



# E-Commerce Workshop

## Legislative requirements for e-commerce

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### INTRODUCTION

E-commerce has raised issues at the nucleus of the regulation of traditional practices and procedures particularly those resulting from legal requirements applicable to the form and evidence of legal acts in the context of domestic and international commercial transactions.

The developing countries' legal framework on e-commerce lacks of internationally acceptable rules and guidelines for the recognition of electronic signatures, digital signatures and certification authorities, causes problems when applying traditional principles on jurisdiction and conflict of law rules in an electronic environment, and lacks of technical assistance to adapt national laws to the new trade avenue!<sup>1</sup>

Due to this upcoming phenomenon and its impact on commercial transactions, new laws will have to be added, and old laws will have to evolve to conform with the specific demands of the new media. The legal framework would have to address the different factors associated with using information and communication technology (ICT) platform for a transaction to be legally valid. Areas that involve legal issues relevant to electronic commerce include: Intellectual Property and Copyright, Privacy and Data Protection, Consumers Protection, liability of intermediaries or Internet Service Providers (ISPs), Applicable Law, Jurisdiction and Dispute Resolution, etc. Some of the goals that Governments when intervening to facilitate e-commerce are: to protect intellectual property and privacy, to support commercial transactions, and to facilitate dispute resolution. These are some of the topics to be developed during this presentation.

### ELECTRONIC CONTRACTS

On-line transactions are a source of revenues but the following obstacles are restricting the possibility of concluding online contracts across frontiers: first, the formal requirements to conclude any type of transactions and second, the legal uncertainty as to the lawfulness or validity of electronic contracts.<sup>2</sup>

These transactions need rules to govern the relationship between the parties. The primary vessel for these rules is the agreement itself – the contract. For example, it is difficult to determine the time and place of conclusion of an electronic contract. In fact, the time when the contract is formed is important in determining the passing of property and transfer of loss or damage in cases of sale of goods. The place where the contract is concluded may determine the applicable law to govern the contract and jurisdiction in case of dispute between the parties to the contract. The contract can be viewed as perhaps the most important self-regulatory measure available to parties engaging in electronic commerce. It is recommended to include specific provisions on the terms and conditions applicable to e-transactions. Provisions shall include the terms of delivery of goods, payment mode and terms, title and ownership, passing of risks, rights, etc according to the type of e-transaction to be undertaken.<sup>3</sup>

Contracts are fundamentally voluntary exchanges. Maximum use should be given to freedom of contracts and party autonomy. The majority of writers affirm that to conclude a contract, even electronically, an offer and an acceptance must be passed. Parties drafting contracts and those parties who would accept them, must be thoughtful about certain terms, such as disclaimers, choice of law and jurisdictional forum (discussed below), consumer protection, limitation of liability issues and questions of mandatory local law. As known, an offer and an acceptance forms a contract, but an offer and an acceptance concluded electronically can be considered as partial evidence of the conclusion of a contract.<sup>4</sup>

The exchange of consents will give legal effects to the contract, without having to respect requirements of form, except in such situations where the law requires a written or stamped document i.e. Bill of landing and contract of sale of goods.

<sup>1</sup> UNCTAD, Building Confidence, Electronic Commerce and Development, 2000, pp. 156 <http://www.unctad.org/ecommerce/building.pdf>

<sup>2</sup> European Commission (EC), Electronic commerce in the Internal Market – A proposal presented by the Commission for a European Parliament and Council Directive on certain legal aspects, Explanatory Memorandum, Proposed Directive on certain legal aspects of electronic commerce, Information Society, EC website, January 1999, pp. 14 <http://europa.eu.int/>

<sup>3</sup> United Nations Economic Commission for Europe (UNECE), Electronic Commerce Agreement, Recommendation No. 31, 1<sup>st</sup>. edition, adopted by United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), ECE/TRADE/257, May 2000, pp. 8 <http://www.unece.org/cefact/>

<sup>4</sup> International Trade Centre UNCTAD/WTO (ITC), Secrets of Electronic Commerce, A Guide for Small-and Medium-Sized Exporters, An ITC Technical Publication for Developing Countries, Trade Secrets Series, Questions, Answers & Reference Guides, 07.04 SEC, Abstract 2000, Doc. No. ITC/290/1B/00-VII-TP, pp. 215 [www.intracen.org](http://www.intracen.org)

With respect to contractual and evidentiary formalities, there is an increasing consensus that, so long as an electronic communication has a sufficient measure of reliability, durability, and integrity as to its content, no particular form or formal procedure is required in order to ensure its effectiveness for the purpose for which it is created.<sup>5</sup>

Evidential rules are of key importance in contractual matters.<sup>6</sup>

There is a need to establish a legislative framework for e-commerce and increase confidence by stating provisions related to legal protection for electronic transactions. Most national laws and international conventions include provisions requiring most of documents to be presented in an original form, and it is not easy to determine an electronic document is presented in an original form. Major problems arise when laws require the storage of information in a paper form. Indeed, in such cases it will not be valid to storage an electronic document.

The **United Nations Commission for International Trade Law (UNCITRAL) Model Law on e-commerce** serves as a model for national and international legislation and assists contracting parties in formulating their contracts.<sup>7</sup> It provides some guidance for removing barriers to electronic commerce. The Model law establishes rules and norms that validate and recognize contracts formed through electronic means, sets default rules for contract formation and governance of electronic contract performance, defines the characteristics of valid electronic writing and an original document, provides for the acceptability of electronic signatures for legal and commercial purposes, and includes rules governing the admissibility of data messages as evidence in legal proceedings and their evidential value. The Model Law includes provisions on storage of data messages, acknowledgement of receipt, time and place of dispatch and receipt of data messages, as well as specific provisions pertaining to carriage of goods.<sup>8</sup> The Model Law stipulates, in any legal proceedings, nothing in the application of the rules of evidence shall apply so as to deny the admissibility of a data message in evidence: on the sole ground that it is a data message or if it is the best evidence that could be reasonable expected to obtain, on the sole ground that it is not an original document.

The **United Nation (UN) Convention on Intl' Sale of goods** is a readily acceptable framework for on-line contracts dealing with the sale of goods. The UN Sales Convention is applicable only to contracts that are concluded between parties having their place of business in different countries. According to important writers, the sale of software can be included under the scope of the convention, even though software is not a tangible good. This will not apply if the software is sent electronically and if the international sale objective covers a custom made software. The reason for the latter, is that the convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services. The convention does not apply to sales of goods bought for personal, family or household use with some exceptions.

When concluding e-contracts parties should clearly indicate the location of their relevant place of business. If the parties do not indicate the relevant place of business, the location should be inferred. For that end, it could be taken into account the address from which the electronic messages were sent i.e. whether one of the parties uses an address linked to a domain name connected to a country such as "nz" for New Zealand or "pk" for Pakistan. In case the addresses of the parties to the contract belong to domain names linked to different countries, the application of the UN Sales Convention should be emphasized. However, it may be possible that the address has no link with a particular country i.e. addresses like .com and .net. In this case, the transaction could be considered as an international one. The UN Sales Convention definition given to the location of the relevant place of business should be taken into consideration to identify a particular electronic transaction relevant place of business.

The international opinion states that the exchange of e-mails suffice to form a contract under this convention. The electronic data message should be considered as writings under the convention. Where companies advertises its goods on a web site, this action could be considered as merely inviting those who access the site to make offer. Offer and acceptance becomes effective upon their receipt.

## **DIGITAL SIGNATURES**

Regardless to its form, signatures serve primarily to confirm or endorse the intent, identify the signatory, authenticate and confirm the integrity of the document signed.

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<sup>5</sup> World Intellectual Property Organisation (WIPO), Primer on Electronic Commerce and Intellectual Property Issues, II. Three legal issues of broad application posed by Electronic Commerce, E-Commerce: Activities & services, E-Commerce primer, WIPO web site, pp. 26 <http://ecommerce.wipo.int/primer/section2.html>

<sup>6</sup> UNCITRAL, Working Group on electronic commerce, Thirty-eight session, New York, 12-13 March 2001, Legal Aspects of Electronic Commerce, Legal barriers to the development of electronic commerce in international instruments relating to international trade: ways of overcoming them, A/CN.9/WG.IV/WP.89, V.00-60330 (E) 100101 170101 0060330, 14 December, 2000, pp. 17 [www.uncitral.org](http://www.uncitral.org)

<sup>7</sup> WTO CTD, UNCITRAL Work on Electronic Commerce. See bibliography.

<sup>8</sup> UNCTAD, Building Confidence. See footnote no. 1.

Most national laws and international conventions include provisions requiring certain transactions to be signed to establish the identity of the signatory and his/her intention to associate him/herself with or be bound by the content of the document. However, most recent legislation and conventions permit the required signature to be made by other forms of authentication, such as by electronic means! The digital signature consists of an encrypted message of the kind normally used in real signatures, which is attached or joined to the main message.<sup>9</sup> Digital signatures are the most frequently used and secure technology to electronically sign a data message.

The UNCITRAL is drafting **Uniform Rules for Electronic Signatures** in order to ensure the security of e-transactions. Singapore has followed the guidelines stipulated in this draft to adopt legislation on e-signatures.

The **American Bar Association (ABA) Model Agreement** states that any signed document properly transmitted pursuant to the Agreement “shall be deemed for all purposes to have been signed and to constitute an original when printed from electronic files or records established and maintained in the normal course of business.”<sup>10</sup>

The **European Union (EU) adopted a Directive on Electronic Signatures**. The main objective of the Directive is to facilitate the use of electronic signatures and contribute to their legal recognition by establishing a harmonized community-wide legal framework for electronic signatures and electronic certification services. The EU has also adopted a Directive on a Community Framework for Electronic Signatures on December 1999.

### **CERTIFICATION & CERTIFICATION AUTHORITIES**

Digital signatures allows signatories to be identified by recipients through the intervention of a trusted third party i.e. Certification Authorities (CAs). The CA creates a digital identification certificate which establishes a link between the person of the signatory and his/her pair of keys (public and private keys). This certificate is signed by the CA. The intervention of a third party is indispensable in establishing confidence and security in electronic exchanges, since the contracting parties are never physically present to sign their contract or other documentation which requires a signature.<sup>11</sup>

Competition between certification authorities will lead to better service provision, but some countries believe that digital signatures certification must be issued and controlled by their national institutions.<sup>12</sup> It is recommended to ensure legal recognition for certificates linking signatures verification data to a person and confirming the certificates which meet the requirements of the accreditation authority and are provided by a certification service provider or trusted third party. It is recommended to ensure legal basis for accrediting certification service providers.<sup>13</sup> In order to facilitate electronic commerce at the world level, mechanisms for co-operation with third countries on mutual recognition of certificates on the basis of bilateral and multilateral agreements should be put in place.<sup>14</sup>

The **EU adopted a Directive on Electronic Signatures** that has established a harmonized community-wide legal framework for electronic certification services and certificates issued in a third country are considered as legally equivalent to certificates issued in the EU provided certain stipulated conditions are met.<sup>15</sup>

### **CONSUMER PROTECTION**

Both producers and consumers need to know what is the legal status of a transaction conducted on the Internet, what is the recourse available to a buyer in case the retailer reneges on its contract. Essentially, consumers want to know about their rights, how they can be protected, and how will they be compensated for their loss. The government's role is to put in place a legal framework which provides for certainty, predictability, and clarity of the rights and obligations of the transacting parties. Consumer Protection law is generally mandatory and in most cases the consumer's national and local consumer protection law will be applicable when a consumer concludes a transaction.

Provisions should be drafted in order to:

1. impose information and transparency obligations upon operators indispensable for consumers to take well-informed decisions,
2. establish certain new guarantees as regards contractual relations (e.g. clarify the moment of conclusion of e-contracts and maybe the state the requirement for providers to send a receipt)
3. promote codes of conduct
4. allow the use of dispute settlement mechanisms such as conciliation and arbitration elsewhere than in a local Court.<sup>16</sup>

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<sup>9</sup> ITC, Secrets of Electronic Commerce. See footnote 4.

<sup>10</sup> UNCTAD, Electronic Commerce: Legal Considerations.

<sup>11</sup> ITC, Secrets of Electronic Commerce. See footnote 4.

<sup>12</sup> Craig, Ian, Electronic Commerce & the Asian Economy.

<sup>13</sup> Report on e-Commerce The Policy Requirements – Business Environment.

<sup>14</sup> European Commission (EC), Electronic commerce: Commission proposes electronic signatures Directive, Media, Information Society & Data Protection, Electronic Signatures, EC website, 13 May 1998, pp. 3 [http://europa.eu.int/comm/internal\\_market/en/media/info/sign.htm](http://europa.eu.int/comm/internal_market/en/media/info/sign.htm)

<sup>15</sup> UNCTAD, Building Confidence. See footnote 1.

Companies conducting business online should be required by law to disclose clearly how they collect and use information. Consumers must be given control of how their data are used. Web surfers should have the ability to inspect their personal data and to correct any errors they discover. When companies break the rules, the government should have the power to impose penalties.

The **Organisation for Economic Cooperation and Development (OECD)** has drafted a **Consumer Protection Guidelines in Electronic Commerce** to ensure on-line consumer protection to assist in protection of consumer rights, and enhance consumer confidence in electronic commerce.

The **Better Business Bureau (BBB)**<sup>17</sup> has developed a **Code of Online Business Practices**. The BBB Online works with industry, consumer representatives and government to develop a code to provide online merchants with guidelines to implement important consumer protections, such as disclosure of sales terms, data privacy, dispute resolution and non-deceptive advertising.

A brief guide from the “**Principles of Consumer Protection for Electronic Commerce: a Canadian Framework**” states that merchants should:

1. offer as much detailed information as they can about its products and services,
2. include the price and currency, shipping charges, taxes, customers duties delivery schedule, etc,
3. inform whether their website is protected with some type of security, and
4. provide an effective process for handing customer inquiries.

It also recommends that a third party should endorse the vendor’s business.

When purchasing goods or services on-line, it is recommended to consumers to make sure the web site has a secure transaction system, check for quality assurance certificates seals, read the contract’s terms and conditions, and review the merchant’s policy for protecting personal information.<sup>18</sup> The only guarantee for security is to use encrypted communications and to deal with a reputable company that will respect the consumers’ privacy and the need for security treatment of consumer’s private data once they have acquired it.

## **PRIVACY AND DATA PROTECTION**

The volume and nature of personal data such as name, address, interests, and purchases of an individual disclosed on Internet is increasing and new methods for processing the data allow the creation of customer profiles that combine demographic data, credit information, details of transactions, etc. Now a days, it is quite easy to collect a vast amount of data about individuals and the law does very little to protect individuals against the use of data that they make available to others. More importantly, now it is quite profitable to collect such data. These are the reasons to talk about privacy and data protection.

Some people have defined privacy as the power to control what other people know about you. Privacy is fundamental to a democratic society. Protecting privacy helps protecting independence. (Mr. Radwanski, George, Privacy Commissioner of Canada, A Guide for Canadians, Privacy Policy, [http://www.privcom.gc.ca/information/02\\_05\\_d\\_08\\_e.asp](http://www.privcom.gc.ca/information/02_05_d_08_e.asp)).

Privacy concerns are being raised in many countries around the world, and some countries have enacted laws, implemented industry self-regulation, or instituted administrative solutions designed to safeguard their citizen’s privacy. Provisions shall be drafted to establish the obligation to collect and process personal data only for specified, explicit and legitimate purposes, and to ensure that such data is relevant, accurate and updated. Protection of data shall include the right for the individual to be informed about where data will be available, the identity of the organization processing the information, and the purpose of such processing. Moreover, there should be a right to rectify personal data and the right to opt out of allowing their data to be used in certain circumstances. Personal data should only be processed with the explicit consent of the individual.<sup>19</sup>

The **OECD** drafted the **Guidelines governing the Protection of Privacy and Transborder data Flow of Personal Data** that state that the keeper of the data should inform individuals about the information they are collecting and how they intend to use such data, and provide individuals with a meaningful way to limit use and re-use of personal information. Such disclosure will enable individuals to make better judgements about the levels of privacy available and their willingness to participate. The Guideline’s principles state that personal information should not be improperly altered or destroyed, such information should be accurate, complete, and relevant for the purposes for which it is provided and used.

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<sup>16</sup> EC, Electronic commerce in the Internal Market – A proposal presented by the Commission for a European Parliament and Council Directive on certain legal aspects. See bibliography.

<sup>17</sup> <http://www.bbbonline.org>

<sup>18</sup> ITC, Secrets of Electronic Commerce. See footnote 4.

<sup>19</sup> e-commerce, Legal Issues, Guidance Legal. See bibliography.

## INTELLECTUAL PROPERTY AND COPYRIGHT

Let's define what is intellectual property and copyright, and what they are applied to. "Intellectual property rights are the rights given to people over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time." Intellectual property rights are legal means to protect and balance the interests of an individual against those of the public. This is done in terms of disclosure, dissemination, alteration, use and abuse of ideas, with an exclusive right to control and profit from invention and/or authorship of such intangible goods, services and ideas.

These rights involve copyright, industry designs and models rights and patents. "The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author. Also protected through copyright and related rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations."<sup>20</sup> Copyrights are referred to as the rights to ensure protection of information from duplication and distribution. Copyright Law applies to things you write electronically. i.e. the personal Web page that a person puts up is copyrighted. Copyright generally gives the copyright owner the exclusive right to make copies of a work.

The holder of copyright or related rights should be able, in event of infringement of his rights, to apply to the courts of each of the countries in which he has suffered a prejudice and, if he prefers, require damages for the whole of his prejudice in the court that "has the closest links" with his prejudice, whereby the simple presumption exists in favor of the court within the jurisdiction of which he has his habitual residence or his principal establishment.<sup>21</sup>

Strong intellectual property rights protection is essential to the continuing development of electronic international trade due to the fact that it helps reduce the risks of online piracy and keep the environment for electronic commerce stable and healthy. International agreements that establish clear and effective copyright are therefore necessary to prevent piracy and fraud. An adequate and effective legal framework also is necessary to deter fraud and the theft of intellectual property.

The **World Intellectual Property Organisation (WIPO)** plays a mayor role as a means to police key issues such as the generation and exercise of copyright in the digital world. WIPO also provided new protection for performers and producers of sound recording by adopting two new treaties: The **Copyright Treaty** and the **Performances and Phonograms Treaty**. Both treaties include provisions relating to technological protection, copyright management information, and the right of communication to the public, all of which are indispensable for an efficient exercise of rights in the digital environment. They also contain provisions that permit to provide for exceptions to rights in certain cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. One of the exceptions is the fair use of copyrighted work.<sup>22</sup> The conditions are met if a person copies only a small part of an article, document, text; or part of a text with the purpose of reporting news or making a critical commentary. Furthermore, in some situations, copies might be legal, either because the copyright owner explicitly allows them or because they are allowed by implied licenses.

The **World Trade Organization (WTO) Agreement on Trade-Related Intellectual Property Rights (TRIPS)** is highly relevant because it obliges member countries to protect the rights, including copyrights of citizens of all other member countries.<sup>23</sup> According to the WTO TRIPS Agreement, computer programs should be considered as literary works, and protected under national copyright laws.<sup>24</sup>

## LIABILITY OF INTERMEDIARIES

There is a problem in allocating the liability between on-line service providers transmitting and storing illegal information and the person who originally put such information on line. The ability of service providers to control the information they transmit or store is unknown or uncertain.<sup>25</sup> The legal system focuses on locally present property as a justification for jurisdiction and, more importantly, as the means for enforcing rules and decisions. This encourages legal institutions to impose liability on intermediaries as a way of reducing uncertainty with respect to jurisdiction and enforcement power over more remote actors who may bear a more direct responsibility for disputed conduct.<sup>26</sup>

<sup>20</sup> What are intellectual property rights?: (i) Copyright and rights related to copyright, TRIPS: What Are IPRS, Trade Topics, WTO [http://www.wto.org/english/tratop\\_e/trips\\_e/intell\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/intell_e.htm)

<sup>21</sup> Lucas, André, Professor Faculty Of Law And Political Science University Of Nantes, France, WIPO Forum On Private International Law And Intellectual Property, 30 – 31 January 2001, Private International Law Aspects Of The Protection Of Works And Of The Subject Matter Of Related Rights Transmitted Over Digital Networks, pp. 23 [www.wipo.org](http://www.wipo.org)

<sup>22</sup> UCC for Electronic Commerce.

<sup>23</sup> Ruggiero, Renato, Director-General of the WTO, Global Rules for the Electronic Market-Place, Global Electronic Commerce, Realizing the Potential, OECD Ministerial Conference, Foreword by the Prime Minister of Canada, Ottawa, Canada, 7-9 October 1998, page 23, pp. 39.

<sup>24</sup> ITC, Secrets of Electronic Commerce. See footnote 4.

<sup>25</sup> EC, Electronic commerce in the Internal Market – A proposal presented by the Commission for a European Parliament and Council Directive on certain legal aspects. See bibliography.

<sup>26</sup> Perritt, Dean Henry H. Jr., Vice President And Professor Of Law Illinois Institute Of Technology Chicago-Kent College Of Law Chicago (United States Of America), WIPO Forum On Private International Law And Intellectual Property, 30 – 31 January 2001, Electronic Commerce: Issues In Private International Law And The Role Of Alternative Dispute Resolution, pp.23. [www.wipo.org](http://www.wipo.org)

An **e-commerce consultation paper** recommends to create new legislation regulating the apportion liability for loss or damage between the provider of the goods or services, distributors and those intermediaries that act as mere conduits. Intermediaries that simply facilitate or provide access between one party and another should not incur liability for the sale of a product or service.<sup>27</sup>

The EC proposed to establish minimum liability rules for service providers, who would in particular be liable for the validity of a certificate's content. The approach will ensure the free movement of certificates and certification services within the Single Market and will build consumer trust and stimulate operators to develop secure systems and signatures without restrictive and inflexible regulation.

### **APPLICABLE LAW**

Applicable Law is the law that the parties to a contract can choose to govern the contract or the law applied when the parties have not made a choice of law and which results from a study of the conflict of law rules and regulations from a country. Since convention law is somewhat lacking, it is necessary to look at the national systems of private international law. However, the reply differs from one system to the other. They differ also within each system.<sup>28</sup> The e-transactions shall be governed by the national laws of the country whose laws apply under the rules of private international law or the law chosen in each e-transaction.

Parties should know the applicable body of law which governs the transaction. The situation can be greatly simplified if it involves a contract and the parties have designated the law to be applied in case of a dispute.

In general, two solutions are most commonly applied to the choice of the applicable law:

1. the first is where the applicable law will be the law of the country of the seller, and
2. the second is where the applicable law is that of the place of the signing of the contract.<sup>29</sup>

Once a court determines that it possesses jurisdiction to hear a case, it must then decide which substantive law should be applied to decide the merits of the dispute.

Agreement is unanimous on the fact that the law of the country of emission has a part to play. The argument concerns principally the issue whether this part should be exclusive or whether room should be made for the law of the country of reception, it being understood that, if such is the case, the plural (the laws of the countries of reception) is essential since the nature of digital networks is to distribute throughout the whole world. The choice of the law of the country of emission makes it possible to give digital network operators a much clearer vision of the right, which is essential for the harmonious development of the information society, however the most serious objection to the exclusive application of the law of the country of emission is the risk of delocalization towards countries of emission having a lower level of protection.

The applicable law cannot be that of the country of emission, which does not constitute an appropriate attachment for localizing the harmful event in digital transmission. It should become absolutely necessary to apply a single law, the center of gravity represented by the domicile, residence or establishment of the injured right holder would provide a more appropriate attachment than the place of emission in the technical sense or the place of establishment of the emitter.<sup>30</sup> As to procedural law, there are no special rules relating to copyright. General civil procedural rules should be applied.<sup>31</sup>

### **JURISDICTION & DISPUTE RESOLUTION**

We take for granted a world in which geographical borders--lines separating physical spaces are of primary importance in determining legal rights and responsibilities, but the Cyberspace radically undermines the relationship between legally significant (online) phenomena and physical location. The rise of the global computer network is destroying the link between geographical locations. Cyberspace has no territorially based boundaries, because the cost and speed of message transmission on the Net is almost entirely independent of physical location. Events on the Net occur everywhere but nowhere in particular. The Internet is multi-jurisdictional and e-commerce has a transnational nature.

If parties do not choose the jurisdiction, a national court will decide if it has competence over the case in accordance with its own rules of law. It is recommended to stipulate in the contract which court or arbitration panel will have competence over a dispute arising from your contract.

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<sup>27</sup> Report on E-Commerce The Policy Requirements – Business Environment.

<sup>28</sup> Lucas, André. See footnote 21.

<sup>29</sup> ITC, Secrets of Electronic Commerce. See footnote 4.

<sup>30</sup> Lucas, André. See footnote 21.

<sup>31</sup> Prof. Dogauchi, Masato; Private International Law On Intellectual Property.

In the international context, questions of jurisdiction, applicable law and recognition and enforcement of foreign judgments have been resolved by reference to private international law. In principle, each country determines its own rules of private international law. In a case involving a foreign element, the first matter for a court to decide is whether it is competent to hear the case.

For electronic commerce and political discourse to flourish in the Internet, new forms of **Alternative Dispute Resolution (ADR)** must be designed and deployed. Greater use of ADR is necessary to allow the Internet to fulfill its potential.<sup>32</sup> To supplement available court procedures, ADR procedures may usefully be employed to provide rights owners with procedures for fast and effective remedial action, reflective of the ease with which intellectual property infringements can occur on the Internet. Arbitration can provide a single solution for multi-jurisdictional disputes arising from commerce over global networks.

On-line dispute-resolution procedures may serve to enhance access to dispute settlement mechanisms, while increasing the speed and efficiency with which the proceedings are conducted and reducing the corresponding costs. Enabling them to initiate or to defend a claim by accessing a web site and completing electronic forms guiding them through the various stages of the process is expected to reduce entry barriers to any available procedures.

Existing arbitration rules can provide a foundation for any adaptations to the online environment that may be required. Issues that need to be addressed in particular are rights of access to the documents by the parties, applicable procedures in case of challenges of authenticity, contact details for notification purposes, calculation of time periods (in view of likely time-zone differences between the locations from which the parties are operating), and writing and signing requirements for dispute clauses, party communications and awards.

Well-designed dispute resolution mechanisms offer lower costs, reassure participants, and solve jurisdictional problem because use of them manifests consent. In international business dealings, arbitration clauses are usual practice.

The WIPO is a central pillar in the development of dispute resolution for the Internet. **WIPO Arbitration and Mediation Center** has developed an internet-based online dispute resolution system to provide a neutral, speedy, and cheap means of resolving disputes arising out of electronic commerce.

Many arbitration systems allow the parties, the arbitrators, and analysts of the process to take the rules and the enforcement for granted. The arbitrator looks to a contract or ordinary law as the source of rules to be applied. The **New York Convention** provide for judicial enforcement for any arbitration award.

Other international instruments ruling jurisdiction & dispute resolutions: Brussels Convention; Lugano Convention; and the proposed Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters. Both, the **UN Convention on Intl' Sale of Goods** and the **UNIDROIT Intl' Principles** can be chosen by parties to govern the disputes that could arise in the context of their contractual relations.<sup>33</sup> The **OECD Consumer's Protection Guidelines in Electronic Commerce** to encourage dispute resolution. The **ABA Working Group on Cyberspace** published a report on Trans-national issues in cyberspace: a project on the law relating to jurisdiction.<sup>34</sup>

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<sup>32</sup> Perritt, Dean Henry H. Jr. See footnote 26.

<sup>33</sup> ITC, Secrets of Electronic Commerce. See footnote 4.

<sup>34</sup> Kessedjian, Catherine, Electronic Commerce And International Jurisdiction..