

Expert Meeting on

CYBERLAWS AND REGULATIONS FOR ENHANCING E-COMMERCE:
INCLUDING CASE STUDIES AND LESSONS LEARNED

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Current trends in e-commerce law: the UNCITRAL perspective

By

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The views reflected are those of the author and do not necessarily reflect the views of UNCTAD



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Enabling ICT use to promote economic development

- Overarching goal: promoting economic development in line with globalisation's requirements
- Use of ICT is the result of policy choices, legal reform and technical implementation
 - Are achievements taking place fast enough?
- Clear need to establish a legal framework enabling the use of ICT to transfer goods, services and funds
 - Nationally and internationally

Law of e-transactions and e-signatures: current status

- Legal harmonisation has made good progress, but is not yet universal
 - Significant differences among regions and legal traditions
- Issues with use of PKI for signatures
 - Technical challenges in implementation in developing countries;
 - Obstacle to cross-border recognition of electronic signatures;
 - Technology neutrality, especially for e-signatures, is being pursued also in Free Trade Agreements.

Law of e-transactions and e-signatures: e-CC contribution to harmonisation

- UN Electronic Communications Convention (e-CC) offers:
 - higher level of uniformity;
 - cross-border “legal interoperability”, including recognition of electronic signatures in B2B exchanges;
 - and much more.
- Has the e-CC delivered?
 - 18 signatories, 6 States parties (more forthcoming);
 - but 10+ States enacted provisions domestically.
- Need to adopt text as a treaty to enjoy its benefits in full.

Law of e-transactions: electronic transferable records

- Electronic transferable records not yet widely used.
- More guidance needed on details of ETR legislation as few examples exist.
- On-going work of UNCITRAL Working Group IV
 - Possible first outcome in form of a model law.
- This may lead to full dematerialisation of all commercial documents, including bills of lading (and letters of credit).
- Developing countries are adopting laws on electronic warehouse receipts
 - but are not yet fully aware of the relevance of this UNCITRAL project.

Legal issues in single window facilities: current status

- SW are largely hailed as pivotal in paperless trade implementation, but:
 - Have piecemeal implementation;
 - Do not operate across borders;
 - Legal issues are often overlooked.
- One major challenge is the “B2G legal divide”
 - E-Government legislation not always aligned with B2B E-Commerce legislation;
 - Prevents submission of high quality data.
- Ongoing work stemming from UN ESCAP Resolution 68/3: “Enabling paperless trade”.

Other issues on the UNCITRAL agenda

- Identity Management
 - Seen also as evolution of e-signatures;
 - Technical model not ready, legislation premature?
- M-Commerce
 - Limited number of legal challenges;
 - But strong demand for guidance on M-Payments
 - Broader need for E-payments laws taking into account the use of third party platforms.
- Cloud Computing
 - Much attention, but significant regional differences, e.g. with respect to privacy and data protection;
 - Scope of work might be limited to contractual practices.