

Novedades

News from the National Law Center for Inter-American Free Trade

*Volume 6, Number 7
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RESPONDING TO THE LEGAL OBSTACLES TO ELECTRONIC COMMERCE IN LATIN AMERICA

From September 29th through October 1st, the Center hosted a Conference entitled **Responding to Legal Obstacles to Electronic Commerce in Latin America**. The Conference, cosponsored by the Center, the Organization of American States, the Business Software Alliance, Compaq, Federal Express, Microsoft, Oracle and the law firms of Greenberg, Traurig, Shook, Hardy & Bacon and Steel Hector & Davis, was held at the headquarters of the OAS in Washington, DC. Panelists and participants included government representatives from Argentina, Bolivia, Brazil, Canada, Chile, Costa Rica, Mexico, Peru, the United States and Uruguay, legal scholars from throughout the Americas and Europe, and industry leaders representing our cosponsors and other multinational corporations. The Center was pleased to have Senator Max Baucus (D-Montana) and Representative Jim Kolbe (R-Arizona) address the Conference with Arizona legislators Jeff Hatch-Miller and Barry Wong in attendance.

The Conference addressed major obstacles to the effective expansion of electronic commerce in the countries of the Western Hemisphere. To foster meaningful discussions, the Center sent a questionnaire to each panelist asking them to set forth the state of electronic commerce legislation in their country, legal norms concerning contract formation, choice of law and forum clauses, and industry practices. This questionnaire allowed the Center to compile up-to-date information concerning the development of electronic commerce in each of the Latin American countries represented at the Conference. A compendium of the questions and answers provided by the government and legal experts was published as part of the Conference materials. In addition, copies of existing and draft legislation were distributed.

WORKING GROUPS TO DRAFT PRIVATE RULES TO GUIDE ELECTRONIC COMMERCE

The final discussion held at the recent Conference on electronic commerce was chaired by Center Founder and Director, Dr. Boris Kozolchyk, who addressed the issue of future proceedings to establish a set of general principles for the development of electronic commerce in Latin America. Certain general principles generated by private parties with the participation of public sector representatives, may serve as the basis for a future OAS convention. At a minimum, flexible and technology-neutral principles will act as guidelines for future work and development on a nation-specific basis. In order to structure the drafting process of these principles, it was decided to reduce the initial number of Conference panels to four working groups, to focus on the following areas:

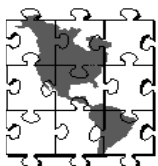
- Electronic contracting, which includes issues of certification, authentication, enforceability, formation, validity, evidentiary records, freedom of contract, choice of law, jurisdiction, the role of customary law, the role of the law of agency, and ostensible authority.
- IP law and practices, including suggestions for enforcement, remedies, jurisdiction, and extraordinary remedies.
- Payment and financing of transactions and electronic commerce.
- Regulatory issues, including taxation, anti-trust, and customs tariffs.

The principles to be established in these four areas will be guiding principles, not detailed rules. As indicated above, these principals may affect future legislation, treaties, practices and/or judicial activities. They may also be adopted by contracting parties, as occur with certain private rules issued by the ICC or UNCITRAL models.

Dr. Kozolchyk expressed his optimism that such principles could be drafted within a year.

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The closing session identified points for future consideration as well as various conclusions. Horacio Gutierrez of Microsoft noted that electronic commerce is developing and expanding regardless of government intervention. He urged the lawmakers present to avoid over-regulating the industry. Gutierrez instead emphasized the need for legislation to create the legal certainty and security to foster the continued growth of electronic commerce at the business-to-business and consumer levels.

Harold Burman of the United States Department of State agreed that any laws passed should be general and technologically neutral. He recommended that legislation stay focused on the commercial marketplace and emphasized the need for financing and the development of commercially sound electronic commerce practices.

Francisco Reyes of la Universidad de los Andes and several other panelists encouraged the establishment of private and public certification authorities to provide the authenticity and security required by contracting parties.

Hope Camp of Jenkens & Gilchrist discussed the difficulties of protecting industrial property rights within electronic commerce, including that of acquiring jurisdiction over the pirating party. He suggested the need to allow private parties the right to effective injunctive relief to protect IP rights. Other panelists, echoing the importance of IP protection, stated that logistically, such protection is most easily afforded by the ratification of a regional or multilateral convention.

Burgess Raby of Phoenix, Arizona stated that customs and taxes would inevitably be components of electronic commerce and called for harmonization or a set of common standards.

The Center thanks the sponsors, participants and staff for a highly successful event and looks forward to continued work overcoming the legal obstacles to electronic commerce in Latin America.

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InterAm_{sm} Updates

ARGENTINA

Ley 25.065 Tarjetas de Crédito. 14-I-1999.

Decree Law 5965/63 Bills of Exchange. 19-VII-1963. \$21.50 S; \$42.50 NS.

Law 17.418 of Insurance. 30-VIII-1967. \$27.50 S; \$55 NS.

Law 19.950 Commercial Companies. 20-III-1989. \$85 S; \$170 NS.

COLOMBIA

Ley 527 Por medio de la cual se define y reglamenta el acceso y uso de los mensajes de datos, del comercio electrónico y de las firmas digitales, y se establecen las entidades de certificación y se dictan otras disposiciones. 18-VIII-1999.

PERU

Ley 27.131 que Reduce Sanciones Tributarias y Modifica Normas del Código Tributario. 04-VI-1999.

VENEZUELA

Código de Comercio. 21-XII-1955.

Ley de Empresas de Seguros y Reaseguros. 08-VIII-1975.

Ley Orgánica que Reserva al Estado la Industria y el Comercio de los Hidrocarburos. 29-VIII-1975.

Ley de Estimulo al Desarrollo de las Actividades Petroquímica, Carboquímica y Similares. 11-IX-1998.

Ley de Estimulo al Desarrollo de las Actividades Petroquímica, Carboquímica y Similares. 11-IX-1998.

The Center's *InterAm_{sm}* Database is a unique online service providing Latin American legal and regulatory information. Subscribers to the database receive same-day electronic access to Mexico's *Diario Oficial de la Federación*, the equivalent of the U.S. Federal Register.

Subscribers also receive the biweekly newsletter, *Inter-American Trade Report*, which features news summaries, analysis and commentary regarding issues and laws relating to commerce throughout Latin America. For subscription information, please call Francisco Laguna at 1-800-LAW-FIND.

RECENT HEADLINES FROM THE INTER-AMERICAN TRADE REPORT

"Summary of Argentine Credit Card Law," By Alexis Kook-Weskott of Baker & MacKenzie

"Overview of Mexico's Environmental Law," by George R. Gonzalez and Maria Elia Gastelum of Haight, Brown & Bonesteel, LLP.

"Colombia Approves New Electronic Commerce Law," compiled and translated from Latin American news sources by the editor.

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CENTER WELCOMES NEW STAFF

Dr. Mariana Silveira of Montevideo, Uruguay is a graduate of the Facultad de Derecho y Ciencias Sociales, Universidad de la Republica Oriental del Uruguay, as well as a certified translator in English and French. In 1995, she was awarded a Fulbright / Institute of International Education grant for work towards obtaining a Masters Degree in International Trade Law at the University of Arizona. Dr. Silveira is a former associate of the law firm of Guyes & Regules of Montevideo, Uruguay. After completing her studies at the University of Arizona, she was appointed Legal Researcher at the National Law Center for Inter-American Free Trade, and participated in projects including banking law, electronic commerce and related issues (electronic model agreements, and land and commercial registries), harmonization of international customs practices, environmental law and international secured transactions. In association with the NLCIFT, Dr. Silveira has also acted as consultant on international trade issues (with special emphasis on MERCOSUR), environmental transboundary concerns, and the analysis of sovereign debt issuance practices in Latin America. At present, Dr. Silveira is Coordinator of the Electronic Commerce Project at the NLCIFT.

The Center's World Wide Web home page has recently been redesigned. New sections have been included. Take a look at the latest news from the Center at <http://www.natlaw.com/media/media.htm>

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