

Presentation of the Nordic School of Proactive Law Conference 2005

Contracts, information resources and IT are valuable assets and a source of strategic advantage. They create and add value and have fundamental impact on financial results. They need to be planned, secured and protected effectively.

Tools and techniques have been developed over decades to support offline, conventional business. Do they apply in e-business where business is fast-paced? How do new contract drafting and contract and risk management tools and other new technology solutions contribute to the success of traditional business?

The underlying theme of the conference is Proactive Law, which comprises a way of legal thinking and a set of skills, practices and procedures that help organizations to identify opportunities in time to take advantage of them – and to spot potential problems while preventive action is still possible. It is a future-oriented approach to law, based on a strong belief that legal knowledge is at its best when applied before things go wrong.

More precisely, the conference idea is based on the following notions. There is no doubt that *proactivity* is a major feature of the legal domain, for instance, in the context of contracting and legislative activities. Furthermore, the characterisation of *society as informational* goes way back historically. But – and this is the core incentive for this conference idea – proactive law¹ *impacts differently* in today's information society.² Drawing on the Nordic experience in the front line of IT development and the common legal and business culture, the conference journey is set to further develop what may be referred to as the *Nordic school of proactive law*.³

An apt illustration of how proactive law impacts differently in today's information society is that legally relevant *core activities often take place outside of acknowledged fora for regulative activities*. Standardisation bodies with different status have a major impact on the conditions for electronic messaging, content management, information security etc.

¹ In the practice of medicine, the emphasis is increasingly on preventing illnesses before they occur. Even in other professions, such as quality management, prevention has long been known to be more effective than control and reactive corrective action. In the context of law and lawyering, the idea of prevention was first introduced by Louis M. Brown. In an effort to help people minimise the risk of legal trouble and maximise legal benefits, he published "Preventive Law" in 1950. He later published numerous other books and articles on the topic. Proactive law has its origins in preventive law, "a branch of law that endeavours to minimize the risk of litigation or to secure more certainty as to legal rights and duties". If we want to help businesses succeed and avoid going to court, legal knowledge must be applied before things go wrong. Working together, business people and lawyers can identify challenges and opportunities that will be faced in the future. Skills, practices and procedures can be developed that secure a strong legal foundation for business. The expression "proactive law" is not to be understood as proactive legislation but rather as comprising a way of legal thinking and a whole set of legal steering mechanisms comprising agreed documents of various kinds: contracts, codes of conduct etc., legal decisions by courts and other litigation bodies, normative instruments such as standards and even program codes for that matter.

² This gives in turn rise to the question "in what ways" impacting differently, which is a major issue to further explore during the conference. The accuracy of the perspective is, however, well founded not least in already existing research in the field of law and informatics. See further e.g., *Rättsautomation: Särskilt om statsförvaltningens datorisering*. Stockholm: Norstedts Juridik, 1992, and *Critical Factors in Legal Document Management: A study of standardised markup languages*. The Corpus Legis Project. Stockholm: Jure, 1998. 458 pp.

³ See further p. 6.

Vocabulary design directed towards a unified business language for e-commerce is one example that calls for particular legal attention.⁴

Another example is that business choices related to *software and system design* have particular normative implications. The transformation of legal information expressed in traditional legal documents such as statutes, preparatory works, and decided (court) cases, contracts etc. into program code commonly involve subjective measures of interpretation. Proactive law in this process means that vague concepts and ambiguous rules must be transformed into strict concepts that can be executed by a computer. It is important to note that this kind of automated procedure has become a common feature in today's information society.

The increased demand for proactive law has to do with the fact that *contracts, information resources and IT are valuable assets, and that they need to be managed effectively*. The management of such assets is not a trivial task, considering software and license auditing, contract and risk management, creation and adding value, etc. Contract and risk management have been developed over decades to support offline, conventional business. It is important that the knowledge gained and methods developed are applied in e-business where the pace of business is fast. Fortunately, new contract drafting and contract and risk management tools (software based, built-in on-line management etc.) are now available to help improve *contract practices* and the entire *contracting process*.

The above statement that proactive law⁵ impacts differently in today's information society implies that:

- (a) It is important to be aware of and actively integrate legal aspects in early stages of system and business process design and development.
- (b) Tools and methods that appear to be merely of a technical nature often have legal consequences.

⁴ See further documents available via the homepage of the LISA-network: Legal Information Standards Action Network: www.lisan.org.

⁵ In addition to the fact that lawyers have always so to speak been proactive in certain aspects there is a more modern movement of proactive law that in turn emerged from the more specific need for preventive law (see also above). For more information about Proactive Law and Preventive Law as specific perspectives of legal development and a growing research field of their own, see e.g., Barton, Thomas D. & Cooper, James M., *Preventive Law and Creative Problem Solving: Multi-Dimensional Lawyering*. National Center for Preventive Law, http://www.preventivelawyer.org/content/pdfs/Multi_Dimensional_Lawyer.pdf, Dauer, Edward, A., *Developing Preventive Law: From Lawyering to Quality*. Law Practice Quarterly. The Newsletter, Law Practice Management Section, American Bar Association (ABA), Summer 1998, <http://www.abanet.org/lpm/newsletters/articles/newsarticle11142-front.shtml>, Haapio, Helena & Smith, Anita: *Safe Sales in Cyberspace*. American Corporate Council Association (ACCA). ACCA Docket, July/August 2000. Albert Kritzer (Ed.). *International Contract Manual - Contract Checklists, Supplement 4*, Kluwer Law and Taxation Publishers, November 2000, <http://www.acca.com/reprints/safesales.html>. More information can be found using the following web addresses: National Center for Preventive Law, <http://www.preventivelawyer.org>, California Western School of Law, Center for Creative Problem Solving, http://www.cwsl.edu/main/default.asp?nav=creative_problem_solving.asp&body=creative_problem_solving/home.asp, Proceedings from the international conference on "Future Law, Lawyering and Language: Helping People and Business Succeed", May 12-13, 2003, Helsinki, Finland, <http://www.ulapland.fi/contentparser.asp?deptid=13095>, Pohjonen, Soile (ed.) *Ennakoiva sopiminen* 2002, note by Anette Kavaleff i JFT 419-424, 2003.

- (c) Proactivity in project, contract and risk management ensures best business practises and results in enhanced business results.
- (d) There is every reason for lawyers – working together with subject matter experts and IT professionals – to take on new roles in the shaping of law and business in today’s information society.

2. Outline of the conference

The conference *purpose* is to enhance best business practices in e-business and related businesses. Under the umbrella of *business management* this is to be accomplished by way of fusing best business practices with legal information management and technology. The term business is here to be understood broadly, comprising activities in the *private as well as public sector*.

The point of departure is a conventional conference in its form where experts share their knowledge and experiences in the form of presentations and where delegates take an active part in panel debate. As initially stated, the conference journey is set to further develop what may be referred to as the *Nordic school of proactive law* and to manifest why it is a worthwhile approach to delve into the global world of information business. This is based on the Nordic experience of being in the forefront of IT development and its common legal and business culture.

It is a joint venture approach deriving its origin from a variety of organisations actively involved in e-business and related businesses. In the Planning Committee, representatives from both public agencies and private enterprises are found, academics as well as practicing business lawyers and technicians. The goal has not been to prepare for a commercial conference product but instead to arrange an event shedding light on the role of law in today’s information society.

Who should attend?

The Conference brings together people responsible for business and legal management. It offers you a forum to hear new ideas, explore issues and discuss best practices. The Conference is directed towards professionals working in the areas of finance, security (risk and insurance), records, IT, project, contract or quality management as well as lawyers from law firms, corporations, public organizations and academia.

Topic areas

The scope of the conference will be captured in the following three major topic areas (a) modern business models, (b) secure legal information management and (c) contract and risk management. The topic areas can briefly be exemplified as follows.

One example of a *modern business model* is the so-called *single sign-on electronic market places*. A basic idea is that a consumer, after having logged in just once, can enter into new deals with a whole set of vendors and suppliers without further identification measures. The legal challenge posed by such a business model is how to comply with pre-contractual as well as post-contractual duties as well as requirements of individual response. *Electronic marketing* is another feature of modern business models. In order to avoid being accused of unlawful spamming it is necessary to pay attention to dominating infrastructures for telecommunications and information management as well as applicable legal frameworks. *Cross border e-commerce* evidently gives rise to jurisdictional issues. In this context there is reason to perform risk assessments of websites for insurance purposes, etc. Risk control and visibility for corporate governance is also of relevance.

Secure legal information management refers to a whole variety of security issues of relevance to the legal domain. Of major interest is the practical need for and legal status of different kinds of *electronic signatures*. Legally founded means and methods for *long-term storage of digital business data* is of core interest. A closely related issue has to do with development trends as regards *digital evidence* referring to information systems.

Contract and risk management is a disciplined, systems-based approach to contracting processes and documents. It works both online and offline and is applicable across many business contexts. For lawyers and business managers alike, contract and risk management generates control and visibility of company rights and obligations and promotes sound risk control and compliance policies. In this session track, the presenters will discuss contract and risk management principles, processes and software solutions. The focus is on key elements contributing to – or endangering – business success, online and offline. The benefits of contract and risk management are demonstrated for bid processes, procurement, software and information resources, etc. This session track also demonstrates how business managers, IT and legal professionals must work together to achieve full benefit from contract and risk management and the related systems and solutions.

See also the conference programme.

3. Summing up

Proactivity is no doubt one feature of traditional business and “lawyering”. In order to develop new solutions to the challenges from new business models both online and offline, lawyers need to refine and explore new ways to work together and with other professionals. The conference will show how proactive lawyering facilitates value-driving business models and how new technology facilitates proactive lawyering. With tools and techniques that are now available, proactive lawyers can help clients to design and master their contracts and transactions so that they produce predictable results, promote business success, and avoid unnecessary problems.

An expected result of the conference is further development of the Nordic school of proactive law, which is a label for the particular kind of legal awareness and strategies called for today. In the context of modern information society, Nordic proactive law is used as the common denominator for a fusion of proactive legal thinking and utilisation of information management and technology in order to facilitate best business practises. It comprises steering mechanisms such as normative instruments including conventional legal rules and regulations as well as program code and information standards. Improved negotiations, decision-making and documentation are other critical factors.

The Nordic school of proactive law seeks to be a catalyst in the discussion on proactivity and hopes to provide input to future work in a variety of arenas such as private and public organizations, commissions, standardisation bodies, private associations developing codes of conduct, societies for suppliers and vendors, etc.

The conference is expected to bring together thought leaders from academia, the public sector as well as the commercial and contracts community from around the world who are initiating research, developing programmes or practising in this field.