

Abstract

Mobile commerce is a one of the electronic commerce methods under Electronic Commerce Act B.E. 2544 Section 4, which governs transactions conducted by means of electronic methods whether wholly or partially. As a result, principles of contract formation, validity of contract, time and location of contract, payment method, electronic signature, termination of contract and unfair contract terms also apply to mobile commerce just like other means of electronic commerce. Various researches, especially thesis, on the above mentioned principles have been conducted extensively both in Thailand and in foreign countries. However, due to specific characteristic of mobile phones, which has different features and limitations from other electronic devices, rules of computerized electronic commerce cannot be adequately applied. The writer therefore intends to study problems which have arisen specifically among mobile commerce users and proposes solutions to such problems in order to protect consumers' rights. Since these are behavioral problems, they cannot be solved by mean of any single method. It is therefore necessary to combine legal, technical, and social measures to solve such problems as indicated below:

1. Problem of Unintentional Contract Formation

This problem involves the ease of contract formation yet difficulty of contract termination. It is necessary to establish a legal measure supporting a more complicated process to enter into a contract. Service providers must enable users to confirm that their intent to enter into a contract and to terminate such contract conveniently through mobile phone screens. The writer has proposed a drafted legislation in Consumer Protection Act B.E. 2522 amended by Consumer Act (No. 2) B.E. 2541 (Please see Chapter 4, pages 180 and 184-185), in Electronic Commerce Act B.E. 2544 (Please see Chapter 4, page 180) and in Direct Sale and Direct Market Act B.E. 2545 (Please see Chapter 4, page 185).

2. Problem of Unauthorized Use of Mobile Phones

This is a case where someone else conducts mobile commerce through user's mobile phone or sim card without authorization of such user. In order to protect phone users, service providers should be required to establish an appropriate security system to prevent an unauthorized use of their mobile phones, a concept of which derives from Poland and the Slovak Republic. Service providers should also be required to grant their users a right to block incoming and outgoing calls, limit the scope of phone usage, and to indicate the maximum credit limit in certain mobile services. In addition, service providers must enable users confirm their formation of contract and termination of contract easily via mobile phone screens. The writer has proposed a drafted legislation in Notification of the National Telecommunications Commission Re: Standards of Telecommunications Service Contract (Please see Chapter 4, pages 194-195).

3. Problem of Inadequate Information Disclosure

Due to vague information provided by service providers, service users might not be aware of their rights and obligations. The vague information arose from limitation of mobile phone features and from the fact that there is no legislation stipulating a standard contract concerning the provision of mobile phone service. Consequently, service providers are not obliged to disclose or distribute some important information to their users. It is necessary to demand that service providers establish a system easily accessible through mobile phone screens to enable users to view contracts at their convenience. In the event that service providers fail to do so, service users should have a right to terminate such contracts at all times. The writer has proposed a drafted legislation in Notification of the National Telecommunications Commission Re: Standards of Telecommunications Service Contract (Please see Chapter 4, pages 203-204).

4. Problem of Mobile Payment

This problem may occur when a discrepancy between the sum of the invoice differs from the money actually deducted or shown in the receipt of payment. Such a discrepancy may come from system errors or errors made by terminal of service providers, stores, or banks. Errors may also arise when a service provider, store or bank revises and alters its charges. It is therefore necessary to instruct service providers to send their users an SMS of confirmation of charges and enable such users to decline the charges through their mobile phone screens. The writer has proposed a drafted legislation in Electronic Commerce Act B.E. 2544 (Please see Chapter 4, page 208).

5. Problem with Minors

Some marketing practices might be overly aggressive when targeting minors, for example, inappropriate services, sales of harmful, illegal or prohibited items for minors, deception of sales of merchandises or services to minors and excessive consumption. Therefore, service providers should be required to provide their service conformed to laws and morals and to verify that the age of users is in line with the requirement of the law prior to the authorization of use of such services. Moreover, service providers should indicate that minors under 18 years old are not allowed to purchase inappropriate or valuable merchandises or services unless an authorization from their legal representatives is granted. The writer has proposed a drafted legislation in Notification of the National Telecommunications Commission Re: Standards of Telecommunications Service Contract (Please see Chapter 4, page 233).

6. Problem of Unsolicited Sale

Unsolicited Sale can be categorized into 2 groups

6.1 SMS Spam/ Junk SMS

Service users often receive advertisement through SMS or location based service emails. This may result in an inconvenience or unnecessary disturbance to the user. Therefore, it is necessary to regulate that SMS for commercial purpose can be transmitted to users only after receiving authorization from such users. In light of this, service provider must establish an opt-out process where service users can opt to receive or reject such SMS. The writer has proposed a drafted legislation in Notification of the National Telecommunications Commission Re: Standards of Telecommunications Service Contract (Please see Chapter 4, page 239).

6.2 Imposed Service

This is a case when service users do not use a service but are required by service providers to pay such service fee. Therefore, it should be stipulated that service providers inform their users of any service fees prior to charging such fees, and establish an option for users to conveniently object or terminate such service through mobile phone screens. The writer has proposed a drafted legislation in Electronic Commerce Act B.E. 2544 (Please see Chapter 4, pages 180, 208 and 242).

7. Problem of Data Protection

This problem can be divided into 2 groups as follows:

7.1 Distribution of Personal Data for Commercial Purpose

It is sometimes questionable how SMS senders gather certain personal data of service users. It is important to require that personal data which includes location information for mobile users shall be kept confidential with an appropriate manner and not disclosed to a third party unless authorized by the user. Service providers must also inform their users what kind of data will be used and for what purpose, the timing of use, and whether this data will be transmitted to the third person for the purpose of other services. Furthermore, the service providers must allow their users to withdraw their authorization at all time. It is necessary to accelerate the consideration and promulgation

of the draft of Personal Data Protection Act B.E. to better protect personal information of the civilian.

7.2 Security of Personal Data

All personal data should be secured from deception and hacking of mobile phones for personal information of a user, which may cause monetary damage to such user. It is suggested that personal data be used only for a certain period necessarily for the preparation of additional services. Service providers do not have a right to retain personal data previously given by their users. If the service providers wish to record such data, they have to transform the data to “data anonymous” and should grant their users a right to revoke a transfer of money made by deception and to revoke the purchase of goods or services. Additionally, service providers must send a report of money transfer to their users through their mobile phone screens for verification. The writer has proposed a drafted legislation in Notification of the National Telecommunications Commission Re: Standards of Telecommunications Service Contract (Please see Chapter 4, page 270).

8. Problem of Advertisement

Problem of advertisement can be divided into 2 groups as follows:

8.1 Advertisement that can be considered as gambling or speculation

This problem comes from the fact that there are many governmental authorities involved in advertisement. However, each authority might consider this matter from different laws. As a result, service providers get confused as to whether it is possible to pursue this advertisement under each law. It is therefore necessary to identify standards and regulations that are united. Furthermore, if service users decide to enter into a contract as a result of such advertisement, there must be an option for such users to terminate the contract from mobile phone screen. The writer has proposed

a drafted legislation of Direct Sale and Direct Market Act B.E. 2545 (Please see Chapter 4, pages 185 and 277).

8.2 Exaggerated Advertisement, untrue or distorted advertisement that may cause misunderstanding to users is the problem where service users do not receive services as they wished. According to Consumer Procedural Act B.E. 2552 Section 11, such service user may enforce service providers to provide a service as advertised. In addition, if a service user enters into a contract as a result of such advertisement, the service user may opt to terminate the contract through the mobile phone screen. The writer has proposed a drafted legislation of Direct Sale and Direct Market Act B.E. 2545 (Please see Chapter 4, pages 185 and 279).

9. Appropriateness of Promotional Campaigns

This problem arises when service providers fail to provide service as stated due to the complication of promotional campaigns which cause confusion and due to competition on air time fee, which might disable phone users to make a call or make the line disconnected. Service providers should therefore be required to inform phone users of their promotional campaign being used at the time of failure or disconnection. Service providers should also compensate their users from the disability to provide service. Furthermore, there should be intensive measures in the stipulation of tariff of fees to enforce the service providers to provide National Telecommunications Commission a prior notification of new promotional campaign for its consideration.