

International Harmonization of E-commerce Law: The Way Ahead
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Paper documents have been the basis for rules on form and evidence of legal acts in many countries. As electronic records promise to displace most of the paper being currently used, lawmakers around the world are moving to adapt legal rules to modern technologies. These measures require adequate international harmonization to avoid that conflicting domestic standards create barriers to international electronic commerce.

As a first step to that end, in 1996 the United Nations Commission on International Trade Law (UNCITRAL) adopted a Model Law on Electronic Commerce.

The Model Law focuses on *facilitating* rather than *regulating* electronic commerce and is based upon an examination of the function fulfilled by traditional form requirements ("writing", "signature", "original", "dispatch", "receipt") and a determination as to how the same function could be transposed, reproduced or imitated in a dematerialized environment. The Model Law is based on the principle of "technology neutrality", which means that its rules do not distinguish between types of technology and could be applied to communication and storage of all types of information. Legislation implementing provisions of the Model Law has been already adopted in 14 jurisdictions, in both developed and developing countries, including members of the European Union, such as France and Ireland, and uniform legislation developed in the United States and Canada (see the full list in www.uncitral.org, under "status of texts; the text of the law itself is available under "adopted texts").

Five years later, in 2001 UNCITRAL adopted another model law dealing specifically with issues related to electronic signatures, such as their legal effect, rules of conduct for the parties involved and cross-border issues.

The preparatory work of the UNCITRAL Model Law on Electronic Signatures showed the difficulties in reaching common international understanding of the legal issues relating to various electronic signature techniques. While some of the signature legislation around the world initially focused upon digital signature techniques used in the context of public key infrastructures, it became increasingly clear that PKIs would be only one of several possible models of electronic signature implementation. There were also differing views between the United States and members of the European Union, but also between other States, as regards the adequate level of regulation of electronic signatures. The resulting consensus was a flexible set of rules to ensure the continuing usefulness and applicability of the Model Law and not to hinder the development of new techniques. The model law affirms the principle of party autonomy, and allows private agreements to be taken into account in assessing whether the nature of the authentication methods used is reasonable or "appropriate for the purpose". The model law also offers basic provisions on cross-border recognition that aim at ensuring legal interoperability.

World-wide implementation of common standards will be essential for the smooth and seamless operation of electronic authentication. Within the European Union, a high level of harmonization has been achieved with the Directive 1999/93/EC ("Electronic Signatures Directive"), which member States are enacting into domestic legislation. This, however, is the central difference between harmonization in the EU and global harmonization. Unlike the EU Directive, the UNCITRAL model laws are not binding upon States, which remain free to adopt them or not, or to

expand or shorten their scope. Cross-border recognition of signatures and their supporting devices is still an unsettled issue.

Another area where e-commerce is challenging existing law relates to transfers of rights in goods in transit or warehoused, which typically involve issuance of paper documents (bills of lading, warehouse receipts). Replacing paper by data messages would save time and money, and reduce the risk of fraud inherent to issuing documents in multiple originals. However, alternatives to paper-based trading are currently operational only within closed or limited access network systems and within narrowly defined sectors. If such transfers were supported by an appropriate international framework for electronic equivalents, goods might be traded more efficiently and at lower cost.

Ideally, companies and consumers using the Internet to purchase or offer goods or services should be able to determine without an inordinate amount of investigation whether or not a contract has been validly concluded, whether the authentication method they use will be upheld in court, whether the contract is covered by any existing international treaty and, if not, which is its governing law.

Working on a binding international consensus on all these matters will take time and effort, but there seems to be no real way around it in a globalized economy, as indicated by the support given by the business community, through the International Chamber of Commerce, to further harmonization. The next round of intergovernmental discussions will take place at UNCITRAL in October 2002 in Vienna. The years to come will show how far governments are willing or able to go to achieve global uniformity for e-commerce law.