



Published in the Philippine Quarterly IT Law Journal of the Arellano Law School
April 2004, Vol. 1, No. 1

A SYNOPSIS OF THE e-COMMERCE LAW

Jaime N. Soriano

In response to the global devastation of computer networks brought about by the “I Love You” virus suspected to have originated from the Philippines, Congress immediately enacted Republic Act No. 8792 on June 14, 2000. Also known as the “Electronic Commerce Act of 2000”, the law was hailed by observers as a landmark piece of legislation that finally placed the Philippines on the map of electronic commerce¹. The Philippines was the fourth country, after Malaysia, Singapore, and Korea that legislated a law on e-commerce.

The Implementing Rules and Regulations of the e-Commerce Act were adopted on July 13, 2000.

This law “aims to facilitate domestic and international dealings, transactions, arrangements, agreements, contracts and exchanges and storage of information through the utilization of electronic, optical and similar medium, mode, instrumentality and technology to recognize the authenticity and reliability of electronic documents related to such activities and to promote the universal use of electronic transaction in the government and general public.”²

Essentially, the law provides:

1. It shall have application to any kind of data message or document generated, sent, received or stored by electronic, optical or similar means regardless whether the activity or transaction is commercial or non-commercial, private or public, or domestic or international.

2. Electronically generated documents have the legal effect, validity and enforceability as any other legal document. Electronic documents are recognized as the *functional equivalent* of a written document for evidentiary purposes.

3. It gives legal recognition to contracts and transactions in the form of electronic data message or electronic documents carrying electronic or digital signatures. *Electronic signature* can be any distinctive mark, characteristic, and/or sound in electronic form that represents the identity of a person and logically associated with the electronic document³. *Digital signatures*, on the other hand, are provided through a secret code known as “electronic key” which secures and defends sensitive information that crosses over public channel into a form decipherable only with a matching electronic key⁴ normally obtained from an Internet security company. Both electronic and digital signatures are necessary to ensure the integrity, reliability and authenticity of electronic documents particularly those that qualify as an electronic contract.

¹Bagares, Romel, “New Rules (of Court) for the New Economy”, The Philippine Star, 27 July 2001, p. B-1.

² Sec. 3, RA 8792

³ Sec. 5 (e), Republic Act No. 8792

⁴ Sec. 5 (f), *ibid.*

4. Electronic documents, signatures and data messages are admissible in evidence in a legal proceeding depending upon their reliability, integrity, nature and quality. For this purpose, the Supreme Court promulgated A. M. No. 02-7-02-SC or the Rules on Electronic Evidence that took effect on August 1, 2001.

5. Offer, acceptance, and other legal requisites for the formation and consummation of contracts may be expressed or executed by means of electronic data message or electronic documents. These contracts shall not be denied validity or enforceability simply because they are in electronic form.

6. The law was also made applicable to actions related to contracts of carriage of goods, including but not limited to: ⁵ (a) statements, declaration or information about the goods, (b) confirmation on the delivery, loading or receipt of the goods, (c) notices or communication on terms and conditions of contract; instructions to carrier; any loss of, or damage to, the goods; specific instructions for the release or delivery of goods; or, any other notice about the performance of the contract, (d) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods, (e) acquiring or transferring rights and obligations under the contract. Contract of carriage of goods can therefore be in the form of electronic documents under the E-Commerce Act. However, in cases contemplated in (d) and (e), "no paper document used to effect any such action is valid unless the use of electronic data message or electronic document has been terminated and replaced by the use of paper documents. A paper document issued in these circumstances shall contain a statement of such termination. The replacement of electronic data messages or electronic documents by paper documents shall not affect the rights or obligations of the parties involved."⁶

7. Government offices, including government-owned-and-controlled corporations, should conduct their transactions electronically within two (2) years from the effectivity of the law.

8. Internet service providers merely providing access to electronic data message or electronic documents in the ordinary course of its business are generally not subject to any civil or criminal liability. Only persons having legal right to the possession of electronic files can have access, and make, or authorize, alterations thereof. Unless consent is given to another person or party, electronic key for identity and integrity is only available to the person or entity in lawful possession of the electronic key. Any person who has authority to access an electronic file or information is bound by the rules on confidentiality of such file or information.

9. Penalties of fine and/or imprisonment are imposed for violations as defined under the law specifically: (a) hacking, cracking or unauthorized access or interference, or corruption and destruction of computer, information and communication systems, without the consent of the owner, including the introduction of virus; (b) piracy, reproduction, distribution, transmission, or alteration of protected materials and intellectual property including electronic signatures; (c) violations of the Consumer Act⁷ through electronic means; and, (d) other violations of the provisions of the e-Commerce Law.

The Philippine law on e-Commerce was patterned after the "UNCITRAL Model Law on Electronic Commerce" adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1996⁸. The model law is intended to promote the harmonization and unification of international trade law and remove unnecessary obstacles to international trade caused by inadequacies and divergences in the law affecting trade as a result of the information technology revolution.

⁵ Sec. 25, RA 8792

⁶ Sec. 25 (5), RA 8792

⁷ Republic Act No. 7394

⁸ During its twenty-ninth session (605th Meeting) on 12 June 1996

The Model Law was prepared and adopted in response to a major change in the means by which communications are made between parties using computerized or other modern techniques in doing business. It is intended to serve as a model to countries for the evaluation and modernization of certain aspects of their laws and practices in the field of commercial relationships involving the use of computerized or other modern communication techniques, and for the establishment of relevant legislation where none presently exists.

The Internet, being the backbone of the digital age, has gained considerable interests, not only among the millions of net users, but also among legal and policy stakeholders. Internet law continues to evolve as e-commerce dramatically flourishes. As more and more rules are being adopted and applied governing Internet activities, there is compelling need for the crafting or re-crafting of laws, policies and regulation, both in local and international levels, as digital technology continue to develop and re-define business models in the information economy.