E-commerce, Entrepreneurship and the Law

Viktor Mayer-Schönberger
The John F. Kennedy School of Government
Harvard University
The E-Commerce Landscape

- An average week in November 2000:
  - more than 4.5 million ecommerce transactions
  - total value of USD 584 million
- Amazon.com from 11/2 to 12/23, 2000:
  - 31 million individual orders
- Value of average e-commerce transaction approx. $130
Entrepreneurship in Cyberspace - a Transaction Game

- Nascent markets
- New business models
- New technologies
- High volume of small transactions across jurisdictions and between parties who do not know each other

- Core entrepreneurial task: managing risks
Only some of the risks faced can be effectively managed.

Managing transactional risks:
- Trust in your partner reduces risk.
- If you do not know your partner, you have to find “trust surrogates”:
  - Third Party Guarantor
  - Laws (a Guarantee Structure)
The Role of Law in E-commerce

- Individual Contract Enforcement
- Individual Conflict Resolution
- Societal Signaling Device
- A means to lower (individual and societal) transaction costs
Not If but How: Legislating in Cybertimes

Helping entrepreneurs manage risks:

- **Aim**: Regulations that lower transactional costs
- **Structure**: Regulations that define goals, not micromanage means
- **Process**: Regulations that provide predictability
From Dot-com to Legal Entrepreneurship: A Tale of two Austrians

- Legal R&D - the *traditional* way
- Legal R&D - the *entrepreneurial* way
  - Timely creation of pragmatic framework
  - Fostering competition not only of firms but of rules, even permitting “Creative Destruction”