

الوكيل الإلكتروني - مفهومه وطبيعته القانونية

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الشارقة، الإمارات العربية المتحدة

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الخلاصة:

يشترك الوكيل الإلكتروني مع الوكيل التقليدي في الفكرة التي يقوم عليها، وهي حاجة شخص إلى من يتولى إنجاز الأعمال نيابة عنه. إلا أن للوكيل الإلكتروني مفهومه الخاص، وخصوصيته وتسميته مستمدتان من ذاتيته الخاصة، كونه من طبيعة إلكترونية، فهو برنامج من برامج الحاسب الآلي. وحيث إن للوكيل الإلكتروني مفهوماً خاصاً ومستحدثاً لذا فإن الأمر يتطلب الوقوف على هذا المفهوم، كما أن طبيعته القانونية مما أختلف بشأنه الفقه، وقد وصل الأمر إلى حد ذهب بعض من الفقهاء إلى إسباغ الشخصية القانونية على هذا النوع من البرامج وتطبيق أحكام عقد الوكالة التجارية على العلاقة بين البرنامج وبين الشخص الذي يستخدمه. وينصب هذا البحث على بحث هاتين الفكرتين. فيقسم وفقاً لهما إلى مبحثين يبحث الأول منهما في مفهوم الوكيل الإلكتروني. وينصب المبحث الثاني على بحث الطبيعة القانونية للوكيل الإلكتروني.

المقدمة:

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أهمية الدراسة:

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أهداف الدراسة:

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منهج الدراسة:

خطة الدراسة:

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المبحث الأول: مفهوم الوكيل الإلكتروني:

المطلب الأول: التعريف بالوكيل الإلكتروني:

الفرع الأول: المقصود بالوكيل الإلكتروني وخصائصه:

أولاً: المقصود بالوكيل الإلكتروني:

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«(1)

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(AI).

(2)

(Robot) (Intelligent Agent - (3))
(Softbots) (Software robots)
(Knowledge based robots -)
(Knowbots)
(4)(Taskbots) (Task - based robots)

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(5)«

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(6)«

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ثانياً: خصائص الوكيل الإلكتروني:

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Graphical user - desktop) (interface

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الفرع الثاني: مزايا الوكيل الإلكتروني ومساوئه:

أولاً: مزايا الوكيل الإلكتروني:

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(downloading)

(Yahoo)

(Alta vista)

(Google)

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ثانيًا: مساوئ الوكيل الإلكتروني:

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(MIT)

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المطلب الثاني: أنواع الوكيل الإلكتروني:

الفرع الأول: الوكيل الإلكتروني الذي يقوم بعمل مادي لحساب مستخدمه:

أولاً: وكلاء البحث عن المعلومات:

(Yahoo) (Google) (Lycos).

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Bargain)

(Finder

(Fido the Shopping Doggie)

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Persona)

(Logic

(Firefly)
amazon.com

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ثانيًا: الوكيل الإلكتروني المراقب:

(watcher agent)

(20)

(Tierra Highlights)

.register.com⁽²¹⁾

الفرع الثاني: الوكيل الإلكتروني الذي يقوم بتصرف قانوني لحساب مستخدمه:

أولاً: الوكلاء الإلكترونيون الممثلون للمستهلك:

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(2006 24 :

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(Tête-à-Tête)

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(Kasbah)

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ثانياً: الوكلاء الإلكترونيون الممثلون للتاجر:

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المبحث الثاني: الطبيعة القانونية للوكيل الإلكتروني:

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المطلب الأول: الوكيل الإلكتروني شخص قانوني:

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أولاً: السند الواقعي:

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(IBM)
()

(Deep Blue)

1997

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ثانياً: السند القانوني:

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رأينا:

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المطلب الثاني: الوكيل الإلكتروني أداة اتصال:

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رأينا:

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هوامش البحث:

- (1) (924) 5 1985.
(MIT)
- (2) (CMU) (IBM).
« theorist Logic »
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Emily M. Weitzenboeck, Electronic Agents and the Formation of Contracts, Available at: http://128.176.101.170/eclip/documentsII/elecagents/contract_formation.pdf

(3)

Hanh Tran & Thoavy Trani, Intelligent Agent, Available at:

<http://www.engin.umd.umich.edu/CIS/course.des/cis479/projects/>

Wooldridge & Jennings, Intelligent Agents: Theory and Practice. Available at:

<http://www.csc.liv.ac.uk/~mjw/pubs/ker95/ker95-html.html>agent/Intelligent_agent.html

(4) Emily M. Weitzenboeck, op. cit.

(5) Building an agent, A strategy white paper written for IBM, Available at:

<http://www.devx.com/assets/download/14089.pdf>

(6) Lenny Foner, Agent and Appropriation, Available at:

<http://foner.www.media.mit.edu/people/foner/Julia/Julia.html>

Wooldridge & Jennings, op.cit.

(7) Shaun Abshar and Naoki Hirata, Filtering with intelligent software agents, Available at:

<http://www.engin.umd.umich.edu/CIS/course.des/cis479/projects/FISA.html>

Oren Etzioni & Daniel S. Weld, Intelligent Agents on the Internet: Fact, Fiction, and Forecast, Available at:

<http://www.cs.washington.edu/homes/etzioni/papers/ieee-expert.pdf>

(8) Stan Franklin & Art Graesser, Is it an Agent, or just a Program?: A Taxonomy for Autonomous Agents, Available at:

<http://www.msci.memphis.edu/~franklin/AgentProg.html>

M. Apistola, F.M.T. Brazier, O. Kubbe, A. Oskamp, M.H.M. Schellekens and M.B. Voulon, Legal aspects of agent technology, Available at:

<http://www.iids.org/publications/bileta2002.pdf>

(9) Emily M. Weitzenboeck, op. cit.

Oren Etzioni & Daniel S. Weld, op. cit.

Federica De Migilio, Tessa Onida, Francesco Romano and Serena Santoro, Electronic agents And the Law of Agency, Available at:

<http://www.lea-online.net/publications/DemiglioOnidaRomanoSantoro.pdf>

Tom Allen & Robin Widdison, Can computers make contracts?, Harvard Journal of law & Technology, Volume 9, Number 1, Winter 1996, p. 27.

- (10) Henry Chan, Raymond Lee, Tharam Dillon and Elizabeth Chang, E- Commerce: Fundamentals and Applications, John Wiley & Sons Ltd., Chichester- England, 2001, p. 253.
Building an agent, op. cit.
Wooldridge & Jennings, op.cit.
Joakim S. T. Oren, Electronic Agents and the Notion Of Establishment, Available at: http://128.176.101.170/eclip/documentsII/elecagents/notion_of_establishment.pdf
- (11) Emily M. Weitzenboeck, op. cit
Wooldridge & Jennings, op.cit.
- (12) Emily M. Weitzenboeck, Introduction to the special issue on electronic agents, available at: <http://ijlit.oxfordjournals.org/cgi/reprint/9/3/187>
Henry Chan, Raymond Lee, Tharam Dillon and Elizabeth Chang, Op. Cit. , p. 252-253.
Efraim Turban, David King, Jae Lee and Dennis Viehland, Electronic commerce: A managerial perspective, Pearson Education International, New Jersey, 2004, P. 48.
- (13) Emily M. Weitzenboeck, Electronic agents and the formation of contracts, op.cit.
- (14) OECD, Information Technology Outlook 2000: Highlights, p. 160. available at: <http://www.oecd.org/dataoecd/30/56/1939833.pdf>
- (15) Emily M. Weitzenboeck, Introduction to the special issue on electronic agents, op.cit. OECD, Information Technology Outlook 2000: Highlights, op. cit., p. 162.
- (16) Emily M. Weitzenboeck, Introduction to the special issue on electronic agents, op.cit.
- (17) OECD, Information Technology Outlook 2000: Highlights, op. cit., p. 154-156.
Federica De Migilio, Tessa Onida, Francesco Romano and Serena Santoro, Op. Cit.
- (18) Itai Yarom, Jeffrey S. Rosenschein, Claudia V. Goldman, The role of Middle – Agents in Electronic Commerce, P. 17, Available at: <http://ieeexplore.ieee.org/stamp/stamp.jsp?arnumber=01249165>
Yannis Bakos, The Emerging Role of Electronic Marketplaces on the Internet, P. 39, Available at: <http://pages.stern.nyu.edu/~bakos/emkts-cacm.pdf>
Vania Conan, Marten Foss, Peter Lenda, Sophie Louveaux and Anne Salaun, Legal Issues for Personalised Advertising on Internet: The AIMedia Case Study, Lecture Notes in Artificial Intelligence: Agent Mediated Electronic Commerce II, New York: Springer, 2000, P. 42.

- (19) Sonia Gonzalo, A business outlook on electronic agents, available at:
http://128.176.101.170/eclip/documentsII/elecagents/business_outlook.pdf
- (20) Oren Etzioni & Daniel S. Weld, op. cit.
- (21) Emily M. Weitzenboeck, Introduction to the special issue on electronic agents, op.cit.
- (22) Robert H. Guttman, Alexandros G. Moukas, and Pattie Maes, Agent-mediated electronic commerce: A survey, available at:
<http://alumni.media.mit.edu/~guttman/research/pubs/ker98.pdf>
- (23) Girish Punj & Adam Rapp, Influence of electronic decision aids on consumer shopping in online stores. Available at:
<http://www.crito.uci.edu/noah/HOIT/HOIT%20Papers/Influence%20of%20Electronic%20Decision%20Aids.pdf>
- (24) Robert H. Guttman, Alexandros G. Moukas, and Pattie Maes, op. cit.
Iyad Rahwan, Ryszard Kowalczyk and Ha Hai Pham, Intelligent Agents for automated one-to-many e-commerce negotiation, available at:
<http://www.crpit.com/confpapers/CRPITV4Rahwan.pdf>
- (25) Federica De Migilio, Tessa Onida, Francesco Romano and Serena Santoro ,Op. Cit.
- (26) Alan M. Gahtan, Martin P. J. Kratz and J. Fraser Mann, Internet law: A practical Guide for legal and business professionals, Carswell, Ontario, 1998, p. 249.
- (27) Emily M. Weitzenboeck, Introduction to the special issue on electronic agents, op.cit.
- .2006 1 (14) (28)
- (29) Tom Allen & Robin Widdison, Op. Cit, p. 35.
Irene Kafeza, Eleanna Kafeza & Dickson K. W. Chiu, Legal Issues in Agents for electronic contracting, available at:
<http://www.cse.cuhk.edu.hk/~kwchiu/pdf/hicss38/hicss38-legal-agents.pdf>
Leon E. Wein, the responsibility of intelligent artifacts: Toward an automation jurisprudence, Harvard journal of law & technology, Volume 6, Fall Issue, 1992, p. 107.
- (30) Lawrence B. Solum, Legal Personhood for Artificial Intelligences, North Carolina Law Review, Volume 70, No. 1231, 1992, Available at:
<http://home.law.uiuc.edu/~lsolum/Westlaw/legalpersonhood.htm>
- (31) Emily M. Weitzenboeck, Electronic Agents and the Formation of Contracts, Op. Cit.

- (32) Gunther Teubner, Enterprise Corporatism: New Industrial Policy and the Essence of legal person, 36 American journal of company law, 130 (1988), as mentioned at: Tom Allen & Robin Widdison, Op. Cit, p. 36.
- (33) Tom Allen & Robin Widdison, Op. Cit, p. 42.
- (34) Federica De Migilio, Tessa Onida, Francesco Romano and Serena Santoro, Op. Cit.
- (35) Emily M. Weitzenboeck, Electronic Agents and the formation of contracts, op. cit. Samir Chopra & Laurence White, Artificial Agents- Personhood in law and philosophy. Available at:
<http://www.sci.brooklyn.cuny.edu/~schopra/agentlawsub.pdf>
- Ian R. Kerr, Providing for Autonomous Electronic Devices in the *Uniform Electronic Commerce Act* , AVAILABLE AT:
<HTTP://WWW.ULCC.CA/EN/CLS/INDEX.CFM?SEC=4&SUB=4F>

2006

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.163

.80 2003

(36)

State Farm Mutual Automobile Insurance Company V. Alfred Bockhorst

State Farm Mutual

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Automobile Insurance Company

<http://bulk.resource.org/courts.gov/c/F2/453/453.F2d.533.712-70.html>

- (37) Silvia Feliu, Intelligent Agents and the Consumer Protection, Available at:
http://128.176.101.170/eclip/documentsII/elecagents/consumer_protection.pdf

(38) 13 6
1 2006

(39)

المصادر:

أولاً: باللغة العربية:

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2006 1 - 4

ثانياً: باللغة الإنجليزية:

A: Books:

- 5 - Alan M. Gahtan, Martin P. J. Kratz and J. Fraser Mann, Internet law: A practical Guide for legal and business professionals, Carswell, Ontario, 1998.

- 6 - Efraim Turban, David King, Jae Lee and dennis viehland, Electronic commerce: A managerial perspective, Pearson Education International, New Jersey, 2004.
- 7 - Henry Chan, Raymond Lee, Tharam Dillon and Elizabeth Chang, E- Commerce: Fundamentals and Applications, John Wiley & Sons Ltd., Chi Chester- England, 2001.
- 8 - Vania Conan, Marten Foss, Peter Lenda, Sophie Louveaux and Anne Salaun, Legal Issues for Personalised Advertising on Internet: The AIMedia Case Study, Lecture Notes in Artificial Intelligence: Agent Mediated Electronic Commerce II, New York: Springer, 2000.

B: Papers & Articles:

- 9 - Building an agent, A strategy white paper written for IBM, Available at: <http://www.devx.com/assets/download/14089.pdf>
- 10 - Emily M. Weitzenboeck, Electronic Agents and the Formation of Contracts, Available at: http://128.176.101.170/eclip/documentsII/elecagents/contract_formation
- 11 - Emily M. Weitzenboeck, Introduction to the special issue on electronic agents, available at: <http://ijlit.oxfordjournals.org/cgi/reprint/9/3/187>
- 12 - Federica De Migilio, Tessa Onida, Francesco Romano and Serena Santoro, Electronic agents And the Law of Agency, Available at: <http://www.lea-online.net/publications/DemiglioOnidaRomanoSantoro.pdf>
- 13 - Girish Punj & Adam Rapp, Influence of electronic decision aids on consumer shopping in online stores. Available at: <http://www.crito.uci.edu/noah/HOIT/HOIT%20Papers/Influence%20of%20Electronic%20Decision%20Aids.pdf>
- 14 - Hanh Tran & Thaovy Trani, Intelligent Agent, Available at: <http://www.engin.umd.umich.edu/CIS/course.des/cis479/projects/>
- 15 - Ian R. Kerr, Providing for Autonomous Electronic Devices in the Uniform Electronic Commerce Act , available at: <http://www.ulcc.ca/en/cls/index.cfm?sec=4&sub=4f>
- 16 - Irene Kafeza, Eleanna Kafeza & Dickson K. W. Chiu, Legal Issues in Agents for electronic contracting, available at: <http://www.cse.cuhk.edu.hk/~kwchiu/pdf/hicss38/hicss38-legal-agents.pdf>

- 17 - Itai Yarom, Jeffrey S. Rosenschein, Claudia V. Goldman, The role of Middle - Agents in Electronic Commerce, Available at:
<http://ieeexplore.ieee.org/stamp/stamp.jsp?arnumber=01249165>
- 18 - Iyad Rahwan, Ryszard Kowalczyk and Ha Hai Pham, Intelligent Agents for automated one-to-many e-commerce negotiation, available at:
<http://www.crpit.com/confpapers/CRPITV4Rahwan.pdf>
- 19 - Joakim S. T. Oren, Electronic Agents and the Notion Of Establishment, Available at:
http://128.176.101.170/eclip/documentsII/elecagents/notion_of_establishment.pdf
- 20 - Lawrence B. Solum, Legal Personhood for Artificial Intelligences, North Carolina Law Review, Volume 70, No. 1231, 1992, Available at:
<http://home.law.uiuc.edu/~lsolum/Westlaw/legalpersonhood.htm>
- 21 - Lenny Foner, Agent and Appropriation, Available at:
<http://foner.www.media.mit.edu/people/foner/Julia/Julia.html>
- 22 - Leon E. Wein, the responsibility of intelligent artifacts: Toward an automation jurisprudence, Harvard journal of law & technology, Volume 6, Fall Issue, 1992, p. 107.
- 23 - M. Apistola, F.M.T. Brazier, O. Kubbe, A. Oskamp, M.H.M. Schellekens and M.B Voulon, Legal aspects of agent technology, Available at:
<http://www.iids.org/publications/bileta2002.pdf>
- 24 - 16-OECD, Information Technology Outlook 2000: Highlights, p. 160. available at: <http://www.oecd.org/dataoecd/30/56/1939833.pdf>
- 25 - Oren Etzioni & Daniel S. Weld, Intelligent Agents on the Internet: Fact, Fiction, and Forecast, Available at:
<http://www.cs.washington.edu/homes/etzioni/papers/ieee-expert.pdf>
- 26 - Robert H. Guttman, Alexandros G. Moukas, and Pattie Maes, Agent-mediated electronic commerce: A survey, available at:
<http://alumni.media.mit.edu/~guttman/research/pubs/ker98.pdf>
- 27 - Samir Chopra & Laurence White, Artificial Agents- Personhood in law and philosophy. Available at:
<http://www.sci.brooklyn.cuny.edu/~schopra/agentlawsub.pdf>
- 28 - Shaun Abshar and Naoki Hirata, Filtering with intelligent software agents, Available at:
<http://www.engin.umd.umich.edu/CIS/course.des/cis479/projects/FISA.html>

- 29 - Silvia Feliu, Intelligent Agents and the Consumer Protection, Available at:
http://128.176.101.170/eclip/documentsII/elecagents/consumer_protection.pdf
- 30 - Sonia Gonzalo, A business outlook on electronic agents, available at:
http://128.176.101.170/eclip/documentsII/elecagents/business_outlook.pdf
- 31 - Stan Franklin & Art Graesser, Is it an Agent, or just a Program?: A Taxonomy for Autonomous Agents, Available at:
<http://www.msci.memphis.edu/~franklin/AgentProg.html>
- 32 - Tom Allen & Robin Widdison, Can computers make contracts?, Harvard Journal of law & Technology, Volume 9, Number 1, Winter 1996, p. 35.
- 33 - Yannis Bakos, The Emerging Role of Electronic Marketplaces on the Internet, P. 39, Available at:
<http://pages.stern.nyu.edu/~bakos/emkts-cacm.pdf>
- 34 - Wooldridge & Jennings, Intelligent Agents: Theory and Practice. Available at:
http://www.csc.liv.ac.uk/~mjw/pubs/ker95/ker95-html.html#agent/Intelligent_agent.html

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Electronic Agent: The Concept and Legal Nature

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ABSTRACT

Electronic means of communication function in concert with the human element and therefore raise questions with regard to the legal practice because of the special nature of computer programs. This study considers the means of electronic communication and the various opinions of legal jurists about its legal nature. It discusses both the concept of an electronic agent and its legal nature in two sections.