

**REGIONAL SEMINAR ON THE
“LEGAL AND REGULATORY
ASPECTS OF E-COMMERCE
AND E-GOVERNMENT”
(TW-242E)**

**19-30 OCTOBER 2002
CAIRO, EGYPT**

WORKSHOP REPORT



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ACKNOWLEDGEMENTS

This Regional Seminar was financed by the

Arab Fund for Economic and Social Development (AFESD)
Safat, Kuwait

as part of the

Joint Training Program (Arab Fund/IDLO) for Arab Countries

and the

United Nations Development Programme (UNDP)
Beirut, Lebanon



The International Development Law Organization (IDLO)
Rome, Italy

would like to express its gratitude to the following organizations that have contributed to the preparation and implementation of this training workshop by providing documentary support, premises and the services of their employees:

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WORKSHOP OBJECTIVES

This two-week seminar was designed to provide lawyers and policy makers of the member countries of the Arab Fund with the most important legal and regulatory aspects of E-Commerce and E-Government.

At the end of the seminar, participants were able to:

- Show a better understanding of the impact that E-Commerce has in the development processes of emerging countries;
- Determine the importance that the construction, maintenance and constant updating of telecommunications infrastructure;
- Show an understanding of the “key” role that adequate legislation has on the development of E-Commerce;
- Explain the concept of E-Government;
- Identify the main legal issues of E-Commerce;
- Explain how contract formation works in Cyber space;
- List the main transactional and payments issues in E-Commerce;
- Recommend measures (legal reforms) to be implemented in their countries, in order to meet international best practices for E-Commerce regulation;
- Understand the necessity and value of on-line dispute resolution schemes;
- Suggest the modification of business contracts and legal documents in order to enhance E-Commerce.

**Regional Seminar on the
“Legal and Regulatory Aspects of E-Commerce and E-Government”
[TW-242E]**

Seminar Manager: María Sara Jijón C.

Seminar Assistant: Ahmed Gamal Ossman

Saturday October 19	Sunday October 20	Monday October 21	Tuesday October 22	Wednesday October 23
Introduction to E-Commerce			Internet Law and Governance	
<p style="text-align: center;">Opening Orientation</p> <p>Introductory issues Technical enablers</p> <ul style="list-style-type: none"> ○ Understanding the jargon of IT people ○ Becoming familiar with the technicalities of e-commerce ○ Enabling technologies <p style="text-align: right;"><i>Sherif Hashem (MCIT)</i></p>	<p style="text-align: center;">E-Commerce</p> <ul style="list-style-type: none"> ○ What is E-Commerce ○ Main players and beneficiaries ○ The dot.com revolution <p style="text-align: right;"><i>Alexander Mahovsky (NextiraOne Austria GmbH)</i></p>	<p style="text-align: center;">E-Business</p> <ul style="list-style-type: none"> ○ Business model overview ○ B2B - business to business ○ B2C - e-tailing ○ Auctions ○ Brokerage ○ Advertising and subscription 	<ul style="list-style-type: none"> ○ Who should be setting the rules that apply to cyberspace? ○ What at the rules of the game now? <ul style="list-style-type: none"> ○ International and regional arrangements (UNCITRAL, UNCTAD) ○ The European Union ○ National legislation: the USA, developing countries ○ The private players ○ The role of ICANN <p style="text-align: right;"><i>Nathalie Moreno (Freshfields – France)</i></p>	
Saturday October 26	Sunday October 27	Monday October 28	Tuesday October 29	Wednesday October 30
CONTRACTUAL / TRANSACTIONAL ISSUES			E-Government Workshop	
<ul style="list-style-type: none"> ○ Setting the State for E-Contracts <ul style="list-style-type: none"> ▪ Contract law fundamentals ▪ Employment agreements ▪ Confidentiality agreements ▪ Practical aspects of important IP provisions ○ Types of E-Commerce Contracts <p>Negotiation Exercises</p> <p style="text-align: right;"><i>Thomas Newman (Alston & Bird – Washington D.C.)</i></p>			<ul style="list-style-type: none"> • Types of E-Commerce Contracts (continued) <p>Several Negotiation Exercises</p> <p style="text-align: center;">The Swedish Experience</p> <p style="text-align: right;"><i>Closing</i></p> <p style="text-align: right;"><i>Hans Sundström (Statskontoret - Sweden)</i></p>	

WORKSHOP SUMMARY OF PROCEEDINGS

Saturday, October 19, 2002: Opening and Orientation

Participants arrived to the National Center for Judicial Studies –NCJS, accompanied by the seminar manager, **Ms. Maria Sara Jijon**. The manager of the seminar opened officially the seminar and mentioned the importance of the rule and the role of law for development, and the role that IDLO plays in this process. She also discussed IDLO's training methodology, which is highly participative and interactive, with the use of teaching methods such as discussions in small working groups, skills practice, case studies, simulated exercises, negotiations, and explanatory discussions.

She then started with some introductory notes about the importance of computer and the Internet in the world nowadays, and the impact it has on the economy and the society as a whole, its tremendous increase in the past decade (even in developing countries) and the greatest importance and potentiality it has in the future, and specially in the development process.

She pointed out that e-ways of living and/or doing are now fashionable and should be considered, even if at the end of the day, it is mostly about the application of the same old rules to the new roles that technology require (paraphrasing H. Sundström): e-commerce, e-business, e-trade, e-government, and e-procurement, as mere examples.

Challenges imposed to governments, business and citizens alike to deal with key issues such as privacy, data protection, authentication, security, confidentiality and standardization.

Further discussions pointed out to legal matters in respect of the intellectual property, personal jurisdiction, product liability, and alternative dispute resolution (ADR).

She assured that information and communications technology (ICT) does not pose a real danger to employment, but actually creates new ways of working, new relationships in the work place, and many challenges to both employers and employees. Of course, during the transition process, many people fear and create resistance to change, but this is only logic to human nature.

The issue of security (and specially the lack of it) was raised by participants. Ms. Jijon confirmed that this risk exists not only in cyberspace (or electronic) transactions, but certainly also in real space. Of course, as perfectly pointed out by one participant, the new issue here is the level of exposure, measure of control, and evidence upon the courts. For this reason, a proper legal framework is required.

One of the key elements of this training program is the fact that it brings together a number of people with common traditions and cultures, but with different positions and backgrounds. This certainly provided the opportunity of exchange of views, information and knowledge-She added that at end of the seminar she will establish an e-group, so that the participants can share opinions and exchange experiences in the future through the e-mail.

Participants putted great emphasis on the positive effect of e-commerce and e- government in saving time and costs. They mentioned that the enactment of laws, the signature of agreements and the adherence to international conventions is not sufficient to create a proper legal and regulatory framework. The unresolved issue (and the challenge, of course) is how to implement and enforce such laws and regulations.

Afternoon Session: At the premises of the Ministry of Communications and Information Technology –MCIT (<http://www.mcit.gov.eg/>)

Meeting with high level policy officers from the Ministry, in charge of the ICT for Development and e-Government Programs in Egypt.

Dr. Sherif Hashem - Director of Information Society Development Office (ISDO)

He started by explaining that the new commercial relations and business models depend tremendously upon information and communications technology. He talked also about the elements of e-commerce:

- 1- Commercial elements.
- 2- Automation elements: represented in calculations, nets, Internet and telephones.

He talked about the characteristics of e-commerce and the importance of communication infrastructure & interconnectivity, and the impact of e-commerce on the gap between the developing and industrialized countries.

In addition, he talked about the different types of relationships in this regard as:

- Business to government (B2C)
- Business to Consumers (B2C)
- Government to Citizen (G2C)
- Citizen to Citizen (C2C)

and many others of course.

He talked about e-commerce, e-trade and how new methods in this field have appeared, such as the e-government, e-tourism, e-banking, e-markets and e-money.

He mentioned also some statistics and expectations of the Arab world, regarding the use of the Internet. There are about 4 million users in the Arab world in year 2001 and more than 2.8 million users and operators in six countries: Egypt – UAE – Morocco – Saudi Arabia – Tunisia – Lebanon. The number of users will increase to 12 million at the end of the year 2002. Dr. Sherif Hashem confirmed that this number of users in Arab countries is very small compared to the USA and Europe. Dr. Hashem mentioned that the amount of e-commerce is going to increase to 609 Trillion US Dollars by 2004, according to the last inspection.

He then talked about the major challenges that developing countries face nowadays in terms of e-commerce. Dr. Hashem insisted in the need of creating convenient and modern legislation and a proper regulatory framework to deal with these matters. He also mentioned that it is necessary to create new form of administration by using the technology of information and telecommunications that would be able to follow the speed of changes in the markets, industries, services, and cope with globalization and regional and international competitors.

He talked about the different models of e-trade and e-business.

He talked about the e-commerce GAT convention and also the efforts of the WTO, and its agreements and agenda after the Doha Ministerial Conference (Nov. 2001).

Then he opened the forum to Q&As.

Participants asked many relevant questions, and demonstrated a lot of interest and knowledge of the topics. For instance, they asked about the role of the Central Bank in e-commerce. Dr. Hashem answered that the Central Bank in Egypt plays a pivotal role in electronic transactions,

specially regarding the payment system. He added that the Central Bank was represented in the committee assigned to prepare the laws related to the same subject.

He mentioned also that there is a study – suggestion – to establish a credit bureau to cover the inquiry about the information of the credit cards.

Another question was raised about the relationship between competition laws and its impact on e-commerce. He said that e-commerce is changing competition, so it is necessary to amend the law to cope with modern technology.

Some participants asked about the phenomena of uncertainty and instability of the new economy and the telecommunications sector, which have a terrible impact on e-commerce. Dr. Hashem mentioned that the failure of a certain important number of enterprises (even if huge conglomerates), does not mean that e-commerce is in danger. This phenomena represents the market forces and natural behavior.

Another question was about the effect of e-commerce & free trade in general on taxable income, considering that for many developing countries income tax is a very important source of revenues. Dr. Hashem mentioned that developing countries, including Egypt, should be creative and explore other sources of revenue. Overtaxing e-commerce is not a good choice. He said that e-commerce should be examined as one unit. It surely has advantages and disadvantages, but the challenge is to how maximize its benefits.

Dr. Ahmed Darwish. E-Government Program Director

He made a presentation about the Egyptian experience in e-Government. He said that the Project began officially on 1/7/2001, and has been approved in order to improve the relationship between public services providers and citizens and business alike. These services shall reach customers/citizens/users wherever they are, at the maximum available speed.

Dr. Darwish mentioned that the MCIT has taken an antimonopoly policy in this project, its role concentrates only on defining the specific standards that shall be followed. Without deprivation to private enterprises (Private sector) to contribute to this activity, supervising and observing that the specific standards defined are being applied by these companies.

He mentioned that the Project objectives are to serve the citizens, firms and investors, updating work systems at the Ministries, reducing the government expenditure and preparing the state machinery to join the global system.

He spoke about the Project components: building infrastructure, classifying the documents according to its subject and importance, automation of the Ministries and government authorities, establishing a state communication network and extending the services through this network, developing the governmental Procurement in a way that secure its integration into the project.

Dr: Darwish made notes on the government Gate and its site on the Internet.. He talked about the different levels of the extended service that started from (1) providing information about how to get the service, (2) then offering inquiry service, (3) then executing the whole process (possibly full transaction). This process is based on the integration between the government bodies and the interactions among the concerned authorities and the dynamic adjustment depending on the artificial intelligence.

Mr: Darwish spoke about the different working groups that have been organized for the proper implementation of such project.

A Legal Working Team was dealing with electronic signature, electronic contract and electronic crimes. There were also technical and financial groups.

He also spoke about what the MCIT has done to prepare the climate for achieving these tasks, such as creating awareness, spreading the Internet culture and facilitating the access to the Internet [minimizing its cost and increasing its use.]

Participants raised some questions about the government's efforts to develop the government staff to cope with such project. He stressed on the importance of this project and mentioned some programs that are being developed by the private sector whereas the ministry role is limited to supervision only.

A participant also asked about the services that are being developed or are developed by the e-government project. Dr: Darwish mentioned some examples such as paying the phone bill, traffic law violations, issuing birth certificates and all issues related to electricity.

Finally **Dr. Amr Hashem**, another technical officer from the MCIT, delivered a short speech in which he explained how to access the Internet. He highlighted the Internet background and the attempts for reducing the price for international calls. He stated also that Egypt has joined several international programs and agreements, in particular BDTA.

Sunday, October 20 and Monday October 21, 2002: Introduction to E- commerce

Mr. Alexander Mahovsky, from NextiraOne, Vienna, Austria was in charge of this two-day session that provided some introductory concepts to participants, from the technical and legal point of view.

The instructor said “the next two days aims are offering the participants an overview of e-commerce”.

On the first day of his presentation Mr. Mahovsky started by defining e-commerce, its History, also on which business activities does e- commerce have an impact? And how to register a domain name?

The participants reviewed such subject in their own countries. For example, the cost of such recording in Egypt. is of about USD 50. Participants reviewed also the body supervising the registration in various countries, especially Egypt where the Supreme Council of Universities is the body concerned with such registration.

He then dealt with “the Main players and beneficiaries”. Players interact, as he said that such interaction is represented in government – business- consumer and that the relation between “e-commerce – e-citizen – e-government” are combined and take different forms. It may be bilateral, or the three parties may combine together. He also discussed the reasons why all these players use the Internet and create websites: to offer 24/7 services, to establish a presence, to allow almost real time feed back from customers, to make business information available, and to reduce advertising costs.

Then he spoke about some governmental issues such as “the necessity for new laws & rules”, and online government services as well.

There were questions around whether the Internet services help the poor? The instructor stressed that the Internet only maximizes the selection chances, yet this does not mean that it will necessarily help the poor, the poor however could benefit indirectly, such as medical treatment through the internet without bearing expensive costs, taking into consideration that there must be some controls to avoid abuse.

He also spoke about what type of goods and services are bought over the Internet. Some statistics show that Internet buyers have the following preferences: 61.7% is for buying computer hardware, 50% books, 32.6% CDs, 11.6 % houseware & furniture, 14.5% tickets for events and electronics, 8.2% others, 35% food, 8.3% sporting goods.

The instructor then discussed the necessity for new rules and new laws. He said that this stage can take long time, so it is important to put protocol and principles for treating such issues before the transition period starts.

Some of the participants demonstrated that the society must reach to degree of proficiency in dealing with such issues and then we can think in legislative amendments.

Then he talked about chances and risks of the digital signature and mentioned that some countries had taken fast actions in spending a lot of money for approving and organizing electronic signature, and buying or developing the necessary technology, but beneficiaries did not use this facility as previously expected because users did not gain any profits.

Some of the participants explained the Egyptian experience in electronic signature as there was a draft for this issue, but this draft avoided technical issues and left technical issues to be dealt at the Regulatory level.

The instructor ended his lecture by introducing six important questions for each participant to think about:

- 1- Is the data system infrastructure ready?
- 2- Is the legal infrastructure ready?
- 3- Is the institutional infrastructure ready?
- 4- Is the human infrastructure ready?
- 5- Is the technological infrastructure ready?
- 6- Is the leadership and strategic thinking ready?

At the end the participants had been divided into two groups: The RIPO Group and SESO Group. The first group had given duty of thinking in out-line risks (RI) and problems (PO) with electronic commerce, new technologies, etc. The second group (SESO) had given the duty of explaining how to solve the outlined problems and how to avoid or reduce the mentioned risks.

On the second day of his presentation, Mr. Mahovsky talked about business models for electronic markets. He started by defining business models, and gave some examples: e-shop, e-procurement, e-mall, e-auction, value chain integrator, virtual communities, collaboration platform, third party market place, information broker, etc.

He also talked about the way each of these business models works, and gave some real life examples.

Mr. Mahovsky then demonstrated one business model by doing an online purchasing (through Internet) using the **Amazon.com** website, and showing how OneClick business model.

Referring to the public purchasing, some participants believe that it is necessary for governmental (public) organizations and authorities to use best international practices, using standard forms for e-procurement. The opinion of some participants is that it is practically impossible to put this into practice in certain sectors due to the specificities of some local foods, or local conditions. Other participants pointed out that there is a need of some legislative amendments in this framework to be compatible with electronic forms and international

standards. Actually, this is not a problem, since standard forms are only models, and each country can adapt it to its own reality.

E-payment systems.

Mr. Mahovsky showed how to make “e-payment”, some of the participants were asking about risks of (e-pay) and how and who will guarantee these risks. The instructor was of the opinion that “e-payment” includes many risks but unfortunately without a full high level of control and/or guarantees.

e-auction

The different models: English auction, the Japanese auction and the Dutch auction. He said that these methods are the most commonly used in Europe, especially the English auction. The main difference between the English and the Japanese auction is that in the Japanese auction the bid prices rise automatically.

“Service Broken”: what it is, how it happens and how to avoid it. Participants mentioned some cases in which some breaks of the service happened, even though all protective actions are taken.

The instructor answered that the situation depends on conditions declared by each company and should be analyzed in a case by case basis. The insurance issue was raised and discussed and the instructor mentioned that “insurance companies are still very slow in entering this field.”

Advertising

The main online advertising models and pricing online. The “Cost per transaction method (CPT)” is the most commonly used.

Some statistics show that advertising through Yahoo.com site started in 1998 (US \$1.7 billion) with expected results in 2005 (US \$30 billion)

Electronic payment systems: any system is based on what information is being transferred online.

The instructor assured that the Digital Cash Payment System is considered as an optimal method for purchasing low prices and limited things.

He talked also about e-learning and the benefits that this method as one can learn at any time and in any place and reduce cost of education.

Education interaction issue was discussed and the instructor assured that e-learning does not mean the best means for education but in some cases it can be considered as best available means of education, or sometimes the ONLY way of providing educational facilities in remote areas.

Finally Mr. Mahovsky formed discussion groups, and asked participants to decide what kind of web site they want to create. Participants chose a website in the tourism industry. Participants were divided in three groups, each group has chosen one of three topics:

- 1- Money spending aspect – What products and services do the company has to spend money to be able to go online ?

- 2- Money making aspect – How to make money with this site and how shall the payment work, etc.?
- 3- Legal aspect –Which legal aspects have to be considered?

After 30 minutes of preparation, each group presented a list of issues and ideas, and the instructor provided his feedback and added some necessary comments.

Tuesday, October 22 and Wednesday October 23, 2002: Internet Law and Governance

Ms. Nathalie E. Moreno, Associate at Freshfields, Bruckhaus, Dehringer, Paris, France, introduced herself and her background and gave the participants the opportunity to introduce themselves and their backgrounds and to present their expectation of this module of the seminar. She then mentioned that she will talk about Internet law and governance.

She started talking about the most important international organizations, international legal frameworks and units related to this field such as: UNCITRAL, UNCTAD, ITU WIPO. Ms. Moreno explained in great detail the role of UNCITRAL and the role that its Model Laws play in different commercial fields. She then reviewed the UNCITRAL Model Law on Electronic Commerce with guide to Enactment (1996), specifically articles 6, 7, 8 of that Model law and she mentioned that a number of countries had taken these articles in consideration when issuing its enactment such as Australia – Colombia – Ecuador – France – Ireland – and some other countries are in the process such as Morocco.

Ms. Moreno made a brief analysis of the UNCITRAL Model Law on Electronic Signatures (2001) and mentioned that it contains the basic rules of conduct that may serve as guidelines for assessing possible responsibilities and liabilities and this is built on the presumption that “where they meet certain criteria of technical reliability, electronic signatures shall be treated as equivalent to hand written signature”.

She said that 60 countries (of which 20 developing countries) had adopted the previous law and she explained some articles, No. 3, 6, 7, 8, 9, 10 and 11. The instructor mentioned also that these model laws represents the minimum limit of the standards, and each country is free to enact laws that have at least these standards, and of course could introduce legislation that is more strict. Then she talked about “UNCTAD Electronic Commerce Branch” as it carries out policy – oriented analytical work on the implications for developing countries of the adoption of E-commerce and Internet technology. Ms. Moreno pointed to the annual report about E-commerce and development. Then she started talking about International Telecommunication Union (ITU) and mentioned that the strategy of this union toward the developing countries is to enhance ICT literacy and increase public awareness on the potentials of ICTs for Socio-economic development, to foster the development of Internet Protocol (IP) networks and services on all types of telecommunication and to integrate the development of IP with the role out of societal applications.

Ms: Moreno also explained the role WIPO in this field especially

- 1- The WIPO Digital Agenda which aims to set out a series of guidelines and goals for WIPO in seeking to develop practical solutions to the challenges raised by the impact of e-commerce on Intellectual Property Rights (IPRs).

- 2- WIPO Internet domain Names processes convene to address certain Intellectual Property Issues arising in the Domain Name System. Following the ICANN rules.

The participants asked her to explain the role of WIPO Mediation and Arbitration Center. The Instructor also showed the differences between WIPO and ICANN.

The European Union (EU) endeavor: the European Legal Framework and the main areas of work represented in Development of legal framework - Promotion of Research & Development- Promotion of information society.

She assured that the importance in this field is given for securing the internal market for e-commerce by providing legal security, predictability and removing barriers to force movement of e-commerce, and balance between different interests. She also talked about the Convention on Cybercrime issued by Council of Europe in Budapest, in 2001.

In addition she talked about E-commerce directive, about the importance of following these directives, how they are being applied in the EU member states. She pointed out that the common goal is to provide impulse to the growth of e-commerce in the Union.

During her second day October, 23,2002

Ms Moreno talked about Internet Governance and about the way the Internet can be managed so it can continue to grow and develop. How can anybody govern the conduct of the different web users, and players???

There must be a legal analysis of the Internet, and it is as important as the technical side of its functioning. It is important to provide some rules, otherwise it would be anarchy.. Judges all around the world must be acquainted and aware of the basic information related to the Internet, how it works, what the players are, who governs it, and many other details, to be able to provide a fair decision. So judges must be re-qualified in the field of Internet.

The role of technical experts in court proceedings. The participants started discussions about experiences in their countries with respect to the experts and they took the situation in Egypt as example: As in Egypt there is an organization for experts affiliated to the MINISTRY OF JUSTICE, in this organization there is a list containing the names of experts in different fields. These hose experts practice their work subject to the supervision and control of the Ministry of Justice and they take their wages from the Ministry of Justice. Of course, once their opinion has been rendered, the final decision is that of the judge. This does not restrict the right of the judge to resort to other experts (outside the official experts), in case needed.

Internet governance organizations and their responsibilities. The Internet Architecture Board (IAB), the Internet Engineering Task Force (IETF), Internet Engineering Steering Group (IESG), Internet Society (ISOC), Internet Corporation for assigned Names and Numbers (ICANN), World Wide Web Consortium (W3C)

ICANN and its role in providing some guidance to the Internet players. It is a non-profit corporation created by US government in 1998 to coordinate policies relating to the unique assignment of Internet Domain Names, Numerical International Protocol Addresses and Protocol Port Parameters Numbers.

Saturday, October 26, Sunday, October 27 and Monday October 28, 2002: Contractual and Transactional Issues.

The instructor started by assuring the importance of exchanging experiences and interaction between different cultures and assuring that the Internet and modern means of communications are owned by all cultures.

Mr. Newman identified the objectives of the first day in: (1) Gaining familiarity with contract terms which apply to IT agreements (2) Gaining understanding of some new terms (3) Becoming aware of negotiating strategies.

Contract law fundamentals, as a refreshment for the lawyers and a short introduction for the techies:

First: Contract formation and its elements : Offer, acceptance, consideration, intent to create legal relations , he assured that the elements are generally the same in different jurisdictions.

Second: Terms of use websites. He said that once anybody clicks on any web page, he/she becomes bound to some type of agreement.

He added that these **terms of use** depend on what the website is intended to do. These terms of use are drafted by the web site owner (lawyer) and it considers only one side. The participants added that from a practical point of view, most people ignore the existence of these terms of use.

The Instructor replied that people accept the terms of use as soon as they decide to browse the site. Ignorance of the law is not acceptable.

Third: Amendment / Modification / Waiver

Fourth: Limitation of Liability. The goal is to limit the scope of claim through express limiting statements directed to the core of what the site does and express limitations on the kind and/or amount of damages that can be claimed.

The issue of usage of the Internet, and access to a particular site by children or teenagers, follows the conventional rules of responsibility and liability, as it will be borne by parents or to the owner of the computer.

Fifth: Limitation of actions / Damages and Liquidated damages. Mr. Newman said that any breach of contract must be initiated within a certain number of years after the contract entered into force. Damages are also limited, e.g., to purchase price or to repair or replacement of non-conforming goods.

The limitation on liability reduces the obligations of the seller and may thereby prevent a breach from occurring. Mr. Newman said that it is favorable for fixing the amount of damages in advance to avoid the need to determine the amount of actual damages.

He talked about the importance of the choice of law in contracts and he mentioned that it is necessary to adopt a reasonable basis when choosing the contract law applicable by stating which country's laws will govern. It is important to keep in mind that this choice will determine the enforceability of the contract as well.

Practical aspects were analyzed, such as problems related with copyrights, patents, trademarks and trade secrets.

The copyright law regime provides copyright owners with a specific set of exclusive rights on the material they create. To receive copyright protection, there are essentially 3 criteria a work must satisfy: originality, creativity, and fixed form.

It is necessary to distinguish between sales and licenses of works and that transferring of copyright must be in writing and signed by the owner.

With respect to patent filed he mentioned that patent provide exclusive rights to inventions of qualifying inventor. To obtain a patent, an invention must be: novel, useful, and non obvious. He assured that patent rights arise after patent is obtained (not when invention created), differently from copyright.

Patents prevent others from manufacturing, using or selling the invention and it last for 20 years from the data of patent application filing.

Participants raised some questions regarding software protection and legal methods to protect software and computer programs.

Computer software was traditionally protected as any other creative work, by copyright law. Now some sophisticated software can be granted patent protection as a process (Business Method Patents) if the process performed by the software does more than simply solve a mathematical problem and satisfies the test for patents. Mr. Newman mentioned the example of Amazon.com as this site has awarded Patent for “one – click” ordering technology.

He also talked about trademarks and defined trademarks as follows:

<Anything used to identify the source of goods and to distinguish that source from its competitors. It can be words, names, symbols, etc. >

The owner has exclusive right to use the work and to prevent others from using marks that are confusingly similar. To get this protection, marks must be distinctive and have priority in commercial use, and be used in a consistent manner.

One of the participants asked about Trademark dilution case, and Mr. Newman replied that when a work becomes famous, it might be entitled to protection outside of the goods and services categories with which it is normally used.

Domain names

Usually people access websites by typing the URL containing the “domain name “and these domain names set by ICANN. He stated also that most companies have registered domain names in an effort to protect their trademarks from cyber squatters. In addition, he mentioned that trademark infringement by domain names can occur if domain names are confusingly similar to trademarks or if they dilute trademarks.

Trade Secrets cover processes and ideas that are not covered by copyrights and patents. And in most reported trade secret cases disclosure of the trade secret has been limited by nondisclosure agreements and employee agreements.

Then he talked about Nondisclosure Agreements (NDA) and stated that NDA agreements bind the employee/contractor to the non-disclosure of confidential or secret information obtained during employment and he confirmed also that NDAs usually refer to specific information or products rather than general confidential information.

Employment Agreements: they can bar employees from professional activities in competition with his / her former employer over a defined time and in a defined place.

Some jurisdictions prohibit pure non-competition clauses in employee contracts unless the employer's rights are clearly identifiable. In some reported cases, courts have not invalidated the clause as being excessive but have modified its terms to fit the court's perception of reasonable terms such as geographic scope, duration and type of activity precluded.

Consulting Agreement

According to this agreement, consultant provides services for a fee. The consultant is independent to contract, he/she is not an employee of the customer. The main question is as follows: who owns the works developed?

Marketing licenses

This type includes software owner engages marketing company (Vendor) to serve as a marketing channel for certain software programs and related materials. An owner retains control over most product content and licensing terms.

Joint Marketing Agreements

The software company (owner) that manages its own marketing and licensing, engages an independent services organization to provide marketing assistance and installation support. And according to this agreement the independent services organization gets a commission.

Supplier / Distributor Agreements

Owner of software (Licensor) grants another entity (Licensee) the exclusive right to distribute software and documentation to end-users and provide support services. The distributor is considered an agent of the Licensor, who collects fees from the end user. In an International distributor agreement, local laws such as restrictions on imports / exports, IP rights, and termination rights should be carefully checked.

Web linking / co- branding Agreements

Vendor agrees to provide 'on- line service" in a customized format that is linked to and accessed from the website of the customer. "Customized" means co- branding because the web page contains names, logos and advertising of both parties. In such these Agreements, the Vendor agrees to build, maintain the link, design and develop the customized format of the co-branded pages, provide online service via the co-branded pages and receives fees for these services.

On the other hand the Customer has the right to determine the customization, approval of the design and request subsequent modifications. The Customer also gets access to business options or features that the Vendor may offer relating to the online service.

Subscription Agreements

This type is considered an end user agreement between Vendor Application Service Provider (ASP). The ASP maintains and operates software programs on its host computer accessible via the Internet. The advantages of this type of agreements are: faster implementation, potentially higher service and security levels, higher technology support and cost predictability.

Retail partner Agreements

The site operator contracts with a vendor for the sale of particular products or services to visitors to the website. According to this model, the Vendor is responsible for processing the Customer orders, collecting payment and delivering products. The site operator is paid a commission.

The Instructor raised a very serious issue in terms of using of Internet by company employees. He assured that in year 2002 nearly 100 million employees in the US are connected to the Internet at work. This situation can create enormous risks for the company's confidential information unless proper precautions are taken.

Exports controls: The Case of the USA

What is an Export? Export occurs when controlled technology (such as software, blueprints, technical data manuals, etc.) or commodities/ goods or other items leave or cross USA borders.

The reasons for export control: national security, sound foreign policy, prevention of terrorism.

Jurisdiction and Dispute Resolution

The Internet breaks down territorial barriers and creates great difficulty in determining which jurisdiction's law will apply and whether the buyer or the seller will be subject to personal jurisdiction in the courts where the other is located. The instructor explained that although no bright line test exists, most courts have applied an (interactive-passive) distinction when determining personal jurisdiction. <Interactive contact> encompasses two way online communication fostering an ongoing business relationship. <Passive contracts> are those that simply make information available to interested viewers.

Participants were divided into four groups for entering the negotiations of consulting agreement. Two groups among them represented the company and the other two groups represented the Consultant. Then each group joined its sister group in order to form two big groups: one of them represented the company and the other represented the consultant. The two big groups, that joined strategies, entered into a negotiation aiming at achieving a satisfactory agreement for all parties.

The instructor explained that the Consultant should focus mainly on the amount paid to him in return for his Consulting, and this is his real interest.

Out-sourcing transactions

The key to control this type of contracts is to break down the deal into manageable elements. (Deal Team) the responsibilities of each lead such as Financial lead, customer lead, Human resources lead, Tower Lead, operations lead. (Transaction Timelines) help to determine the scope of the transaction, manage expectations and facilitate negotiation of deal terms.

“WARN ACT”

As the American law gives the employee a period of 6 months to arrange situations before getting rid of him.

Some of the participants discussed the situation in their countries, they pointed out that there is a need to have experienced employees, and sometimes the only way out it to get rid of those employees that are not useful. In all cases as the work itself represents valuable need that can not be substituted by money, some of them mentioned what happened when the public sector companies got rid of a lot of personnel - because of privatization policy and conversion to free market- and substituting these employees by paying some money to them. This created a social problem, because unfortunately some of these former employees abused the money and spending the money in consuming goods and did not get any benefits and thus, they had been added to the numbers of unemployed citizens.

The Legal Team’s Role: Deal negotiation and documentation, deal management, risk analysis, market analysis, due diligence, and solving problems.

Key Transaction Elements: Service level agreements, pricing payment terms, Termination, allocation of risk, Intellectual Property Rights.

A Model of Out-sourcing Agreement was distributed to the participants who were again divided into 4 groups following the same idea mentioned above in order to have two big groups: one representing the Service Provider and the other the Company.

Each group had to assign a legal, technical and financial experts.

Each party started studying the contract and determining negotiation points and strategy, in order to negotiate a satisfactory agreement.

Monday October 28, 2002. Afternoon session. Dr. Ashraf Hasan abd El- Wahab Manager of project of Automation and Linking Ministries (M.C.I.T)

Dr. Asharaf was presented in more detail the Egyptian experience in E-government. He explained the difficulties that faced the project and how they could overcome these difficulties, including those legal and technical.

The government desired to encourage the private sector to enter this field and to restrict the government’s role to control and supervision. He showed the governmental services that had been automated and the services that could be automated in the future . At the end, the participants asked some questions which made them near to the Egyptian experience and made comparison between the Egyptian structure and the situation in their countries.

Tuesday October 29, and Wednesday October 30, 2002: E-Government Workshop

Hans Sundström, Statskontoret, Stockholm, Sweden. He talked about Swedish E government program.

He showed the governing principles:

- All services that can be provided on line shall be provided online
- Citizen shall be free to choose the desired service format on site, on phone, on paper, on line.
- The public services shall be customer oriented and equally available to all.
- Public consultation shall be enhanced in order to strengthen democracy and transparency of the public sector.

The fundamental Administrative values: democracy, efficiency and rule of law.

The most important Swedish Administrative laws: Freedom of the press act (1949), Fundamental law on freedom of expression (1991), Public Administration Act, Administrative procedure Act, Personal Data Act and Secrecy Act.

E-governments strategies cannot be separated from governance strategies. He said that the plan adopted by Sweden to transfer from manual system to Digital system started through an ambitious program for data automation and documentation in the 1960s. The legislative amendment came at the final stage, and this is what happened in Australia and other industrial countries.

He showed a statistical list of the countries that use Internet the most, and Sweden is certainly one of the main users, where the number reached to 5.2 million users in April, 2002.

He also showed the ratio of the visitors to the public sector websites, as this ratio was 8% visited regional councils, 45% visited central government, 33% visited local authorities.

IT infrastructure represented in e-identification and e-signatures - information security in a networked environment - Government e-link - information infrastructure.

The Swedish Government e- link is a specification for information exchange designed for communication with a high level of security over Internet with citizens, enterprises, and other agencies.

On day two of his presentation, Mr. Sundström started talking about the Administrative Infrastructure.

Four fundamental issues to be taken into consideration: Automation -Communication - Documentation – Organization.

Automation: the conversion from manual to automated data processing.

Communication: the conversion from analogue to digital.

Documentation: the conversion from paper based to electronic.

Organization: the conversion from sector based to transcending boundaries.

Evidence in electronic transactions: any communication or documentation must have a certain form or be arrived at in a certain manner in order to obtain certain legal status.

An interesting discussion between participants and instructor started about cyber crimes. He confirmed that the crime through Internet is similar to any other crime. The criminal escapes

after any crime, there is a need to find him, and prove the relation between the criminal and the crime.

Some discussions were raised in terms of e-signature laws as all were agreed on that e-signature laws do not organize e-commerce itself but only to treat some issues related to the methods of evidence.

E-Signature

The instructor showed some kinds of signature, and how this issue is treated in Swedish Law.

On the need to have a totally new legal framework

Some discussions also were raised concerning the need of legislative amendment in e-transactions in general or in e-commerce and e-government in particular. After the discussion, it was clear that it will all depend on the circumstances of each country, its legal tradition, etc. Each country has the right to determine the proper time and the proper way to make these necessary changes, and whether it will enact new legislation and regulations, or will simply make some amendments.

Closing Ceremony

Participants received their certificates of participation from the Seminar Manager, Ms. Maria Sara Jijon, with the presence of Mr. Aly Shekyb – Judge in Court of Appeal in behalf of “The National Center for Judicial Studies”. He addressed a speech and thanked the participants from all Arab countries, appreciating the valuable discussions.

Mr. Shekyb confirmed the important role of IDLO in legal training, its integrated training methodology and wished more cooperation in future.

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