

Draft WGIG Issues Paper on E-Commerce

This paper is a 'draft working paper' reflecting the preliminary findings of the drafting team. It has been subject to review by all WGIG members, but it does not necessarily present a consensus position nor does it contain agreed language accepted by every member. The purpose of this draft is to provide a basis for the ongoing work of the group. It is therefore not to be seen as a chapter of the final WGIG report, but rather as raw material that will be used when drafting the report. This draft working paper has been published on the WGIG website for public comment, so it will evolve, taking into account input from governments and stakeholders.

1. Issue

E-commerce, or electronic commerce, generally refers to commercial transactions between businesses (B2B e-commerce) or between businesses and consumers (B2C e-commerce) that take place wholly or partially over the Internet or other electronic communication networks.

The concept of e-commerce includes a broad spectrum of commercial activities, which range from the simple provision on the Internet of information or advertising about products and services that remain physical and are ordered, delivered and paid for by physical means (e.g. comparison shopping for automobiles or houses), to transactions that are entirely virtual and involve marketing, advertising, ordering, delivering, purchasing and servicing products and services entirely over the Internet (e.g. downloading applications programs or music or video files).

E-commerce may take place within the borders of a country or across national boundaries.

It is worth noting that similar kinds of transactions, using similar techniques and raising similar issues, also occur between governments and businesses (G2B and B2G – as in the case of electronic procurement systems and the payment of corporate taxes), between governments and citizens (G2C and C2G – as in the case of on-line filing of personal income taxes), and between governments (G2G – e.g. procurement transactions between government agencies).

At present, e-commerce accounts for only a very small percentage of global trade and commerce. Although transactions between large corporations and their suppliers and customers account for the largest share of e-commerce today, a growing number of small- and medium-sized enterprises (SMEs) are beginning to implement Internet business solutions (IBS). However, engaging the SME sector in electronic commerce is a challenge facing developed and developing countries alike. As well, the adoption of e-commerce techniques by governments in their relations with citizens, businesses and each other is still in its infancy.

The volume of e-commerce is expected to increase significantly, particularly if effective legal, policy, and regulatory frameworks can be developed and implemented at national, regional and international levels as appropriate to facilitate trade and protect the interests of consumers and businesses in the global marketplace.

The general governance issues raised by e-commerce are three-fold:

1. the extent to which the arrangements and mechanisms that have been developed to govern trade and commerce in physical goods and services should apply to trade and commerce in intangible products and services;
2. what new kinds of arrangements and mechanisms may be necessary to protect the interests of businesses and consumers in the on-line world;

3. how to apply whatever kinds of traditional and innovative governance arrangements are deemed necessary, both within countries and across borders.

In addition to these general e-commerce issues, specific aspects of a number of the other issues that are listed in the “Inventory of Public Policy Issues” are part of the general issue of e-commerce. These related issues include:

- dispute resolution
- competition policy
- consumer, user protection
- privacy
- spam
- cybercrime
- security of network and information systems
- electronic authentication
- unlawful content
- intellectual property rights
- applicable jurisdiction, cross border coordination and cross border enforcement – which is a particularly important issue, given the differences between national laws and regulations among countries
- taxation of e-commerce
- trade
- exemption of ISPs for third party liability

As well, from a development perspective the possibility of engaging in and benefiting from e-commerce within and between countries depends on the resolution of a number of fundamental, underlying issues that are listed in the Inventory. These include:

- telecommunications infrastructure, broadband access
- Internet leased line costs
- peering and interconnection
- affordable and universal access
- education, human capacity building
- multilingualization of Internet naming systems
- cultural and linguistic diversity
- freedom of information and media

2. Attribution to category / ies

As the preceding section illustrates, although e-commerce is listed as an “Other issue for consideration”, aspects of the e-commerce issue-complex are found in the other four categories as well.

3. SWOT Analysis

Rather than being the subject of a single governance system, electronic commerce is facilitated and promoted by the various legal, policy and regulatory frameworks that relate to the issues listed in section one. Coordinating these different governance mechanisms is a very challenging task, given the wide range of issues involved in e-commerce and differences among countries with respect both to national governance arrangements in relation to e-commerce issues, as well as to levels of economic development and human and institutional capacity. However, in the last decade work has begun at the national and international levels to develop comprehensive e-commerce policy frameworks.

All developed countries and some developing countries have developed arrangements and mechanisms for governing e-commerce within their borders. These often involve a mix of laws and regulations enacted by governments, significant amounts of industry self-regulation, e.g. through codes of conduct, and special measures taken by public and private organizations to protect the interests of consumers in the on-line world.

Internationally, a significant degree of cross-border coordination has been achieved among countries at high levels of economic development and in some regions, particularly in Europe. Work on e-commerce issues has also begun at the global level in various international organizations.

The main strengths of the present system have been:

- the broad view that has been taken of the governance challenges posed by e-commerce;
- the bottom-up approach that has been followed to date;
- the willingness of states to involve non-government actors in the development of e-commerce governance arrangements, at both the national and international levels;
- the recognition that human and institutional capacity-building are critical issues in developing countries, and the provision of innovative development assistance mechanisms.

The main weaknesses of the present system have been:

- the failure to fully engage consumers and users, at the national and international levels;
- the failure to successfully include many developing countries in the development of overall e-commerce governance initiatives, as well as in action on many of the specific issues that fall under the general umbrella.

The main opportunities that effectively governed e-commerce would bring at the national and international levels are:

- increased efficiency, productivity and competitiveness for individual businesses in all economic sectors, in their dealings both with suppliers and consumers;
- savings in the use of physical materials and energy, with resultant environmental benefits;
- increased consumer choice and reduced prices;

- easier access to local, regional, national and global markets for both producers and consumers;
- new business and employment opportunities and new ways of preserving the competitiveness of established industries and preserving jobs;
- resulting benefits to economic and social development and consumer welfare at the national and international levels.

The main threats to the development of an effective system for governing global e-commerce are:

- uncontrolled annoyances and criminal activities that undermine consumer acceptance and uptake (e.g. spam, phishing and identify theft, other forms of fraud);
- protectionism (e.g. concerns in developed countries about outsourcing jobs to developing countries, concerns to protect established industries from online competition);
- lack of investment in the information, communications and financial infrastructures needed to support e-commerce as a result of poverty in many developing countries, as well as consequent shortfalls in the human and institutional capacity necessary to operate and govern e-commerce effectively;
- legal, institutional and cultural differences between countries with respect to many of the issues that fall under the e-commerce umbrella, particularly in relation to content.

4. Actors

A wide range of actors is involved in e-commerce issues:

- Different departments and agencies of national governments
- Individual corporations
- Industry associations
- Civil society organizations (e.g. consumer advocates)
- Intergovernmental organizations at the regional and global levels
- Other kinds of international groups and organizations, some of which are multi-partite (e.g. with government, business, and civil society participation), others of which represent a single stakeholder group

5. Forums

At the regional level, both the OECD and APEC have done a lot of work on e-commerce and maintain working groups that meet regularly to advance their work programs. The focus of these organizations has been on analyzing issues related to e-commerce, diffusing information, and developing guidelines and recommendations intended to help coordinate national policies and practices among their members. Although they are intergovernmental organizations, they have involved other actors in their work.

At the international, intergovernmental level:

- The World Trade Organization (WTO) helped lay the foundation for e-commerce through its agreements on trade in telecommunications and other services, and is the source of the moratorium agreement not to impose customs duties on e-commerce. The WTO has also

maintained a work programme on e-commerce for a number of years. Rather than involving negotiation of a specific international agreement on e-commerce, this programme has provided a “horizontal” forum for identifying and examining the implications of e-commerce for the different types of trade dealt with by the WTO (i.e. trade in goods, services and intellectual property). This programme includes a capacity-building component designed to assist developing countries;

- The United Nations Conference on Trade and Development (UNCTAD) and the associated International Trade Centre (ITC) have done a lot of work identifying and analyzing e-commerce issues, particularly from the perspective of developing countries, and have important capacity-building roles;
- The World Intellectual Property Organisation (WIPO) has concluded two “Internet treaties” that update international copyright law so that it applies to digital works, and maintains an ongoing “Digital Agenda” to address issues related to e-commerce. In addition, WIPO provides the Domain Name Dispute Resolution Service that arbitrates disputes about IPRs in domain names;
- The United Nations Conference on International Trade-Related Laws (UNCITRAL) has developed a model e-commerce law that has been adapted and applied in a number of countries;
- The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) develops recommendations aimed at facilitating trade through the electronic exchange of trade-related information between government agencies and the private businesses;
- The International Telecommunication Union (ITU) has developed technical standards related to e-commerce and has a technical assistance programme that aims at building capacity in relation to the technical and business underpinnings of e-commerce.

Participation in the formal governance activities of intergovernmental organizations is generally limited to governments. A notable exception is the ITU, which includes a wide variety of non-governmental actors in all but its treaty-making activities. However, all intergovernmental organizations generally include non-governmental actors in their informal activities in advisory or consultative roles, including those related to e-commerce, in advisory or consultative roles.

Other international fora that have been active in e-commerce include:

- long-established business organizations, such as the International Chamber of Commerce which has maintained a very active work programme that has produced reports and recommendations to its members, national governments and international organizations on a wide range of issues related to e-commerce;
- special initiatives by the business community, such as the Global Business Dialogue, which does policy research and advocates on e-commerce issues;
- multi-partite initiatives, such as the G8 DOT Force and the UN ICT Task Force, which have included representatives of national governments, the private sector, civil society and international organizations, and which have addressed selected issues related to e-commerce.

6. Governance mechanisms

The overall objective of the emerging e-commerce rules system is to facilitate e-commerce, both B2B and B2C in all its forms, and to protect and advance the interests of business and consumers to the benefit of developed and developing countries.

As indicated in section 5, the content of the principles, norms and rules designed to achieve these objectives includes:

- treaty agreements governing trade in telecommunications and other services and protecting copyright in digital works;
- standards developed by intergovernmental organizations with respect to technical, legal and other aspects of e-commerce;
- recommendations and guidelines issued by international and regional intergovernmental organizations with regard to a wide range of issues that fall under the umbrella of e-commerce, such as consumer protection and privacy, cybercrime and network security, spam, etc;
- recommendations and guidelines issued by national and international business associations with respect to business practices in e-commerce.

7. Adequacy measured against criteria / benchmarks set out in Declaration of Principles:

As indicated in preceding sections, none of the individual mechanisms involved in the governance of e-commerce fully meets the criteria set out in the WSIS Declaration.

Collectively, it might be argued that they meet the criteria of being multilateral and embodying a multi-stakeholder approach. However, while this might be true in a formal sense, the lack of effective participation by developing countries and representatives of consumer and user groups in most of the fora involved in e-commerce governance effectively undercuts this claim.

While e-commerce fora differ in the extent to which they can be considered transparent and democratic, it is clear that even the more open of these venues fall short of meeting the “spirit of WSIS” with respect to the ideals of transparency and democracy.

As indicated in preceding sections, e-commerce is a “meta-issue” that groups a large number of sub issues that are complex in their own right and closely inter-related. Although one of the strengths of the current system has arguably been to take a broad view of the range of issues related to e-commerce, this policy vision has not yet been translated into coordinated governance action at the international level.

Although considerable progress has been made on e-commerce policy coordination at the national and regional levels, overcoming the current divide between developed and developing countries is likely to remain a major challenge for some time to come, for the various reasons cited in section three.