



ITECHLAW e-COMMERCE LAW COMMITTEE

**e-COMMERCE LEGAL DEVELOPMENTS SURVEY
2007/2008**

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Introduction

The ITechLaw e-Commerce Law Committee was established at the ITechLaw conference in Chicago in April 2007. The initial objective of the e-Commerce Law Committee is to establish a network of lawyers from ITechLaw member countries who have a keen interest in e-commerce and are prepared to participate in the proceedings of the Committee and to make contributions on e-commerce legal issues.

In pursuit of this initial objective, it was decided at the e-Commerce Law Committee meeting in London in November 2007 to conduct a small survey among e-commerce legal practitioners from the initial target list of sixteen jurisdictions listed below on what has been, in their opinion, the most significant legal developments that have occurred in their jurisdiction in 2007 and what, in their opinion, are likely to be the most significant legal e-commerce issues in their jurisdiction in 2008.

The expectation was that respondents in completing the survey would draw not only on their general knowledge of, and familiarity with, the e-commerce legal environment in their jurisdiction, but also on the actual e-commerce work that they were doing in their own legal practices. In this way, it was hoped that we would get some level of insight into the manner in which e-commerce related issues that their clients were encountering was translating into actual legal work.

Jurisdictions Surveyed

- Austria
- Belgium
- Brazil
- Canada
- Czech Republic
- England
- Germany
- India
- Italy
- Ireland
- Luxembourg
- Northern Ireland
- Portugal
- Spain
- United States
- Uruguay

Objectives and Methodology

The survey had a number of objectives:-

- to obtain a “snapshot” overview of what, in the opinion of the contributors, have been the most significant e-commerce developments in their jurisdiction in 2007, and what are most likely to be the most significant e-commerce developments in 2008. Contributors were requested to limit their responses to three issues for each of the two years;
- to use the findings of the survey to identify trends and potential topics that can be included on the programmes of future ITechLaw conferences and events;

- to build the membership of the ITechLaw e-Commerce Law Committee and use the survey as a means of testing whether more substantial surveys or collaborative works or studies can be undertaken by ITechLaw e-Commerce Law Committee.

The methodology used was quite simple. The initial target list of jurisdictions (see above) was drawn up and a number of individuals who signed up to join the ITechLaw e-Commerce Law Committee at the Chicago and London ITechLaw conferences undertook to procure respondents to the survey from a number of the target jurisdictions.

The survey questions were as follows:

Question 1: Please provide brief details of what in your opinion have been the most significant legal e-commerce developments in your jurisdiction during 2007; and

Question 2: In your opinion, what are likely to be the most significant legal e-commerce issues in your jurisdiction in 2008?

For the purposes of this survey, the term “e-commerce” was given a narrow interpretation limited to the following:-

- online and electronic contracting;
- electronic/digital signatures;
- e-commerce advertising issues; and
- e-commerce consumer protection issues.

The reason for this narrow interpretation was to avoid initial potential conflicts with the work of other ITechLaw Committees (Data Protection/Privacy; Intellectual Property and Outsourcing) and with which there could be an overlap. Notwithstanding this, it was evident from the responses received that it can be very difficult to separate data protection/privacy and intellectual property issues from e-commerce issues.

Acknowledgement of Contributors

We would like to extend our sincere appreciation to the following for all their time and effort in either responding to and/or assisting with obtaining responses to the survey:-

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Future Surveys and Membership of ITechLaw e-Commerce Law Committee

It is our intention to repeat the survey for 2008/2009 and to expand both the number of countries covered and the number of contributions per country. We will also work at trying to strike a better balance between the number of contributions per country, and in this way get a better proportionality and representation from country to country and geographic region to geographic region.

If you are interested in participating in the 2008/2009 survey, and/or participating in the activities of the ITechLaw e-Commerce Law Committee please contact:-

Chair: Don McAleese, Matheson Ormsby Prentice Solicitors, Dublin, don.mcaleese@mop.ie

Vice-Chair: Anja Dekhuijzen, DLA Piper Nederland N.V., anja.dekhuijzen@dlapiper.com

Format of Survey Report

In Part 1, we report on the main findings and trends indicated by the responses to the survey and we also comment on some of the more noteworthy developments.

In Part 2, we summarise the responses that were received in respect of each jurisdiction.

Don McAleese, Matheson Ormsby Prentice, Dublin, Ireland, Chairman

Anja Dekhuijzen, DLA Piper Nederland N.V., The Netherlands, Vice-Chair

24 April 2008

E-Commerce Legal Developments Survey 2007/2008

Part 1 – Analysis of Findings

For the purposes of this survey, the term “e-commerce” was given a narrow interpretation limited to the following:-

- online and electronic contracting;
- electronic/digital signatures;
- e-commerce advertising issues; and
- e-commerce consumer protection issues.

The reason for this narrow interpretation was to avoid initial potential conflicts with the work of other ITechLaw Committees (Data Protection/Privacy; Intellectual Property and Outsourcing) and with which there could be an overlap. Notwithstanding this, it was evident from the responses received that it can be very difficult to separate data protection/privacy and intellectual property issues from e-commerce issues.

In Part 2 we summarise the responses that were received in respect of each jurisdiction. One of the challenges we faced in compiling this report was that many respondents when responding to the survey were able to categorise quite specifically the nature of the issues that they had identified as the major developments in their jurisdiction (or where they did not specifically categorise them, it was a relatively straight forward task in compiling the report to do this). However, as a number of the specific issues could also quite legitimately be grouped under slightly more expanded general categorisations (this was particularly the case in the responses in the e-government and e-money fields), it was felt that the report should include an analysis of the main findings under both the specific categorisations and the general categorisations of the legal developments identified by the respondents.

Accordingly, the analysis below gives the top three categorisations (both specific and general) for the year 2007, the year 2008 and also for the combined years 2007 and 2008.

Main Findings and Trends

2007

Top 3 Specific Categorisations

1. Consumer protection/distance selling/distance contracts – 14.5%.
2. Liability for ISP/content providers/disclosure obligations – 9.5%.
3. Website/email/disclosure/transparency requirements – 9%.

Top 3 General Categorisations

1. E-Government -16.4%.
2. Liability for ISP/content providers/disclosure obligations/search engines – 10%
3. E-contracting/e-commerce/online services – 9%

2008

Top 3 Specific Categorisations

1. Consumer protection/distance selling/distance contracts – 11.3%.
E-payments/e-money 11.3%.

2. E-signatures – 6%.
3. Mobile/m-commerce – 5.7%.
Security/fraud – 5.7%.
Social networking – 5.7%

Top 3 General Categorisations

1. E-banking/e-financial services – 13.2%.
2. E-government – 13.2%.
3. Internet 2.0/user generated content/social networking/virtual world – 13.2%.

2007 and 2008 Combined

Top 3 Specific Categorisations

1. Consumer protection/distance selling/distance contracts – 13.1%.
2. Liability for ISP content providers/disclosure obligations – 6.5%.
3. E-payments/e-money – 5.6%.
Data Protection/privacy – 5.6%.

Top 3 General Categorisation

1. E-government – 15%.
2. Consumer protection/distance selling/distance contracts – 13.1%.
3. Liability for ISP/content providers/disclosure obligations/search engines – 6.5%.
Internet 2.0/user generator content/social networking/virtual world – 6.5%.

It was noted that respondents in replying to the survey in respect of 2008 developments were able to categorise more specifically the nature of the anticipated/expected development than was the case in 2007. This is particularly the case in the general category e-government and e-banking/e-financial services.

By quite some distance the main areas of activity are in the areas of:-

- consumer protection/distance selling/distance contracts;
- e-government;
- e-banking/e-financial services;
- internet 2.0/user generated content/social networking/virtual world; and
- liability for ISP/content providers/disclosure obligations.

Noteworthy Findings and Developments

While there was quite a degree of consistency between many of the responses, there were a number of responses that were noteworthy in their own right. These included:-

- The topical issue of the legal position arising from the sale of “used software” (Austria and Germany);
- The likely publication of legislation setting out conditions for the operation of pharmacies (Belgium);

- The submission of draft legislation to regulate online gambling (Belgium);
- The move outside the US towards security breach notification type requirements (Canada);
- A court decision ordering the operator of a football fan website to disclose the identify of five users of the site in relation to the posting of allegedly defamatory messages (England);
- The development and evolution of the issue of “disturbance liability” in Germany (Germany);
- The further development of IT and e-commerce law in India including requirement for operators of electronic payment systems to obtain prior authorisation from Reserve Bank of India (India);
- The introduction of draft legislation preparing the ground for e-conveyancing (Ireland);
- The introduction of “class action system” through reform of financial law amending consumer code enabling consumers and protection associations to bring collective actions for claims regarding reimbursement or damage or compensation (Italy);
- The implementation of regulations dealing with remote access and online skill based games (Italy);
- The introduction of favourable tax treatment in respect of income generated by licensing certain software patent trademarks and domain names (Luxembourg);
- The launch of a citizen’s card with optical reader and chip containing holder’s address and two digital certificates permitting secure identification of holder; authentication of transactions and qualified electronic signature of documents (Portugal);
- The ongoing debate on the issue of “net neutrality” (US);
- The experience of the US following the first five years of operation of the Children’s Online Privacy Protection Act which seems to indicate that online commerce, including commercial websites inappropriate for use by children, can co-exist with a wide range of general audience websites so as to allow wide spread commercial and non-commercial use of the web by people of all ages (US);
- The importance of e-tourism in those countries with significant economic dependency on tourism (Italy); and
- The subsequent take up of m-commerce activity (as opposed to e-commerce activity) in those countries where the internet user base is comparatively low (India).

Part 2 Country Summaries

Country	2007 Most significant legal e-commerce developments and that have occurred.	2008 Most significant legal e-commerce issues anticipated
Austria	<ul style="list-style-type: none"> • Keyword advertising – a recent Austrian Supreme Court decision ruled that the use of trade marks as key words is inadmissible as it is a clear trade mark infringement, and because it may also be deemed to be a breach of the rules against unfair competition. Seemingly this was the first decision from a European court of last resort regarding the permissibility of claims against competitors (there have been claims against Google before). • Liability for host providers – another Austrian Supreme Court decision has extended the liability of host providers when it ruled that a host provider offering a visitor book for its users may be liable for the content. A user had posted a libellous comment on the defendant’s website. The host provider removed the particular posting after the victim informed it of the incident. However, it did not react as new infringing statements were posted. The Supreme Court ruled that the host provider had a duty to monitor entries from specific users once it was informed about possible unlawful acts. 	<ul style="list-style-type: none"> • Used software – the issue of reselling software licences in respect of used software will be particularly significant. Austrian law is rather stringent on the issue, even in cases where the first licensor is bankrupt or has no further use for the software. A licensor’s intellectual property rights are only exhausted if software is sold on a data carrier, and it is uncertain if the exhaustion principle can be further applied to non-corporeal goods. Even if it does, the licensor may have an entitlement to challenge any such sales due to anti-piracy reasons. The issue is likely to be significant because of the number of German used software licensors trying to enter the Austrian market. • Distance selling directive – it is still very unclear whether the right of withdrawal applies for sales conducted in internet auctions. The main question is whether such a sale will be covered by the general exemption for “auctions”. While the German Supreme Court has denied that e-Bay could be qualified as being an auction, in Austria, the legal situation and background is different. There is – other than in German – no restrictive definition of the term “auction” in the Civil Code. It remains to be seen how the Austrian Supreme Court will decide the issue.
Belgium	<ul style="list-style-type: none"> • Trade Practices and Consumer Protection Legislation Review – Belgium’s main piece of legislation relating to consumer protection and B2C and B2B commerce and advertising was thoroughly reviewed in order to transpose the EU Directive on Unfair Business to Consumer Commercial Practices. 	<ul style="list-style-type: none"> • Online gaming and online entertainment – the draft legislation on gambling is likely to be adopted in 2008. • Online pharmacies - draft legislation setting out conditions to operate online pharmacies is expected. It appears this will be

Country	2007 Most significant legal e-commerce developments and that have occurred.	2008 Most significant legal e-commerce issues anticipated
	<p>Whilst not specifically concerned with e-commerce, the legislation has significant implications for conducting business on-line.</p> <ul style="list-style-type: none"> • Computer crime –the Belgian Federal Computer Crime Unit (a division of the national police authority) has launched an initiative whereby it automatically flags inappropriate website content and notifies Belgian ISPs. Currently limited to child pornography. • Search engines – the Belgian courts ordered Google to stop linking to Copiepresse (a Belgian copyright management organisation representing a number of Belgian newspapers) news articles in Google News and to withdraw the cache feature in its search results as these links and features constituted a copyright infringement. The court refused to grant Google the benefit of the intermediary service provider’s liability regime. The case is currently under appeal. • ISP liability – a Belgian ISP (Tiscali) was held to infringe copyright because its customers exchanged illegal music files through P2P networks. Relying on a report of a computer expert, the court ruled that ISPs are technically able to filter such exchanges by using Audible Magic software. The case is under appeal. • Surveillance– in 2007 the installation and use of cameras became subject to new rules. Although the use of cameras was already subject to Belgian data protection legislation, the new rules provide for a new notification regime; a prior consent regime and conditions as to where and how cameras can be used in 	<p>limited to Belgian land based pharmacies only, and will exclude foreign online pharmacies.</p> <ul style="list-style-type: none"> • Spamdexing – an increase in the intensity and range of use of spamdexing (the umbrella term for techniques whose aim is to influence the organic search results of search engines) is anticipated and expected to give rise to new wave of metatag like litigation. • Single Euro Payments Area (“SEPA”) – the EU Directive expected to be adopted in 2008. • e-Merchants Deposits – legislation enabling e-merchants to impose deposits on consumers should be adopted. • Trusted third parties – draft legislation creating a common legal framework for enterprises certifying certain online operations (eg: for the verification of age on adult or gambling sites) is expected.

Country	2007 Most significant legal e-commerce developments and that have occurred.	2008 Most significant legal e-commerce issues anticipated
	<p>public and non-public places.</p> <ul style="list-style-type: none"> • Trusted services – a new legal framework was introduced for certain trusted third parties. The new rules address four types of trusted third party service:- electronic archiving; electronic time stamping; electronic registered mail and money escrow. • Online gambling – draft legislation to regulate online gambling and licence EU operators subject to qualifying for “reliability certificates” was submitted by the Federal Government to Parliament. 	
Brazil	<ul style="list-style-type: none"> • Electronic judicial procedures – during 2007 many courts developed electronic processes for civil procedures. • Liability of internet content providers – there has been a significant increase in claims against the main ISPs for honour, image and other personal right violations. • Computer crime – attempts to introduce computer crime law creating 11 specific cyber crimes (including password theft; phishing; falsification of cards; falsification of mobile phones and unauthorised obtaining of data) was unsuccessful. The draft bill has been severely criticised and is quite controversial. It seeks to impose several new and controversial obligations on ISPs, including obligations to maintain connection data for a period of three years; supply data of connections made and user identification data via judicial authorisation during the course of an investigation; and reporting to the competent police authorities of indicia of criminal conduct on the computer network under its 	<ul style="list-style-type: none"> • Convergence and digital TV – official launch of digital TV in 2007 expected to give rise to expanded activities including interactivity and consequent legal issues. • Internet 2.0 – interactive P2P tools, collaborative websites and other social networking networks are anticipated to give rise to legal issues. • Advertising and content regulation – greater examination of sufficiency of existing legal and self regulating codes is expected. Currently Brazil has a hybrid advertising regulation based both on general and mandatory laws approved by congress and on a self-regulation advertising code adopted exclusively by the traditional players in the advertising market:- advertisers; advertising agencies and vehicles. The development of new media and the internet has resulted in both the laws and the self-regulation codes becoming considered to be insufficient.

Country	2007 Most significant legal e-commerce developments and that have occurred.	2008 Most significant legal e-commerce issues anticipated
	<p>responsibility that have been brought to its knowledge. An earlier version of the bill also included an obligation to “properly identify” all users that access any websites. This obligation has been excluded in the most recent draft of the bill.</p>	
Canada	<ul style="list-style-type: none"> • Internet agreement contract term incorporation – Canadian Supreme Court decision (Dell Computer Corp -v- Union des Consommateurs) ruled that an arbitration clause directly accessible by highlighted hyperlink entitled “Terms and Conditions of Sale” which re-appears on every page was binding. This may give rise to potential conflicts with Quebec consumer protection legislation requirements that certain terms be brought expressly to the attention of consumers. Also Ontario and Quebec consumer protection laws now invalidate arbitration clauses in consumer contracts that waive or restrict consumers rights to go to court and/or to benefit from the protections provided for under the consumer protection legislation. • Distance Contracts – amendments to the Quebec consumer protection legislation were introduced. These set forth new formalities and rules for “distance contracts”, including internet agreements. These rules and formalities target information obligations; cancellation rights and obligations upon cancellation. • e-Distance Contracts – new regulations under the consumer protection legislation were adopted to exempt particular types of distance contracts from some of the writing; paper; duplicate copy and signature requirements of the legislation. Contracts of credits and contracts of service involving sequential performance are 	<ul style="list-style-type: none"> • Security breach notifications - pressure is increasing for federal and provincial legislators to establish security breach notification requirements. Alberta, British Columbia and Ontario privacy commissioners have issued guidelines on the matter, and the federal commissioner is expected to follow. The decision of some privacy commissioners across Canada suggest that existing privacy laws may already require breach notification in certain circumstances, although the legislation does not explicitly impose such an obligation. The Ontario Personal Health Information Protection Act 2004 clearly establishes an obligation to notify individuals if their personal health information is breached. • Mobile e-commerce – Canadian banks are experimenting with mobile payment systems and other mobile solution providers are working on improving internet access via mobile devices. An increase in related legal issues is anticipated. • National Do Not Call Registry – National do not call list expected to be established in 2008.

Country	2007 Most significant legal e-commerce developments and that have occurred.	2008 Most significant legal e-commerce issues anticipated
	<p>covered. Going forward, financial institutions will be able to enter into contracts of credits with consumers over the internet.</p> <ul style="list-style-type: none"> • Internet jurisdiction – the Federal Court of Appeal found that the US based Intermix websites were not subject to Canadian jurisdiction. They did not target Canada or Canadian consumers in any specific way; had no specific references to Canada; no specialised content for a Canadian audience, and no French language content. There was no direct advertising to the Canadian market and no solicitation aimed at the Canadian market. No person affiliated with Intermix had either directly or indirectly ever attended trade shows or any other internet industry promotional events in Canada. Although some Canadians had downloaded software from the Intermix website (this ranged from 2.5% to 5.3% of the downloads depending on the application), this was not sufficient to establish jurisdiction. As the analysis is inherently fact driven, foreign website operators must never assume they will not be subject to Canadian law when contracting with Canadians over the internet. 	
Czech Republic	<ul style="list-style-type: none"> • E-Justice – the electronic justice project commenced. Phase 1 involves electronic filing. Electronic filing is signed by the certified electronic signature addressed to the court generally do not require subsequent paper confirmation any more. 	<ul style="list-style-type: none"> • Electronic payment order – the electronic payment order is expected to be introduced in 2008. Ultimately all court records are expected to be kept in electronic form.
England	<ul style="list-style-type: none"> • Website operator obligation to disclose identities – the High Court (Sheffield Wednesday Football Club Ltd and others -v- Neil Hargreaves) ordered the operator of a football club fan website to disclose identity of 5 users of the site in relation to the 	<ul style="list-style-type: none"> • User generated content - increase in legal issues anticipated arising from growth of social networking sites. • Notice and take down procedure concerns – it is considered that there is a need

Country	2007 Most significant legal e-commerce developments and that have occurred.	2008 Most significant legal e-commerce issues anticipated
	<p>posting of allegedly defamatory messages concerning the club's management. The Court set out some clear guidelines as to when a court can require a website operator to disclose the source of defamatory material by way of a Norwich Pharmacal order which build on the principles first set out in the Motley Fool case. The decision is of particular importance with the growth of web 2.0 and user generated content.</p> <ul style="list-style-type: none"> • Legal actions for spam – the first legal actions for spam or unsolicited commercial email under the Privacy and Electronic Communications Regulations 2003 took place. A Scottish court made an award of Stg£750 plus expenses to an individual claimant against the internet service provider Transcom Internet Services Ltd. Microsoft in Microsoft Corporation -v- Paul McDonald were awarded damages and an injunction against the defendant. Microsoft had claimed that it was suffering loss and damage to the goodwill it enjoyed in its hotmail service arising from the high proportion of hotmail users who complained about spam emails received from the defendant who was offering a database of email addresses for sale to “spammers”. • Company law website disclosure requirements – legislation was introduced amending the Companies Act 1985 and obliging every company to provide certain specific details and information on the company's websites and in their electronic communications. 	<p>for a better balance between the risk/liability of an ISP and an ISP having to act as censor. There are concerns over the uncertainty with regard to time lines to respond to notices; amount of due diligence to be undertaken and whether any obligation to “put back”.</p> <ul style="list-style-type: none"> • Website consumer protection compliance drive – Office of Fair Trading launched an inquiry into compliance by top 600 retail websites. They will want to “show their teeth” in terms of taking action, obtaining undertakings or issuing “Stop Now” orders against non-compliant retailers.
Germany	<ul style="list-style-type: none"> • Email company information requirements – German legislation requiring additional information in email footers concerning company issuing 	<ul style="list-style-type: none"> • Security – technical and legal steps to ensure IT compliance and IT security; the prevention of online fraud assaults and virus attacks and the effectiveness of

Country	2007 Most significant legal e-commerce developments and that have occurred.	2008 Most significant legal e-commerce issues anticipated
	<p>email.</p> <ul style="list-style-type: none"> • Distance contracts – inconsistent court decisions giving rise to uncertainty over whether sample provision in German legislation of instruction to consumer to exercise right of revocation is legally acceptable. • Keyword advertising – significant legal activity and discussion as to whether keywords containing foreign trade marks constitute trade mark infringement. • Internet platform operators – German Federal Supreme Court handed down 3 judgments about “disturbance” liability – form of contributory infringement. Decisions dealt with liability of internet platform operators for various infringements by their users. • Telemedia services – new German legislation introduced that covers basically all online services that are not telecommunications services – covers mobile commerce, web shops, music download platforms, video on demand, internet search engines, emails and even simple company websites. The legislation implements the EU’s “country of origin principle” which is aimed at facilitating the provision of cross-border tele services within the EU. Each Member State must ensure that service providers established in its territory comply with the national provisions applicable in that State. Subject to certain exceptions, it is sufficient for providers of such services to comply with their local laws – in other words, even if their service is received in another EU country, they need not check whether they comply also with the laws of that other EU country. In Germany the most important exceptions are 	<p>new criminal law provisions against denial of service attacks and hacking tools are seen as being critical for 2008 in terms of seeing whether or not companies are properly prepared for increasing security threats to their IT systems.</p> <ul style="list-style-type: none"> • Distance selling/right of revocation – German Parliament may need to amend the sample instructions in German legislation on the consumer’s right of revocation in order to ensure legal certainty. • Disturbance liability – further discussion and developments on the controversial decision of German courts anticipated. • Distance selling - pricing – it remains to be seen how far German traders will take advantage of German court decision which appears to relax the requirements with regard to the online presentation of pricing information from previous decisions. • Social networks – the legal obligations that arise out of the use of social networks both for the user and the sites themselves is seen as one of the most significant legal e-commerce issues for 2008. The law in this area is still relatively unsettled and some recent developments have created intriguing precedent. Legislation in the pipeline looks as if this area will be “interesting” for the foreseeable future. This will be the case particularly with personalised advertising based on member profiles. • User generated content – further legal activity in this area expected.

Country	2007 Most significant legal e-commerce developments and that have occurred.	2008 Most significant legal e-commerce issues anticipated
	<p>data protection laws, gambling and unsolicited emails. The new legislation declares that German law applies to services established outside the EU, for instance services of US providers, if certain circumstances are present, namely circumstances that present a “grave and severe” danger to consumers interests; public security and/or health. However recent German court decisions indicate that it is unclear whether services that originate outside the EU and which do not present such a “grave and severe danger” are exempt from German law.</p>	
India	<ul style="list-style-type: none"> • Online payment systems – legislation was introduced requiring any entity seeking to operate payment systems including electronic payment systems to obtain prior authorisation from Reserve Bank of India. • Electronic signatures – India’s Standing Parliamentary Committee on Information Technology submitted a report on the Information Technology (Amendment) Bill 2006. • ISP liability – the Indian Information Technology Act 2000 defines “internet services providers” inadequately as “intermediaries”, thereby giving them near complete immunity from proceedings based on third party information they make available. Effectively a website owner or an ISP is liable only to take down illegal content if notified of it. However the Indian Supreme Court in December 2007 in Sanjay Kumar Kedia -v- Narcotics Control Bureau is expected to mark a new period in online enforcement. The judgment introduces the concept of “innocent intermediary” and limited immunity to offences under 	<ul style="list-style-type: none"> • Online payment systems – regulations and directives with greater detail on e-payment systems are expected. • Digital signatures/electronic contracts – it is expected that digital signatures and even digital stamping may be permitted to validate certain types of agreements, eg: share transfer forms; undertakings to government, etc. • Cyber crime – it is expected that police capability and enforcement levels will continue to improve. • Information technology law amendments – will the Information Technology Amendment Legislation Bill be revived? • m-Commerce – given the low internet user base in India contrasted with the large and growing mobile subscriber population, m-Commerce is expected to grow significantly.

Country	2007 Most significant legal e-commerce developments and that have occurred.	2008 Most significant legal e-commerce issues anticipated
	<p>the Information Technology Act itself. The court, on electronic evidence, held service providers guilty of abetting drug trafficking in India and abroad.</p> <ul style="list-style-type: none"> • Intellectual property and online business – Delhi and Mumbai High Courts have applied established principles of IP law to cases involving domain name ownership, cyber squatting, geographical indicators in domain names and also the remedy of permanent injunction against online passing off. • e-filing – e-filing of patent and trade mark applications introduced following improvement in levels of compliance in corporate governance arising from the earlier introduction of e-filing with digital signatures in corporate affairs arena. • Spectrum allocation for WiMax – Department of Telecom moved to de-licence 50 MHz of spectrum in the 5.8 GHz band for commercial use with a view to aiding in the roll out of WiMax services. • Information technology legislation amendments on hold – the Parliamentary Standing Committee on information technology submitted a detailed report on the proposed amendments to the Information Technology Act. The report is critical of many aspects of the proposed amending legislation, and this is likely to result in either the delay or shelving of the amendment. 	
Ireland	<ul style="list-style-type: none"> • Website and email disclosure requirements – regulations were introduced to extend the requirements of earlier Company Law legislation in relation to the disclosure of a company's 	<ul style="list-style-type: none"> • e-Money – while Ireland has implemented the EU Directive on e-money, to date credit institutions that have been engaged in the issue of e-money have done so under the terms of

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	<p>particulars on its letterhead and other forms to electronic communications and websites.</p> <ul style="list-style-type: none"> • Consumer protection – new consumer protection legislation overhauls Irish consumer law. While not specifically concerned with e-commerce, the legislation nevertheless has significant implications for conducting business on line. • e-Conveyancing – Land and Conveyancing Law Reform Bill introduced in 2006 prepares ground for e-conveyancing and makes provision for the interim period before a fully electronic and paperless system of conveyancing becomes operative. 	<p>their credit institution’s licence. So far no separate e-money institutional licence has been issued by the Financial Regulator, but further developments (including pass porting by other European electronic issuers into Ireland) or anticipated.</p> <ul style="list-style-type: none"> • Payment services generally – Further activity in areas of payment services expected ahead of implementation of proposed EU Directive on “Payment Services”. • IT Security and online fraud – Targeting online fraud is likely to become a greater priority in 2008 following numerous initiatives including Irish and Northern Ireland Government Department cross border initiatives.
Italy	<ul style="list-style-type: none"> • Consumer protection – online business – introduction of Italian legislation implementing EU Directive on Unfair Commercial Practices and maintaining existing statute law regulation of misleading and illicit comparative advertising in the context of B2B relationships. • Class action – Italy has introduced a “class action system” through reform of the financial law amending Italy’s consumer code. Only consumers and protection associations may bring collective actions for claims regarding reimbursement or damage or compensation. • Online games – the Italian State Monopolies Authority has implemented a regulation dealing with remote access and online skill based games. The regulations deal with “solitaire” games such as puzzle games where players play alone and the winning are based on the player’s ability to meet 	<ul style="list-style-type: none"> • Online banking and financial services – increase in online business in general and e-commerce specifically is expected to rise significantly provided consumer confidence can be improved. • e-Tourism – tourism accounts for more than 50% of the Italian e-commerce market. Any amendments by the European Commission to the existing EU Directive regarding the protection of consumers including the Directive on package holidays will have an impact in Italy. The European Commission EU wide investigation on airline ticket websites which disclosed in November 2007 that over 50% of all investigated websites have some irregularities, particularly relating to pricing, contract terms and clarity show that in Italy there is cause for concern with 9 of the 11 websites investigated being found to have irregularities.

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	<p>certain objectives set by the concessionaires and “tournament games” in which winnings are determined by players playing against each other. The scope of application of the new regulations are considered to be unclear, and it is considered that cumbersome requirements and procedures may hinder the development of the skill – based online games market.</p>	<ul style="list-style-type: none"> • Social media for travel – many online Italian tourism operators have implemented, or are planning to implement on their e-commerce websites, some social media strategies. They intend to benefit from the opportunities brought about by the use of Web 2.0 by introducing user generated content and social networks. Therefore legal issues surrounding operator liability and legal issues connected to user generated content are expected.
Luxembourg	<ul style="list-style-type: none"> • e-Commerce VAT Agreement – the European Council of Finance Ministers reached agreement (ECOFIN Agreement) on a draft EU Regulation aimed at ensuring that VAT on services accrues to the country where consumption occurs. Under current EU legislation the place of taxation is where the supplier is established. The current VAT rate in Luxembourg is 15%, and therefore its attractiveness to B2C businesses may diminish from 2015 as a result of this measure. • Taxation – Luxembourg has introduced favourable tax treatment in respect of income generated by licensing certain software patent trade marks and domain names. Such income will be tax exempted at a level of 80% of net revenue. This regime aims to attract businesses that manage a large number of trade marks and domain names. 	<ul style="list-style-type: none"> • Electronic signatures – new legislation aimed at creating a regulatory body responsible with the security accreditation on products and services is under discussion. The new legislation will modify the existing legislation on electronic signatures. • e-Filing – new legislation on companies and associations is currently under discussion. The legislation aims to modify the laws relating to e-filing with the Trade and Companies Registry; e-storing of all documents filed with the registry; provision for on-demand e-storing of documents; public availability of copies of electronically stored documents and provision of certification of e-copies.
Northern Ireland	<ul style="list-style-type: none"> • Website and email disclosure requirements – introduction of legislation requiring all companies to clearly state certain mandatory information on their websites and on any electronic communications. 	<ul style="list-style-type: none"> • IT security and online fraud – 2008 will see a greater focus on IT security and online fraud with the cross-border initiative between Northern Ireland and Ireland Government departments. • Consumer Protection – regulations implementing the EU Unfair Commercial Practices

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		<p>Directive will come into effect in 2008, and this will have a significant impact on how business is conducted online.</p> <ul style="list-style-type: none"> • e-Commerce advertising – regulations implementing the EU Misleading and Comparative Advertising Directive are due to come into force in 2008. It is believed the new regulations will catch fake reviews under the rules, ie: businesses posing as customers to “hype” their business on on-line forms.
Portugal	<ul style="list-style-type: none"> • e-Invoicing – The technical requirements applicable to the issue, preservation and archiving of electronic invoices and the requirements of the Portuguese tax authorities in relation thereto have been published. • e-Government – The Portuguese Government has been investing heavily in e-Government initiatives in the G2C, G2B and G2G areas. This includes the establishment of an enterprise portal (an integrated access point to public services provided to enterprises), the citizens portal (a portal for citizens access to digital public services); the Portuguese electronic identity card and public e-procurement. • Safer internet - A hotline service dedicated to fight illegal content on the internet was inaugurated in July. Its mission is to block illegal content such as child abuse images; incitement to violence and incitement to racial hatred. 	<ul style="list-style-type: none"> • Citizens card project – the Portuguese citizens card was launched and made available in 2007 on an experimental basis in the Azores. It will be implemented in continental Portugal during 2008. The front of the card will have the holder’s photograph and personal details. On the back will be the identification numbers for the different public bodies, an optical reader area and the chip. Besides the information that can be seen on the card itself, the chip will contain the holder’s address and two digital certificates that will permit the holder’s secure identification; the authentication of his/her transactions and the qualified electronic signature of documents. • e-Procurement – a new procurement code will enter into force. This will consolidate Portuguese legislation and adopt the new EU Directives in a comprehensive manner. It will implement electronic procurement; electronic signatures for e-procurement bids and e-options within e-procurement will be facilitated. • e-Government – the Portuguese Government will continue to

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		implement its e-government initiatives including online incorporation of companies, online registration of trade marks and online application for patents.
Spain	<ul style="list-style-type: none"> • e-Commerce/e-Signature law amended – Spain has introduced major legislation which amends its Information Society and e-Commerce legislation of 2002 in the area of online contracting and online advertising. The requirements of the earlier legislation have been relaxed in a number of areas; the identification of commercial e-mails as advertisements can be made with an abbreviation; acceptance of the fact that when the contract making process is specifically designed to take place through a small sized device, the provider can provide the consumer with the URL of the internet page where the prior mandatory information that must be given to consumers before the contract is made is displayed. The Act also amends the definition of “electronic document” and the provisions governing its admission as evidence in court, as well as the liability of certification service providers. • Distance marketing of consumer financial services – Spain has introduced legislation implementing the EU Directive on the distance marketing of consumer financial services. • e-Government – Spain has introduced legislation aimed at promoting the use of new technologies in the relationship between the public sector and citizens. 	<ul style="list-style-type: none"> • Consumer protection – the Spanish Consumer Protection Act of 2007 will be a key issue in e-commerce contracts in 2008 and beyond. • e-Commerce Data Protection/Privacy – the long awaited Government regulations developing the Data Protection Act of 1999 were approved in late 2007 and will become effective in 2008. They have been drafted with the purpose of increasing the protection of personal data in internet transactions by regulating the exercise of access, rectification and cancellation rights by electronic means, recognising Robinson lists and increasing the security measures that controllers must implement in electronic transactions. It is expected that these regulations will have a significant impact on business activities with those related to online advertising.
United States	<ul style="list-style-type: none"> • Net neutrality – in a June 2007 report the Federal Trade Commission urged restraint in response to the new regulations proposed by Network Neutrality 	<ul style="list-style-type: none"> • Social networking/video sharing websites – the YouTube -v- Viacom litigation is the first major video sharing website case in the US, and whether YouTube

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	<p>advocates. It recognised that such regulations “may well have adverse effects on consumer welfare despite the good intentions of their proponents”. The FTC conclusions had been questioned in Congress and have sparked much public and academic interest.</p> <ul style="list-style-type: none"> • Keyword advertising – the decision of the United States District Court for the Northern District of California in the case of Google -v- American Blinds on the issue of whether Google’s sale of sponsored links using trade mark terms of American Blinds to competitors constitutes trade mark infringement will be closely monitored. • Website contracting – the strength of website contracting (through privacy policies and terms of use) was further defined through a combination of several federal court opinions in various US jurisdictions. • Internet advertising – the approval by the Federal Trade Commission of Google’s acquisition of DoubleClick is seen by many as demonstrating a potential “hands off” approach to the development of internet advertising. • Imposition of privacy standards – the Federal Trade Commission’s actions in imposing privacy standards on all American businesses in the absence of any applicable statutes (such as HIPAA or GLB) is seen as significant, as most state trade laws track the FTC’s own rules and regulations, thus rendering those recent actions nationwide in scope both federally and at the state level. • Protection of consumer 	<p>is held liable for contributory infringement may have vast implications for social networking and video sharing websites.</p> <ul style="list-style-type: none"> • Virtual worlds – the continued growth and popularity of Second Life. Already there are many trade mark and copyright issues at the forefront of several pending cases between users in Second Life. The resolution of these issues will determine the longevity of second life and the evolving standards of intellectual property law. • Security breach notifications – the implementation of consumer protection oriented measures and the expansion of consumer notification measures / obligations on the part of businesses suffering system breaches and/or malfunctions are seen as significant. • m-Commerce – the application of e-commerce laws, regulations and contracting strategies to mobile devices – the Federal Trade Commission will host a “town hall meeting” in May 2008 to explore consumer protection issues arising in the world of m-commerce. • ISP trade mark – infringement liability – a February 9th Circuit opinion indicated that ISPs that have the power to remove infringing material from websites or directly stop their distribution over the internet may be liable for failing to do so. This opinion could increase the responsibility of ISPs to police trade mark infringement. • Patent law impacts on e-commerce – the 2007 KSR decision which lessens the threshold for obviousness is clearly making it harder in 2008

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	<p>information in e-commerce transactions – various State and Federal laws now protect consumers from intentional or inadvertent use of their personal information. 2007 saw increasing enforcement actions showing not only that businesses must make the needed investments to ensure consumer information is protected, but is also extending to situations involving whether data collected by a company can be used and shared after a merger with another company.</p> <ul style="list-style-type: none"> • Maturation of Children’s Online Privacy Protection Act – the Federal Trade Commission reported on the first five years of operation of the Children’s Online Privacy Protection Act (COPPA). The NTC’s analysis confirmed what by 2007 many have come to implicitly recognise: online commerce, including commercial websites inappropriate for use by children, can co-exist with a wide range of general audience websites so as to allow wide spread commercial and non-commercial use of the web by people of all ages. While problems have arisen with regard to data collection practices violating COPPA, generally these have been quickly resolved, often by negotiated settlement in a manner that involves both a civil fine and an agreement to institute practices that are in compliance with COPPA. • e-Government – 2007 was the year that Federal, state and local government agencies e-government initiatives came into main stream use. Activities which were previously electronic “options” became the norm in 2007, and in many instances non-electronic filings have been abandoned completely. Notably in 2007 government departments 	<p>for patent applicants and plaintiffs to widely assert claims on e-commerce related patents – particularly those filed during the .com bubble. Even enforcement techniques are changing. The fruit retailer, Harry & David recently filed a fraud and breach of contract action against IBM for selling it a computer system that it claims violates third party patents, based on a lawsuit brought by the patent holder against Harry & David. Patent law reform efforts that gained significant traction in 2007 are slated for action in 2008, and some of these changes may result in another significant impact on e-commerce players.</p> <ul style="list-style-type: none"> • Practical adoption of electronic health information exchange – electronic health records are far from new, but 2008 is poised to mark the emergence of truly portable health information on a massive scale. Various industry and government initiatives are now in place with pilot health information exchange products. Perhaps most notably, Google has announced its “Google Health” project which may increase public awareness and interest in this area. Many consumers previously only thought of the Health Insurance Portability and Accountability Act (“HIPAA”) compliance note as a frustrating privacy form they had to fill out and sign at the local doctor’s office. In 2008 those consumers may start focusing more on how they and their healthcare providers will really be able to review their medical records from any location at any time. • Social networking – 2007 saw a marked increase in people using social network information for more than just developing their

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	<p>finally came to embrace both web based forms and .pdf submissions as standards, as the commercial sector had done much earlier. In prior years some government agencies had attempted their own custom-built techniques, many of which proved cumbersome or unreliable, thereby slowing the widespread use of e-government systems.</p>	<p>own connections with other people. Such sites have now begun to be used to gather information, whether it is colleges investigating applicants or consumers investigating the backgrounds of people who provide product reviews. Social networks have become a new kind of search engine for all kinds of information having anything to do with people. They have also become useful tools for statisticians. Along with their increasing usage, legal constructs are beginning to develop that relate to those wide-ranging uses. For example, the extent to which privacy is to be respected for information provided within a social network, but not otherwise publicly available is becoming more of a real as opposed to merely academic concern. Likewise, plaintiff-side employment lawyers are beginning to come up with legal theories calling into question how appropriate it may be for employers to make employment decisions based on information found in social networks.</p>
Uruguay	<ul style="list-style-type: none"> As distinct from previous years 2007 has seen no major developments on matters to report on in terms of new regulations or jurisprudence 	<ul style="list-style-type: none"> There are no signs that there will be significant legal e-commerce issues in 2008. Advocacy legislation is under consideration, but it is too early to say if its scope may have any application or impact on e-commerce