

Questionnaire

I. Business and Legal Reality in the New Economy

What legal developments (court decisions, draft legislation, etc.) in the electronic business sector - for example, those addressing the responsibility and liability of providers, the allocation of domains or the prohibition of certain business models - have garnered special attention in your country?

II. Contract Law

1. Conflict of Law Issues

1.1 *International Jurisdiction of Domestic Courts*

1.1.1 What are the requirements under your legal system regarding the enforceability of contracts with respect to the international jurisdiction of your domestic courts (forum selection clauses)? Can such contractual clauses be entered into on-line? Are on-line arbitration tribunals admissible?

1.1.2 Where there are multi-jurisdictional contract law matters and no forum selection clause has been executed, which provisions of your legal system confer international jurisdiction on your domestic courts? According to these provisions, under which conditions will your domestic courts have international jurisdiction on contract litigation matters?

1.2 *Application of Domestic Law*

1.2.1 Under what situations will your legal system restrict (e.g., the application of mandatory provisions of law [*jus cogens*] other than the law selected by the contract) or preclude (e.g., insufficient real and substantial connection between the facts underlying the contract and the governing law of the contract) contractual agreements on the governing law in situations involving several different jurisdictions (choice of law clauses)?

1.2.2 What rules under your legal system determine the application of your domestic contract law where international facts are involved and there are no choice of law clauses?

1.2.3 Under what situation would your domestic contract law be applicable as a result of these provisions? What criteria are applicable for establishing a connection or link to the domestic law (e.g., language used on the Web site, disclaimer,

currency, retrieval, ability to review the identity of the enquiring party)? To this extent, what changes will result from implementation of Article 3 of the E-Commerce Directive?

2. Formation of Contracts

2.1 When does a recipient effectively receive a statement of intent that has been transmitted over the Internet (hereinafter referred to as "Electronic Statement of Intent")?

2.2 What differences exist between a statement of intent made privately and one made in connection with a commercial transaction? To this extent, what changes will result from implementation of Article 11 (1), 2nd bullet-point of the E-Commerce Directive?

2.3 Who is responsible if, as a result of technical disruptions, an Electronic Statement of Intent is delivered late or not at all (specifically where the storage capacity of the recipient's mailbox is exceeded)?

2.4 Under what conditions can an Electronic Statement of Intent be revoked based on either general or special rules and regulations (e.g., those enacted in order to implement the Directive on the Protection of Consumers in respect of Distance Contracts)?

2.5 How much time does a recipient of an electronically transmitted offer have to reject or accept the offer?

2.6 When exactly is a contract executed over the Internet legally formed?

2.7 Does a reference to a good or service already contained on a Web site constitute a binding offer to supply such good or service?

2.8 Must a provider of a good or service furnish his or her contracting party with a confirmation that a contract has been concluded? To this extent, what changes will result from implementation of Article 11 (1), 1st bullet-point of the E-Commerce Directive?

2.9 How will your country treat the exception relating to contracts concluded via e-mail?

Will a contract executed in this manner be treated differently or the same as a visit to a Web site? Please provide further details here.

3. Validity of Contracts

3.1 Minors

How does your legal system deal with the issue of minors who issue Electronic Statements of Intent?

3.2 Rescission

3.2.1 Does your legal system allow unilateral rescission of Electronic Statements of Intent? In particular, may a contract be unilaterally rescinded if:

- the declarant clicks the wrong field and thereby issues a statement contrary to his or her actual intent;
- a hardware or software problem generates the wrong statements;
- the provider incorrectly transmits the statement?

3.2.2 How does your legal system deal with the situations in which the declarant did not (yet) wish to issue a Statement of Intent, but rather did so inadvertently (e.g., by striking the wrong key)?

3.2.3 Under what conditions can such a Statement of Intent be attributed to the declarant?

3.2.4 What are the consequences for a declarant in the event of a unilateral rescission/revocation (compensatory damages)? Against whom would he or she have regress (Provider? Telecommunication companies?)

3.2.5 Who assumes the risk that third parties (hackers) may falsify messages? To this extent, what changes will result from implementation of Article 11 (2) of the E-Commerce Directive?

3.3 Deputies and Agents

3.3.1 When will a person (principal) be bound by an Electronic Statement of Intent issued by a third party using the former's name or identification?

3.3.2 What claims and rights does the recipient of the statement have in the event that the principal is not bound in the aforementioned event?

3.4 Formal Requirements

3.4.1 What formal requirements exist under your legal system which apply to all contracts or for particular types of contracts?

3.4.2 Under which conditions can contracts be entered into by means of electronic mail?

3.4.3 Are there any other types of obstacles relating to digital contracts that must be eliminated pursuant to the application of Article 9 I E-Commerce Directive?

3.4.4 Please briefly describe the current legal situation under your legal system with respect to digital signatures and kindly address, more specifically, the following questions:

- Has the European Directive EC/99/93 of 13 December 1999 on a Community Framework for Electronic Signatures been implemented into domestic law?

- What specific rules, regulations or court decisions concerning digital signatures exist in your legal system?
- How is "digital signature" defined in your legal system?
- What specific technical requirements exist in your legal system regarding digital signatures?
- What is the legal effect of a digital signature? In particular, do they have the same legal status as handwritten signatures?
- Does your legal system permit digital signatures to be used as evidence? If yes, under what conditions?
- What certification agencies have been established in your jurisdiction? Do these certification agencies require governmental approval? What is their authority with respect to questions of security, encryption and certification? In particular, do they have access to private signature keys?
- What is the procedure for obtaining a signature key? What information is contained about the respective holder in a signature key?
- What are the requirements under your legal system for recognising foreign certification agencies and the signature keys issued by them?
- In your legal system, are certification agencies liable for any damages incurred by third parties as a result of having relied on the security of the signature keys issued by such agencies?

4. Evidentiary Issues

4.1 What evidentiary problems exist in your legal system regarding contracts that are concluded over the Internet? How does one attempt to solve these problems in practice?

4.2 Do evidence agreements exist? What degree of credibility do they have? (B2C-business, B2B-business)?

III. Consumer Protection Law

Under your legal system, which statutory provisions fall within the concept of consumer protection law? How is the consumer defined under your legal system?

1. Conflict of Law Issues

1.1 International Jurisdiction of Domestic Courts

1.1.1 Where there are multi-jurisdictional consumer protection matters, which provisions of your legal system confer international jurisdiction on your domestic courts?

1.1.2 According to European or domestic conflict of laws provisions, under which conditions do your domestic courts have international jurisdiction over consumer protection disputes?

1.1.3 What particularities does your legal system have with respect to the recognition and enforcement of judgements in consumer protection matters?

1.1.4 For EU member states: What is the relationship between the Regulation European Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters (EuGVÜ) and domestic provisions on conflict of laws?

1.1.5 What changes in your domestic law have resulted, or will result, from the implementation of EU directives containing consumer protection elements (e.g. the E-Commerce Directive and the Directive on the Protection of Consumers in respect of Distance Contracts)?

1.1.6 Are there on-line arbitration tribunals for consumers?

1.1.7 How will Article 17 and Article 18 of the E-Commerce Directive (access to domestic courts via the Internet, extra-judicial agreements online) be implemented into domestic law?

1.2 Application of Domestic Law

1.2.1 Where there are multi-jurisdictional matters, which provisions in your legal system grant your domestic consumer protection laws multi-jurisdictional application? Based on these principles, to what conditions is the application of domestic consumer protection law subject?

1.2.2 Is there a difference in the level of protection granted to the citizens of your country and the level of protection enjoyed by foreign consumers?

1.2.3 For EU member states: What changes have resulted or will result from the implementation of EU directives containing consumer protection elements (e.g. the E-Commerce Directive and the Directive on the Protection of Consumers in respect of Distance Contracts)?

2. Internet-specific Consumer Protection Provisions

2.1 Are there any special domestic provisions with respect to consumer protection for

legal transactions on the Internet? What is the content of these special domestic provisions?

2.2 Which consumer protection particularities exist for the conclusion of agreements on the Internet?

2.3 How can standard terms and conditions be included in the agreement between entrepreneurs and consumers over the Internet?

2.4 Is there a statutory right of revocation for consumer contracts concluded via the Internet? If yes, are there exceptions to such a right of revocation? Which provisions apply with respect to the consumer's right of revocation?

2.5 Are there special duties to inform consumers? With which requirements must documentation of this duty to inform comply (e.g., Directive on the Protection of Consumers in respect of Distance Sales)?

IV. Competition Law

1. Conflict of Law Issues

1.1 *International Jurisdiction of Domestic Courts*

Where there are multi-jurisdictional competition law matters, which provisions of your legal system confer international jurisdiction on your domestic courts? What are the requirements for international jurisdiction of your domestic court in competition law proceedings pursuant to these provisions?

1.2 *Application of Domestic Law*

In multi-jurisdictional matters, under which provisions of your legal system does your domestic competition law apply? In which cases is your domestic competition law applicable based on these provisions? To this extent, what changes will result from implementation of Article 3 of the E-Commerce Directive?

2. Applicable Legal Provisions

Which competition law provisions must be observed under your legal system in relation to commercial Internet use? To this extent, are there special rules for specific classes of persons, products or business models? Please describe in brief the key aspects of the applicable provisions.

3. Internet Advertising

3.1 *Advertising Information Requirements*

3.1.1 To which general requirements must advertisers adhere under your legal system in relation to the formulation and structure of Internet advertising?

3.1.2 What requirements does your legal system have in relation to the duties to identify the provider and state prices in the context of Internet advertising?

3.1.3 Under what conditions and to what extent does your legal system permit comparative advertising and the grant of discounts or gifts in the context of Internet advertising?

3.1.4 What other requirements must be taken into account under your legal system in relation to Internet advertising?

3.2 Spamming

3.2.1 To what extent is spamming - i.e. the mass mailing of e-mails for advertising purposes - permissible under your legal system? What rights does the recipient of such e-mails have?

3.2.2 Under your legal system, does the opt-in model (sending is prohibited unless the recipient had given his/her permission) or the opt-out model (sending is permitted unless the recipient prohibits it) apply to the sending of e-mails for advertising purposes? To this extent, what changes are planned in light of implementation Article 7 of the E-Commerce Directive?

3.3 Hyperlinks

3.3.1 What competition law problems result under your legal system if a provider inserts on its website a hyperlink that leads to the website of another provider?

3.3.2 Subject to what requirements are, in particular, the following types of hyperlinks permissible under competition law:

- virtual department stores in which the customer is offered numerous links to commercial homepages on a central website from which he/she can make his/her selection and click on individual links (so-called Virtual Malls);
- hyperlinks that - if clicked on - do not involve a change of Internet address, but give the user the impression that the hyperlink still forms part of the offer on the original server (so-called Frame Technology and In-line Linking);
- hyperlinks for advertising purposes - particularly banner advertising - on an information, science or journalism oriented web page (so-called Site Sponsoring); and
- so-called Metatags (control characters invisible to the user, whose information is given priority by the search engines' filter programs over information contained in visible text)?

3.4 Electronic Marketplaces

How are powershopping (several buyers combine in order to buy a product) and Internet auctions treated under your legal system, in particular, from a competition law and cartel law perspective?

V. Labelling Law

1. Conflict of Law Issues

1.1 *International Jurisdiction of Domestic Courts*

1.1.1 Where there are multi-jurisdictional labelling law matters, which provisions of your legal system confer international jurisdiction on your domestic courts? What are the requirements for international jurisdiction of your domestic court in labelling law proceedings pursuant to these provisions?

1.1.2 How are ICANN/WIPO arbitration tribunals decisions recognised and enforced?

1.2 *Application of Domestic Law*

In multi-jurisdictional matters, under which provisions of your legal system does your domestic labelling law apply? In which cases does your domestic labelling law apply based on these provisions? To this extent, what changes will result from implementation of Article 3 of the E-Commerce Directive?

2. Domains

2.1 *Allocation Practice*

2.1.1 What institution in your country is responsible for allocating domains?

2.1.2 Can a domain be reserved for future use under the allocation conditions of this institution?

2.1.3 Is this institution also responsible for assessing labelling or naming law issues in relation to registration or reservation of a domain?

2.1.4 To what cartel law conditions is this institution subject?

2.2 *Protection of a Label/Name versus Use as a Domain*

2.2.1 *Protection of a Trade Mark/Company Name*

What rights does the holder of a protected label - in particular, a trade mark or company name - have under your legal system if third parties use such label as a domain in an identical or similar form? What adverse rights could there be in favour of the third party?

2.2.2 *Protection of a Name*

What rights does the holder of a name have under your legal system if third parties use this name as a domain in an identical or similar form? What adverse rights could there be in favour of the third party?

2.3 Protection of a Domain Under Labelling and Naming Law

Do domains enjoy independent protection under labelling or naming law under your legal system? Are domains protected, in particular, as trade marks/company names or a name? If yes, what rights does the holder of a domain have against use of such domains by third parties?

2.4 Domain Grabbing

How are cases assessed under your legal system where individual or several domains identical with third party labels/names are registered with the intent of demanding a sum of money ("ransom") for the release of such domain (Domain Grabbing)?

2.5 Multi-jurisdictional Conflict of Laws

How does your legal system treat cases where domains having the same name (e.g., xy.com and xy.de) are used by the holder of a foreign name and the holder of a domestic name?

2.6 Levy of Execution Over Domains

Can levies of execution be issued over domains under your legal system? If yes, please describe the requirements for such a levy of execution.

3. Metatags

Under what conditions is it permissible under your legal system's labelling law to use third party labels in so-called metatags (control characters invisible to the user, whose information is given priority by the search engines' filter programs over information contained in visible text)?

VI. Copyright Law

1. Conflict of Law Issues

1.1 International Jurisdiction of Domestic Courts

Where there are multi-jurisdictional copyright law matters, which provisions of your legal system confer international jurisdiction on your domestic courts? What are the requirements for international jurisdiction of your domestic court in copyright law proceedings pursuant to these provisions?

1.2 Application of Domestic Law

In multi-jurisdictional matters, under which provisions of your legal system does your domestic copyright law apply? In which cases is your domestic copyright law applicable based on these provisions?

2. Works Capable of Protection

Under what conditions are works granted copyright protection under your legal system? Are the following objects also copyright-protected works:

- the website;
- parts of a website (e.g. text elements, graphics, pictures, etc.);
- databanks;
- results of a search engine or link lists;
- e-mails;
- contributions to mailing lists or newsgroups?

3. Copyright Holder's Rights

3.1 What rights does a copyright holder have in relation to his/her work under your legal system? What copyrights vest in the event of on-line use of a work - i.e. provision and dissemination over the Internet?

3.2 What copyright bars (e.g., consent requirements, compensation obligations) exist under your legal system in relation to the following actions:

- digitalisation of a work by scanning and storing on a server (upload);
- making a work visible on the screen (browsing);
- temporary storage of a work, e.g., in the RAM working memory or on a proxy server;
- permanent storage of a work, e.g., on the hard disk or on a diskette;
- printing out a work in the form of a hard copy?

3.3 Are certain forms of on-line use of a work released from certain copyright bars (consent requirement, compensation obligation) under your legal system - e.g., the preparation and dissemination of electronic press reports (*Pressespiegel*) or non-commercial, free reproduction of a work on the Internet? If yes: what forms of use are released, and from what copyright bars are these forms of use released?

3.4 Does your legal system have organisations that act as trustees and protect the work from exploitation by, in particular, collecting any compensation payable for use of a work (where applicable, following deduction of their administrative charges) and forwarding such compensation to the relevant copyright holder (hereinafter referred to as "Exploitation Companies")? If yes: which Exploitation Com-

panies are these? For what types of works are these Exploitation Companies responsible? Does on-line use of the works fall within their authority?

3.5 What rights does the copyright holder lose in his/her work if he/she uploads it onto the Internet thus making it accessible to the public?

3.6 What rights does the author of a work have under your legal system if his/her copyright is violated?

VII. Responsibility

1. Conflict of Law Issues

1.1 *International Jurisdiction of Domestic Courts*

Where there are multi-jurisdictional non-contractual liability law matters, which provisions of your legal system confer international jurisdiction on your domestic courts? Are there special provisions for certain areas (press law, product liability)? What are the requirements for jurisdiction of your domestic court in non-contractual liability law proceedings pursuant to these provisions?

1.2 *Application of Domestic Law*

In multi-jurisdictional matters, under which provisions of your legal system does your domestic non-contractual liability law apply? In which cases is your domestic non-contractual liability law applicable based on these provisions? To this extent, what changes will result from implementation of Article 3 of the E-Commerce Directive?

2. Liability for Own Contents

Under which provisions is a provider liable where such provider provides his/her own contents for use on his/her website where such contents are impermissible? What claims may be asserted against such a provider? Who is entitled to assert claims?

3. Liability for Third Party Content

3.1 Under which provisions is a provider liable where such a provider offers third party content for use on his/her website where such content is impermissible? What claims may be asserted against such a provider? Who is entitled to assert claims?

3.2 Under which provisions is a provider liable where such provider arranges access to third party content for use other than on his/her website where such content is impermissible? What claims may be asserted against such a provider? Who is entitled to assert claims?

4. Injunction

4.1 How is responsibility for an injunction governed? Can a provider be subjected to an injunction even if such provider does not have to pay compensatory damages or would not be liable under criminal law?

4.2 Could he/she be made responsible under public law (police law)?

VIII. Money Transfers

1. Which of the existing payment systems under your legal system can also be used on the Internet under your legal system, even if, where applicable, an adjustment is necessary (e-money, etc.)? To the extent possible, in your short description please distinguish between the various payment systems in and outside the Internet between account-linked and non-account-linked (*kontoungebunden*) payment systems, and also discuss potential admission requirements and identification measures.

2. What national rules does your country have concerning the processing of money transfers over the Internet? What formal requirements are there to this extent?

3. When do Internet payments become effective as between the customer and the dealer?

4. When is the customer obliged to reimburse the bank or the e-money institution?

5. Does the customer have the right to revoke or cancel the payment?

6. Who bears the risk of misuse of PIN numbers, credit cards or other forms of payment? What role does the digital signature play in this context?

7. What legal consequences does this revocation have in relation to the dealer and the bank or e-money institute?

8. For EU Member States: Has Directive 2000/46/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions already been implemented? If yes, how? If not, does your legal system already have comparable rules?

IX. Data Protection

1. Domestic Data Protection Provisions

- 1.1** What (general and sector-specific) data protection provisions does your legal system have for electronic transactions?
- 1.2** Has EC Directive 95/46 dated 24 October 1995 already been implemented?
- 1.3** Has the EC Directive 97/66 dated 15 December 1997 on the Processing of Personal Data and the Protection of Privacy in the Telecommunications Sector already been implemented?
- 1.4** What sector-specific data protection rules exist?

2. Notification and Registration Duties

- 2.1** To what extent does your legal system have notification and registration duties in relation to dealing with personal data?
- 2.2** Which supervisory authority is responsible for the registration and monitoring of compliance with data protection obligations in relation to electronic legal transactions?

3. Permissibility of the Collection, Storage, Use and Transmission of Personal Data

- 3.1** What requirements exist in relation to the permissibility of the collection, storage, use and transmission of personal data in electronic form?
- 3.2** What specific requirements result from special statutes/sector-specific statutes?
- 3.3** Is the use of so-called cookies permissible? If yes, under what conditions?
- 3.4** Is the compilation of user profiles permissible? If yes, under what conditions?

4. Rights of the Affected Party

- 4.1** What rights does the affected party have in relation to the processing of personal data in electronic form?
- 4.2** In what form must the affected party be informed about any data collection, processing and transmission concerning him/her?

4.3 What requirements are imposed concerning the obtaining of the affected party's consent (e.g., formal requirements, disclosure duties, etc.)?

4.4 Can the consent also be given in electronic form?

5. International Transmission

What requirements exist in relation to international transmission of personal data?

6. Sanctions

What sanctions exist in relation to violation of data protection provisions?

X. Cartel Law

1. Applicable Law

Under what conditions is your domestic cartel law applicable to foreign matters?

2. Substantive Law

2.1 How are markets defined in relation to Internet matters? Have the cartel authorities issued decrees?

2.2 What is the relationship with sector-specific regulations (Telecommunications? Radio/television?)?

2.3 How are electronic market places treated?

2.4 How are search engines and portals treated? What effect does the Essential Facilities doctrine have in your country?