

The impact of e-commerce on Mexican trade and laws

By Jesus Molina

E-commerce is nothing but ordinary commercial transactions conducted over new high-tech facilities, namely computers and telecommunications structures. These facilities are able to provide contacts to service providers and consumers at any time and at any place.

E-commerce is now establishing new trends in many industries through its ability easily to access and accelerate the exchange of information. This new trading technology diminishes the need for companies to have a physical presence in each jurisdiction, shifting to virtual activities instead. The advent of e-commerce is breaking down former rudimentary trading structures, and is becoming, on one hand, an indispensable tool for service providers and a convenient marketplace for consumers, on the other.

In historical terms, the Internet has parallels with the telegraph and the telephone: both were electronic inventions that might be used for trading. However, Internet technology has rapidly developed in comparison with previous electronic media. For example, the radio was available to 60 million people in approximately 30 years after its invention; the television took 15 years to reach the same number of people; and the Internet managed to reach this number in only three years.

It is expected that in a couple of years:

- i) over 80% of companies worldwide will use the Internet as a work tool;
- ii) over 50% of companies worldwide will use the Internet for the 80% of their outside activities; and
- iii) over 80% of business standards will be generated by internet technologies.

In Mexico, electronic commerce has become already an important and effective means of trade with the rest of the world. The arrival and implementation of Internet and computer technologies in Mexican businesses is favoring the rapid increase of trading. It is estimated that in 1999, commercial activities over the Internet reached \$60 million, almost 100% more than in 1998.

But Mexican businesses operating over the Internet may become subject to the laws of different countries when commercial transactions are made with other parties throughout the world. Specific laws apply, depending on the type of transactions made over the Internet. At the moment, however, no specific laws on Internet transactions and e-commerce have yet been adopted in Mexico. Nevertheless, modifications on existing legal provisions are to be implemented in the near future. The local resolution of the legal and regulatory issues raised by electronic commerce will determine how the Internet develops in Mexico, as well as its long-term social and economic consequences.

The legal and policy areas that most directly affect electronic commerce in Mexico can be grouped into five main areas:

- Intellectual Property rights;
- Goods and services and their relationship to commercial, financial, taxation, crime and even the Notary laws;
- Privacy rights and security concerns in cyberspace communications and electronic commerce transactions, given that vastly greater surveillance is possible over the Internet;
- The regulation of, and setting technical standards for, telecommunications and other information service providers to ensure network interoperability; and
- The internationalization of electronic commerce and, therefore, the need for cross-national and international governance and rulemaking.

Together, these issues prompt questions of both the substance of the laws and regulations, and of the institutional means used to formulate law and policy governing electronic commerce and cyberspace.

More specific regulation on e-commerce related matters is needed in certain areas of Mexican law. The Mexican Trade Law, however, broadly oversees the regulation of commercial activities and of all other activities that are made with the purpose of trading. Accordingly, commercial activities conducted over the Internet may be regulated under the Mexican Trade Law.

Under the above, and other legal provisions established in Mexican Civil Law, parties can establish the terms and conditions for e-commerce contracts. Likewise, Mexican laws establish the possibility of contracting by mail. Therefore, we could say that e-commerce is in some way regulated, at least as regards to Internet trade contracts.

But critics argue that, notwithstanding these laws, electronic commerce cannot become a successful and secure means of business unless it becomes possible to form binding electronic contracts between strangers. The first and main problem for substituting common contracts using paper and signature for their e-commerce equivalents, was the creation of virtual documents, digital signatures, and an online certification by a Notary, that are recognized as legal and valid by the authorities.

Nowadays these problems are solved. E-commerce in Mexico also may be affected by illegal and criminal activities such as: i) infringing patents, trademarks and copyrights by the unauthorized use of any of these rights; u) revealing trade secrets; iii) the use of misleading comparative-advertising; iv) unfair competition practices; y) non-fulfillment of a contract; vi) pornography; vii) invading privacy; viii) truncating freedom of expression and freedom of information; ix) not complying with taxation issues; x) violating any of the provisions established in International treaties, etc.

There are many proposals in Mexico for the regulation of e-commerce in each specific field concerned with this technology. The proposals come from lawyers, government organizations, legislative representatives of government, associations, and in general, from all type of entities interested in a proper regulation of the trading activities in Internet.

Although the Mexican authorities and legislative representatives of government maybe unaware of some specific issues on e-commerce, most of them have responded enthusiastically to the new technology.

The main goal for the Mexican authorities and companies is the prompt and effective observation of trading activities in the web, and this may be obtained sooner than expected.