface with the same 'searchable catalogue' premise it employs today. Needless to say, it was very successful. Today, depending on the metric one uses, it can be considered the most successful eCommerce enterprise in the world.

Electronic banking, known as online banking or eBanking, on the other hand, was not able to grow by itself. Financial institutions in the early 1990s also observed the radical growth of the internet and decided it would be a good idea to create online presences for exposure. These online presences tended to be limited to a webpage with information allowing customers to find their "brick-and-mortar", or real life, locations with more ease. Later on, in the mid-1990s, institutions started to offer actual services online without requiring any visits to “brick-and-mortar” locations, but due to low consumer trust in the security of such online services these services were not very successful. It took the popularization of eCommerce sites such as Amazon before people started to really make use of online banking starting around the turn of the century.

The move to the World Wide Web brought with it many regulatory concerns and issues. The internet was only young when electronic transactions started to occur, making it largely self-regulated due to the lack of regulatory bodies on the subject at that time. Many scholars and regulators at the turn of the century recognized the need for adaptive regulatory measures that would address this new aspect of trade. In response to that, regulatory agencies implemented a flurry of new regulations over the first few years of the 21st century. It is now nearly twenty years later and recent activities regarding regulation of electronic banking and commerce have been relatively few and far between. The internet is different now, as is the global economic landscape, meaning there are new challenges to be addressed. eCommerce and eBanking are more relevant than ever before and it is time for there to be an international regulatory ‘update’, so to speak, in order to uphold the principles of the early regulatory movement, by reinforcing and amending old regulation that still applies, as well as addressing new issues or discoveries by introducing new international legislation.

Definition of Key Terms

Consumer-to-consumer (C2C)

This refers to transactions between one consumer and another through online means. This is a very well-known form of eCommerce as it is the service offered by successful businesses like eBay or Amazon (which also can act as a B2C business).

Business-to-consumer (B2C)

This refers to an online transaction wherein a business offers some sort of good or service to a consumer. This type of eCommerce might be the best known to the general population and could involve, for example, the purchase of clothes from an online catalogue.

Business-to-business (B2B)

This refers to any eCommerce transaction from a business to another business. This for example would include sale from a wholesale business to a retail business etc. Although the electronic commerce types that involve consumers are better known to the public, there is twice as much spending occurring through B2B than through B2C

Consumer

A consumer is any entity that engages in the buying of a good or service for personal use not industrial use or sale of any kind. This can refer to a person or a company but in the context of this research report will generally refer to a person. They can also be thought of in terms of the target audience of marketing, public relations, and advertisement campaigns.

eBanking

Also commonly referred to as online banking, among other things, this refers to any process that allows a consumer to execute banking transaction or take advantage of some financial service offered by a bank without having to visit a brick-and-mortar location. The most common, and relevant for this report, type of electronic banking is internet banking, a type that emerged out of Personal Computer (PC) banking. This is relevant because it allows transactions and the accessing of different financial services to occur over the World Wide Web.

eCommerce

Electronic commerce, or eCommerce, refers to any process wherein a business transaction takes place through electronic means such as a computer or mobile device. Its most salient feature is the ability to execute transactions between different parties over the World Wide Web in real time without need for a physical location to do business, which makes it much easier for entrepreneurs to start with due to significantly reduced cost for physical space and personnel.

eMoney

eMoney, or electronic money, refers to any currency that exists as stored information either on a physical piece of technology, like the chip in a credit or debit card, or on the internet somewhere; it doesn’t have a physical presence anywhere. Generally, eMoney is used in a majority of online transactions, to the point that the amount of eMoney in existence is much greater than the amount of physical money in circulation. The importance of eMoney to electronic transactions is what makes it so concerning when developing nations don’t trust eMoney enough to use it: it limits their access to, and ability to take advantage of the benefits of, electronic commerce and banking.

Small and Medium-Sized Enterprises (SMEs)

This term refers to an individual company, or a group of companies, that are somewhere between a small business and a large business, but cannot be considered either one. Whether or not a company is an SME can be determined by a staff count or balance sheet or other factors depending on the standards by which one is measuring.

Background Information

Although the very first online transaction may have been somewhat unorthodox—a sale of marijuana—the way in which the transaction took place, with computers, would become a convention over the decades to come. Some time after that very first transaction, the World Wide Web would be created. On that platform, many companies, like Amazon, and eBay, would see an opening for themselves to become a part of the new online marketplace. This allowed electronic commerce to come into the mainstream. With it came electronic banking of course, to facilitate the transactions that occur as a part of electronic commerce.

Electronic commerce entails any business transaction occurring electronically whereas electronic banking exclusively deals with transactions that involve banking or financial services being offered by a banking institution. What exactly constitutes a 'banking institution' really depends on whose definition is being used, which is already a problem. In any event, both eCommerce and eBanking are very relevant right now. Currently most retail businesses have online catalogues where consumers can peruse and buy things over the internet. Currently among the ten biggest eCommerce websites in the world are, in ascending order, Ali Baba, Tao Bao, owned by the same group who owns Ali Baba, and, of course, Amazon. They all offer similar either Business to Consumer (B2C) or Consumer to Consumer(C2C) eCommerce services. They essentially allow for the buying and selling of goods, just online.

Electronic banking includes anything that you could do by walking into a brick-and-mortar bank, except it can be done online. This can include services such as a bank allowing someone to check their balance on their telephone or make a wire transfer on the computer. One of the most notable features, though, of electronic banking is Electronic Fund Trasfer (EFT). An example of EFT is paying for something with credit, debit, or even contactless cards nowadays. It allows the instantaneous transfer of funds out of one account into another through use of electronic and technological means such as a chip in a credit card and the Personal Identification Code (PIN) attached to it. As consumers rely more and more heavily on EFT to make purchases, eMoney becomes more and more important. eMoney is unsurprisingly hard to trace, making money laundering and the regulating of eMoney, and as such electronic banking institutions, that much harder.

Since the birth of electronic commerce, privacy has been a very sensitive issue. Unlike real life, information posted on the internet might never come down. The idea that personal information could be public is not reassuring to many consumers. The massive attention given the Google Spain case, also known as the 'right to be forgotten' case, in Europe simply goes to show the importance consumers give to their privacy. Many developed nations have already developed national or regional legislation on the topic of data protection. There are two main kinds of approaches to data protection in eCommerce in western countries: Self-Regulation approach and Government Regulation approach. A nation that subscribes to the Self-Regulation is the United States, where there is no legislation requiring any business engaging in eCommerce to adhere to any federal data protection policy. The European nations are examples of nations that subscribe to the Government Regulation approach. In the UK, for example, nations are required to report to the Information Commissioner if they collect information and have to adhere to the UK’s Data Protection Act. Electronic Commerce websites are also obliged to communicate their privacy policy to consumers on their website which includes how their data could be recorded and/or disclosed. Many developing countries, on the other hand, have no approach to eCommerce data protection whatsoever.

Developing nations arguably have the most to gain from eCommerce and eBanking. This is because SMEs make up 99% of the companies and between 60 and 70% of all employment in developing countries. SMEs are considered to be better suited for eCommerce and banking than bigger companies as they don’t have to deal with lengthy, bureaucratic processing that bigger companies do. This ability to adapt faster to technology means that eCommerce will be particularly beneficial to them. eCommerce is also beneficial because of many reduced costs including costs of transaction, transport, and advertising as everything is already online. Many initiatives have been undertaken in the African region to encourage the SMEs to engage in eCommerce and utilize eBanking to do so.

Major Countries and Organizations Involved

United Nations Conference on Trade and Development (UNCTAD)

This UN body has been actively endorsing eCommerce since the early 2000s. It has many reports imparting data and information about eCommerce. They have had projects such as annual ‘eCommerce Weeks’ where they work towards maximizing the benefits of eCommerce for all member nations and have helpful resources such as the ‘UNCTAD Global Cyberlaw Tracker’ which allows you to track how many countries have legislation regarding eCommerce and in how many areas of eCommerce each country has legislation in. They published the ‘United Nations Guidelines for Consumer Protection’ which was recently updated and republished in 2016. Notably, they started the ‘eTrade for all’ initiative which will be discussed further down, in order to help developing nations, as well as others, get advice on how to regulate eCommerce.

European Union (EU)

The EU has been a pioneer of legislation in the government regulated approach, and many nations modeled their policies after the EU’s ‘Electronic Commerce Directive’. The EU is known for being relatively strict with privacy policies. They have been known to clash with the US over differences in regulatory approach regarding eCommerce and only recently passed the GDPR to be implemented next year which takes regulations further than before.

Relevant UN Treaties and Events

- United Nations Convention on the Use of Electronic Communications in International Contracts, New York, 23 November 2005
- UNCITRAL Model Law on Electronic Signatures, 5 July 2001
- UNCITRAL Model Law on Electronic Commerce, 1996
- UNCTD United Nations Guidelines for Consumer Protection, 16 April 1985 **(RES/39/248),** expanded 26 July 1999 in **(RES/1999/7)** and revised and adopted 22 December 2015 **(RES/70/186)**
- UNCHR (now UN Human Rights Rouncil) Human Rights and Technological Developments **(E/CN.4/1990/72)** revised in 15 December 1989 **(RES/45/95)**

Main Issues

eCommerce

There is a lack of consistent international data protection guidelines. The discrepancy between different nations makes it difficult for eCommerce businesses operating in different jurisdictions. As the EU implements stronger regulations with the GDPR, the US deregulates. The US senate voted to undo many of the privacy policies President Obama had implemented that required consumers to be informed of data collection. Furthermore, there are still countries that haven't broached the subject of data protection in eCommerce at all. This is particularly salient as electronic fraud is not uncommon. eCommerce companies could be selling consumer information to third-parties, without consent, who might use it to commit fraud and engage in illegal activities with their identities. Both the collection of consumer data needs to be regulated as well as to whom the data can be sold if it is collected.

As has already been mentioned, developing nations have much to gain from eCommerce and encouraging growth in this area would be a good idea. There are some barriers, though, slowing down the growth if eCommerce in developing nations. One such barrier includes accessibility. There is simply not enough affordable access to Information and Communications Technology (ICT) in many developing regions. That means many SMEs simply don't see investing in ICT, and therefore in eCommerce, as affordable. Also, access to skilled laborers in the fields of ICT is a significant problem as without workers who can manage ICT, SMEs can't make full use of them. These issues with accessibility severely hinder developing nations from developing their economy and must be addressed.

Accessibility can also refer to limited access to electricity in certain places. Furthermore, accessibility could also be understood in terms of accessibility to the consumer. Many consumers in developing nations have difficulty using technology. This can be due to language problems, such as literacy or a language barrier, or a lack of fundamental understanding of eCommerce. Also, many SMEs consider eCommerce to be inaccessible in terms of lack of safety. This is because SMEs are the targets of a disproportionate percentage of the cyberattacks that have taken place. Accessibility can also be physical in nature. These attacks SMEs imply that SMEs are not prioritising ICT security as much as they should be or that they aren't aware they should be. Certain rural places or countries with underdeveloped transportation infrastructure (roads, bridges etc.) suffer from this as it is difficult to transport goods purchased through eCommerce to consumers or other businesses.

eBanking

One big reason why SMEs in some developing nations are hesitant to enter into the world of electronic commerce is because of a lack of access to legitimate electronic payment methods. There is also a lack of secure, legitimate ePayment Solutions in many developing nations. Clearly this means that electronic banking institutions need to make sure they keep good and safe reputations if they want to be successful and have customers in developing nations. The fact that some don't already have good reputations means that either they are not publicizing the safety of their services enough or they're services are just generally not safe enough; either way, this is an issue.

One problem that must be addressed is the lack of an adequately comprehensive international definition for an electronic banking institution. The regulation thus far imposed on a national or regional level regarding electronic banking has resulted in loopholes that have allowed prompted the existence of entities such as fintechs—or finance technology firms—which are not legally considered banks and as such are able to get away with things that banks are not legally able to.

Some eBanking institutions, are also expanding at such a rate that they're not able to keep up with the different regulations required of them in all the jurisdictions they operate in. Their ignorance leaves them and their customers exposed to attacks from outsiders or legal action from a law enforcement agency. This is compounded with the fact that many people, particularly in developing countries, but not only, are not aware of the rights afforded to them by the regulations of whatever jurisdiction they reside in. This widespread ignorance of the rights of the consumer as well as the business is not sustainable if we want to give consumers and banking institutions security.

In a similar vein, a risk arises of a bank, or entity providing 'bank-like' services, attempting to evade regulations that are already in place by establishing their bank in a country that they know has limited, or no, regulatory oversight on electronic banking and then attempting to use that as an excuse for not following the regulations of other countries when doing business in or with them. Legality is also a problem in the event that someone may be using online banking services to launder money. In some cases the bank doesn't even know all the details about these transactions and when it does it might not feel obliged to give the government such information making it harder to combat money laundering.

Previous Attempts to solve the Issue

Guidelines 63-65 of ‘The United Nations Guidelines for Consumer Protection’ (2016 edition) are about protecting consumers of eCommerce and protection of privacy is also mentioned in a couple of places in the document. Three guidelines are relatively little, though, compared to the other things addressed in the document.

The UNCITRAL published the ‘Model Law on Electronic Commerce’ in 1996 in an effort to introduce international legislation regarding eCommerce and it was either implemented in or inspired the national policies of 23 nations and 7 non-sovereign jurisdictions.

The UNCTAD started the ‘eTrade for all’ initiative: a platform whose goal is to allow developing countries to take advantage of the benefits eCommerce can give their economies. The page includes suggestions and advice for developing nations in many different areas as well as being a good source of data and research information.

The European Union’s eCommerce Directive of 2000 was one of the first major regulatory frameworks on electronic commerce by any governmental, or intergovernmental, body. It in conjunction with the 1995 Data Protection Directive and the 2002 ePrivacy Directive represented the major regulatory frameworks on electronic activity for a majority of the European Nations. The EU’s newest policy the General Data Protection Regulation (GDPR) was adopted in 2016 and will be put into effect in 2018.

Possible Solutions

eCommerce

Given the inconsistency across different nations, it would be a good idea to compromise and find basic common principles that could be introduced as international guidelines that would allow some uniformity. These principles could cover whether a business needs consent to collect or disclose a consumer’s private information to third parties, whether or not privacy is a human right and other such issues. Inspiration could be taken from already existing national policy frameworks. They could also include policies that would combat against electronic fraud and other such unlawful activities. Additionally, developing nations who have not already, should also be encouraged to develop an approach, or use an already existing approach, towards data protection in eCommerce. The reasons why they have not as of yet implemented some policy should be explored such as illiteracy, lack of awareness, or sociopolitical turmoil to name a few. These could be addressed in the context of eCommerce to help both social and economic development. This would encourage consumer trust in eCommerce which would help the nations develop as well as helping the overall eCommerce economy grow.

The lack of accessibility must be addressed. Regarding a lack of ICT, it would be a good idea to explore the idea of member nations investing in or subsidizing ICT in developing countries. This would allow these nations to develop more technology, and as such decrease the prices of technology to more affordable levels for SMEs. Exploring ways to help developing nations improve their infrastructure would be a good idea in areas such as transportation and electricity so that people in rural areas or underdeveloped areas can still access and take advantage of the benefits of eCommerce. Regarding a lack of skilled labor, member nations could explore ways of either encouraging governments to train workers, or encouraging SMEs to train workers through subsidies, as that would allow SMEs to have a larger pool to draw from of people who are trained and skilled in ICT and ICT management. This could be done in conjunction with helping consumers be more technologically literate, either through the education system or some other way, so that they are able to use the internet and engage in eCommerce without confusion or fear. Finally implementing stronger cybersecurity measures both on an national level, as well as encouraging SMEs to implement their own, would help keep SMEs safe from cyber-attacks would help SMEs trust eCommerce more which would be beneficial to them as well as to the economy as a whole.

eBanking

Since there is a lack of trust in ePayment Solutions in many developing countries, well-established eBanking institutions could offer their services in developing countries or work in conjunction with local enterprises to offer SMEs in developing countries a platform on which to spring-board their own business. Investment in eBanking institutions founded in developing countries could also be encouraged with the goal of giving them the resources they need to invest in more security measures and protocols to ensure they have both a good reputation, and the actual security to back it up.

Somewhat similarly, programs or measures to increase awareness of the rights of the consumer as well as the obligations of eBanking, as well as eCommerce, institutions could be implemented in order to inform consumers as well as businesses who may be operating under misinformation or ignorance. Educating people would also allow people in developing countries to feel more secure with technology, as they understand it better, which would allow them to make use of eBanking and eCommerce and benefit from them.

International regulations could also be implemented defining an electronic banking institution and regulating its operation so that it cannot evade regulations by simply moving somewhere else. Some sort of standardized international regulation could be implemented to ensure that a company must respect regulations of the jurisdiction its operating it as well as the one it's based in to ensure no regulations can be escaped. Also international cooperation would be good in order to attempt to implement policies that would fight against money laundering through electronic banking, which would aid law-enforcement and hinder criminals as well as helping electronic banks feel safer as they know legal action cannot be taken against them for facilitating the laundering of money.

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