Chapter 10
The Internationalization of Internet Law

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Originally dominated by North American users, the growth of the internet has spread all over the world. In November 2007 there were nearly 1.3 billion of internet users worldwide. The largest population of internet users is currently located in Asia (36.6%), followed by Europe (27.7%), North America (18.8%), Latin America (9.7%), Africa (3.5%), the Middle East (2.7%) and Australia (1.5%).

This internationalization of the internet has had a discernable impact on global trade and international law, as internet businesses have created a new international marketplace for goods and services. Globally recognised brands such as EBay, Google and Amazon, along with popular Web 2.0 websites such as MySpace and Facebook have not only provided transnational platforms for exchanging products or information but also empowered the enormous growth of web advertising. At the same time, global peer-to-peer networks have contributed to the creation of a file sharing culture, creating enormous copyright tensions in some jurisdictions, particularly in the United States.

Facing these rapid new developments and challenges, international lawmakers has responded very slowly. Although there have been some important developments in international electronic commerce law, no globally binding written norms have been established so far.

The first important instrument was the 1996 UNCITRAL Model Law on Electronic Commerce, a non-binding template that helps draft technology-focused regulations. However, this instrument has at least two major downsides: first, it is not binding; and second, it was drafted in the pre-web era, which does not make it a good model to guide the regulation of modern electronic commerce.

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The 2005 United Nations Convention on the Use of Electronic Communications in International Contracts (UNECIC or the UN Convention) is the most likely candidate for providing usable transnational norms for electronic commerce. However, it is not binding and only contains very general provisions that will not be helpful in solving many internet disputes. Compared with the 1980 Vienna Convention on Contracts for the International Sale of Goods (CISG or the Vienna Convention), which provides detailed regulation of parties’ rights and obligations, the UNECIC is not as flexible and comprehensive. On the other hand, the Vienna Convention was drafted at the end of the 1970s, and therefore favors the use of telexes and faxes. Because this convention does not take into account the growing importance of computer networks, it is unsuitable for regulating web-based commerce.

Although there have been interesting international developments in the areas of cybercrime and intellectual property law, these conventions are not directly relevant in the area of e-commerce regulation. For example, the 2001 Convention on Cybercrime, although comprehensive, is addressed primarily to European states and a few other countries. The 1996 WIPO Treaties only dealt with intellectual property in a general context, instead of with e-commerce more broadly. Although some provisions reflect concerns of the drafters on the potential impact of the internet on the rights of reproduction and distribution and the need to protect intellectual works in the digital era, because these treaties were also drafted in the pre-Web era, they do not address the key contemporary challenges to the copyright regime, such as peer-to-peer networks or open source software.

The discussion presented here will consider the most important developments in international internet law, in particular the 2005 United Nations Convention, the Convention on Cybercrime, and the 1996 WIPO Treaties.

10.1 The 2005 United Nations Convention on the Use of Electronic Communications in International Contracting

10.1.1 General Information

On November 23, 2005, the United Nations General Assembly adopted a new Convention on the Use of Electronic Communications in International Contracting (UNECIC). Drafted by the UNCITRAL Working Group IV over six sessions since 2002, the UNECIC is the most important and long awaited