



by: Peter F.M. Jones

The United Nations Commission on Trade Law

The United Nations Commission on Trade Law (UNCITRAL) was responsible for the development of international rules applicable to the use of electronic communications in commerce. In 2005, UNCITRAL members adopted the United Nations Convention on the Use of Electronic Communications in International Contracts (ECC).

The ECC requires signatory countries to recognize the legal validity of electronic communications used in contracts, and also supports the principle of party autonomy in electronic contracting. It contains provisions dealing with issues that commonly arise in electronic agreements, such as location of the parties, information and form requirements, time and place of dispatch and receipt of electronic communications, invitations to make offers, and errors.

The provisions of the ECC were based upon the provisions of the 1996 UNCITRAL Model Law on Electronic Commerce (the Model Law). The Model Law also inspired many national laws facilitating e-commerce, such as the *Canadian Uniform Electronic Commerce Act* (UECA). So, it is not surprising that the ECC closely parallels national laws. Still in many cases the text of national laws “improves” on the Model Law, so differences in e-commerce law from state to state may arise.

Article 19(1) of the ECC allows a Contracting State to apply the Convention only when both of the parties to electronic communications have a place of business in one of the Contracting States, or when the parties have agreed that the Convention will apply. Parties to a contract may also exclude the application of this Convention or vary the effect of any of its provisions.

It makes sense for countries that are already familiar with e-commerce laws, especially those whose e-commerce laws follow the Model Law, to become a party to the Convention. But there is a central issue to be resolved: states can adopt the convention only for international contracts, such as has been done with the Convention on the International Sale of Goods, leaving domestic electronic communications and contracts formed thereby to be governed by domestic law.

Should Canada have one law on e-communications for international contracts and another for such communications in domestic contracts? These two regimes would be very similar, but not identical. John Gregory of the Attorney General's Department of the Province of Ontario, a leader in the analysis of e-commerce issues that may require legislative intervention, has written a helpful paper on the issue. Mr. Gregory's current inclination is to choose the first option, to recommend implementation only for

international contracts, but he has invited comment on all issues before making any formal recommendation.

For a copy of Mr. Gregory's paper, click on

<http://pages.ca.inter.net/~euclid1/ECCproject2010.html>

Next: The ECC and Transport Documents – Industry Recommendations