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**Current work by other international organizations in the
area of electronic commerce**

Note by Secretariat

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I. Introduction

1. The following paper sets out a summary of work of international organizations relating to electronic commerce undertaken or planned to be undertaken in the past year or planned to be taken in the near future. The paper is not intended to be exhaustive but rather focuses on the work of organizations that might have implications for the work of the Working Group on Electronic Commerce. It is intended to provide information to the Commission in order to consider possible future areas of work for the Working Group as well as to consider the scope for cooperation with other international organizations. The paper complements the current activities report contained in A/CN.9/584.

2. The work of the following organizations is described in this report on the basis of publicly available material:

(a) *United Nations bodies and specialized agencies*

UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
ITU	International Telecommunications Union
WIPO	World Intellectual Property Organization

(b) *Other intergovernmental organizations*

APEC	Asia Pacific Economic Cooperation
Commonwealth Secretariat	
Council of Europe	
EC	European Commission
Hague Conference	Hague Conference on Private International Law
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
WCO	World Customs Organization

(c) *International non-governmental organizations*

ICC	International Chamber of Commerce
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II. Current work by other international organizations in the area of electronic commerce

(a) United Nations bodies and specialized agencies

UNCTAD¹

3. At its ninth session (Geneva, 22-25 February 2005), the Trade and Development Board approved recommendations in respect of electronic commerce strategies for development. It recommended that UNCTAD should carry out research and policy-oriented analytical work on the implications for trade and development of the different aspects of information and communications technologies (ICT) and e-business that falls within the mandate of UNCTAD, with particular focus on those sectors of main interest to developing countries. It also recommended that UNCTAD continue to work, inter alia, in the field of measurement of ICT, including the development of statistical capacity, to enable developing countries to measure the access, use and impact of ICT and monitor progress in this field and to contribute to capacity building in the area of ICT for development, particularly in trade sectors of special interest to developing countries or those that can be profoundly enhanced through the use of ICT, such as tourism, small and medium-sized enterprise (SMEs) development and poverty alleviation.²

4. UNCTAD is involved in interregional and country specific projects aimed at improving the efficiency of the trade sector of developing countries and countries in transition, through a reduction in the transaction costs linked to problems in customs and in transit transport. Improvements in the effectiveness of customs in these countries is being sought through the upgrading of Automated Systems for Customs Data (ASYCUDA) which involves the development of information technology (IT) tools to be used in monitoring transit transport agreements and technical assistance projects, providing experts, training and project coordination.³

5. UNCTAD also publishes annually its Ecommerce and Development Report which focuses on trends in information and communications technologies (ICT), such as e-commerce and e-business, and on national and international policy and strategy options for improving the development impact of these technologies in developing countries.⁴

UNECE⁵

6. Through its Centre for Trade Facilitation and Electronic Business (UN/CEFACT), UNECE supports activities dedicated to improving the ability of business, trade and administrative organizations, from developed, developing and transitional economies, to exchange products and relevant services effectively. Its principal focus is on facilitating national and international transactions, through the simplification and harmonisation of processes, procedures and information flows, and thereby to contribute to the growth of global commerce.

7. UN/CEFACT has set up a new Trade Facilitation project to revise its existing Recommendation 6 on the Invoice for International Trade, adapting it to the business and regulatory requirements of electronic invoicing (e-invoicing).⁶ The revised Recommendation seeks to resolve the obstacles to e-invoicing, and to

provide a solution that can easily be implemented by both SMEs and large companies. The draft will be presented during a UN/CEFACT international forum on paperless trade to be held on 20 –21 June 2005 in Geneva, at which regulatory and business entities will present their proposals towards paperless trade and seek to agree on their implementation (the forum is discussed in para. 11 below and for related work undertaken by the EC see para. 38 below).

8. The Trade Facilitation project will seek to define the data elements necessary to enable automatic invoice reconciliation and the information required to enable financial institutions effectively to process invoices. Requirements as to the authenticity of origin and integrity of the content of invoices will be addressed from a legal standpoint and the forum will analyze the data content requirements from a value added tax (or sales tax) perspective. A number of bodies have expressed an interest in this work and the potential for efficiency gains through e-invoicing (including the International Air Transport Association). UN/CEFACT is seeking both industry and government agencies resources and support for the project, and is working with relevant departments and programmes of the EC in this regard.

9. The UNECE, with UNCTAD, jointly sponsored the Working Party on the Facilitation of International Trade Procedures which developed rules on Electronic Data Interchange For Administration, Commerce and Transport (UN/EDIFACT) comprising internationally agreed standards, directories and guidelines for the electronic interchange of structured data, and in particular that relate to trade in goods and services between independent, computerized information systems.⁷

10. UNECE has also established a task force on developing a uniform approach to electronic documents for trade, including the United Nations Electronic Trade Documents project (UNeDocs)⁸ with the support of Technical Committee 154 of the International Organization for Standardization (ISO).⁹ UNeDocs is a UNECE initiative aiming at facilitating the shift to paperless trade by providing electronic alternatives to key paper documents in the international supply chain. UN/CEFACT has established a new working group (the UNeDocs TBG2 Working Group)¹⁰ to identify core documents used in international trade and to develop the paper and electronic specifications for those documents as well as customized document specifications to support national, regional and international projects for Single Window implementation¹¹ and paperless trade.¹²

11. UNECE will sponsor an executive forum from 20 to 21 June 2005 on paperless trade in international supply chains with the aim being for all countries, enterprises and non-governmental organizations (NGOs) to make a commitment to a roadmap of making paperless trade happen, including identification of the main obstacles that have so far prevented the large-scale implementation of paperless trade in the global supply chain and identifying a framework and plan of action on information exchange for security and efficiency of supply chains.¹³

UNESCAP¹⁴

12. UNESCAP has recently undertaken the first phase of a project commissioned by the World Bank¹⁵ on the harmonization of electronic commerce legal systems in the Asia and the Pacific. To that end UNESCAP held a Regional Expert Conference on that subject in Thailand from 7-9 July 2004¹⁶ which, through a collection of papers, focussed on the electronic commerce laws and regulations in some of the subregions

of Asia and the Pacific islands as well as the e-ASEAN (Association of Southeast Asian Nations) legal framework.¹⁷ The papers examined the status and challenges for the development of an electronic commerce legal system in Asia and the Pacific and also focussed on capacity-building needs for harmonized development of electronic commerce legal systems in that region. At a meeting on capacity building needs held at the end of the Regional Expert Conference,¹⁸ a recommendation was made that UNESCAP, as the regional arm of the United Nations, coordinate with other relevant capacity-building organizations, particularly UNCITRAL, ITC, UNCTAD/WTO, UNCTAD, ITU, WIPO and the World Bank, to implement regional capacity-building activities on a regional or subregional basis. In the following phases of the project it is envisaged that, in 2005, a subregional training workshop for lawmakers and regulators on developing a regional approach for harmonized electronic commerce legal systems be held as well as “training the trainer” programmes for both judges and lawyers. In a later phase scheduled for 2006 it is proposed that technical assistance be provided to individual countries and regions as well as national training for judges and lawyers with the aim being to ensure the harmonized development and application of electronic commerce laws by lawyers, judges and governments across participating countries.

ITU¹⁹

13. The ITU, a specialized agency of the United Nations, has the lead role in organizing the World Summit on Information Society (WSIS)²⁰ which has as its primary aim the development of an inclusive and equitable information society. Envisaged in two phases, the first Summit was held in Geneva on 10-12 December 2003, where agreement was reached on the Declaration of Principles²¹ (which sets out the principles upon which to develop the global information society) and a Plan of Action²² (which sets out concrete action lines to advance the achievement of internationally-agreed development goals, including those in, inter alia, the Millennium Declaration,²³ by promoting the use of information and communications technologies (ICT) based products, networks, services and applications and helping countries overcome the digital divide). The second phase of WSIS will be held in Tunis on 16-18 November 2005 focussing on implementing the agenda for development of achievable targets by 2015, and seeking consensus on unfinished business, inter alia, on the question of Internet governance.²⁴

14. ITU is implementing a series of activities on countering spam, in the shorter and longer term, to foster international cooperation, develop harmonized policy frameworks, and promote the exchange of information and best practices, as well as to provide support to developing countries in the field of spam.²⁵ The opening day of an ITU WSIS Thematic Meeting on Cybersecurity to be held on 28 June 2005 will be devoted to the issue of countering spam.²⁶

15. In November 2004, an ITU E-Government and IP Symposium for the Arab Region, was held in Dubai, UAE to consider the practical issues involved in implementing e-Government initiatives as well as to discuss policy aspects of the management of the Domain Name System (DNS) and IP addresses. This is part of an ITU global e-government project aimed at increasing government efficiency in developing countries by providing Internet-based services and applications to citizens.²⁷ Also, in 2004, the ITU published a report on its activities related to internet protocol networks.²⁸

WIPO²⁹

16. In 1999³⁰ and 2001,³¹ WIPO prepared two comprehensive studies focussing on questions arising out of the interface between domain names and intellectual property (IP) rights. The 1999 report recommended the establishment of a uniform dispute resolution procedure to deal with disputes concerning alleged bad faith registration and deliberate misuse of trademarks as domain names or “cybersquatting”. The 2001 report was concerned with a range of identifiers other than trademarks³² and found considerable evidence of the misleading registration and use of such identifiers as domain names. In respect of names and acronyms of IGOs, the 2001 report recommended that States should seek to develop an administrative dispute resolution procedure similar to the Uniform Domain Name Dispute Resolution Policy which is, in part, administered by the WIPO Arbitration and Mediation Center. The activities of the WIPO Arbitration and Mediation Center in the area of domain name disputes have partly contributed to the wider acceptance of the use of online procedures for resolving disputes arising in the networked environment.

17. In the area of intellectual property law, with the global reach of the Internet and the rapid growth in electronic commerce, a number of questions relating to jurisdiction, enforcement of judgments and applicable law have arisen. For example, the question of applicable law is a priority issue in copyright in cyberspace given the ease and speed with which it is possible to digitally transmit perfect copies of copyrighted materials to and from anywhere in the world with or without the authorization of the copyright holder. In the context of a global marketplace, choice of law issues have increased for industrial property rights. To address these questions in relation to the different aspects of IP, WIPO held a forum in January 2001.³³ The forum discussed IP aspects of the Preliminary Draft Convention on Jurisdiction and Foreign Judgements in Civil and Commercial Matters prepared under the auspices of the Hague Conference. In particular, experts considered those provisions which impacted on the resolution of IP disputes. The forum also considered electronic commerce disputes and the role of alternative dispute resolution procedures.

18. WIPO continued to address points of the WIPO Digital Agenda, a program aimed at formulating appropriate responses to the influence of the Internet and digital technologies on IP systems and in particular ensuring the protection of IP on the Internet.³⁴ Issues covered by the program include: the application of IP law in transactions via the Internet and the impact of the Internet and digital technologies on the areas of copyright and related rights, trademarks and domain names and patents as well as dispute resolution. The WIPO Digital Agenda also includes: broadening the participation of developing countries through the use of WIPONET and other means to access IP information and improve their opportunities to use their IP assets in eCommerce; the adjustment of the international legislative framework to facilitate e-commerce through the extension of the principles of the WCT³⁵ and the WPPT³⁶ to audiovisual works; the adaptation of broadcasters’ rights to the digital era; and the development of a possible international instrument on the protection of databases.

19. Other points of the WIPO Digital Agenda include: establishing international rules for determining the circumstances of IP liability of Online Service Providers

(OSPs); promoting an institutional framework to facilitate the exploitation of IP through, for example, the online administration of IP disputes; and the introduction of online procedures for the filing and administration of international applications for the PCT,³⁷ the Madrid³⁸ and the Hague Systems.³⁹

20. The Economic Development Sector (EDS) of WIPO focuses on the development dimension of IP with programs to provide technical assistance to developing countries and promote IP as an aid to social and cultural development, economic growth and wealth creation.⁴⁰ Technical assistance programs are initiated in response to specific requests from individual countries. EDS' technical assistance programs to developing countries have concentrated on building up the legal and administrative infrastructure required to protect IP rights. This includes assistance with training, modernising IP institutions and systems, awareness-raising, and expert advice on IP legislation. Increasing numbers of developing countries are now also requesting WIPO's assistance in the next stage of optimizing the economic and cultural value from IP assets and technology transfer.

21. WIPO is also committed to studying and responding in a timely and effective manner to: the need for practical measures to improve the management of cultural and other digital assets at the international level by investigating inter alia, the notarization of electronic documents and the introduction of a procedure for the certification of websites for compliance with appropriate IP standards and procedures; studying other emerging IP issues relating to electronic commerce; and, where appropriate, developing norms in relation thereto and coordinating with other international organizations in formulating international positions on issues affecting IP and in particular, the validity of electronic contracts and jurisdiction.

(b) Other intergovernmental organizations

APEC⁴¹

22. APEC e-commerce activities are coordinated by the Electronic Commerce Steering Group (ECSG). Based on the principles set out in the 1998 APEC Blueprint for Action on Electronic Commerce,⁴² the ECSG promotes the development and use of electronic commerce by creating legal, regulatory and policy environments in the APEC region that are predictable, transparent and consistent.⁴³

23. In 2004, the ECSG continued its work on data privacy, consumer protection, cyber-security, paperless trading, trade facilitation and initiatives to counter spam. APEC Member Economies endorsed the APEC Privacy Framework⁴⁴ which encourages the development of appropriate information privacy protection and ensures the free flow of information in the Asia-Pacific region. Sixteen economies have prepared Paperless Trading Individual Action Plans (IAPs) which set out the steps members should take to meet APEC's target to reduce or eliminate customs, cross-border trade administration and other documents relevant to international sea, air and land transport.⁴⁵ A comprehensive paperless trading environment that enables the electronic transmission of trade-related information across the APEC region is to be established by 2020. The ECSG also agreed to continue its activities to counter spam. In that respect, it undertook a survey on individual economies' approaches to spam, and considered possible cooperation with the APEC Telecommunication and Information Working Group in 2005.

24. As part of its intention to build trust in e-commerce, the ECSG is considering ways to better protect consumers from fraudulent and deceptive practices when buying goods and services online. Work is underway to help economies implement APEC's Voluntary Consumer Protection Guidelines for the On-line Environment.⁴⁶ These cover international cooperation, education and awareness, private sector leadership, on-line advertising and marketing and the resolution of consumer disputes.

25. In 2005, the ECSG has stated that it will continue its work on information privacy, spam, paperless trading, digital economy initiatives and review the format of the Stocktake of Electronic Commerce Activities, a business-friendly inventory of the electronic commerce activities currently being undertaken by APEC fora.⁴⁷

26. For work relating to the issue of e-procurement being undertaken by APEC, see, A/CN.9/WG.I/WP.31, para. 37.

Commonwealth Secretariat⁴⁸

27. In 1999 Commonwealth Law Ministers mandated the Commonwealth Secretariat to look at the legal implications arising from the use of technology in order to assist Member Countries to take full advantage of the opportunities presented by technological developments. The Secretariat convened several expert groups and prepared drafting instructions from their deliberations. Model laws dealing with technology were specifically drafted on the following: Electronic Transactions;⁴⁹ Electronic Evidence;⁵⁰ Freedom of Information;⁵¹ Privacy;⁵² and Computer and Computer Related Crimes.⁵³ These model laws were submitted to Law Ministers for consideration at their meeting in 2002. The Commonwealth Secretariat was asked to continue its work with senior officials in these areas to ensure that the laws remain current and reflective of the interests of Member Countries, particularly small and developing States. The Law Development Section of the Commonwealth Secretariat continued its work on the promotion of the Commonwealth's Model Laws.

The Council of Europe⁵⁴

28. In September 2004, the Council sponsored a conference entitled "The Challenge of Cybercrime" which was aimed at encouraging broad and rapid ratification of and accession to the CyberCrime Convention⁵⁵ and its Protocol.⁵⁶

29. In April 2005, the Council of Europe's Multidisciplinary Ad-hoc Committee of Experts on the Information Society (CAHSI) adopted the "draft political statement on the principles and guidelines for ensuring respect for human rights and the rule of law in the information society".⁵⁷

30. Following on from the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the Project Group on Data Protection (CJPD)⁵⁸ prepared a report for the European Committee on Legal Cooperation (CDJC) on the impact of data protection principles on the use of biometric data (fingerprints, iris recognition, face recognition etc) and noted that, where a biometric system is applied then a procedure of certification and monitoring and control, if appropriate by an independent body, should be promoted, particularly in the case of mass applications, with regard to the quality standards for the

software, the hardware and the training of the staff in charge of enrolment and matching. As well, it was suggested that a periodic audit of the system's performance was recommendable.⁵⁹

31. The Council is also undertaking a number of projects relating to e-governance which refers to the use of information technology to raise the quality of the services governments provide to its citizens and to business. To that end, the Committee of Ministers adopted a recommendation in September 2004 on e-voting which is the first international legal instrument on this subject and a recommendation on e-governance was also adopted at the end of 2004. From 2005 a follow up project on "Good Governance in the Information Society" will consider how new information and communication technologies (ICT) impact upon the democratic practices, human rights and the rule of law in Council of Europe member States.

EC⁶⁰

32. As part of its target for a dynamic electronic business ("e-Business") environment by 2005, the EC has undertaken a number of projects including: the creation of the future .eu domain in 2003; reviewing relevant European legislation preventing e-Business uptake; convening a major e-business summit in February 2004 involving high-level business representatives; establishing an online dispute resolution mechanism to improve trust and confidence in e-Business; supporting the development of interoperable business solutions for transactions, security, signatures, procurements and mobile payments; establishing an e-Business support network to strengthen and coordinate SME e-Business support actions and the funding of the e-Business Watch Function to provide greater information on the impact of e-Business at sectoral levels across the EU.

33. The EC has already prepared a number of legislative instruments regulating electronic commerce. The European Union Directive on Electronic Commerce⁶¹ is aimed at providing a legal framework to facilitate the free movement of information society services between Member States. The Directive provides a flexible legal framework for e-commerce and addresses only those elements which are strictly necessary in order to ensure the proper functioning of the Internal Market in e-commerce. It is drafted in a technologically neutral way to avoid the need to adapt the legal framework constantly to new developments. Measures required by the Directive include a general ban of prior authorisation requirements to act as an information society service provider, the requirement that the service provider make available general information accessible to recipients and public authorities, and the obligation of Member States to ensure that their legal system allows contracts to be concluded by electronic means.⁶² The First Report on the Application of the Directive (published in November 2003) indicates that 12 Member States have brought into force implementing legislation and found that, in the remaining 3 Member States, work on transposition of the Directive was well advanced.⁶³ The report concludes that analysis to date has not shown a need to adapt the Directive as yet and, given the lack of practical experience, revision of the Directive would be premature. The EC has launched an open consultation on legal problems in e-business with a view to collecting feedback and practical experience from the market and identifying remaining practical barriers or new legal problems encountered by enterprises when doing e-business. The results of that consultation

will form the basis for a second report on the application of the Directive due in 2005, which will also address possible needs for adaptation of the Directive.

34. The EU Directive on Electronic Signatures⁶⁴ facilitates the use of electronic signatures and contributes to their legal recognition. It does not cover aspects related to the conclusion and validity of contracts or other legal obligations where there are requirements in that respect prescribed by national or Community law nor does it affect rules and limits, contained in national or Community law, governing the use of documents. The principal aim of the Directive is to ensure that electronic signature products that comply with the Directive are permitted to circulate freely in the internal market. Member States are required to ensure that advanced electronic signatures which are based on a qualified certificate and which are created by a secure-signature-creation device satisfy the legal requirements of a signature and are admissible as evidence in legal proceedings. A study on the legal and practical issues concerning the implementation of the EU Directive on Electronic Signatures was undertaken by the Interdisciplinary Centre for Law and Information Technology, at the request of the EC and was presented to the Commission in October 2003.⁶⁵ The report found that most of the EU Member States have more or less consistently transposed the Directive into national legislation and concluded that the Directive should not be amended as it was adequate to serve its purpose but that divergences in its practical implementation could be addressed by the development of a non-binding Community-based interpretation of the Directive accompanied by short term support measures.

35. As well, the EU Directive on the protection of consumers in respect of distance contracts⁶⁶ provides for the same level of consumer protection throughout the territory of the European Union in respect of distance contracts. In accordance with Article 17 of the Directive a study was undertaken by the EC to consider the feasibility of establishing effective means to deal with consumers' complaints in respect of distance selling.⁶⁷ In that report the Commission expressed its intention to monitor closely the situation of consumer complaints as part of the work which is being done on the issue of consumer access and give special attention to consumer complaints in future reports and proposals for new legislation, in the regulatory framework of electronic commerce.

36. Also, in relation to the question of anti-spam measures, the European Directive on Privacy and Electronic Communications (2002/58/EC)⁶⁸ which came into force in October 2003, regulates the sending of unsolicited communications via e-mail, SMS or phone across all European Union (EU) Member States.

37. The importance of e-Government for the efficiency of the public sector was highlighted in the Commission's 2004 Competitiveness Report. A priority for the e-Europe 2005 action plan was that basic public services should be available on-line by 2005, a priority which is largely being achieved. A study executed under the Commission's e-Europe 2005 programme focussed on the online availability and sophistication of 20 public services and found that significant progress had been made. The Commission will now try to monitor the take-up of services to identify and exchange good practices and will also examine how the 'back office' has been integrated to maximise efficiency gains and hence boost productivity in the public sector.

38. The European Commission has addressed the question of standardization of electronic invoicing (e-invoicing) in the European Union in two aspects. First, in order to implement the goals of Council Directive 2001/115/EC of 20 December 2001, which recognizes the legal validity of e-invoices for value added tax purposes and specifies the related technical conditions required, the EC requested the European Committee for Standardisation (CEN)⁶⁹ in accordance with the Information Society Standardization System (CEN/ISSS),⁷⁰ to address standardization by means of formal CEN Workshop Agreements (CWA) in e-invoicing, notably as regards electronic signatures, electronic archiving/storage and the format of transmissions of electronic invoices, eg. Electronic Data Interchange (EDI).⁷¹ This project is expected to be completed by January 2006 (for work on e-invoicing undertaken by UNECE, see paras. 7-8 above).

39. Secondly, the IDA programme (Interchange of Data between Administrations) of the EC, working in cooperation with other Commission services, has set up a project to facilitate the efficient introduction of interoperable electronic procurement solutions in compliance with the new European public procurement regulatory framework. The programme includes modelling of electronic procurement phases such as electronic tendering, electronic awarding of contracts, electronic ordering, electronic invoicing and electronic catalogues. In order to contribute to the definition of standards and take into account European requirements, the IDA models have been discussed with and submitted to standardization bodies such as CEN/ISSS, UN/CEFACT and OASIS (a non-profit, international consortium that creates interoperable industry specifications based on public standards such as XML (Extensible Markup Language (a language that enables the definition, transmission, validation, and interpretation of data) and the earlier, related, Standard Generalized Markup Language (SGML)).⁷² For information regarding the work of the European Union in relation to e-procurement, see A/CN.9/WG.I/WP.31, para. 35).

The Hague Conference⁷³

40. One instrument prepared by the Hague Conference is the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (the Apostille Convention).⁷⁴ The main purpose of this multilateral treaty is to facilitate the circulation of public documents issued by a State Party to the Convention and to be produced in another State Party to the Convention by simplifying the series of formalities which complicated the utilisation of public documents outside of the countries from which they emanated. Recommendation Number 24 of the Special Commission of the Hague Conference on the Practical Application of, inter alia, the Apostille Convention requires that States Parties and the Permanent Bureau “work towards the development of techniques for the generation of electronic Apostilles”. To that end, the Hague Conference and the International Union of Latin Notaries (IULN) are jointly organising an International Forum on e-Notarization and e-Apostilles on 30 and 31 May 2005 in Las Vegas, Nevada, USA.

41. The forum will undertake a representative international survey of technologies for e-Notarization currently available or in the process of being developed from a technology-neutral perspective. As well, the forum will provide an opportunity for a legal analysis of the main issues raised by the use of these technologies in the

context of notarization and the Hague Apostille Convention. In particular, this analysis is intended to focus on the possible legal requirements and regulatory standards for electronic notarisation, the question whether electronic public documents (in particular notarial acts and official certificates) fall within the scope of the Apostille Convention and whether the current framework of that Convention allows for the issuance and circulation of e-Apostilles.

OAS⁷⁵

42. The OAS General Assembly is scheduled to mandate work in the area of electronic commerce and consumer protection to be considered in the Seventh Inter-American Specialized Conference on Private International Law. This work includes the possible drafting of the following instruments: a convention on specific aspects of e-commerce that relate directly to jurisdictional consumer issues⁷⁶ and a convention on the law applicable to consumer transactions.⁷⁷

OECD⁷⁸

Authentication

43. In recent years OECD Member countries have undertaken to develop and implement policies and laws related to authentication and electronic signatures. The OECD provides a forum for exchange of views and developing consensus about specific policy and regulatory issues related to information and communications networks and technologies, including electronic authentication.

44. The OECD Working Party on Information Security and Privacy,⁷⁹ comprised of government and private sector representatives from OECD Member countries, has conducted work related to authentication for a number of years. Both the 1992 OECD Guidelines for the Security of Information Systems⁸⁰ and the 1997 OECD Guidelines on Cryptography Policy⁸¹ noted the importance of data integrity and security in information and communications networks and systems. The OECD Inventory of Approaches to Authentication and Certification in a Global Networked Society surveys activities in OECD Member countries related to authentication and certification on global networks, including laws, policies and initiatives in the public and private sectors, and at both the national and international level. A Declaration on Authentication for Electronic Commerce adopted by Ministers at the Ottawa Ministerial Conference in October 1998⁸² recognised the importance of authentication for electronic commerce and outlined a number of actions to promote the development and use of authentication technologies and mechanisms, including continuing work at the international level, together with business, industry and user representatives. Ministers declared their determination not to discriminate against the authentication approaches taken by other countries and to amend, where appropriate, the technology or media specific requirements in current laws or policies that might impede electronic commerce.

45. An inventory of approaches to authentication and certifications was prepared in 2000. In August 2004 the OECD published a report summarizing responses to a survey of legal and policy frameworks for electronic authentication services and e-signatures in OECD Member Countries.⁸³ The survey, which was designed taking account of a similar survey undertaken within the APEC in order to allow for wider comparison, provided information on OECD member countries' legal and policy

frameworks for electronic authentication and applicable regulations to entities providing authentication services. It was intended to identify the legal and regulatory barriers to electronic authentication services that might prevent the cross-jurisdictional acceptance of authentication services as well as that might prevent the recognition of electronic signatures across jurisdictions in a non-discriminatory way. The report noted that any subsequent work on authentication by the OECD should draw on UNCITRAL expertise developed during the course of developing the UNCITRAL Model Law on Electronic Signatures as well as taking account of discussions and work underway in other international forums regarding authentication issues (for example, APEC) so as to avoid overlap and duplication of efforts and ensure that the OECD benefits from the experience of other forums. Other subsequent phases envisaged in the report are the identification and assessment of the gaps in technical and operations approaches, for example, guidelines, practices, security standards etc.

46. In November 2004, the OECD launched a new questionnaire intended to gather relevant information on the current usage of authentication across borders in OECD Member Countries. It is planned that a synthesis report will be discussed at the next meeting of the Working Party on Information Security and Privacy scheduled for May 2005 with the central aims being: identifying examples of current offerings and actual implementation of authentication across borders; identification of actual or potential barriers to current cross border use of digital signatures from the supplier/user perspective; and exploring the extent to which cross border offerings of authentication meet or do not meet transaction needs. The report will also consider whether the legal and institutional framework in OECD Member Countries are implementing an existing international or transnational framework (for example, the European Directive 1999/93/EC on a Community Framework for Electronic Signatures and the UNCITRAL Model Law on Electronic Signatures).

Spam

47. Although a number of measures and initiatives have been undertaken to address spam by OECD countries, there is general acknowledgement that no single approach will likely succeed without close international co-ordination. In March 2005, a special half-day session of the OECD Committee for Information, Computer and Communications Policy was held on emerging spam issues. This session followed on from the launch of the Anti-Spam “Toolkit” seen as the first step in a broader initiative to help policy makers, regulators and industry restore trust in the Internet and e-mail.⁸⁴ As well, the OECD in 2004 launched a survey to gather information and data about anti-spam legislation and enforcement authorities in member countries and encouraged non-OECD countries to provide data. As a result, a list containing information and contact details of enforcement bodies has been compiled and is now available on line.⁸⁵

Impact of electronic commerce on development

48. The OECD’s main focus on electronic commerce is considering the impact on the development prospects of emerging economies of the possibilities opened up by electronic commerce. The OECD has published a number of reports relating to electronic commerce including a paper entitled “Policies and Institutions For E-Commerce Readiness: What Can Developing Countries Learn From OECD

Experience?”⁸⁶ which examines the key elements of the policy and institutional framework for e-commerce existing in OECD countries, and reflects on their applicability and adaptability to a developing country context.⁸⁷ Other published OECD reports include a summary of the OECD’s June 2004 expert panel on digital broadband content,⁸⁸ and another entitled “ICT, E-Business and Small and Medium Enterprises” which provides guidance on policy directions to foster appropriate business environments for e-business and ICT uptake, and target programmes to overcome market failures to the extent that they are needed in particular areas.⁸⁹

Taxation and determining location of the parties

49. The OECD is also examining the relationship of electronic commerce to questions of taxation. The 1998 Ottawa Taxation Framework Conditions provide that rules for the consumption taxation of cross-border electronic commerce should result in taxation in the jurisdiction where the consumption takes place.⁹⁰ In January 2004, the OECD released a discussion draft on whether the current tax treaty rules for taxing business profits are appropriate for e-commerce.⁹¹

50. In its work on international aspects of taxation the OECD Committee on Fiscal Affairs adopted changes to the commentary on article 5 of the Model Tax Convention on Income and on Capital (the OECD Model Tax Convention) to deal with the issue of the application of the definition of permanent establishment, as understood in the context of the Model Tax Convention, in connection with electronic commerce. The recommendation distinguished between a website and servers through which websites are stored and used and found that in certain circumstances, a server might constitute a permanent establishment for tax purposes. This information is discussed more fully in paras. 13 to 17 of A/CN.9/WG.IV/WP.104.

51. The future work program of the OECD’s WP9 Sub-Group on Electronic Commerce (WP9)⁹² includes: verification of the declared jurisdiction of residence of the customer in B2C (business-to-consumer) online transactions; verification of the status of the customer; registration thresholds; technology-based and technology-facilitated collection mechanisms and international administrative co-operation as well as longer term strategies for exploiting the potential of technology-based mechanisms. In respect of verification of business establishments, the WP9 is committed to the development of a set of practical rules defining business presence of the recipient that should be considered in B2B (business-to-business) transactions where the business customer has multiple locations (e.g. headquarters in one jurisdiction and branches in others) as well as to research and evaluate options that facilitate and promote the use of electronic material, including invoicing, reporting, and record keeping. Determining a place of business of a party to an electronic transaction has been addressed in article 6 of the draft convention on the use of electronic communications (see A/CN.9/ 577).

WCO

52. The WCO promotes and administers the harmonization of customs laws and procedures within its membership.⁹³ With the growth in areas such as international cargo, information technology and e-commerce, the practices and systems already adopted pursuant to the Kyoto Convention⁹⁴ were seen as having created a conflict with modern trade practices. The revised Kyoto Convention,⁹⁵ provided a new

structure through which modern trade practices, including electronic commerce can operate and be regulated⁹⁶ as it takes into account and adopts flexible methods and systems to allow for the changing nature of international trade. Further, the WCO Council adopted a declaration on electronic commerce known as the “Baku Declaration”, in 2001 to recognize the potential social and economic impact of electronic commerce on nations, in particular that of developing nations. The Declaration invited Members of the WCO to take certain steps in response to the declaration and also requested the WCO to develop a coherent strategic WCO policy and action plan on electronic commerce.⁹⁷ At the WCO Policy Commission in December 2004, the draft “WCO Framework of Standards to Secure and Facilitate Global Trade” was accepted. One of the main elements of the draft framework is to harmonize advance electronic manifest information in order to allow risk assessment. At the WCO conference to be held in May 2005⁹⁸ the WCO is to follow up on discussions from its previous conference in 2003⁹⁹ to discuss, inter alia, the role of customs within the global trading system and how customs practices can enhance trade. The WCO IT Conference in April 2005¹⁰⁰ provided a forum for industry and customs experts to discuss information technology best practices.

(c) International non-governmental organizations

The International Chamber of Commerce

53. The ICC Commission on E-Business, IT and Telecoms (EBITT) serves as the overarching body for issue-specific Task Forces which include: the Task Force on Privacy and the Protection of Personal Data;¹⁰¹ the Task Force on the Internet and IT Services;¹⁰² the Task Force on Jurisdiction and Applicable Law (jointly with ICC’s Commission on Commercial Law and Practice (CLP));¹⁰³ the Task Force on Consumer Policy for E-Business; the Task Force on Security and Authentication¹⁰⁴ and the Task Force on Electronic Contracting - jointly with ICC’s Commission on Commercial Law and Practice (CLP).¹⁰⁵

54. The ICC’s Commission on Commercial Law and Practice (CLP) aims to facilitate international trade and promote a fair and balanced self-regulatory and regulatory legal framework for international business-to-business (B2B) transactions.¹⁰⁶ The CLP prepared a draft of principles on electronic contracting and also assisted with the EC’s initiative to harmonize European contract law by the revision of the Rome Convention.

55. In coordination with a broadly based group known as the Alliance for Global Business (AGB)¹⁰⁷ the ICC annually updates the Global Action Plan for electronic business (GAP) which is a global reference document that records base policy positions of many business groups and serves as one single interface on all policy issues relating to, inter alia, electronic business that is being dealt with at national and intergovernmental levels. The 3rd edition of the Global Action Plan for electronic business was distributed and made available on the ICC website at the end of July 2002.¹⁰⁸

56. EBITT also annually prepares policy and practice documents known as the ICC compendium on ICT and E-Business policy and practice for presentation at the World Summit on the Information Society (WSIS).¹⁰⁹ This compendium sets out ICC policy statements on global issues, such as broadband, privacy and content regulation. The compendium sets out ICC responses to specific ICT and e-business

policy initiatives, such as European directives and the impact on ICTs of international trade commitments, and also provides information on ICC ICT and e-business tools by setting out best practices which encourage business, particularly small to medium enterprises, to effectively manage their relationships with online consumers. Finally, the compendium includes the ICC model contract clauses for cross-border transfers of personal data which were submitted in September 2003 to the EC for approval by the European Article 29 Working Party on data protection which are intended to provide an alternative means for companies to make personal data transfers from the European Union to third countries while maintaining a level of data protection acceptable under the European Data Protection Directive (95/46/EC).

Notes

- ¹ www.unctad.org.
- ² TD/B/COM.3/L.31, 1 March 2005.
- ³ A full list of ASYCUDA related projects may be found at:
<http://www.unctad.org/Templates/Projects.asp?mode=showprojects&status=subject&intItemID=1451&intSubjectID=23&value=ASYCUDA>.
- ⁴ A copy of the Ecommerce and Development Report 2004 is available online at:
http://www.unctad.org/en/docs/ecdr2004_en.pdf.
- ⁵ <http://www.unece.org/Welcome.html>.
- ⁶ See further, http://www.unece.org/cefact/forum_grps/tbg/projects.htm.
- ⁷ http://www.unece.org/trade/untdid/texts/d100_d.htm.
- ⁸ Detailed information on UNEDocs can be found at <http://www.unece.org/etradet/unedocs/>.
- ⁹ <http://www.iso.org/iso/en/ISOOnline.frontpage>.
- ¹⁰ International Trade and Business Processes Group 2. More information regarding the TBG2 may be found at: http://www.unece.org/cefact/forum_grps/tbg/tbg2_edocs/tbg2_edocs.htm.
- ¹¹ Whereby documents need only be submitted at one single entry point.
- ¹² More information may be found at: http://www.unece.org/cefact/prs/pr05_trd_04e.pdf.
- ¹³ Further information concerning the forum is available at
<http://www.unece.org/forums/forum05/welcome.htm>
- ¹⁴ <http://www.unescap.org/>.
- ¹⁵ <http://www.worldbank.org/>.
- ¹⁶ The full text of the papers presented at the regional conference and related papers are available on the UNESCAP Trade and Investment Division website (www.unescap.org/tid/).
- ¹⁷ ASEAN leaders endorsed the eASEAN initiative during their Annual Summit meeting in Manila on 28 November 1999. The aim of the initiative is to establish a region-wide approach to making comprehensive use of information and communication technology in business, society and government.
- ¹⁸ The meeting was held on 9 July 2004 and the list of participants (which included over 50 experts and senior government officials) and the regional capacity building plan which formed part of the conclusions and recommendations of the Regional Expert Conference are available at www.unescap.org/tid/projects/ecom04_conf.asp.
- ¹⁹ <http://www.itu.int/home/>.
- ²⁰ Following a proposal by the Government of Tunisia, the International Telecommunication Union adopted a resolution at its Plenipotentiary Conference in Minneapolis in 1998 to hold a World Summit on the Information Society (WSIS) and to place it on the agenda of the United Nations. In 2001, the ITU Council decided to hold the Summit in two phases, the first from 10 to 12 December 2003, in Geneva, Switzerland, and the second from 16 to 18 November 2005 in Tunis, Tunisia. This was endorsed by the UN General Assembly (Resolution 56/183) which accorded the lead role for the preparatory work to ITU in cooperation with other interested organizations and partners.
- ²¹ <http://www.itu.int/wsis/docs/geneva/official/dop.html>.

- ²² <http://www.itu.int/wsis/docs/geneva/official/poa.html>.
- ²³ Resolution 55/2, adopted 8 September 2000. The declaration may be found at: <http://www.un.org/millennium/declaration/ares552e.htm>.
- ²⁴ The paragraphs relating to internet governance in the Declaration of Principles may be found at: http://www.wgig.org/docs/Paragraphs_Internet_Governance.doc. A Working Group on Internet Governance (WGIG) has been established to deal with the following issues: develop a working definition of Internet Governance; identify the public policy issues that are relevant to Internet Governance; and develop a common understanding of the respective roles and responsibilities of governments, existing international organizations and other forums as well as the private sector and civil society from both developing and developed countries. For more information about the WGIG, see <http://www.wgig.org/>.
- ²⁵ Information about ITU initiatives to counter spam may be found at: <http://www.itu.int/osg/spu/spam/intcoop.html>.
- ²⁶ <http://www.itu.int/osg/spu/spam/>.
- ²⁷ For more information about this and related projects see: <http://www.itu.int/ITU-D/e-strategy/e-applications/E-government/index.html>.
- ²⁸ http://www.itu.int/osg/spu/ip/chapter_five.html.
- ²⁹ <http://www.wipo.int/>.
- ³⁰ "The Management of Internet Names and Addresses: Intellectual Property Issues" Report of the WIPO Internet Domain Name Process (<http://wipo2.wipo.int>).
- ³¹ "The Recognition of Rights and the Use of Names in the Internet Domain Name System", Report of the Second WIPO Internet Domain Name Process (<http://wipo2.wipo.int>).
- ³² Such as: international non-proprietary names (INNS) for pharmaceutical substances; names and acronyms of international intergovernmental organizations (IGOs); personal names and geographical identifiers, such as indications of geographical source used on goods, geographical indications and other geographical terms; and trade names which are used by enterprises to identify themselves.
- ³³ <http://www.wipo.int/pil-forum/en/>.
- ³⁴ The WIPO Digital Agenda was launched in September 1999 by the Director General of WIPO at the WIPO International Conference on Electronic Commerce and Intellectual Property. It was approved later that month by WIPO's Member States at their General Assembly. To keep the public fully informed about its activities under the Digital Agenda, WIPO has created a website dedicated to electronic commerce issues. This web site, maintained in English, French and Spanish, provides extensive information regarding WIPO programs in the areas concerned, background papers on substantive issues, and a comprehensive calendar for meetings. The web site can be found at <http://ecommerce.wipo.int>.
- ³⁵ WIPO Copyright Treaty (adopted in Geneva on December 20, 1996). Entry into force: March 6, 2002; Source: International Bureau of WIPO, <http://www.wipo.int/>.
- ³⁶ WIPO Performances and Phonograms Treaty (WPPT (adopted in Geneva on December 20, 1996); Entry into force: May 20, 2002. Source: International Bureau of WIPO, <http://www.wipo.int/>.
- ³⁷ The Patent Cooperation Treaty, concluded in 1970, amended in 1979, and modified in 1984 and 2001. Source: International Bureau of WIPO, <http://www.wipo.int/>.
- ³⁸ Madrid Agreement Concerning the International Registration of Marks April 14, 1891, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Nice on June 15, 1957 and at Stockholm on July 14, 1967 and amended on September 28, 1979.
- ³⁹ Comprising the Hague Agreement Concerning the International Registration of Industrial Designs (the 1999 Act, the Common Regulations under the 1999 Act, the 1960 Act and the 1934 Act of the Hague Agreement).
- ⁴⁰ WIPO's approach towards economic development is rooted in the United Nations Millennium Declaration and its eight millennium development goals, aimed at reducing poverty across the world and creating an environment conducive to development.
- ⁴¹ www.apec.org.
- ⁴² A copy of the Blueprint may be found at: <http://www.export.gov/apeccommerce/blueprint.html>.
- ⁴³ More information is available on the Electronic Commerce Steering Group Website at: http://www.apec.org/apec/apec_groups/som_special_task_groups/electronic_commerce.html.

- ⁴⁴ The APEC Privacy Framework promotes a consistent approach to information privacy protection across APEC member economies and also avoids the creation of unnecessary barriers to information flows.
- ⁴⁵ A copy of these IAPs is available at <http://www.apec-iap.org/>.
- ⁴⁶ A copy of the guidelines is available at <http://www.export.gov/apececommerce/cp/guidelines.htm>.
- ⁴⁷ A copy of the Stocktake is available online at:
http://www.apec.org/apec/apec_groups/som_special_task_groups/electronic_commerce.html.
- ⁴⁸ <http://www.thecommonwealth.org/HomePage.asp?NodeID=20593>.
- ⁴⁹ The draft Model Law on E-Commerce is presented as providing a sound basis for the passage of laws by those Commonwealth member countries which seek to adopt legislation that addresses all major issues covered by the UNCITRAL Model Law on Electronic Commerce and is adapted for the specific use of common law jurisdictions. It may be found at:
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{1072058F-7B90-4A11-A5DF-E33AACEF4000}_E-commerce.pdf.
- ⁵⁰ The Model Law contains provisions on general admissibility, the scope of the Model Law, authentication, application of best evidence rule, presumption of integrity, standards, proof by affidavit, cross examination, agreement on admissibility of electronic records, and admissibility of electronic signature. A copy may be found at:
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{E9B3DEBD-1E36-4551-BE75-B941D6931D0F}_E-evidence.pdf.
- ⁵¹ The Model Freedom of Information Bill may be found at:
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{AC090445-A8AB-490B-8D4B-F110BD2F3AB1}_Freedom%20of%20Information.pdf, and contains provisions regarding the right of access to information.
- ⁵² The Model Privacy Bill may be found at:
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{82BDA409-2C88-4AB5-9E32-797FE623DFB8}_protection%20of%20privacy.pdf, and deals with the collection, use, disclosure and retention of personal information as well as establishing a Privacy Commissioner and a system of investigation of complaints of breaches of privacy.
- ⁵³ The Model Bill on Computer and Computer Related Crime may be found at:
http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/{DA109CD2-5204-4FAB-AA77-86970A639B05}_Computer%20Crime.pdf, and establishes offences in relation to certain computer crimes including illegal access, interfering with data or with a computer system, the illegal interception of data, illegal devices and child pornography.
- ⁵⁴ <http://www.coe.int/DefaultEN.asp>.
- ⁵⁵ The CyberCrime Convention, ETS 185, entered into force on 1 July 2004. It is intended to develop a common criminal policy aimed at the protection of society against cybercrime, inter alia by adopting appropriate criminal legislation and fostering international co-operation. Source: Council of Europe Treaty Office, <http://conventions.coe.int/>.
- ⁵⁶ The Additional Protocol to the Convention on Cybercrime Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature supplements, as between the Parties to the Protocol, the provisions of the Convention on Cybercrime as regards the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189). It was opened for signature in Strasbourg on 28 January 2003. Source: Council of Europe Treaty Office, <http://conventions.coe.int/>.
- ⁵⁷ http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Steering_Committees/CDCJ/Documents/2005/cahsi%20_2005_7%20en%20final-2.pdf.
- ⁵⁸ CETS No. 108, entered into force, 1 October 1985. Source: Council of Europe Treaty Office, <http://conventions.coe.int/>.
- ⁵⁹ http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Data_protection/Documents/Reports/O-report%20BIOM%202005.asp#P42_6028.
- ⁶⁰ http://europa.eu.int/comm/index_en.htm.
- ⁶¹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, Official Journal L 178 , 17/07/2000 P. 0001 - 0016.

- ⁶² For more information about Directive 2000/31/EC see:
<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/00/442&format=HTML&aged=0&language=EN&guiLanguage=en>.
- ⁶³ The report may be found at: http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2003/com2003_0702en01.doc which contains an annex setting out the list of national measures transposing the Directive.
- ⁶⁴ Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, Official Journal L 013 , 19/01/2000 P. 0012 – 0020.
- ⁶⁵ http://europa.eu.int/information_society/eeurope/2005/all_about/security/electronic_sig_report.pdf.
- ⁶⁶ Directive 97/7/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 1997 on the protection of consumers in respect of distance contracts. The text of this Directive is published in Official Journal No 144 of 4 June 1997.
- ⁶⁷ <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:52000DC0127:EN:HTML>.
- ⁶⁸ http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_201/l_20120020731en00370047.pdf.
- ⁶⁹ CEN was founded in 1961 by the national standards bodies in the European Economic Community and EFTA countries and contributes to the objectives of the European Union and European Economic Area with voluntary technical standards which promote free trade, the safety of workers and consumers, interoperability of networks, environmental protection, exploitation of research and development programmes, and public procurement. For more information see:
<http://www.cenorm.be/cenorm/aboutus/index.asp>.
- ⁷⁰ CEN/ISSS is the “European Entry Point” to the United Nations e-business standardization activities and provides a comprehensive and integrated list of standardization services and products to facilitate e-Business.
- ⁷¹ The objectives, the work programme and the progress of the work are documented at:
<http://comelec.afnor.fr/cen/wsei>.
- ⁷² See further, <http://europa.eu.int/idabc/eprocurement>.
- ⁷³ http://www.hcch.net/index_en.php.
- ⁷⁴ http://www.hcch.net/index_en.php?act=conventions.text&cid=41&zoek=apostille. The Apostille Convention entered into force on 24 January 1965.
- ⁷⁵ <http://www.oas.org>.
- ⁷⁶ As proposed by Canada. For a copy of the proposal see: http://www.oas.org/dil/CIDIP-VII_topics_cidip_vii_proposal_canada_10dec2004.htm.
- ⁷⁷ As proposed by Brazil. For a copy of the proposal, see: http://www.oas.org/dil/CIDIP-VII_topics_cidip_vii_proposal_consumerprotection_applicablelaw_brazil_17dec2004.htm.
- ⁷⁸ <http://www.oecd.org/home/>.
- ⁷⁹ More information about this Working Party is available at:
http://www.oecd.org/departement/0,2688,en_2649_22555297_1_1_1_1_1,00.html.
- ⁸⁰ On 26 November 1992, the Council of the OECD adopted a recommendation in respect of these guidelines. The Guidelines have since been replaced by the 2002 “OECD Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security”.
- ⁸¹ On 27 March 1997, the Council of the OECD adopted these guidelines relating to cryptography.
- ⁸² The declaration was adopted by the OECD ministers at the conference on “A Borderless World: Realising the Potential of Global Electronic Commerce”, of 7-9 October 1998, Ottawa, Canada.
- ⁸³ A copy of the report is available at [http://www.ois.oecd.org/olis/2003doc.nsf/LinkTo/dsti-iccp-reg\(2003\)9-final](http://www.ois.oecd.org/olis/2003doc.nsf/LinkTo/dsti-iccp-reg(2003)9-final)
- ⁸⁴ The OECD’s work on spam may be found online at:
http://www.oecd.org/departement/0,2688,en_2649_22555297_1_1_1_1_1,00.html.
- ⁸⁵ http://www.oecd.org/document/3/0,2340,en_2649_22555297_34409283_1_1_1_1,00.html.
- ⁸⁶ <http://www.oecd.org/dataoecd/17/38/2081349.pdf>.
- ⁸⁷ The key elements include, inter alia: improving access to telecommunications and internet services; building trust for users and consumers of electronic commerce; establishing ground rules for the digital market place.
- ⁸⁸ <http://www.oecd.org/dataoecd/53/39/34579763.pdf>.
- ⁸⁹ <http://www.oecd.org/dataoecd/17/38/2081349.pdf>.

- ⁹⁰ The application of this principle often raises difficulties in practice. For example, the tax administration in the country where the customer is located may encounter difficulties in ensuring that the right amount of tax is collected and remitted given that there may be no jurisdictional relationship between the administration and the supplier. Similarly, the supplier may have difficulty in complying with the tax rules of the country where the customer is located. For more information, see report of OECD "Electronic Commerce: Facilitating Collection of Consumption Taxes on Business to Consumer Cross-Border Electronic Commerce Transactions".
- ⁹¹ <http://www.oecd.org/dataoecd/2/38/20655083.pdf>.
- ⁹² The report is published at:
http://www.oecd.org/document/46/0,2340,en_2649_37441_1834414_1_1_1_37441,00.html.
- ⁹³ <http://www.wcoomd.org/ie/En/AboutUs/aboutus.html>.
- ⁹⁴ The International Convention on the Simplification and Harmonization of Customs Procedures ("Kyoto Convention") which entered in to force on 25 September, 1974 was the principal instrument through which the WCO operated and through which members regulated and implemented customs policies.
- ⁹⁵ The International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) as revised in June 1999 was adopted by the WCO Council as the updated "blueprint" for modern and efficient Customs procedures in the modern era:
<http://www.wcoomd.org/ie/En/AboutUs/aboutus.html>: "The Kyoto Convention: Customs contributing to the development of international trade."
- ⁹⁶ The revised Kyoto Convention is to come into force upon the ratification or accession of the Protocol of Amendment by 40 Contracting Parties.
- ⁹⁷ http://www.wcoomd.org/ie/En/Topics/Issues/topics_issues.html: "WCO Strategy Paper: Customs and E- Commerce", p. 2.
- ⁹⁸ WCO Conference, 19 – 21 May, 2005 at Baku, Azerbaijan.
- ⁹⁹ In Budapest, Hungary.
- ¹⁰⁰ 27- 29 April 2005 in Istanbul, Turkey.
- ¹⁰¹ This Task Force analyzes the impact of regulatory frameworks in the area of privacy and data protection and formulates business positions on these issues. It has provided detailed input to the European Union Review of the 1995 General Data Protection Directive, and is currently developing a policy statement on data protection and human resources. It is also developing practical tools for use by companies worldwide in their implementation of data protection regulation, such as alternative contract clauses for transborder data flows and work on the use of codes of conduct to facilitate data flows between regions with differing privacy regimes.
- ¹⁰² This Task Force, which includes members of the ICC Commission on Intellectual Property, responds to Internet governance issues stemming from the Internet Corporation for Assigned Names and Numbers (ICANN), and other issues related to the technical management of the Internet. It also works to ensure a trade environment for I.T. services that supports innovation.
- ¹⁰³ This Task Force, with participation from experts from the ICC Commission on Commercial Law and Practice (CLP), responds to key global and regional legal initiatives that affect electronic commerce, particularly in light of the critical jurisdiction and applicable law issues raised by cross-border nature of online trade. The work commented on includes the Draft Hague Convention on Jurisdiction and the Enforcement of Foreign Judgements in Civil and Commercial Matters and attempts by the EC to change the Rome Convention. The business stance in this field is reflected through the ICC policy statement entitled "Jurisdiction and applicable law in electronic commerce" (French version) issued by ICC's former Electronic Commerce Project (ECP) in June 2001. It has also developed a clear and understandable guide to jurisdiction and applicable law for non-lawyers.
- ¹⁰⁴ This Task Force aims to address issues relating to security and authentication policy regulation of importance to business users. The Task Force is also finalizing an Information Security Toolkit aimed at improving awareness and raising the priority of information security amongst smaller companies and companies in developing countries. In addition, it has provided practical tools for business users worldwide such as the GUIDEC (General Usage for International Digitally Ensured Commerce) which provides guidelines for ensuring trustworthy digital transactions over the Internet and describes how parties should use digital signatures.
- ¹⁰⁵ This Task Force participates in the UNCITRAL Working Group IV on Electronic Commerce, particularly in its current work on electronic contracting.

¹⁰⁶ More information on the CLP Commission may be found at: <http://www.iccwbo.org/law/commission/>.

¹⁰⁷ Members of the Alliance for Global Business are: Business and Industry Advisory Committee to the OECD (BIAC), Global Information Infrastructure Commission (GIIC), International Chamber of Commerce (ICC), International Telecommunications Users Group (INTUG), and World Information Technology and Services Alliance (WITSA).

¹⁰⁸ http://www.iccwbo.org/home/e_business/word_documents/3rd%20Edition%20Global%20Action%20Plan.pdf.

¹⁰⁹ The compendium is available from the ICC website at:
http://www.iccwbo.org/home/e_business/policy/ICC%20compendium%20on%20ICT%20and%20E-Business%20policy%20and%20practice.pdf.
