

## AN APPROACH TO ARGENTINE LAW ON E-COMMERCE

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For many years, Argentine companies have used e-mail, though as some specialists phrase it, we can speak of *traditional e-commerce* and *Internet driven e-commerce*. For traditional e-commerce, networks are simply a means of transferring data. For Internet driven e-commerce, the market is the network itself. In turn, e-commerce splits into two categories: *indirect e-commerce* and *direct e-commerce*. In the case of indirect e-commerce, orders for tangible goods are placed electronically, and such goods (mainly in parcels) are delivered to customers through ordinary distribution channels, like carriers or postal services. Direct e-commerce distribution is quite different. Orders are placed for intangible goods, like software, so the distribution channel becomes electronic, too.

It is now easy to develop relationships with consumers, business and the government through the Internet. To date, these relationships have been segmented into the following main categories: *business-to-business (B2B)*; *business-to-government (B2G)*; *government-to-business (G2B)*; and *business-to-consumer (B2C)*. This article explores how law impacts these sectors. For these relationships to be useful to the market, technology must make it possible for transactions to be made electronically. These relationships should also be legally binding under the law governing them.

Undoubtedly, those relationships are meant to create contractual obligations. In a broad sense, it is possible to define a contract as an agreement between two or more parties that creates an obligation to do or not to do something. Offer and acceptance – two of the essentials of any contract - may take place either with the parties being physically present at the same time to express their mutual consent to enter into an agreement, or under a condition in which both parties are not present.

A suitable example of the second type of contract would be those contracts which are entered into via mail, and now, by e-mail. However, according to some local scholars, it is no longer accurate to apply such a distinction to contracts made through the Internet. They are already talking about *virtual presence* in the Internet. For them, *presence* would not only have a physical connotation, but also a legal meaning which would even prevail over the former.

From a different point of view, contracts can be divided into two categories: written contracts and oral contracts. For written contracts, the existence of a written document and the signature of the parties entering into the contract are essential for the contract to be enforceable. Over the centuries, written contracts have been assumed as documents written on a piece of paper and with the parties signing them with a pen. Because of the existence of the Internet and e-mail, this is no longer true. The law must now acknowledge legal effects to contracts entered into via e-mail, because the market is always looking for a secure legal framework in which to make transactions.

Thus, for any country to encourage commercial transactions through the Internet, it is necessary to enact the appropriate legislation in order to provide such transactions with an acceptable standard of legal security which the relevant players can rely upon.

Since the early 1990's, Argentina has taken steps to provide the technological community and businesses with an up-to-date legislation on electronic transactions. One legal improvement that favors e-commerce in Argentina is the *Consumer's Defense Act* (enacted in 1993). This law, which main purpose is to protect consumers in the *B2C* segment. It acknowledges the legality of sales made by mail and/or electronic means. It defines *electronic sale* as a sale in which both the offer and the acceptance are made and sent to the other party by electronic means, and in that way, regulates *Internet driven e-commerce*.

Some provisions of the *Consumer's Defense Act* apply to *traditional e-commerce*, too. If conducted through the Internet, all information provided to the consumer must be furnished by suppliers in compliance with legal provisions.

We emphasize the *B2C* segment, because under this law, businesses buying goods and/or services are considered consumers. In such contracts, companies, not only individuals, can be consumers protected against supplier abuses.

We are not wrong if we say that it is almost technically impossible to retrieve an acceptance before it reaches the offeror in electronic contracts. For said reason, the Act allows consumers who have already sent their acceptance to the offeror to revoke with no liability their acceptance within five days as of the signature of the contract or delivery of the goods to the consumer, whichever occurs later.

This legal solution entitles consumers to a free-cost exit from the contract. This is very different from the principle set by the Argentine Civil Code that no valid and binding contract can be revoked without liability for the party who revokes it. In the case of contracts made by *absent parties*, revocation is accepted by law only if revocation is received by the offeror before he or she receives the acceptance.

The *Digital Signature Act* (enacted in 2001) and its regulations are of great importance for transactions carried out via the Internet, for any of the *B2C*, *B2C*, *G2B*, or *B2G* segments. This law provides that a digital signature has the same legal effect as a written signature if it is used in *digital documents* and created from a *digital certificate* including a *private key* to be created by the user and a *public key* provided by a *licensed certification authority* which has to meet all the requirements set forth by the Act and its regulations to be allowed to act as such. According to the Act, *foreign certification authorities* can be accepted on a reciprocity basis, and *non-licensed certification authorities* are allowed to play in the market under different conditions. *Non-licensed certification authorities* are permitted by law to certify *electronic signatures*, but not *digital signatures*. According to the Act, a *digital signature* provides non-repudiation, and an *electronic signature* does not. The difference between them is quite important because unlike a *digital signature*, in the case of an *electronic signature*, the burden of proof is on the party claiming signature's authenticity.

The federal government is in charge of providing detailed mandatory guidelines for those who apply to be a *licensed certification authority*. These guidelines are currently under analysis by authorities before their release to the public in the near future.

We can say, without hesitation, that according to Argentine law, a new type of contract has to be added to the traditional contract list: the electronic contract, one which could be electronically made and stored.

Protection against fraud concerning *digital signatures* or *digital documents* in the criminal code is one part of the legal amendments Argentina is undertaking for the development of e-commerce in a safe environment.

Furthermore, both individuals and corporations may now submit tax returns to the federal tax agency through the official Web site, which means a real improvement in the relationship between taxpayers and the government in Argentina. Federal agencies and provinces are increasingly using technology to link their activities to the Internet. For instance, some competitive bids for the supply of goods are being made and awarded via Internet.

Within the Internet and e-commerce realms, the law is always catching up with technological achievements to regulate how new innovations impact individuals, businesses, and the government. Investments only flow towards countries committed enacting legislation, which gives legality to these achievements. In this respect, Argentina is on the right path to becoming an e-commerce hub.

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