

# Thailand's Consumer Protection in Electronic Commerce: Laws and Regulations

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## **Abstract**

*This paper was adapted from the research funded by The Thailand Research Fund and Commission on Higher Education. It focuses on the problems and legal measures of consumer protection for electronic commerce in Thailand.*

*The purposes of the paper were: (i) to indicate the problems that consumers usually encountered when they did online shopping [Business to Consumer (B2C) and Consumer to Consumer (C2C) types only]; (ii) to examine the existing legal measures applicable to online consumer protection in Thailand.*

*The study revealed that consumers experienced similar problems when they did online shopping, such as delays or non-delivery, unauthorized use of payment card, non-conforming goods or services, right to cancel an order, inability to get a warranty or refund from a virtual retailer, credibility of information, trust and redress.*

*As to legal measures, it showed that Thailand has promulgated a sui generis law dealing with electronic commerce (the Electronic Transaction Act of 2001).*

*Nevertheless, the Act mainly just copes with the general framework of electronic transactions and contains no specific provision dealing with consumer protection. The Act only stipulates that existing*

*consumer protection laws are applicable in cases where a problem might have occurred regarding online consumer matters. In terms of relevant existing laws, a few of these statutes enacted, such as the Consumer Protection Act of 1979, the Unfair Contract Term Act of 1997, the Direct Sales and Direct Marketing Act of 2002, the Civil and Commercial Code and the Penal Code are applicable to online shopping in some aspects. Furthermore, the Computer Related Crime Bill and the Data Protection Bill, now pending in Parliament as sui generis bills, are intended to protect online consumers in other facets.*

*Still, it seems Thailand has adequate legal measures to handle the electronic commerce atmosphere. Nevertheless, law enforcement and jurisdiction issues are other points that we need to be concerned about in order to make legal measures more competent for consumer protection.*

**Keywords:** Consumer Protection, Electronic Commerce, Online Shopping, Consumer Privacy, Online Dispute Resolution, Law

## **1. Current Situation and Perspectives of Electronic Commerce**

It is unarguable that the rapid change of information technology innovation has turned the world upside down and inside-out.

Maybe we can claim that nothing has been affected more than the business world. The Internet has been changing the form of business from “*Brick- and -Mortar*” to “*Click-and-Click*”, or what we call *Dot Com* Company. However, the change facilitates both merchant and consumers in various aspects such as business that can lower the costs and eliminate all intermediaries; consumers all over the world are able to shop with virtual stores anywhere, anytime with a better variety of choices.

With regard to global E-Readiness, *The 2005 E-Readiness Ranking Report* conducted by The Economist Intelligence Unit (EIU) and IBM’s Institute for Business Value, indicated that Denmark was ranked in 1<sup>st</sup> place (8.74 from 10 points) among 65 nations, followed by the USA (8.73) and Sweden (8.64). Meanwhile, Thailand was placed 44<sup>th</sup> and 9th in e-readiness in Asia (4.56).

The growth of E-Commerce is very positive. UNCTAD estimated that the figures for global Business-to-Business (B2B) E-Commerce would reach \$ U.S. 12 trillion by 2006 (UNCTAD, 2001). Regarding Thailand, it was reported by the Department of Business Development under the Ministry of Commerce, that the total amount of E-Commerce transactions in Thailand was 63 billion baht (approximately \$ U.S. 16 billion) (ICT Ministry, 2004). Nonetheless, the Thai government is aware that E-commerce will play a key role in the global market. Thus, the government is investing heavily in E-Commerce to encourage both government agencies and the private sector--especially small and medium sized enterprises--to use E-Commerce to increase their efficiency and capabilities for competition in the global market.

Thailand E-Commerce Policy Framework used as E-Commerce development guidelines was launched by NECTEC (National Electronics and Computer Technology Center) in the year of

2000. Major principles of the policy are: (i) to encourage the establishment of infrastructure, including a legal and security base to enhance E-Commerce growth in the domestic market; (ii) to facilitate the flow of E-Commerce transactions by eliminating obstructive regulations, supporting fair and competitive circumstances and providing consumer protection; (iii) to develop cooperation between the government and the private sector on E-Commerce roles and national interests. NECTEC played a major role in the passage of the “*Electronic Transaction Act*” of 2001 as a *sui generis* law, which deals explicitly with E-Commerce and electronic transactions and is legally binding on all kinds of E-Commerce, such as B2B, B2C, and B2G.

Yet, E-Commerce in most jurisdictions still remains uncertain as the drawbacks of virtual environment cause less confidence than a physical commerce.

## 2. Consumer Protection: Issues and Challenges

Consumer surveys including Internet Fraud Watch, Foundation of Consumers and NECTEC, denoted that primary concerns for the consumers when they did online shopping were *trust and confidence*. From the reports, consumers experienced similar problems for unfair marketing practices as follows:

- *Insufficient Information Disclosure*: refund policies, warranty information, cancellation terms
- *Unfair Contract Terms*: validation, enforceability of terms or provisions
- *Transaction Confirmation & Cancellation Policies*
- *Fraud and Deception*: fake merchandise, non-conforming goods purchased online,
- *Delivery*: non-delivery or late delivery
- *Payment*: Insecure payment methods

- *Invasion of Privacy*: misuse of personal information, interception and alteration of financial data, and misuse of personal information
- *Redress*: solving international disputes

All above unfriendly consumer practices have been a major hindrance for E-Commerce to flourish and have caused E-Commerce to become less vigorous.

### 3. Regulatory Framework for Online Consumer Protection in Thailand

The Thai government recognizes the positive potential of E-Commerce to expand business opportunities, reduce costs, increase efficiency, and facilitate the greater participation of small businesses in global commerce. The relevant government agencies including NECTEC, Ministry of ICT and Ministry of Commerce play their key roles in fostering E-Commerce in Thailand. NECTEC has launched policies to deal with E-Commerce, i.e., the National IT Policy and the National ICT Master Plan. The Ministry of ICT has duties to promote and support the development of a proper information infrastructure throughout Thailand. In addition, to give consumers more confidence and likewise, to keep a tighter control for consumer protection and benefit, the Ministry of Commerce has launched a regulation for all interactive E-commerce websites requiring them to register with its Department of Business Development.

In terms of laws and regulations, there are laws and regulations that are applicable to E-Commerce in Thailand as follows:

#### 3.1 Sui Generis Laws

Thailand has a *sui generis* law dealing particularly with E-Commerce which is the “*Electronic Transaction Act of 2001*”. The

Act recognizes that online transaction is valid, but contains no specific provision dealing with consumer protection. However, the Act stipulates that the existing consumer protection laws are applicable only in cases where a problem might have occurred regarding online consumer matters. The other two *sui generis* bills, the *Computer Related Crime Bill* and the *Data Protection Bill*, are supposed to protect consumers from unauthorized access, interception of data, reproduction of a protected computer program and individual protection from the personal information misuse respectively. Still, two other bills drafted and pending passage by Parliament, the *Electronic Fund Transfer Bill* and the *Universal Access Bill*, are aimed at promoting consumer protection, allocating the liability incurred from technology risk and facilitating local communities in the establishment and development of information centers.

However, the above *sui generis* laws seem inadequate in coping with various aspects for online consumer protection such as information disclosure, delivery, transaction confirmation, cancellation and refund policy etc. As a result, existing laws, intended to deal with traditional commerce, need to be applied to those cases *mutatis mutandis*. The following are the consumer protection issues that are applicable under existing laws.

#### 3.2 Applicable Laws

##### 3.2.1 Online Contract: Unfair Contract Terms, Enforceability

There are two main statutes dealing with contract validation:

- a) *The Civil and Commercial Code (CCC)*

The CCC is the main statute that applies to private transactions. It retains the principles of “*Freedom of Contract*” and “*Autonomy of Will*”. These principles give

the contracting parties autonomy in concluding an agreement, as long as the purpose of the agreement is neither prohibited by law, nor contrary to good morals or against public policy.

Regarding the online contract issue, Thai courts used to apply traditional contract laws to the E-Commerce transactions before the Electronic Transaction Act of 2001 was promulgated. In the *Supreme Court Decision No. 3046/1994*, the case related to a contract for the purchase of rice made over telex. The Court ruled that the contract was complete where the offer and acceptance had been made over the telex. Still, the contract was unenforceable on the grounds that the contract formation for purchasing of material with a price over 500 Baht was not met.

Generally, online contracts are usually known as “*Click-Wrap Agreements*”. They are standard form contracts that include “I AGREE” and “I DECLINE” buttons. If the other party agrees with the terms, he then clicks the “*I AGREE*” button to complete the purchase transaction. Otherwise, the offeree can terminate the transaction by simply clicking the “*I DECLINE*” button. In Thailand, general rules of contract law are applied to click-wrap agreements as no specific law is available. Unfortunately, contract law does not provide a clear answer as to whether Click-Wrap Agreements would bind the parties, particularly the end-users. It can be inferred though that *The Principles of Freedom of Contract and Autonomy of Will* encourage the enforceability of Click-Wrap Agreements, unless the terms and conditions are either prohibited by law, contrary to good morals or against public policy.

b) *The Unfair Contracts Term Act of 1997*

The Act authorizes the courts in making their discretions if contract terms are extremely unfair or unreasonable. Contracts subject to the Act include consumer contracts, standard form contracts and hire

purchase contracts. Any term therein that places an excessive burden on one party and gives a benefit to another party is likely to be considered as unfair contract terms which violate the Act. Therefore, in case the terms and conditions are extremely unfair to the other party, who has no right to negotiate the contract terms or provisions, then those terms are unenforceable. Thus, this Act, at least, can provide equitable relief to the consumer when he has to enter into a Click-Wrap Agreement, as the court may limit or void any such unfair contract term.

**3.2.2 Other Online Practices: Insufficient Information Disclosure, Transaction Confirmation & Cancellation Policies, Non-Conforming Goods and Delivery**

a) *The Consumer Protection Act of 1979: Misleading, False Statement*

The Act applies to all kinds of commercial advertisement. Section 22 of the Act stipulates that

*“[A]dvertisements must not contain any statement taking unjust advantage of the consumer, or any statement which may cause harmful effect to the society as a whole, regardless whether such statement is on the origin, condition, quality, or appearance of the goods or services through the delivery, procuring or application of the goods or service. Unjustly taking advantage of the consumer, or causing a harmful effect on the society includes: False or exaggerated statements; Statements which may lead to a material misunderstanding concerning the goods or service, regardless whether it was through application or reference to technical reports, statistics or anything untrue or exaggerated, Statements which are directly or indirectly in support of a legal or moral offence, or lead to the*

*detriment of the National culture; Statements which might create disunity or are detrimental to the unit of the people.....”*

This Act is applicable for online advertising for E-Commerce as well. Therefore, any online advertisement that contains false, exaggerated or misleading messages to consumers is considered as a violation of the law.

*b) The Civil and Commercial Code (CCC)*

- *Non-Conforming Goods*: Section 503 (paragraph 2) of the CCC stipulates that

*"[I]n a sale by description, the seller is bound to deliver property corresponding to the description." In cases where goods do not fit the description, the buyer may refuse acceptance of the goods and require repayment, or the buyer may claim compensation for any loss suffered. In the online world, where text and alterable still pictures are commonly used to aid in a description, there is an added ease in deceiving the purchaser. This Section may address any deceit attempted by the on-line seller."*

The above provision requires the merchant to deliver the conforming merchandise as it is described. This seems to make online consumers more confident with the problem of fake or false merchandise or non-conforming merchandise.

- *Non-Delivery*: Section 461 of the CCC stipulates that

*"[T]he Seller is bound to deliver to the buyer the property sold."*

This provision requires the merchant to deliver the merchandise to the buyer.

- *General Wrongful Acts*: Section 420 of the CCC stipulates that

*"[A] person who willfully or negligently, unlawfully injures the life, body, health, liberty, property, or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore."*

This provision is a universal remedy against all negligence in civil matters that might occur from online transactions.

*c) The Direct Sales and Direct Marketing Act of 2002*

E-Commerce is categorized as "direct marketing" under the Act. Therefore, this Act seems to play a key role in protecting online consumers in various aspects as follows:

1. *Sales Documents Submission*: All sales documents must be in Thai and contain the seller's and buyer's names, the purchase date, the delivery date of merchants or services and information describing the consumer's right to terminate (must be conspicuously printed). Thus, this requirement can solve the problem of insufficient information disclosure for E-Commerce transaction.
2. *Warranties*: Warranties for merchants and services must be written in Thai and clearly state the consumers' rights under those warranties. In addition, the sales documents of specific products (to be determined in future regulations) must contain additional information.
3. *Sales Documents Must be Provided to Consumers*: Consumers are entitled to retain copies of the

merchandise or service sales documents. Otherwise, they are not bound by the particulars therein.

4. *Consumers' Rights to Terminate the Contract:* Consumers are entitled to have a "cooling-off period" in a direct sales or marketing agreement (within seven days after the delivery of the merchandise or service). Consumers have the right to change their minds, prior to the expiration of those seven days, by terminating the agreement and returning the merchandise.
5. *Refunds:* Merchants are required to give a full refund to consumers within 15 days after receiving the termination notification. However, in case the merchandise has been damaged by the consumer, the consumer must be responsible for such damage. A description of the goods and services to be excluded from this seven-day delay will be provided by future regulations, as will be the general procedures for returning goods.
6. *Consumer Privacy:* Independent distributors or sales agents are unable to approach a dwelling for the purpose of solicitation unless he/she has already been granted permission to do so by the dweller. This case does not occur for E-commerce.
7. *Fraud Prevention:* Pyramid direct sales and direct marketing are prohibited. Thus, customers cannot receive a special bonus or discount from the merchants for recommending other consumers to buy merchandise from a particular website.

8. *Recording of Direct Sales and Direct Marketing:* This is to give more confidence to consumers. Consumers can track all merchants' information from the record when they have problems with merchants.

d) *The Penal Code*

- *Cheating and Fraud:* Section 341 of the Penal Code stipulates that

*"[W]hoever dishonestly deceives a person with the assertion of a falsehood or the concealment of the facts which should be revealed, and, by such deception, obtains a property from the person so deceived or a third person, or causes the person so deceived or a third person to execute, revoke or destroy a document of right is said to commit the offence of cheating and fraud, and shall be punished with imprisonment not exceeding three years or fine not exceeding six thousand baht, or both".*

This provision can resolve fraud problems in general, which usually occurs with B2C and C2C in particular such as fake merchandise, phishing.

- *Electronic Card Fraud:* Section 269/1-269/7

These provisions are added into the penal code to deal with the offenses relating to fake credit card making, unauthorized use of another person's electronic card resulting in a potential harmful to the rightful cardholder and other similar acts. This gives consumers more confidence knowing that the laws protect them, while they use their electronic cards to do their online shopping.

## 4 Conclusion

According to the laws and regulations in Thailand, it seems that there are adequate legal measures to handle E-Commerce. However, another concern is the problem of law enforcement and the forum when there are some disputes over the E-Commerce. Questions of which national law should be applied to the agreements and which national court should have the competent jurisdiction are other major arguments that merchants and consumers have to face. Or even though they agree on the issue in a Click-Wrap agreement, other concerns are that; (i) whether the court decisions are enforceable in other jurisdictions and (ii) whether it's worth to sue the party in another jurisdiction, especially in another country. So the mechanism of online dispute resolution might be another alternative mechanism to resolve these issues.

## References

- Internet Fraud Watch (2004). *IC3 Annual Internet Fraud Report 2004* [online]. Available from <http://www1.ifccfbi.gov/strategy/statistics.asp> [January 29, 2005].
- NECTEC (2004). *Internet User Profile Survey 2004* [online]. Available from <http://www.nectec.or.th/tindex.html> [April 6, 2005].
- National Electronics and Computer Technology Center (2000). *Policy and Infrastructure*. [online]. Available from <http://www.nectec.or.th/itinfrastructure/enationalpolicy.php> [January 11, 2002].
- Pascale Prud'homme (2000). *Sale of Goods in Cyberspace Under Thai Law* [online]. Available from <http://www.tillekeandgibbins.com/Publications/Newsletters/legaldevelopment/cyberspace.htm> [October 29, 2005].
- Pascale Prud'homme and Barbara Zeller (2002). *Consumer Protection Enhanced: New Direct Sales and Direct Marketing Act*. [online]. Available from [http://www.tillekeandgibbins.com/Publications/pdf/consumer\\_protection.pdf](http://www.tillekeandgibbins.com/Publications/pdf/consumer_protection.pdf) [October 29, 2005].
- Pravith Mangklatanakul (2001). *E-Commerce Legal Guide-Thailand*. [online]. Available from [http://www.bakerinfo.com/apec/thaiapcc\\_main.htm#Online%20Contract](http://www.bakerinfo.com/apec/thaiapcc_main.htm#Online%20Contract) [August 25, 2004].
- The Economist Intelligence Unit (EIU) and IBM's Institute for Business Value (2005). *The 2005 E-Readiness Ranking Report*. [online]. Available from <http://www.eiu.com/2005eReadinessRankings> [October 28, 2005].
- The United Nations Conference on Trade and Development (2001). *UNCTAD Electronic Commerce and Development Report 2001* [Online]. Available from [http://r0.unctad.org/ecommerce/docs/edr01\\_en.htm](http://r0.unctad.org/ecommerce/docs/edr01_en.htm) [May 2, 2002].