

# APPRAISING THE ROLE OF UNCTAD IN DEVELOPMENT OF CYBER COMMERCE LAWS IN DEVELOPING COUNTRIES

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## ABSTRACT

*The cyber technological revolution has caused a major legal challenge to various jurisdictions on how to deal with virtual trading or commerce. This paper assesses the value and role of United Nation Conference on Trade and Development (UNCTAD) in the development of virtual trading laws in developing countries in Africa, Asia and Latin America. The aim is to examine the legal regime that address the issues raised by cyber infrastructure to ensure trust in virtual exchange and ease the conduct of domestic and international trade online and offer legal protection for providers of cyber commerce and users.*

**Keywords:** Cyber, Technological, Revolution, Trading, Developing, Trust, Legal, Protection.

## INTRODUCTION

In the early days of the Internet, discussion of the Internet law centered largely on whether the Internet could or should be regulated. The Internet of those days bore little resemblance to the Internet of today. Rather, the Internet of the 1980s and early 1990s had a communal feel, where users generally trusted one another and commercial activities were frowned upon. Today the Internet has emerged as an integral part of our communications and social infrastructure, with millions of users and companies online. This growth resulted in critical changes to the legal regulation of Internet-based activity (Ayres & Braithwaite, 1995).

### UNCTAD as a Front Runner of Cyber Regulations

United Nation Conference on Trade and Development (UNCTAD) is a permanent intergovernmental body established by the United Nations General Assembly in 1964 and part of the UN Secretariat and have been developing e-Commerce Law, Regulation programs and Reform Programmes to support developing countries in Africa, Asia and Latin America in their efforts to enact legal regimes that help to address the issues raised by cyber commerce and to ensure trust in cyber transactions, enhance and ease how domestic and international trade are conducted online, and delivering educational programs in the forms of training and legal protection for users and providers of e-commerce and e-government services (Bonnici, 2008). Capacity of policy makers and lawmakers both at national and regional levels in understanding the underlying issues underpinning e-commerce have been assisted and built by United Nation Conference on Trade and Development (UNCTAD). The assistance targets, in particular, ministry officials in charge of law reform who need to learn more about the legal implications of ICTs; parliamentarians who have to examine new cyber laws and legal professionals who enforce new legislation (Hanefah et al., 2008).

## Key Issues Addressed by UNCTAD

1. Electronic Transactions and Electronic Signatures.
2. Data Protection and Privacy.
3. Consumer Protection.
4. Computer Crime.
5. Intellectual Property.
6. Competition.
7. Taxation.
8. Information Security.

## UNCTAD Engagement with Economic Community of West Africa States (ECOWAS) on Regional Cyber Regulations

In 2013, United Nation Conference on Trade and Development (UNCTAD) engaged with the Economic Community of West Africa States (ECOWAS) in a capacity-building programme in support of the implementation of the regional legal texts at the domestic level. Two online training sessions on the legal aspects of e-commerce were organized for 315 representatives, and three regional workshops. Face-to-face workshops allowed for the exchange of best practice between representatives of member countries and particularly assisted those who had not yet adopted any legislation. The current study, undertaken within the United Nation Conference on Trade and Development (UNCTAD) E-Commerce and Law Reform programme, has the objective of evaluating legislation on e-commerce in the region. It is based on contributions of member countries that participated in a capacity-building program from 2013 to 2014. In view of strengthening the knowledge of Economic Community of West Africa States (ECOWAS) countries in the area of e-commerce, the UNCTAD Train for Trade project also covered capacity-building activities for e-commerce for practitioners.

During United Nation Conference on Trade and Development (UNCTAD)'s workshops, participants expressed also the need to extend law harmonization to other areas such as taxation and consumer protection, which have not yet been discussed at the community level (Li, 2003). Electronic transactions in this area, particularly through the use and development of mobile money, considerable efforts are still required to integrate member countries into the e-commerce world by introducing the use of e-transactions (King et al., 1999). The lack of a legal framework hinders an important aspect of e-commerce, namely cross-border transactions. The existence of national regulation applicable to e-transactions is a vital prerequisite for building consumer trust. Personal data are dealt with on several levels and their dematerialization heightens the risk of misuse, in particular in marketing and in identity fraud caused by a lack of data processing security. Lack of regulation in the processing of personal data constitutes a real danger. Apart from the standard regulations required to monitor ICT, the accelerated growth of the ICT area obliges States to adapt their legislation in order to comply with more advanced technology. In the area of personal data protection, cloud computing introduces new concerns, in particular, where the authority responsible for processing assigns its related responsibilities.

While there is not necessarily a need to develop laws or regulations that are required in areas including privacy, data protection, information security and cybercrime. It is essential that governments of developing countries adopt and enforce appropriate laws and regulations in these areas. Putting such legislation in place will give local businesses, including local entrepreneurs, new opportunities to innovate in services and applications, seeking to address export as well as

domestic markets (United Nation Conference on Trade and Development UNCTAD, 2013). United Nation Conference on Trade and Development (UNCTAD) has helped Economic Community of West Africa States (ECOWAS) to provides a regulatory framework to combat cybercrime through the Directive C/ DIR/1/08/11 of 19 August 2011 on cybercrime (Bowman & Hodge, 2009). When creating strategies for the regulation of e-commerce, Economic Community of West Africa States (ECOWAS) Member States currently do not adequately take into account the need to protect consumers (Bennett, 2004). States must prioritize the development of a legal framework for consumer protection, adapted to ICT, in order to secure transactions, engender user trust and ultimately, facilitate the use of e-transactions in respect to long distance contracts. With the emergence of cloud computing, the regulation of online content faces new challenges, notably, in relation to its localization, the nature and scope of different stakeholder responsibilities and the reversibility of outsourcing.

These new problems add to those that surround intellectual property rights of online content and, in particular, the regulation of such content on social networks. These examples demonstrate the size of the challenges that States must face to achieve integration within the ICT society (Kenneth & Guercio, 2017). However, by effectively addressing these issues in state legislation and community law within a harmonized legal framework for ICT, they can be overcome. Domain names are managed centrally by the Internet Corporation for Assigned Names and Numbers (ICANN) 34 and the Member States are allowed to directly manage national domain names (Geist, 2002).

### **UNCTAD Engagement with East Africa Community (EAC) on Regional Cyber Regulations**

United Nation Conference on Trade and Development (UNCTAD) assisted East Africa Community to establish a Task force on Cyber laws in 2007 as part of its regional integration process. United Nation Conference on Trade and Development (UNCTAD) ensured to provide legal advice and training to help build awareness on policy and legal issues pertaining to e-commerce for the East Africa Community. And leads the task force prepared and endorsed two cyber law frameworks, now the most advanced on the African continent. The first framework covers electronic transactions, electronic signatures and authentication, cybercrime, data protection and privacy. The second framework focuses on intellectual property rights, competition, e-taxation, and information security (Li, 2000).

There have also been two published studies on e-commerce developments in the EAC by United Nation Conference on Trade and Development (UNCTAD): *Harmonizing Cyber laws and Regulations: The experience of the East African Community*. *Mobile money for business development in the East African Community: A comparative study of existing platforms and regulations* (Chatterjee, 2002).

The development of an enabling framework for e-commerce has the potential to generate significant economic development gains for countries by promoting investor confidence, tapping into business opportunities and responding to the increasing reliance on electronic applications in all sectors (government, commerce, health, education, banking, insurance, etc.).

In 2009, with the assistance of the United Nation Conference on Trade and Development (UNCTAD), EAC became the first region in Africa to adopt a modern and effective regional harmonized framework for cyber laws. This has been developed to meet the need expressed by

Council of Ministers of the East African Community in 2006 to support the regional integration process with regard to e-Government and e-commerce (Barlow, 1996). Two sets of recommendations for cyber laws were subsequently prepared by the EAC Task Force on Cyber laws in close cooperation with the EAC secretariat with the support of United Nation Conference on Trade and Development (UNCTAD).

Phase I of the Framework covering electronic transactions, electronic signatures and authentication, cybercrime as well as data protection and privacy was adopted in 2010 by the EAC Council of Ministers on Transport, Communications and Meteorology. It is currently being implemented at the national level. Phase II of the Framework covering intellectual property rights, competition, e-taxation and information security is to be examined by the EAC in 2010 (Shon, 2005).

### **UNCTAD Engagement with Association of Southeast Asian Nations (ASEAN) on Regional Cyber Regulations**

In 2013 United Nation Conference on Trade and Development (UNCTAD) assisted Association of Southeast Asian Nations (ASEAN) to provide an up-to-date assessment of the current state of e-commerce legislation, maps prevailing gaps, identifies emerging challenges and makes specific recommendations towards furthering harmonization in different areas. In 2015, United Nation Conference on Trade and Development (UNCTAD) assisted Association of Southeast Asian Nations (ASEAN) to meet their objectives of its ICT masterplan which are through the following:

1. Online surveys of Association of Southeast Asian Nations (ASEAN) member State government representatives and e-commerce businesses on legal frameworks for e-commerce;
2. Regional workshop to discuss advances and challenges in adopting and enforcing e-commerce legislation;
3. Review of e-commerce laws and developments in the region;
4. Separate capacity-building and awareness-raising workshops for policymakers and lawmakers from Cambodia and the Lao People's Democratic Republic from 2003 to 2009, and provided assistance to those governments as they drafted e-commerce legislation.

### **CONCLUSION**

Global computer based communications cut across territorial borders, creating a new realm of human activity and undermining the feasibility and legitimacy of laws based on geographic boundaries. While these electronic communications play havoc with geographic boundaries, a new boundary, made of the screens and passwords that separate the virtual world from the “real world” of atoms, emerges. This new boundary defines a distinct Cyberspace that needs and can create its own law and legal institutions. Territorially based law-makers and law-enforcers find this new environment deeply threatening. But established territorial authorities may yet learn to defer to the self-regulatory efforts of Cyberspace participants who care most deeply about this new digital trade in ideas, information, and services

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