



International Telecommunication Union (ITU) Electronic Commerce for Developing Countries (ECDC)



Basic E-Commerce Training for Pakistan Legislative Requirements for E-Transactions

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INTRODUCTION:

The growth of computer networks and on-line services in the past few years has been explosive.

The Organisation for Economic and Co-operation Development (OECD) issued a report in which they emphasized the fact "that e-commerce has transformed the marketplace, has a catalytic effect, has vastly increased interactivity in the economy, is characterised by openness and expansiveness, and has altered the importance of time"¹ In parallel, 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!²

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. As e-commerce is a new way of doing business, many countries have yet to draw up a proper set of operating principles to govern legal, regulatory, and enforcement issues. There is a gradual evolution of commercial international practices.³

E-commerce is a new world for the Pakistani business and financial sector entities⁴. In Pakistan, mostly all governmental organizations do not have a computerized system. Furthermore, these organizations are lacking of skills/qualified staff to manipulate such a computerized system. Both reasons are a mayor obstacle for a paperless environment and subsequently for the recognition, validation and common use of electronic transactions, messages, documents, etc.⁵ There is a current lack of domestic laws dealing with e-commerce.

An Action Plan on e-commerce headed by the Ministry of Science and Technology is in progress since year 2000 in Pakistan. About 137 different sets of laws, ordinances, acts, rules and procedures requiring consideration are to be studied with reference to electronic commerce, by working groups of the Ministry of Science and

¹ United Nations Conference on Trade and Development (UNCTAD), Distr. General, TB/B/COM.3/EM.8/2, 4 May 1999, Original: English, Trade and Development Board, Commission on Enterprise, Business Facilitation and Development, Expert Meeting on Capacity Building in the Area of Electronic Commerce; Legal and Regulatory Dimensions, 14 July 1999, Item 3 of the provisional agenda, pp. 17.
<http://www.unctad.org/en/docs/c3em8d2.pdf>

² UNCTAD, Building Confidence, Electronic Commerce and Development, year 2000, pp. 156
<http://www.unctad.org/e-commerce/building.pdf>

³ World Trade Organisation (WTO) CTD, UNCITRAL Work on Electronic Commerce, Electronic Commerce and Development, 19 February 1999 (G:\docs\Jenny\lectures\ec\ECML - WTO 18/2/99), pp. 8

⁴ Malik, Nadeem, Pakistan approves e-commerce promotion plan, Business News, IslamiQ Financial Daily, 2000, pp. 2.
http://www.islamigdaily.com/business/art_bus5_17072000.htm

⁵ Pario, Aftab A., CCS, IBA, E-Commerce: Obstacles & Suggestions, Finance & Markets, "Pakistan's leading Business Magazine for the last 25 years", 4-10 December 2000, pp. 5 <http://www.pakistaneconomist.com/page/issue49/f&m2.htm>

Technology after the framing of information technology legislation. Among some of the statutes to be examined, in a long process are the State Bank of Pakistan Act, Qanoon-i-Shahadat/Evidence Act, the Contract Law, Company Act, Pakistan Penal Code, Criminal Procedure Code, and Export and Import laws. A draft copy of the IT legislation was prepared in the light of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on e-commerce 1996, the IT laws of neighbouring countries, as well as recommendations of the Computer Society of Pakistan, National Telecommunication Organizations, and National Database Organization (NADRA). The final draft was awaiting review by legal experts who were expected to frame it in the form of an Act.⁶

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.⁷ These are some of the topics to be developed during this presentation.

ELECTRONIC CONTRACTS:

Emerging electronic commerce platform and the use of the Internet provides users with a combination of technologies to communicate data and contract electronically. On-line transactions are a source of revenues on the Internet 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.⁸

Electronic commerce generates interactivity and transactions between parties that may have had no previous contact. These dealings can occur in real-time over the network between businesses, or between businesses and consumers. The use of e-commerce still raises a number of issues that can be better addressed through a contractual process. 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.⁹

Contracts are fundamentally voluntary exchanges, and contract law looks for evidence that the parties have mutually assented to the terms of a particular set of obligations before it will impose those obligations on them. 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.

⁶ Monteiro, Noel, DAWN Sub-Editor, E-Commerce implementation in Pakistan, Information Technology (IT), the future of Pakistan, DAWN the Internet Edition <http://www.dawn.com/events/infotech/it21.htm>

⁷ Mahmood, Farhan, What the government should do for e-commerce in Pakistan, DAWN the Internet Edition, 08 May 2000, pp. 5 <http://www.dawn.com/2000/05/08/abr18.htm>

⁸ 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/>

⁹ United Nations Economic Commission for Europe (UNECE), Electronic Commerce Agreement, Recommendation No. 31, first 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/>

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 lading and contract of sale of goods. Of course, the existence of a contract can be disputed if you do not have evidenced of its formation.

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.¹⁰

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.¹¹ Evidential rules are of key importance in contractual matters.¹²

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. Mayor 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. Current local laws do not recognize electronic contracts in Pakistan.¹³

Not only national laws refer to a written document, or a signature, also the **CEFACT** Survey on conventions related to international trade reveals that these types of conventions use such words. The CEFACT identified provisions from up to thirty conventions, multilateral agreements, uniform model laws or standard rules on international trade in direct relation with paper-based documents. The CEFACT emphasized the incompatibility of definitions like "signatures", "writing" and "document" with the specific requirements of on-line trade and manifested that the presence of such definitions in international and national environment could constitute a barrier to the development of electronic commerce.

(silide) The **UN/CEFACT Recommendations** propose a model for a contractual approach of electronic operations called the **Electronic Commerce Agreement** intended to serve the commercial requirements of business to business (B2B) e-commerce partners. The **UN/ECE** has also adopted the Model Interchange Agreement for International Commercial use of EDI in 1995.¹⁴

The agreement contains a basic set of provisions which can ensure electronic commercial transactions. The agreement could be considered as the electronic contracting legal framework.

Some legal systems exclude electronic messages/documents as acceptable evidence in a Court.

The consultation paper recommends governments to enact legislation to ensure the legitimacy and enforceability of e-commerce contracts and ensure contracts made and signed electronically have the same force in law as if they had been made and signed physically. Asian Governments should embrace the principle of freedom of contract with respect to the formation and execution of electronic contracts. Legislation is required to provide for electronic evidence in civil proceedings and to set out the parameters for its use. Guidelines will be required as to what procedures are necessary in order that computer records are considered sufficient in evidential terms.¹⁵

¹⁰ 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

¹¹ 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>

¹² 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

¹³ Pakistan E-Commerce Project Questionnaire, adapted from ECDC ITU requirements and procedures document, Afranet, February 2001, pp. 7.

¹⁴ UNCTAD, Building Confidence. See footnote 2.

¹⁵ Report on e-Commerce The Policy Requirements – Business Environment, 3.1. Legal and Regulatory Framework, Publications, <http://www.entemp.ie/ece/business.htm>

Apart from electronic communication geared for the conclusion of a contract, certainty should also be provided regarding the use by parties of electronic messages geared for the performance of contractual obligations.

The Hague Conference organized an **Expert Meeting** in Ottawa in which the Experts identified three new elements to be discussed:

1. the necessity to make a distinction between contracts concluded electronically and performed off-line and contracts concluded and performed electronically,
2. the necessity to localize parties to the electronic contract, and
3. the necessity to make a distinction between products/goods and services, since the subject-matter of electronic transactions is mainly information. Such information shall be treated as "provision of services" (Reference: EU Directive on electronic Commerce from May 2000).¹⁶

The **UNCITRAL model law on e-commerce** serves as a model for national and international legislation and assists contracting parties in formulating their contracts.¹⁷ It provides some guidance for removing barriers to electronic commerce by ensuring that the keeping of electronic records is given the same status as the keeping of paper records if some conditions are fulfilled^{18,19}. The UNCITRAL Model law on electronic commerce 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.²⁰

The UNCITRAL commission has recommended "to review the legal rules affecting the use of computer records as evidence in litigation in order to eliminate unnecessary obstacles to their admission, to be assured that the rules are consistent with developments in technology, and to provide appropriate means for a court to evaluate the credibility of data contained in these records." Possible provisions to be incorporated in the UNCITRAL Model Law on E-Commerce: Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is incorporated by reference in a data message. This provision is intended to provide guidance as to how legislation aimed at facilitating the use of electronic commerce might deal with the situation where certain terms and conditions, although not stated in full but merely referred to in a data message, might need to be recognized as having the same degree of legal effectiveness as if they had been fully stated in the text of that data message.²¹

The UNCITRAL 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.

¹⁶ Kessedjian, Catherine, Electronic Commerce And International Jurisdiction, Ottawa, 28 February – 1 March 2000, Summary Discussion Prepared By Ms. Kessedjian In Cooperation With The International Law Team Of The Ministry Of Justice Of Canada, pp. 11 <http://www.Hcch.Net/E/Workprog/Idgm.Html>

¹⁷ WTO CTD, UNCITRAL Work on Electronic Commerce. See BIBLIOGRAPHY LIST.

¹⁸ The conditions are the following:

- a. "the information contained therein is accessible so as to be usable for subsequent reference; and
- b. the data message is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to represent accurately the information generated, sent or received; and
- c. such information, if any, is retained as enables the identification of the origin and destination of a data message and the date and time when it was sent or received."

¹⁹ UNCTAD, Distr. General, UNCTAD/SDTE/BFB/1, 15 May 1998, Original: English, Study prepared by the UNCTAD Secretariat, UNCTAD, Electronic Commerce: Legal Considerations, GE.98-50741 (E), pp. 59. <http://www.unctad.org/en/docs/posdtebfd1.pdf>

²⁰ UNCTAD, Building Confidence. See footnote no. 4.

²¹ United Nations Commission On International Trade Law (UNCITRAL), Thirty-first session, New York, 1-12 June 1998, United Nations - General Assembly, General, Possible Addition To The UNCITRAL Model Law On Electronic Commerce: Draft Provision On Incorporation By Reference prepared by the Secretariat pursuant to a decision made by the Working Group on Electronic Commerce at its thirty-second session, A/CN.9/450, 6 April 1998 http://www.uncitral.org/english/workinggroups/wg_ec/ml-ec-bckdocs/acn9-450.htm

The Model Law aims at facilitating electronic commerce by providing a set of internationally acceptable rules and legal principles that can be used by States in enacting legislation to remove legal uncertainties arising from the application of paper-based rules and regulations in an electronic environment.²² One of the objectives of the UNCITRAL Model Law on e-commerce is to allow a more secure legal environment created for electronic commerce. The accompanied Model's Guide to Enactment is aimed at assisting legislators and users of e-commerce by providing explanations and clarifications of the provisions of the Model Law. The model law has been used as a template for many countries considering an appropriate response to the issues of e-commerce.²³ UNCITRAL Model Law on e-commerce provides a framework to adapt legislation. The paper recommends that any proposed legislation must be uniform and conform to existing international standards and rules. The UNCITRAL model law has also contributed significantly in this regard.²⁴

The **UN Convention on Intl' Sale of goods** is a readily acceptable framework for on-line contracts dealing with the sale of goods. The provision of the conventions appear to offer workable solutions in an electronic context too, however some rules related to the effectiveness of communications may need to be adapted to electronic contracts.²⁵ The UN Sales Convention is applicable only to contracts that are concluded between parties having their place of business in different countries.

The Convention applies only to contracts for the international sale of goods. According to the majority of the doctrine, copyrights are not considered "goods". 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 object 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 conventions regulate the formal validity of contracting for international sale of goods. 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 and authenticate and confirm the integrity of the document signed.

Electronic signature is a generic, technology neutral term that refers to the universality of all the various methods by which one can sign and electronic records. Electronic signatures can take many forms and can by

²² Uniform Commercial Code for Electronic Commerce, and UNCTAD, Building Confidence. See footnotes 46 and 2.

²³ UNCTAD, Legal and Regulatory Dimensions. See footnote 1.

²⁴ Green Paper on Electronic Commerce for South Africa. See bibliography.

²⁵ UNCITRAL, Working Group on Electronic Commerce, Thirty-eight session, New York, 12-13 March 2001, Legal Aspects of Electronic Commerce, Possible future work in the field of electronic commerce contracting: an analysis of the United Nations Convention on Contracts for the International Sale of Goods, Note by the Secretariat, A/CN.9/WG.IV/WP.91, 9 February 2001, pp. 15 www.uncitral.org

created by many different technologies. One technology specific type of electronic signatures is the digital signature created through the use of public key cryptography to sign messages.²⁶

It is important to examine whether a data message, which has been created electronically by a particular person, has not been altered to confirm the integrity and authenticity of the data message. One of the techniques available to confirm the integrity and authenticity of a data message is the digital signature technique i.e. PKI. (slide) Digital signatures are the most frequently used and secure technology to electronically sign a data message. 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.²⁷ The level of security afforded by encryption is related to the size of the authorization key, which is measured in bits.

The U.S. Government exempts the export of products that contain weak encryption of up to a maximum of 56 bits but controls the export of higher-bit products.²⁸ There are some tools that people can use to protect themselves. The most important tool will be the use of encryption. Encryption is a technique for turning your message into gibberish, readable only by the person intended to read the message -- someone else who has the proper key. The most powerful forms of encryption have two keys: one public, the other private. The two key system works like this. Built into the web already are protocols for encrypting messages when, for example, the user send his/her credit card number.²⁹ Parties to a B2B and B2C transaction may consider using public key cryptography or other measures to improve the safeguard against errors in communication and interception of messages and to enhance the evidential value of records of the Parties's electronic communications.³⁰

Many Asian countries and legal jurisdictions have adopted legislation that recognizes the validity of digital signatures, however problems still arise where the application of digital signatures to international trade is concerned.³¹ Requirements such handwriting is in process of being adapted to the new technology. 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!

Current local laws do not recognize digital signatures in Pakistan.³² Asian Governments should embrace the principle of freedom of contract with respect to the use of electronic signatures. It is recommended that countries seek to achieve a relaxation of export controls on encrypted products. There should be a relaxation of restrictions concerning the use of encryption. All encryption hardware and software must be inspected and authorized by the Pakistan Telecommunication Authority (PTA) before sale and use and algorithms and keys must be inspected and deposited with the PTA.

The **UNCITRAL Model Law** stipulates that where the law requires information to be presented or stored in its original form, the requirement is met by data messages if the integrity of the information from the time it was first generated in its final form as a data message can be verified/assured, and if the information can be displayed to the person to whom it is to be presented. 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 **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."³³

²⁶ Green Paper on Electronic Commerce for South Africa. See bibliography.

²⁷ ITC, Secrets of Electronic Commerce. See footnote 10.

²⁸ Report on e-Commerce The Policy Requirements – Business Environment. See footnote 14.

²⁹ Lessig, Larry; ... Cyberspace Law for non-lawyers. See bibliography.

³⁰ UNECE, Electronic Commerce Agreement, Recommendation No. 31. See footnote 9.

³¹ Craig, Ian, Chief Executive of Arena Transportation Community Network Ltd., Electronic Commerce & the Asian Economy, Global Electronic Commerce, Realising the Potential, OECD Ministerial Conference, Foreword by the Prime Minister of Canada, The Right Honourable Jean Chrétien, Ottawa, Canada, 7-9 October 1998, pages 38-39, pp. 39.

³² Pakistan E-Commerce Project Questionnaire. See footnote 13.

³³ UNCTAD, Electronic Commerce: Legal Considerations. See footnote 18.

The **E.U. 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 adopted a Directive on a Community Framework for e-signatures on December 1999.

CERTIFICATION & CERTIFICATION AUTHORITIES:

Both businesses and consumers must be assured of security and safety in cyberspace transactions. Basically, customers need to know who and what they are dealing with out there on the Internet. Consumers need to know that the intermediary, whether it is a bank or merchant, is a trusted one and that the transaction will follow through.³⁴ In an electronic environment, an unauthorized person may have sent the message but the authentication by code, encryption or other, might be accurate. Due to the impersonal and instantaneous nature of e-commerce transactions, commercial practice may require the law to provide some measure of certainty in this regard. The law may have to deal with the issue of attributing an electronic communication to its purported originator by establishing a legal presumption that in certain circumstances a communication would be considered as a message sent or authorized by the originator.

Due regard should be taken that legal presumption, if any, would apply only in the absence of contractual arrangements governing attribution, for example, the use of certification authorities.³⁵

Digital signatures allows signatories to be identified by recipients through the intervention of a trusted third party i.e. Certification Authorities. 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.³⁶

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.³⁷ Mutual recognition of the digital signature certification authorities should be on the table for further bilateral and multilateral trade negotiations.

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.³⁸

The **E.U. adopted a Directive on Electronic Signatures** 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.³⁹

A system whereby organizations are accredited to certify the existence of individuals and companies in Pakistan are required. Such organizations should interact with their counterparts around the world so that the same identification information, on potential suppliers and customers, can be made available to Pakistani companies and individuals trading internationally.

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.⁴⁰ Asian countries local laws should recognize authentication certificates for electronic signatures issued by certification authorities

³⁴ Mahmood, Farhan, What the government should do for e-commerce in Pakistan. See footnote 7.

³⁵ Green Paper on Electronic Commerce for South Africa. See bibliography.

³⁶ ITC, Secrets of Electronic Commerce. See footnote 10.

³⁷ 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/infos/sign.htm

³⁸ Craig, Ian, Electronic Commerce & the Asian Economy. See footnote 27.

³⁹ UNCTAD, Building Confidence. See footnote 2.

(CAs) within the jurisdiction of any other country. Asian countries should recognize any signature authenticated by a CA lawfully operating within any other country, without further requirements.

CONSUMER PROTECTION:

Anyone with a computer and Internet access can become a merchant and reach consumers the world over and any consumer can acquire products and services offered anywhere in the world.⁴¹

Without an e-commerce legal framework, customer confidence will remain affected, as people will remain unsure on how they are protected, or if they will be protected if anything goes wrong during an on-line transaction. Many businesses and consumers are still wary of conducting extensive business over the Internet because of the lack of a predictable legal environment governing transactions.

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.⁴²

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.

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.⁴³

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.

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 **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)**⁴⁴ 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 businesses 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.

⁴⁰ Report on e-Commerce The Policy Requirements – Business Environment. See footnote 14.

⁴¹ Organization for Economic Co-operation and Development (OECD), Electronic Commerce, Policy Brief, No.1-1997, pp.8

⁴² Mahmood, Farhan, What the government should do for e-commerce in Pakistan. See footnote 7.

⁴³ 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.

⁴⁴ <http://www.bbbonline.org>

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.⁴⁵ 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. If a company starts collecting and organizing messages from Discussion Forums in a data bank, and put it available on the Web to make research by a particular word, or phrase, or for the name of a particular user, the user of this service will be able to get a profile of all the messages that a person has sent and access all of the messages this sender has sent to the discussion forum. 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.

There are several cases where privacy can be threatened. Let's see some examples:

1. A consumer buys some groceries at a supermarket. The supermarket compiles the data about his/her purchases, and sells it to marketers. The problem is that the consumer has not been notified that the supermarket intends to use the information for this purpose; nor have the consumer explicitly consented to this use.
2. The credit card company has the same information about its clients -- clients supplied it when you getting the credit card. The credit card company could collect the data about the client's purchases, and sells it to marketers.⁴⁶

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.⁴⁷

Cryptography will play a particularly important role in ensuring the security of data and the reliability of transactions by safeguarding both the confidentiality and the integrity of data. The **OECD** member countries adopted the **Guidelines on Cryptography Policy in 1997**.

New methods and technological tools will offer alternative ways to protect individual's data. Some of these methods are mechanisms for verifying information i.e. Certification, Registration and Verification Authorities.⁴⁸

⁴⁵ ITC, Secrets of Electronic Commerce. See footnote 10.

⁴⁶ Lessig, Larry; ... Cyberspace Law for non-lawyers. See bibliography.

⁴⁷ e-commerce, Legal Issues, Guidance Legal. See bibliography.

⁴⁸ OECD, Electronic Commerce, Policy Brief. See footnote 38.

The **OECD drafted some Guidelines governing the Protection of Privacy and Transborder data Flow of Personal Data.** The OECD Guidelines 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 cover state that personal information should not be improperly altered or destroyed, such information should be accurate, complete, timely, and relevant for the purposes for which it is provided and used.

Disparate policies could emerge and disrupt transborder data flows. For example, the European Union (EU) has adopted a Directive that prohibits the transfer of personal data to countries that, in its view, do not extend adequate privacy protection to EU citizens.⁴⁹

The EU stipulates data protection as an important part of European human rights law. The EU has adopted a Directive relating to the protection of personal data on October 1995.

The **U.S. Electronic Communications Privacy Act of 1986** has adopted the following provision: "any person who (a) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication" shall be fined or imprisoned. The intentional disclosure or use of the contents of any wire, oral, or electronic communication that is known or could reasonably be known to have been intercepted in violation of the statute is prohibited. This largely guarantees the privacy of in-transit email as well as data transfers over a network or telephone line going to or from a computer system. In essence, e-mail cannot legally be read except by the sender or the receiver even if someone else actually intercepted the message.

The Act prohibits unlawful access to communications which are being stored on a computer. E-mail, voice mail, and even pager data are stored at some point during the transmission process. The provision reads, in part, "whoever--(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or (2) intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system" shall be subject to fines and/or imprisonment. This statement enables electronic communications to be preserved for use outside of any government investigation.

The Privacy Protection Act immunizes from law enforcement search and seizure any "work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate commerce."⁵⁰

The U.S. congress passed the Video Privacy Protection Act of 1988. This data should be protected and the individual should have control over it, otherwise, the electronic commerce will facilitate the invasion of privacy.

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." These rights involve copyright, industry designs and models rights and patents. During this session we will only talk about copyrights. "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."⁵¹ Copyrights are referred to as the rights to ensure protection of information from duplication and distribution. Computers are changing the way that copyrighted goods can be illegally copied and distributed. Copyright Law applies to things you write electronically. i.e. the personal Web page that a person

⁴⁹ Uniform Commercial Code (UCC) for Electronic Commerce, Read the framework, A framework for Global Electronic Commerce, President William J. Clinton, Vice-President Albert Gore, Jr., Washington D.C.

⁵⁰ Loundy, David J., E-LAW 4. See BIBLIOGRAPHY.

⁵¹ 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/intel1_e.htm

puts up is copyrighted. Copyright generally gives the copyright owner the exclusive right to make copies of a work.

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.

The Internet enables everyone to copy an original document of any kind. Controlling copies (once created by the author or by a third party) becomes a complex challenge.⁵² Authors can now, for the first time in history, deliver copies of their creations instantaneously and at virtually no cost anywhere in the world. Text, pictures, sounds, software--all of these can be distributed via computer systems--and all can be copyrighted.

Text, music and images are reduced to strings of binary code. The digitization of data enables its transmission at speed with the potential for indefinite storage in the memory of information technology and network devices. As a result, vast amounts of information and intellectual property are being transmitted in digital form, to anyone with access to the network.

The technologies of the digital system allow users to duplicate and manipulate content – perfectly, instantly and infinitely – in ways that may be largely undetectable, thereby greatly expanding opportunities for confusion, fraud and infringement of intellectual property rights.

It is very easy for anyone to commit intellectual property rights infringements such as downloading the content of a site, reproducing information, copying publications, etc. Violations to copyright covers copies of less than a whole document i.e. making a copy of few pages and even copying only few paraphrases. Moreover, other violations to copyright are translating an article into a foreign language, or making a movie based on a book.⁵³

There is no intent or knowledge requirement to find a copyright violation. Copyright infringement is a strict liability offense--intent is only a factor in calculating damages. When a work is copied, even if the person making the copy does not know or have reason to know that the work is copyrighted, an infringement may still be found. Even subconscious copying has been held to be an infringement.

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.⁵⁴

Much of the trade on the Net involves selling or licensing information or cultural products subject to intellectual property rights. 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.

There are several treaties that establish international norms for the protection of copyrights, most notably the Berne Convention for the Protection of Literary and Artistic Works. The Berne Convention was updated by WIPO in 1996. According to the Berne Convention revised in 1996, any original intellectual creation is subject to ownership, confers on the owner a monopoly over exploitation, and provides the following exclusive rights: representation, reproduction, translation, broadcasting, adaptation, recording, public reciting, right of

⁵² Johnson, David R. And Post David G., Law And Borders- The Rise Of Law In Cyberspace, 48 Stanford Law Review 1367 (1996), CLIO Website, PP. 20 http://www.clio.org/x0025_lbfin.html

⁵³ Lessig, Larry; ... Cyberspace Law for non-lawyers. See BIBLIOGRAPHY.

⁵⁴ 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

continuity, moral rights, etc. The protection lasts for the lifetime of the author and 50 years after his or her death.

The **World Intellectual Property Organisation (WIPO)** is a central pillar 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 **WIPO Copyright Treaty** and the **WIPO 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.⁵⁵ WIPO Treaties clarify that national law must prevent unauthorized access to and use of creative works which, may be downloaded anywhere in the world. Discussions continue aiming at adopting a Treaty on Intellectual Property in Databases.

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.⁵⁶ According to the WTO TRIPS Agreement, computer programs should be considered as literary works, and protected under national copyright laws.⁵⁷ The TRIPS agreement was adopted in 1994 to provide rules concerning trade-intellectual property rights, basic principles of previous intellectual property conventions, standards regarding availability, scope, and use of intellectual property rights. Appropriate enforcement, multilateral dispute settlement procedures and transitional arrangements for countries are also included in the agreement. TRIPS agreement is enforced through WTO panels and dispute resolution mechanisms. **TRIPS basically covers copyrighted and related rights such as the right of broadcasters, performers, producers, of sound recording and broadcasting organizations; industrial designs and patents including** the protection of layout and design of integrated designs; undisclosed information including trade secrets and test data; trademark and services marks. It also outlines the main elements and standards of protection to be provided by each member, the nature of the subject matter to be protected, and the rights to be conferred and permissible exceptions to those rights as well as the duration of protection. It further includes enforcement mechanisms on behalf of the standards and their protection (provisions of civil and administrative procedures, criminal procedures, remedies, and other dispute resolution mechanisms).

In the absence of global agreement on applicable copyright principles, the jurisdictional problems inherent in any attempt to apply territorially based copyright regimes to electronic works simultaneously available everywhere on the globe are profound.

Intellectual property infringements, such as an infringement of a patent, trademark or copyright, belong to the category legally known as "torts" or "delicts," that is, activity in violation of a legal duty which results in an injury or other civil wrong.

The **draft Hague Convention** provides for a non-exclusive special jurisdiction for this category, specifying that a plaintiff may bring an action "in tort or delict" in the courts of the State where (a) the act or omission that caused injury occurred or (b) the injury arose, unless the person claimed to be responsible could not reasonably have foreseen that the act or omission could result in an injury of the same nature in that State.

Similarly, the European Commission's proposed Regulation provides for jurisdiction in "the courts for the place where the harmful event occurred or there is the risk of it occurring." This approach may not sit well with the essentially "de-localized" character of the Internet and the activity conducted on it. There are several drafts EU directives on copyright.

⁵⁵ UCC for Electronic Commerce. See footnote 46.

⁵⁶ Ruggiero, Reato, Director-General of the WTO, Global Rules for the Electronic Market-Place, Global Electronic Commerce, Realising the Potential, OECD Ministerial Conference, Foreword by the Prime Minister of Canada, The Right Honourable Jean Chrétien, Ottawa, Canada, 7-9 October 1998, page 23, pp. 39.

⁵⁷ ITC, Secrets of Electronic Commerce. See footnote 10.

The **U.S. Copyright Act** allows protection of "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." The Act gives an author the exclusive rights to make copies of his or her works, as well as create derivative works which includes copies in computer readable form. Scanned pictures, digitized sounds, machine-readable texts, and computer programs are all subject to an author's copyright. Any attempt to turn original material into one of these computer-readable forms without the author's permission (unless the copy falls under one of the Act's exceptions) is a violation of the author's copyright.

Whether the unauthorized distribution or archiving of a copyrighted work constitutes a violation of the Copyright Act is also determined by whether the copying falls under one of the Act's exceptions. The most important exception is the "fair use" provision which gives the right to reproduce information in certain circumstances. Fair use was traditionally a means of promoting educational and critical uses. Fair use is an exception to the general rule that the public's interest in a large body of intellectual products coincides with the author's interest in exclusive control of his work, and it is decided in each case as a matter of equity.⁵⁸ The conditions are met if a person copies:

1. only a small part of an article, document, text; or
2. 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.

An e-commerce consultation paper recommends governments to ensure that new copyright legislation makes it an offence to post copyright material on public web sites without the copyright owner's consent and enhance the enforcement powers and penalties for electronic breach of copyright.⁵⁹ The paper identified some problems around the adaptation, protection and enforcement of intellectual property rights in e-commerce.

Some of these problems are:

1. The difficulty in distinguishing between the original owner of intellectual property and the host or custodian of such property in an electronic environment.
2. The availability of free, unsolicited, and cheap electronic goods and services online,
3. Availability of inexpensive, sophisticated and innovative methods for reproduction and distribution often referred to as circumventing technologies including duplicating devices of intellectual property,
4. The ever-changing technology innovations relating to the use of Internet for commercial transactions,
5. The global nature of e-commerce, the Internet transcending borders,
6. Inadequate legal framework to regulate rights and responsibilities for and on behalf of Internet Service Providers in terms of liability.⁶⁰

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.⁶¹

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.⁶²

⁵⁸ Loundy, David J., E-LAW 4. See BIBLIOGRAPHY.

⁵⁹ Report on e-Commerce The Policy Requirements – Business Environment. See footnote 14.

⁶⁰ Green Paper on Electronic Commerce for South Africa. See bibliography.

⁶¹ 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.

⁶² 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

What is necessary to regulate computer information system content and system operator liability is, first and foremost, an understanding of the technology. If judges, juries, lawyers, and legislators do not understand current technology, the technology will change before the law catches up to it.⁶³

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.⁶⁴

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.

Under the **U.S. Copyright Act**, there are two types of third party liability that may be present: One is Contributory Liability (Summarized as "Knowledge And Participation" in the infringing activity), and the other is Vicarious Liability (Summarized as "Benefit And Control" of the infringing activity).

The proper circumstances for finding contributory infringement are those in which the third party has knowledge of and participates in the direct infringement of a protected work. The oft-cited definition of a contributory infringer is "one who, with knowledge of the infringing activity, induces, causes or materially contributes to the infringing conduct of another." If the person authorizes the use of a work without the permission of the copyright holder, and was in a position to control the use of the copyrighted works by others, then that person can be held liable as a contributory infringer.

The second type of third-party liability is vicarious liability. vicarious liability attaches when, even in the absence of knowledge of the infringement, a party has the "Right and Ability" to supervise the infringing activity of another, and derives "obvious and direct financial interest in the exploitation of copyright materials." vicarious liability cases are often analyzed based on two lines of cases: landlord-tenant cases, which exempt from liability landlords who receive only a fixed rent and receive no additional financial benefit from any infringement; and "Dance Hall" cases, where nightclub owners have been held vicariously liable for infringing music played by bands performing in the clubs.

The document is read from the web provider's disk drive and into the ram of the web provider's computer, creating a copy. The work is then transmitted through the computer network and "fixed" in the ram of the user's computer. The work has now been reproduced, implicating rights of the copyright holder (who, of course, may be the web provider).

As stated earlier, "one who, with knowledge of the infringing activity, induces, causes, or materially contributes to the infringing conduct of another, may be held liable as a 'contributory' infringer." In order for a web operator to be liable to an "infringing site" for placing a link on its web page, the web operator does not have to actually know or have reason to know of the infringements that are likely to occur as a result of the user accessing the infringing site. Actual knowledge that the link will result in infringements is not required; reason to know on the part of the web operator will suffice.

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, as we have mentioned, in clarity, it is necessary to look at the national systems of private international law. However, the reply differs from one system to the other. They

⁶³ Loundy, David J., E-LAW 4. See bibliography.

⁶⁴ Report on e-Commerce The Policy Requirements – Business Environment. See footnote 14.

differ also within each system.⁶⁵ 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.

International co-operation will become essential in resolving matters such as conflicts of laws if the legal environment is to be truly clear and understandable to guide the behaviour of system operators. We can apply an appropriate foreign private law to the problem at issue. In order for an issue to be dealt with appropriately, we should apply the law that has the closest connection with the issue, which is the law of the home country. If the same law is chosen to apply to issues in accordance with choice-of-law rules in every country, the differences in the content of the laws of countries do not matter at all. Civil (e.g. European Union, Latin-American countries, former French, Italian and Belgian colonies, and Common Law (e.g. U.S.A., U.K., and former British colonies) have adopted this model, inclusive the Hague Conference has stipulated this model in its conventions. In order to achieve the final objective of the choice-of-law method, which is to have the international legal situation in order by way of applying everywhere the law most closely connected to the issue in question, it is of crucial importance to adopt appropriate connecting factors. Connecting factors play a role to designate the law applicable to the category of legal issues. The objective of the choice-of-law rules is to apply the law of the most closely connected place or country.

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.⁶⁶

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.

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.

Many conventions have been ratified by several countries.⁶⁷ However, even within their scope of application these conventions did not harmonize the laws of their contracting states as a whole.

1. The **International Institute for the Unification of Private Law (UNIDROIT) Principles of International Commercial Contracts** from 1994 and the UN Convention on Contracts for the International Sale of Goods from 1980 stipulate specific rules relating to the applicable law to international transactions. Both, the convention and the international rules can be chosen by parties to govern their contracts.
2. **Hague Conference on International Private Law conventions** concluded since 1951, see, <http://www.hcch.net/> In the **Preliminary Draft Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters** made on 30 October 1999 by the Special Commission of the Hague Conference on Private International Law, there is a provision concerning exclusive jurisdiction of particular States' courts in certain kinds of proceedings. The problem is whether or not courts of a Contracting State in which the deposit or registration has taken place have exclusive jurisdiction in proceedings concerning the infringement of industrial property rights. Such proceedings often involve the question of the validity of the rights themselves as an incidental question.
3. The **EU Convention on the Law Applicable to Contractual Obligations**, 1980 (Rome Convention). The general regulatory principle, as codified in relevant national and international instruments, is to respect the choice of law made by the parties. In Europe, the Rome Convention on the Law Applicable to Contractual Obligations governs this area, providing generally that a "contract shall be governed by the law

⁶⁵ Lucas, André, Private International Law Aspects of the Protection of Works and of the Subject Matter of Related Rights Transmitted over Digital Networks. See footnote 51.

⁶⁶ ITC, Secrets of Electronic Commerce. See footnote 10.

⁶⁷ Copyright law international harmonization:

1. Berne Convention for the Protection of Literary and Artistic Works, 1886, as amended (147 countries);
2. Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961 (67 countries);
3. Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, 1971 (63 countries);
4. WIPO Copyright Treaty, 1996 (21 countries); and
5. WIPO Performances and Phonograms Treaty, 1996 (18 countries).

chosen by the parties." The principle of freedom of contract should be accorded appropriate respect under the law as a means for facilitating electronic commerce and the parties' expectations in a complex international legal environment. The Rome Convention provides that "to the extent that the law applicable to the contract has not been chosen..., the contract shall be governed by the law of the country with which it is most closely connected." Further, it is "presumed that the contract is most closely connected with the country where the party who is to make the performance which is characteristic of the contract has, at the time of conclusion of the contract, his habitual residence..."

4. Although the **Berne and Paris Conventions** contain certain choice of law elements, they are generally not regarded as complete, and their precise relationship with national private international law provisions is not always clear. For example, the Berne Convention provides that in the case of an alleged infringement of copyright, "the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed." In any event, if one assumes the prevailing view that this phrase refers to the country where the alleged infringement takes place, a posting on the Internet, as noted above, may implicate a multiplicity of possible laws.
5. Some conventions were adopted under the auspice of the **Organization of American States**, see, <http://www.oas.org/>.

The recognition of foreign judgements should be considered in the context of the application of laws because of its overriding effect in this regard. A foreign judgement is an act of state which is decisive in nature. In general, foreign acts of state are recognized in accordance with certain requirements provided for by the recognizing country. Recognition of foreign judgements is one of the more explicit mechanisms within this general framework. When one country agrees with others to recognize the effect of acts of other countries, it is under an international obligation to recognize such effect accordingly. Without such an international agreement, there is no rule of general public international law that would force the country to recognize of such foreign acts of State. Accordingly, countries may or may not recognize the effect of foreign acts of State.⁶⁸ For references see the N.Y. Convention on recognition of foreign judgements and arbitral awards.

The choice of law issues rose by electronic commerce and digital communications will remain complex and difficult in relation to the protection and exploitation of intellectual property.⁶⁹ The problem of the law applicable to copyright or related rights is not without a link to that of competence of jurisdiction, but the two must nevertheless be carefully separated. Attention has become focused on two laws that are in competition, and that it is usual to designate as the law of the country of emission and the law of the country of reception. However, we must look further, since other attachments have been proposed.

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 majority of writers approve application of the laws of the countries of reception with respect to local harms. The solution, included in the general tendency of private international law to give preference, for civil liability, to the law of the place where the harm has been suffered, the compensation due to the victim will be complicated thereby and possibly even compromised by risk of contradiction and failure to enforce the decision abroad. And the person responsible himself will claim that it is not reasonable to oblige him to adapt his behavior to such a large number of laws at once.

⁶⁸ Prof. Dogauchi, Masato; Faculty Of Law, University Of Tokyo, WIPO Forum On Private International Law And Intellectual Property, 30–31 January 2001, Private International Law On Intellectual Property: A Civil Law Overview, WIPO/PIL/01/8, Original: English Only, 24 January 2001, pp. 15. www.wipo.org

⁶⁹ WIPO, Primer on Electronic Commerce and Intellectual Property Issues. See footnote 11.

In the present state of substantive law and taking into account the significant differences that exist between the national laws in respect of copyright and related rights, 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.⁷⁰ As to procedural law, there are no special rules relating to copyright. General civil procedural rules should be applied.⁷¹

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 location: the power of local governments to assert control over online behavior; and the legitimacy of the efforts of a local sovereign to enforce rules applicable to global phenomena. Cyberspace has no territorially based boundaries, because the cost and speed of message transmission on the Net is almost entirely independent of physical location.

The Net enables transactions between people who do not know, and in many cases cannot know, the physical location of the other party. Location remains vitally important, but only location within a virtual space consisting of the "addresses" of the machines between which messages and information are routed. The system is indifferent to the physical location of those machines, and there is no necessary connection between an Internet address and a physical jurisdiction. Events on the Net occur everywhere but nowhere in particular. No physical jurisdiction has a more compelling claim than any other to subject these events exclusively to its laws.⁷² The Internet is multi-jurisdictional and e-commerce has a transnational nature. It is not concerned about traditional jurisdictional borders. Digitized information may travel through various countries and jurisdictions, each with its own legal system, in order to reach its destination.

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. Within the analytical framework of Private International Law, one needs to think about choice of law (the law applicable to the dispute) and **enforcement** (the recognition and enforcement of judgments in courts in foreign jurisdictions) as well as forum selection (**jurisdiction** to adjudicate a dispute at a particular location).

There are problems of jurisdiction applicable to electronic transactions which will include many cross-border transactions. This uncertainty applies to contractual rights, the remedies and the marketing rules and practices. Jurisdiction raises the question of which national court or arbitral tribunal will hear the dispute. 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.

The jurisdictional concepts still depend upon localizing conduct. Tort Law Rules depend on where injuries occur; Contract Law Rules depend on where contracts are made or performed. Property Law Rules depend on where the property is located.

Under the Common Law (Pakistan), the jurisdiction where the consumer habitually resides generally prevails.⁷³ New methods and technological tools will offer alternative ways to protect individual's data. Some of these methods are mechanisms for notifying consumers of the legal jurisdiction or venue for resolving disputes arising from a transaction.⁷⁴

⁷⁰ Lucas, André, Private International Law Aspects Of The Protection Of Works And Of The Subject Matter Of Related Rights Transmitted Over Digital Networks. See footnote 51.

⁷¹ Prof. Dogauchi, Masato; Private International Law On Intellectual Property. See footnote 65.

⁷² Johnson, David R. And Post David G., Law And Borders - The Rise Of Law In Cyberspace. See bibliography.

⁷³ Report on e-Commerce The Policy Requirements – Business Environment. See footnote 14.

⁷⁴ OECD, Electronic Commerce, Policy Brief. See footnote 42.

For electronic commerce and political discourse to flourish in the Internet, new forms of **Alternative Dispute Resolution** must be designed and deployed. Greater use of alternative dispute resolution is necessary to allow the Internet to fulfil its potential.⁷⁵ To supplement available court procedures, Alternative Dispute-Resolution (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. ADR procedures offer a solution of international dimension for the jurisdictional concerns raised above. Arbitration is a procedure providing a private and binding adjudication, which operates within a well-established and publicly enforceable international legal framework. Arbitration can provide a single solution for multi-jurisdictional disputes arising from commerce over global networks. At the same time, the nature and speed of electronic commercial activities have generated pressure to streamline and reduce the time and cost of traditional arbitral procedures. 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. Furthermore, Internet-based document filing systems may allow parties to submit instantaneously a significant number of documents over any distance, at virtually no cost. Submissions can be processed, stored and archived by automated document management systems, and their review from any location will be possible through an Internet-based interface on a 24-hour basis for parties with the required access rights. With the development of appropriate audio and video facilities, parties will also have the possibility of conducting meetings or hearings online, greatly reducing travel expenses and the costs of organizing conference rooms.

Next to the establishment of a technical system allowing the proceedings to be conducted online, the required legal framework needs to be established. 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. In addition, the time periods for the accomplishment of various steps in the procedure can be shortened to ensure that the proceedings can be conducted swiftly and, consequently, at lower cost.

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. Disputes arising out of or in connection with any electronic transaction shall be referred to the court or arbitration stated in the e-transaction (transaction shall insert country and municipality). Nevertheless, arbitration may not always be necessary where countries concerned are linked by treaties that define which court have competence to hear the controversy.

An E-Commerce consultation paper recommends governments to promote arbitration as a suitable dispute resolution mechanism for e-commerce transactions, encourage national courts to develop e-commerce expertise, and consider the establishment of an online international arbitration mechanism, which companies can use to resolve disputes, regardless of their country of origin.

The WIPO is a central pillar in the development of dispute resolution for the Internet. The 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.

It is recommended to stipulate in the contract which court or arbitration panel will have competence over a dispute arising from your contract.

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

⁷⁵ Perritt, Dean Henry H. Jr., *Electronic Commerce: Issues In Private International Law And The Role Of Alternative Dispute Resolution*. See footnote 59.

applied. The New York Convention and/or national arbitration statutes provide for judicial enforcement for any arbitration award.

For the EU, **Brussels Convention** from 1968 and **Lugano Convention** from 1988 provide that, in principle, the court, which has jurisdiction, is the court of the defendant's residence, the court of the country where the contract is performed, or the court of the country where the harmful event, which is the subject of the dispute, occurred. The 1968 Brussels Convention on jurisdiction and the enforcement of judgements in civil and commercial matters, concluded between the States of the European Community, of which the scope was extended by the 1998 Lugano Convention to the Member States of the European Free Trade Association, and which is applicable with respect to intellectual property, gives a victim the possibility of choosing between the jurisdiction of the State of residence or headquarters of the defendant (general competence deriving from Article 2) or the court of the place "where the harmful event has occurred" (delictual or quasi-delictual competence deriving from Article 5[3]). However, it remains to see how the rule can be applied where there is a plurality of harms in differing countries.

In any event, it is not sufficient for the victim of the infringement to obtain a decision in his favour. He must also be able to have it recognized and enforced in another country, for example to obtain the closure of the infringing site. The Brussels Convention contains liberal provisions in that respect. Article 26(1) indeed lays down the principle that "decisions given in a Contracting State shall be recognized in the other Contracting States without it being necessary to have recourse to any procedure" and Article 31(1) provides that authority to enforce the judgement is obtained on a simple request.⁷⁶

The Brussels Convention attempts to use personal jurisdiction as a way to identify one forum as the single most appropriate location for the resolution of a particular dispute.

Also, **the European Commission Proposed Regulation on Jurisdiction and Enforcement of Judgments** which is intended to replace the Brussels Convention of 1968 (and its Protocol). Article 2 provides the general jurisdictional rule that persons "domiciled" in a Member State may "be sued in the courts of that Member State," subject to the other provisions of the proposed Regulation. An example of prospective legislation enabling alternative dispute resolution for disputes between service providers and users is found in Article 17 of the European Commission's Proposal for a European Parliament and Council Directive on Certain Legal Aspects of Electronic Commerce in the Internal Market. The Commentary to the Proposal states that "this type of mechanism would appear particularly useful for some disputes on the Internet because of their low transactional value and the size of the parties, who might otherwise be deterred from using legal procedures because of their low cost."⁷⁷

The proposed Regulation similarly provides that, for matters relating to contract, a person in one Member State may be sued in another Member State in the courts "for the place of performance of the obligation in question." The "place of performance" is defined, in relation to goods or services respectively, as the place where, under the contract, they are delivered or provided (or should have been delivered or provided). For transactions in which an order is placed online, but the goods or services are physically delivered offline to the customer, the existing rules of private international law remain relevant. To avoid these potential issues, online agreements should, whenever possible, designate the place where performance under the contract may be deemed to have taken place, or, better yet, specify the court or courts which the parties agree will have jurisdiction if a dispute arises.

The proposed **Hague Convention on Jurisdiction and Foreign Judgements in Civil and Commercial Matters** is currently drafted to cover most fields of private litigation, including intellectual property. (There is currently reason to be concerned that it may not be promulgated at all, or that if it is promulgated, that it will be reduced in scope and cover only select areas of litigation, likely not to include intellectual property). The proposed Hague Convention is mainly aimed at facilitating the enforcement of judgements; it includes features that would also make the adjudication of multinational disputes more efficient. The ability to consolidate

⁷⁶ Lucas, André, Private International Law Aspects Of The Protection Of Works And Of The Subject Matter Of Related Rights Transmitted Over Digital Networks. See footnote 64.

⁷⁷ WIPO, Primer on Electronic Commerce and Intellectual Property Issues. See footnote 11.

actions in one court, with the expectation that the judgement of that court will be recognized in all convention's Member State, would reduce costs for all sides, conserve judicial resources on an international basis, and promote consistent outcomes. This convention identifies a fairly wide set of *fora* with adjudicatory authority over the parties. The goals of the Draft are first, to harmonize jurisdictional rules and limit the places where proceedings can be instituted to a few appropriate *fora*, thus avoiding an unnecessary multiplicity of proceedings as well as the possibility of conflicting judgements; and second, to simplify and expedite the recognition and enforcement of judgements, provided that they comply with provisions of the draft Convention. The Hague Conference expert meeting concluded that the Hague Convention can be adapted to e-commerce innovations.

Because arbitration is now a common way to resolve intellectual property disputes, this proposal makes clear that arbitral agreements are enforceable on the same terms as choice-of-forum agreements. This proposal makes clear that all Member States must recognize the monetary and injunctive awards rendered by courts with proper authority over the parties. There are a few exceptions. This provision would permit a court where recognition is sought to deny enforcement when the rendering court's choice of law was arbitrary or unreasonable. Recognizing the growing importance of resolution of intellectual disputes through arbitration, we include contractual choice of an arbitral forum. The Experts from the Hague Conference on Private International Law Expert Meeting held in Ottawa in February-March 2000 emphasized the importance of alternative methods of dispute resolution, but no consensus view emerged on the place to be assigned to them. The choice of court clauses in a contract would be valid only if the State of consumers' habitual residence accepts these types of clauses as valid.

Because the draft Hague Convention assigns exclusive jurisdiction over registered rights cases to the State where the rights are registered, certain intellectual property claims cannot be consolidated in the forum first seized. To the extent that this proposal subsumes registered rights, it facilitates a higher degree of consolidation. It facilitates centralized adjudication of a multinational dispute through, essentially, transfer of parallel actions to a single forum.

The paper expresses that it is important to ascertain the time and place of receipt of information. The use of electronic communication techniques makes it difficult to ascertain the time and place of contracting. The question is to know which criteria should be considered by the law to infer the place and time of the conclusion of an e-contract: the location of information system and their components, or a more objective criteria such as the place of business of the parties. The information theory generally applied to modes of direct, interactive communication provides that a contract is concluded at the place where and time when the acceptance is brought to the mind of the offeror. The time when and place where an e-commerce contract is concluded are fundamental to determining which country has jurisdiction to adjudicate a dispute involving both local and foreign nationals and which country's laws our court would apply.⁷⁸

The Hague Convention uses personal jurisdiction to create a narrow range of appropriate Choices⁷⁹ Article 3 contains, as a matter of general jurisdiction, the provision that "a defendant may be sued in the courts of the state where the defendant is habitually resident." This concept follows largely the approach taken by the Brussels Convention, but modified in that the relevant link is not the "domicile" but the "habitual residence" of the defendant. Article 18.2 (e), which belongs to the second category referred to above, expressly excludes the possibility of assuming general jurisdiction under the national law of a Contracting State solely on the ground of "carrying on of commercial or other activities," but allows for special or specific jurisdiction under national law (see third category in paragraph 46, above) in so far as the dispute is "directly related" to those activities. The draft Hague Convention provides that an action in contract may be brought in the courts of a

⁷⁸ Green Paper on Electronic Commerce for South Africa. See bibliography.

⁷⁹ Prof. Dreyfuss, Rochelle C., Harry Cross M., distinguished visiting professor of Law, University of Washington School of Law, Seattle, Washington, Director, Engelberg Center on Innovation Law and Policy, New York University School of Law, and Prof. Ginsburg, Jane C., Morton L. Janklow, Professor of Literary and Artistic Property Law, Columbia University Law School, New York City, U.S.A., WIPO Forum on Private International Law And Intellectual Property, 30–31 January 2001, Draft Convention on Jurisdiction and Recognition of Judgments, in Intellectual Property Matters, WIPO/PIL/01/7, Original: English only, 24 January 2001, pp. 32 www.wipo.org

State in which the goods or services were supplied in whole or in part, or, in matters relating to both goods and services, where "performance of the principal obligation took place in whole or in part."

Both the draft Hague Convention and the EC proposed Regulation on Jurisdiction and Enforcement of Judgments respect the principle of party autonomy, by permitting the parties to choose for themselves the court or courts that will have jurisdiction to settle any dispute arising in connection with their legal relationship. The approach taken in these instruments with respect to the formalities for the validity of an electronic agreement is liberal. Both indicate that such agreements will be considered valid as to form if they meet minimum indicia of reliability. For contracts involving consumers, both instruments give weight to the prerogatives of the consumer as a party deserving special treatment.

The draft Hague Convention provides that a consumer may bring suit "in the courts of the State in which it is habitually resident," if the consumer's claim relates to "trade or professional activities that the defendant has engaged in or directed to that State, in particular in soliciting business through means of publicity." A claim against a consumer can only be brought in the courts of the State of the habitual residence of the consumer. The proposed Regulation is to the same effect.

Both draft conventions contain special provisions for exclusive jurisdiction for certain registered intellectual property rights. Both texts being modeled on the Brussels Convention. Exclusive jurisdiction will reside in the courts of the relevant State: (i) where the register is kept, for proceedings which have as their object the validity or nullity of entries in public registers; or (ii) where the deposit or registration has been applied for, has taken place or, under the terms of an international convention, is deemed to have taken place, for proceedings which have as their object the registration, validity, [or] nullity [, or revocation or infringement,] of patents, trade marks, designs or other similar rights required to be deposited or registered. As drafted, these provisions relate only to rights that are required to be deposited or registered and it "shall not apply to copyright or any neighboring rights even though, under certain legal systems, registration of such rights is possible."

Both, the **UN Convention on International Sale of Goods** and the **UNIDROIT** international principles can be chosen by parties to govern the disputes that could arise in the context of their contractual relations.⁸⁰

The **OECD** has drafted a **Consumer's Protection Guidelines in electronic commerce** to encourage dispute resolution.

The **Digital Millennium Copyright Act** provides a legislative framework which clarifies the practices of private parties in notifying alleged infringements to online service providers and the circumstances in which service providers may limit their liability by acting upon such notifications to take-down infringing material. It limits service providers from monetary liability for online infringements of copyright that may occur in the transmission, caching or hosting of copyrighted material, provided that a number of conditions enumerated in the Act are met. The Act incorporates a procedure whereby right owners can formally notify service providers of claimed infringements, whereupon the provider must expeditiously remove or disable access to the material in question in order to benefit from the liability limitation.

Both localization and enforcement are under active discussion in The Hague Conference on Private International Law. The Conference is considering a Comprehensive Treaty For Judicial Jurisdiction and Enforcement of Foreign Civil Judgments.⁸¹ An October Draft Convention on International Civil Judgments is modeled closely on the European Brussels and Lugano Conventions.

The **American Bar Association (ABA) Working Group on Cyberspace** published a report on Trans-national issues in cyberspace: a project on the law relating to jurisdiction.⁸²

RECOMMENDATIONS/SUGGESTIONS:

⁸⁰ ITC, Secrets of Electronic Commerce. See footnote 10.

⁸¹ <http://www.hcch.net/e/workprog/jdgm.html> (draft convention and associated analyses).

⁸² Kessedjian, Catherine, Electronic Commerce And International Jurisdiction. See footnote 15.

There is an urgent need for creating a proper legal atmosphere under which e-commerce could flourish in Pakistan. The Ministry of Science and Technology is trying to implement e-commerce in Pakistan and should obtain all the political and financial support and other Ministry's cooperation to exploiting the new technology. There is also a need to put in place a computerized system and networking to be used as basic tools to create a paperless environment for the governmental organizations in Pakistan.⁸³ Existing laws and regulations that may be an obstacle to e-commerce should be reviewed and revised or eliminated to reflect the needs of the new electronic age. Reform is needed in legal and regulatory areas, such as trusted third parties, contract law, etc. Policy and decision makers should recognize the need for legislation and regulation at the country level that is consistent with other Asian countries and the international market in order for the region to get full benefits from e-commerce.

The new rules and regulations for e-commerce should be technology-neutral & flexible due to the fact that e-commerce is in constant development and legislation may suffer modifications in a short-term basis to accommodate to the e-evolving situation (technological changes). For example, the country should regulate digital signatures regardless the technology used to create them i.e. asymmetric cryptography or biometrics.

New legislation shall include legal acceptance of electronic documentation.⁸⁴ New statutes, as well as proposed changes to the law, should expand the notion of a "writing" to include information that may be accessed electronically. General principals for the Asian region should be drafted on the following grounds: Recognition of electronic signatures (i.e. digital signatures), freedom of contract, technology neutrality, intellectual property protection, consumer's protection, privacy and data protection, etc.

The legal framework supporting commercial transactions on the Internet should be governed by consistent principles across state, national, and international borders that lead to predictable results regardless of the jurisdiction in which a particular buyer or seller resides. The global nature of the Internet makes it imperative for domestic policies to be in line with those in the international environment. It is therefore important that our legislative framework is a friendly and internationally acceptable one that conforms to stringent standards. It is very important to ensure that there is compliance and compatibility. If different countries have different standards or laws, it will then be difficult to settle disputes when it comes to cross-border transactions.⁸⁵ New e-business should be aware that, although national governments are gradually developing their own legal frameworks in this regard, there is as yet little harmonization world-wide.

Governments should be encouraged to give consideration to using the UNCITRAL Model Law⁸⁶ on Electronic Commerce in reviewing their legal framework.

⁸³ Pario, Aftab A., E-Commerce: Obstacles & Suggestions, Finance & Markets. See footnote 5.

⁸⁴ e-commerce, Legal Issues, Guidance Legal. See bibliography.

⁸⁵ Mahmood, Farhan, What the government should do for e-commerce in Pakistan. See footnote 7.

⁸⁶ The Republic of Korea, Singapore <http://www4.gov.sg/cca/eta/contents.html>, <http://www.cca.gov.sg/regulations/contents.html>, or <http://www.ifrance.com/signelec/Liens.htm>, Malaysia <http://www.geocities.com/Tokyo/9239/digisign.html> and New Zealand <http://www.med.govt.nz/irdev/elcom/transactions/bill/index.html> or <http://www.lawcom.govt.nz/publications/R68.PDF>), have incorporated the Model Law on E-Commerce to their legal system. See also Australia <http://scaleplus.law.gov.au/html/bills/0/1999/0/0642404917.htm>, India <http://www.mit.gov.in/rules/act2000.pdf>, Philippines <http://www.neda.gov.ph/PressReleases/NewsAboutRA8782/SignedRA8792.htm#RA>, and Hong-Kong <http://www.info.gov.hk/itbb/english/it/eto.htm>