Resolution of Cross-border E-business Disputes by Online Arbitration Tribunals on the Basis of Transnational Substantive Rules of Law and E-business Usages: The Emergence of the Lex Informatica
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Abstract
The aim of the paper is to examine the theoretical feasibility and advisability of a transnational approach to the rules of law applicable by arbitration tribunals to the substance of cross-border e-business disputes. The paper derives from the theory and arbitral practice of application of the Lex Mercatoria to the substance of international business disputes, sets forth the postulate of Lex Informatica and tests the hypothesis that a transnational approach is the optimum answer to the question of the substantive rules of law applicable to cross-border e-business disputes.

The first part of the paper sets forth the definition of the Lex Informatica and elaborates on the justification of its necessity. The justification is founded on three grounds: Firstly, on the truly international and delocalized nature of cross-border e-business transactions. Secondly, from a regulatory perspective the emergence of the Lex Informatica is in tandem with a transnational, decentralized, multi-stakeholder and multi-instrument co-regulatory framework for cross-border e-business based on transnational online arbitration and online alternative dispute resolution. Thirdly, given the growing importance of online arbitration in cross-border e-business, the necessity and usefulness of the Lex Informatica is discussed in the light of the quest for procedural delocalization or even denationalization of transnational online arbitration proceedings. The first part of the paper concludes by examining potential obstacles to the emergence and development of the Lex Informatica.

The second part of the paper identifies the various sources of Lex Informatica principles and rules. We then move on to a prima facie examination of the content of transnational e-business rules and usages. Further, we affirm the necessity for transnational rules and usages with a sector-specific scope. We then elaborate on the method of identification and application of Lex Informatica rules and usages and examine the conditions for the shaping of e-business custom. Finally, we confirm the enforceability of arbitration awards based on the Lex Informatica.

The paper concludes by identifying the aspects of the Lex Informatica that call for further research and by acknowledging that ultimately the success or failure of the Lex depend on its acceptance by the international e-business and legal communities.

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