Development of E-Commerce in Chile: Overview of Legal Issues
Summary

• Economical facts.
• An overview of Internet, E-Commerce and E-.Goverment.
• The Digital Signature Act.
• Other issues related with the E-Commerce
  - Privacy Act.
  - Consumers Protection Act.
  - Cybercrime act.
  - Spam.
• Conclusions
**Economical facts**

- **15 millions of inhabitants.**

**Corruption**

The Report of International Transparency 2003, it locates at Chile among the **20 less corrupt countries of the globe**, surpassing countries like France, Spain, Japan or Israel and with a very near qualification to that of Germany, Belgium, Ireland and United States.

Price Waterhouse Coopers threw in 2001 a meter of transparency of the markets, with Chile and United States in the **second place** behind Singapore.
• **Growth of the GDP**

It has allowed it that the country has presented a half annual growth of the GDP that overcomes 6% approximately during the last 20 years.

For the year 2004, the Central Bank of Chile foresees a growth that rotates around 5.5%.

• **The most liberals economies in the globe.**

The Index of Economic Freedom that every year The Wall Street Journal qualifies Chile in the 2004 like one of the 13 freer economies, for on countries like Finland, Germany or Spain, being leader in Latin America.
International perspective

FTA partners

- USA
- EU
- Canada
- South Korea
- Mexico

FTA candidates

- China
- India
- Singapore

Economic associations

Asia-Pacific Economic Cooperation Forum
Mercado Común del Sur
(Common Market from South)
Internet Users in Chile and his comparison with other American countries.

Source: Centro ED & ITU
Growth of the Broad Band in Chile
Source: Centro ED, El Mercurio
Growth of the E-Commerce in Chile
Source: Centro ED
Ranking of E-Goverment, Brown University.
Source: Centro ED

1. Taiwán
2. Corea del Sur
3. Canadá
4. EE.UU.
5. Chile
6. Australia
7. China
8. Suiza
9. Gran Bretaña
10. Singapur

Ranking of E-Goverment, Harvard University.
Source: Centro ED

1. India
2. Mexico
3. Belgium
4. Italy
5. Hungry
6. Germany
7. Spain
8. France
9. Australia
10. Ireland
11. Netherlands
12. UK
13. USA
14. Taiwan
15. Estonia
16. Iceland
17. Singapore
The individual User: The Paradox

% of population that use E-Government.
Source: Taylor Nelson Sofres

Penetration of E-Commerce.
Source: Centro ED
Principal activities of individual users Chile v/s USA
Source: Centro ED
Reasons for the less utilization of Internet from the individual users

• The short time that they take connected to Internet (6 hours).

• The level of knowledge in terms of handling of Internet (55% regular users, 17% experts).

• Other outstanding reasons are of cultural type: the purchase in a mall or commercial house has a recreational and symbolic connotation.

• It doesn't exist of buying for catalog, but rather the tendency exists to play and to see the things that are bought.

• The great apprehension exists for the security of the personal data.

However.... E-Banking and Declaration and payment of taxes
• In December of 2002 a total of **687 thousand people** was connected to the platforms offered by the banks, what represents an increase of **49%** in twelve months.
• Also in that month, they were reported more than **20 million transactions**.

The tax experience

Total of declarations

- **Internet**: 1,403,178
- **Paper**: 633,950

The tax experience
Digital Signature Act 2002

Act Nº 19.799 "of electronic documents, electronic signatures and the certification of this signature" 12th April of 2002

This legislation has 25 articles, which regulate five aspects fundamentally:

1. Establishment of a series of principles which will inspired the law, and that will prevail specifically on the interpretative rules of Civil Code (a. 19 & ss)

2. Juridical recognition of the electronic documents signed electronically,

3. Recognition of the electronic signature,

4. The use of the electronic signature by the State.

5. Regulation of Certification Authorities.
Juridical recognicement of the Electronic Documents

**Definition:** "Article 2º. - For the purpose of this Act:

d) **Electronic document:** all representation of a fact, image or devises that it is created, send, communicated or received by a electronic form and stored in a suitable way for their later use;

**Importance of the juridical recognition:**

- **General Rule:** all contract concluded by electronic means are perfectly valid: agreement of wills
  However article 1.709 of the Civil Code: the civil obligations over 2 UTM (£ 54 approximately) should be in written form (in paper).
  Hence, **electronic contracts are valid BUT can’t be proven in trial** because it is not considered as "document".

- **Solemn Contract (exception):** Some contract require for their validity being in written form (ex. Purchase of a property). So Electronic Document will **not be valid** for this purpose.
The E.D. granted by way of solemnity (art.3)

General Rule: Art. 3º: "The acts and granted contracts or taken place by natural or juridical people, undersigned by means of electronic signature, will be valid in the same way and they will produce the same effects that those taken place in writing and in paper support. This acts and contracts will be reputed as writings, in the cases in that the law demands that the same ones consist in that way, and in all those cases in that the law foresees juridical consequences when they consist equally in writing."

1. Be signed by an electronic signature.
2. They will have the same legal effects as of “paper” documents.
3. They will be considered as written, where the law demands.

Exceptions:

a) Where the law demands a solemnity that is not susceptible from being completed by means of electronic document → Registers
b) Those in that the law requires the personal concurrence of some of the parts, and
c) In relation to the Family Law

Result: Almost any solemn contract cannot be made it in electronic form

Recognition E.D. as a valid prove (art.5)

In explicit terms establishes that the E.D. can be presented as an evidence. Also regulates the valuation of E.D. as evidence.

The article recognizes three classes of electronic documents:

1. Public E.D. (art. 5, nº 1).
2. E.D. private signed by means of Advanced Electronic Signature (art. 5, nº 2)
3. E.D. private that signed but not by means of A.E.S. (art. 5, inc. final).
Judicial recognition of Electronic Signature

Electronic Signature

Concept: "any sound, symbol or electronic process that it allows to the receiver of an electronic document to identify its author at least formally" (art. 2, letter f of the Act Nº 19.799).

- Principle of technological Neutrality.

- This definition, not necessarily fulfills the requirements for authenticity, integrity, no rejection and confidentiality.
Advanced Electronic Signature:

Concept:

"that certified one for a credited C.S.P. that has been created using means that the holder maintains under his exclusive control, so that it is only linked to the same one and the data to those that refers, allowing the later detection of any modification, verifying the holder's identity and impeding that he ignores the integrity of the document and his responsibility. (art. 2, letter g) "

Elements:

- signature is certified by accredited C.S.P
- signature has been created using means that the holder maintains under his exclusive control, linking the user's identity with the signature.
- allows the later detection of any modification (Integrity). (P.K.I.)
- impedes the rejection about the integrity and the responsibility by the signatory.
Certification Service Providers:

Concept: "... national or foreign, public or private juridical people that grant certificates of electronic signature, without damage of the other services that can carry out" art. 11, inc. 1º

Obligatory services:
1. The emission of the certificate (art. 11, inc. 1º).
2. The keeping of a directory of certificates (art. 12, letter b))
3. Revocation service and suspension of the certificates (art. 16, nº2 of the Law, art. 27,28 and 30 of the Regulation).
4. Elimination in the registration of the certificate that has been without effect (art. 16)
5. Upgrade of the certificates (art. 24 of the Law, art. 6, d) of the Regulation)
6. Creation of a couple of keys of a digital signature (art. 25 of the Regulation)

Obligations:
1. Common obligations (art. 12)
2. Obligations for the accredited CSP (art. 12 y 17)

Acredited Service Provided (art. 17)

The legislator established a voluntary system for the C.S.P., by means of the Accreditation before the Subsecretary of Economy for also called "Accreditation Entity" according to the art 2, letter and)

Registration Authorities: State Agencies.

Liability of the CPS (art. 14)

• Subjetive responsability
• In case of dispute C.S.P have to prove that he acted without blame.
• C.S.P. limits its civil responsibility for the “uses” that it determines for each certificate in its CPS.
• Insurance 5.000 UF (£ 76.000). Just Accredited CPS.
• Exention of responsability of the State.
Criticism of the Act

1. Restricted recognition of the E.D.

2. Limitation of the C.S.P. “use” → amount of $. End of the insurance or acotate it.

3. Registration Authorities.

4. Liability of the State → unconstitutional.

5. No initiatives for the mutual recognition of the electronic signatures with other countries.
Act nº 19.628 SOBRE PROTECCION DE LA VIDA PRIVADA (1999)

**Privacy Act:**

Art. 4º: “Right to privacy”.

The **BIG** exception. The confidential data is illegal to use without authorization. It is only considered “confidential” for: bank, taxes, political parties.

There is no special authority that control the accomplish of the act.
Other legal issues

**Spam:**

- There is no Civil (Consumer Protection) and Criminal law that punish the Spaming

- The Transatlantic Consumer Dialogue (TACD), in *Report of online survey on spam, Oct - Dec 2003*, 52% said that **they shop online less or not** at all because they are worried about **spam**
Consumer protection act:  


• Doesn’t contemplate the explicit recognicement of the e-commerce.

• Is not aplicable to the majority of the aplication form contracts on web (use & terms), because they not contemplate “a payment”. But even they have commercial proposits.
Conclusions

- As we see, there is not enough protection to the individual user to trust in B2C

- The measures that are adopted from now on should spread to be made in a holistic way in order to generate the enough trust. Not everything is money.

- The Chilean experience should be model for other nations in order to avoid that the same errors take place, mainly in the countries in the developing countries.

- Recently the rushed "Digital Calendar 2004 - 2006"....