

**The Russian approach to the international
legal regime in respect to E-Commerce
by
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I thank the Government of the Netherlands and the Hague Conference on International Private Law for the opportunity to speak to you today, and commend it for its leadership in convening this conference.

With an electronic commerce growing immensely worldwide, until the present date no uniform international regime regulating specifically e-commerce has been elaborated. Internet, electronic transactions – pretty new legal environment, which erases the national boundaries and breaks the traditional views in respect to territorial application of laws. Talking about electronic contracting we face not so easy problems to resolve, among them: validity of contracts, enforceability, jurisdiction, reference to the law of conflicts, substantive law to be applied.

Ensuring compliance with the contract in the event of a dispute and court proceeding, i.e. enforceability of a contract, is a very significant element for many transactions, one of the issue underlying the distinction between written and electronic agreements in many jurisdictions.

Regulations usually establish that enforceability depends on the laws of the individual jurisdictions and on compliance with public policy principles in those jurisdictions. Thus, it is essential to establish what the competent law and jurisdiction are.

Traditional in many cases forum law of the respondent or the rule of effective jurisdiction cannot be easily invoked in a virtual world where parties contract through the virtual capacity of modern Internet, where places of business, as a relevant factor for establishing jurisdiction, are in high degree of legal uncertainty.

For instance, last session of the UNCITRAL Working Group on electronic commerce finished in Vienna about a week ago has clearly demonstrated that no common view in respect to legal determination of the “place of business” for the so-called “virtual companies” existed.

We have noticed that most national and international rules have not addressed these issues, or have only done so in a limited manner.

Russia, among others, has not yet enacted extensive legislation in the sphere of electronic contracting, although E-commerce is growing in my country with every year. We have the Federal Law on electronic signatures of 10 January 2002. A draft law on electronic commerce was approved by State Duma in first reading in 2001, but still being there.

Since we are starting to think seriously about the specific regulations, we have undertaken to determine major gaps and obstacles which prevent smooth electronic trading, at least at the internal market. Among them: lack of laws and judicial practice, lack of mechanisms of risk insurance, uncertain dispute resolution apparatus, the low level of network security and stability thus provoking fraudulence and misrepresentation in business relations.

Few years ago some radical decisions were proposed – the comprehensive legislative interference into the internet relations, establishing control over electronic transactions, etc.

Now, at least in legal doctrine and practice, the more balanced approach has been taken. It is based on the following views.

There is no need to work out the new principles of legal regulations of internet-relations. We do need to "formalize" such relations, to introduce it into the laws and legal system as a welcomed "newborn child" by defining new tendencies and emerging practices (e-commerce, electronic money, electronic document etc.). For example, legal aspects of electronic transactions can be reflected in civil law, trademark law, in procedural legislation by amendment or adjustment of the relevant norms.

There should be well-balanced complementarity between legal regulation and self-regulation. The latter means that participants in electronic transactions by their own actions may form the definite rules of legal behaviour, which subsequently can be fixed in jurisprudence.

Much attention should be given to the judicial practice. Although court precedents traditionally are not regarded in Russia as a source of law, the role of judiciary in application and interpretation of the existing laws in relation to the virtual environment as well as to the determination of the current business practice is at the highest degree of esteem and analysis.

No doubts, the modern trends in international electronic contracting must be adequately covered by international law. New digital epoch raises very difficult questions both in international public and private law. Many international organizations, such as WIPO, WTO, OECD, UNCITRAL, are on their way to study problems and try to find solutions at international level. Effective international legal regime, in our view, can be built by coordinated efforts of states, international organizations, with the participation of members of industry directly dealing with electronic commerce and sharing their international experience.

The continuous development towards effective legal regime, as we see it, would be activity of states in the framework of their national jurisdictions, based on more or less standardized principles of legal regulations, duly implemented into the national laws pursuant to norms of relevant international agreements. To elaborate such agreements is a task of a day.