

ASPECTS REGARDING ESCROW SERVICES IN ROMANIA, AS AN IMPORTANT PART OF E-COMMERCE ACTIVITY

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Abstract

E-commerce has appeared and developed along with the Internet. Online buyers and sellers can become fraud victims. Escrow Services reduce the number of fraud cases and guarantees online transactions. In Romania, those services are only just beginning to act, as the cyber fraud phenomenon is present in our country in the same rates as worldwide.

Keywords: escrow, e-commerce, cyber - fraud, escrow accounts, legislation, online auctions.

Introduction

Since the beginning of the 21st Century, the electronic commercial transactions have increased around the world. Initially embraced in big nations such as the United States or Japan, shopping and developing financial transactions on the Internet quickly became popular in most of the world's countries, including the Eastern Europe. But along with this phenomenon, came a new threat - cybercrime, involving unlawful online sale-purchasing of goods. The Escrow services represent a guarantee for both the seller and the buyer and the presence of such services on a website will increase the user's trust in e-commerce.

General Aspects

The term "escrow" dates since 1590s, but its origin is a controversial one. It appears to come from the English "escrowe", from the French term "escroue" referring to "scrap, roll of parchment" or from a Germanic source "scrot" meaning scrap, shred. Originally "a deed delivered to a third person until a future condition is satisfied", the term earned its sense of "deposit held in trust or security" in 1888. [1]

Nowadays, the term refers to an arrangement and/or a transaction where an independent trusted third-party receives and disburses money (or documents) for two or more transacting parties, with the timing of such disbursement by the third-party dependent on the performance by the parties of agreed-upon contractual provisions, or an account established by a broker, for the purpose of holding funds on behalf of the broker's client or some other person until the confirmation or termination of a transaction. Also, "escrow" can refer to a trust account held in the borrower's name to pay obligations such as property taxes and insurance premiums.

As mentioned above, Escrow service generally refers to money held by a third-party on behalf of transacting parties and it is often used in the U.S.A., in the context of real estate (specifically in mortgages, where the mortgage company establishes an escrow account to pay

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property tax and insurance during the term of the mortgage). Escrow companies are also commonly used in the transfer of high value personal and business property, like websites and businesses, and in the completion of person-to-person remote auctions (such as Amazon.com or Ebay.com), although the advent of new low cost online escrow services has meant that even low cost transactions are now starting to benefit from using escrow services.

In many countries, escrow accounts are often used during private property transactions to hold solicitors' clients' money, such as a deposit, until the transaction is completed.

It is a common belief that Escrow services are only used in buy-sell transactions, but, in reality, there are several types of Escrow services, depending on the area in which the service is being used. Therefore, we have Internet Escrow, Banking Escrow, Real Estate Escrow, Intellectual Property and Law Escrow.

The vending industry always has known that "downtime can kill you," that an out-of-order machine is not making the sales needed to produce a return on the investment in it. They also know that frequent breakdowns annoy locations, who often cite undependable service as a prime reason for wanting to change operators. But the strategic cost is even steeper.

In the past, informal surveys of vending patrons suggested that simple lack of confidence in vending machines was a major reason for not buying things from them. It was argued, eloquently, that a machine on which someone has taped a handwritten "out of order" sign is not only failing to generate any revenue, but also is sending a negative message about the reliability of any nearby vending machines - indeed, about vending machines in general.

As vending finds more applications in the retailing mainstream, and so must handle a wide range of merchandise at prices far higher than the old blue-collar-based business could have imagined, confidence in vending machines becomes more and more important. All the old correctives , fast dispatch of well-trained technicians, good records of service calls and their dispositions, effective preventive maintenance programs, selection of machines and components on the basis of reliability and durability , remain important, and new ones (like telemetry) deserve study. [2]

There is a universally recognized rule that for every pro there is usually a con, and the world of ecommerce is not exempt from that rule. Any type of online process or system that is capable of taking payment via credit card is open to abuse by the more unscrupulous and devious elements that haunt the Internet. It is also important to remember that it's not only credit card transactions that are under threat. Hacking into programs that hold personal information such as bank account numbers, names and addresses etc., is another area that has a vast income potential for those who would use the information illegally.

Ecommerce security is more a case of prevention rather than cure, and to this end designers are constantly developing new and innovative anti-intrusion solutions into their ecommerce programs. The use of highly sophisticated encryption software and secure servers are just a couple of the numerous methods employed to keep the uninvited out. And although it's true to say that at present no system can be guaranteed to be one hundred percent secure or fool

proof, today's rapid advances in software and technology certainly seems to be heading in the right direction. [3]

Internet escrow

This is the service provided by a third party to make sure a fair transaction is made over the web between a buyer and seller. Many websites provide this kind of service as a method of security for those who do business over the internet. When using internet escrow, the buyer of a product or service sends his money to the escrow service instead of the seller. At the time that the product is delivered or the service is rendered to the buyer, the escrow service releases the payment.

The ease of online shopping coupled with the instant availability of such a wide variety of items has made the internet a popular destination for buyers and sellers of all kinds of products and services. This boom of internet transactions has been accompanied by an inevitable rise in fraudulent behavior on the web. In order to eliminate the chances that one of the parties involved is the victim of fraud, a website specializing in internet escrow services can be used.

When using internet escrow, a small fee is rendered to an escrow service in exchange of monitoring the transaction between a buyer and a seller. First, the party buying the product sends the required payment to an escrow service, who verifies that the payment is valid and the specified amount is correct.

The service then contacts the seller and asks him to send the desired product to the buyer. Once the buyer notifies the escrow service that he has received the product or service as advertised or agreed upon, the service releases the payment to the seller. This way, Internet escrow prevents the possibility of both the payment and the product being in the hands of one party at any point during the transaction, helping to eliminate any type of illegal activity by either party.

If the product or service that is being sold is of minimal value, then the parties in question might want to skip the extra payment to the escrow service and take their chances, since a small amount of money is at stake. For more expensive items like jewelry, art or electronics, internet escrow provides a safety net for both parties.

Buyers enjoy the benefit of knowing that their payment is protected from theft and will only be released when they have received what they purchased. Sellers don't have to worry about checks without coverage or other invalid payments and don't have to be concerned about fraudulent claims of buyers saying that they never received their package. The Internet Escrow services have developed along with the online auctions, as a direct and easy way of selling and purchasing goods. Not having a guarantee like a strong brand can offer to a buyer, the Escrow service became an urgent need against the cyber fraud phenomenon. Still, the illegal activity affects the escrow services in such that even with the use of an escrow service, one can become a victim of a fraud.

An example of such a fraud related to an escrow service is the following: the perpetrator will propose to the other party the use of a third-party escrow service for safety. The victim is

unaware that the perpetrator has actually forged a true escrow site and created one that closely resembles to a legitimate escrow service.

The victim sends the payment to the fake escrow service and receives nothing in return. In other cases, the victim sends merchandise to the subject and waits for his/her payment through the escrow site which is never received because it is not a legitimate service. [4]

Due to an increasing number of such frauds, users can now report them to several agencies and institutions specialized in e-commerce claims, such as The FBI and NW3C's Internet Fraud Complaint Center or The Federal Trade Commission's Complaint Form for the United States or the UK's National High Tech Crime Unit.

Some of the most popular websites for online shopping, such as eBay.com, have their own location for reports regarding the escrow frauds (If the fraud site is being recommended by an eBay user, you can: report the user to eBay; post on the eBay Escrow Discussion Board). [5]

Aspects regarding legal provisions

Normally, a legal functioning escrow service must have a license given by a state authority. Those services are required to have bonds that ensure customers can recoup money lost in the escrow process.

If the state legislation does not imply such a disposition, the client may endure inequitable clauses, as the in many such agreements, escrow agents are held to a mere gross negligence standard and benefit from indemnity and harmful provisions. [6] In the United States of America, some states have developed legal provisions regarding escrow. For example, the state of California has The Escrow Law that is contained in Division 6 of the California Financial Code.

The Escrow Law protects members of the public who entrust their money or other goods to independent escrow agents in California. This Law also applies to the Escrow agents, joint control agents and Internet escrow agencies. Persons or companies performing escrow services over the Internet in California, or performing escrow services over the Internet for users in California, are subject to the licensing requirements of the Escrow Law. Another benefit of this law comes from the fact that it provides a series of definitions of terms such as "escrow agent", "joint control agent" and "Internet escrow agent".

In the European Union, the Payment Services Directive that commenced on 1 November 2009 has for the first time allowed the introduction of very low-cost Internet escrow services that are properly licensed and government regulated. The regulatory framework in the EU allows these web-based escrow services, which operate along the lines of expensive Letter of Credit service run by banks for international buyers and sellers, but at a cost in cents rather than thousands of Euros, the ability to enhance security in commercial transactions [7].

Another problem regarding forged Escrow services is that the buyer provides some of his personal data in order for the transaction to be completed. Therefore, aside from losing a sum of money, the user's personal rights are broken.

Globalization made the transnational corporations and other large business more powerful and, at the same time, more responsible. The last centuries' preoccupation for an international established responsibility of multinational corporations in respect of their human rights abuses was failed.[8]

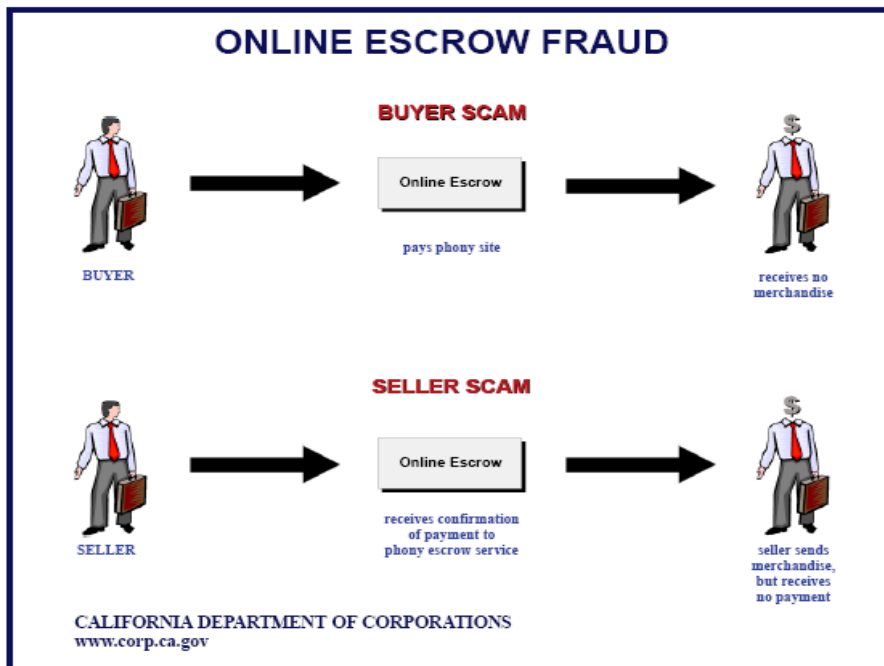
These aspects represent a new point of view that will surely lead of a lot of discussions and hopefully, to a new set of legal provisions.

Escrow Services in Romania

The Internet Escrow Service is a relatively new actor in Romania, as is being used since 2009. Following the foreign pattern, this type of service was first used by okazii.ro, the biggest and most popular website in Romania, in the area of person – to – person good auctions. The service had a money back guaranteed system, in case the buyer did not receive the good that he or she auctioned for. The only condition for the service to be enforced is the purchased product's value to be at least 100 lei (approx. 20 EUR at the date of the present article). The fee for the service is 3% from the value of the transaction and it is paid by the buyer. Also, it is important to mention that the buyer pays less by using an escrow service, that he or she would pay for an unsafe transaction paid at delivery or by national mail.

Currently, the market of independent Internet Escrow Services is expanding in Romania, as more and more companies appear in this area.

Also, many of the bank institutions in Romania have developed escrow services for their clients, with fees between 1 and 3% from the value of the transaction.



Conclusions

The Escrow Service appeared as a necessity on the financial market and later on the e-commerce market, due to the new, ever changing types of frauds and criminal deeds that are created faster and faster in our days. It is said that the criminal world will always be one step ahead from the “good science”, as every progress seems to come with a darker side that scammers will take advantage of.

Escrow Services have proven their utility in commercial - auctions area and after the main sites started to collaborate with such services, the users trust towards online transactions has increased.

In Romania, as middle class lifestyle gets a faster rhythm every day, the number of online purchase transactions increases. Here, Escrow Services represents a new element for most of the users but nevertheless, useful for the companies managing the websites, as well as for the parties of the online transactions.

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