

THE FORMATION AND ENFORCEMENT OF ELECTRONIC CONTRACTS

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Abstract

"Electronic data interchange," or EDI, allows companies to do business by computer, transmitting purchase orders, invoices and shipping notices and so on nearly instantaneously over the "information superhighway." Unfortunately, it is often unclear how existing laws concerning the formation and enforcement of contracts apply to these new, paperless transactions.

The American Bar Association Electronic Messaging Services Task Force has drafted a "Model Electronic Data Interchange Trading Partner Agreement" to help businesses avoid these legal uncertainties. By entering into Trading Partner Agreements, businesses can resolve the existing legal uncertainties by private agreement, and create enforceable contracts by EDI. This report reviews the ABA's Model Agreement and concludes that such agreements would be enforceable under California law, and would largely resolve any uncertainty about the enforceability of contracts formed by EDI between businesses that have agreed to a Trading Partner Agreement.

This report also concludes that while Trading Partner Agreements are an effective strategy for overcoming the existing legal uncertainties, another solution would be to modify the California Commercial Code in several respects to make it easier to form and enforce contracts by EDI. In particular, the provision of the California Commercial Code that requires some contracts to be in writing and signed (Cal. Comm. Code 1102(3)) might be modified.