



## Latin America E-Commerce Survey 2017

Prepared by the South America Membership Committee

Participating Countries:

- Argentina
- Bolivia
- Brazil
- Chile
- Colombia
- Ecuador
- Mexico
- Panama
- Peru
- Puerto Rico

## Introduction

By Robert M. Weiss, 2017-2018 President of ITechLaw

E-Commerce and online transactions represent an ever-growing portion of global economic activity. But, national legal regimes that govern this area are in diverse states of maturity, and generally lag behind technological advances and rapidly evolving commercial practices. The countries of Latin America, in particular, have promulgated e-commerce related laws and regulations that are strikingly diverse in some respects, but in other respects have coalesced around certain common norms and precepts. The South America Committee of ITechLaw has completed a rich and expansive survey that interrogates a pool of experts in important Latin American jurisdictions about key concepts pertaining to e-commerce and online transactions and how such concepts (if indeed recognized) are treated under their respective national laws. The jurisdictions surveyed include Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Panama, Peru and Puerto Rico. Among the issues examined for each subject country are:

- Does the country has specific regulations addressing e-commerce?
- Does the country have governmental agencies that control e-commerce?
- Do electronic documents have legal recognition in the country?
- Is the country's consumer protection regulation applicable to e-commerce?
- Are digital signatures recognized in the country? and
- Does the country have tax regulation that is specific to e-commerce?

Our survey participants have responded to these and other important questions regarding the laws and regulations applicable in their countries to e-commerce and online transactions. Their answers will surely leave the reader with a nuanced and detailed picture of the legal regimes that govern the conduct of e-commerce in Latin America.

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**1. Please indicate whether, in your respective jurisdiction, there exist specific regulations for e-commerce. If yes, please explain and provide a summary of them. If no, please explain what general principles of law would apply to e-commerce.**

**Argentina:**

Argentina does not have in place a comprehensive regulatory scheme governing e-commerce, although there are regulations that are applicable to it. These include Consumer Protection Law No. 24,240 ("CPL"), and Resolutions Nos. 412/1999 and 104/2005 of the Ministry of Economy. In addition the Civil and Commercial Code ("CCC") which came into effect on August 2015 addresses issues related to e-commerce and electronic contracting.

The CPL, passed in 1993, was originally contemplated to protect consumers in the actual commercial market. Since then, however, its provisions have been applied to consumers dealing in the e-commerce market. Although question (g) below will address the CPL in more detail, it is worth noting that it does not protect commercial transactions that are entered into with the purpose of carrying out other commercial transactions, since its aim is to protect consumers.

The same is true of Resolution No. 104/2005 of the Ministry of Economy, which expressly regulates commercial transactions carried out on the internet. This regulation incorporates Resolution No. 21/2004 of the MERCOSUR, on the Right to Information of the Consumer in Commercial Transactions Conducted on Internet. It seeks to safeguard the right to information of the consumer in e-commerce transactions, stating that they have a right to clear, precise, sufficient and easy access to information.

Moreover, Resolution No. 412/1999 of the Ministry of Economy, which approved the recommendations formulated by the Ministry's Work Group on Electronic Commerce and Foreign Trade also applies to e-commerce. It is for the most part aspirational in nature and, while some of the suggested provisions were later adopted, for the most part they remain as guidelines.

On the other hand, the CCC brought many changes to the old regulatory scheme and meant an update in some issues that relate to electronic commerce.

In the first place, the CCC formally incorporated the validity of digital signatures in Section 288. The definition and effects of digital signatures under Argentine law will be discussed in question (i). In addition, it expressly recognized electronic contracts, and incorporated provisions on electronic consumer contracts. Regulations introduced by the CCC will be discussed in more detail in response to questions (e) and (g).

**Bolivia:**

In this jurisdiction there are vague references to e-commerce. Telecommunications Law 164 and Bylaw to Law 164 have scarce reference to e-commerce. Law 164 has four articles pertaining to e-commerce, which are broad and vague and defers the validity of e-commerce relations to the "stipulations of the law" but there are no specific laws talking about e-commerce.

The bylaw to Law 164 contains 2 articles in relation to e-commerce and basically lists what the object of e-commerce is with very broad enunciations.

**Brazil:**

There is not a single law for e-commerce in Brazil. From the consumer protection perspective, e-commerce is regulated by Decree 7,962/2013, which is applied to B2C (business-to-consumer) transactions but jointly with the Consumer Protection Code (CDC), which establishes rules on consumer rights, product/service liability and crimes against consumerist relationships. On the other hand, B2B (business-to-business) and C2C (consumer-to-consumer) transactions are, as a general rule, governed by the Brazilian Civil Code, which establishes general rules on contracts and civil liability.

From the intellectual property perspective, the Laws 9,609/98 and 9,610/98 establishes rules on the protection of author rights on software and the use of photos, images, texts, audios and videos, and it is also applied to e-commerce.

As regards personal data protection, the Brazilian Constitution and several statutes guarantees individuals' right to privacy, and that the right to

compensation for economic and non-economic damages resulting from the violation thereof is guaranteed.

In addition, the Law 12,965/2014, known as the Internet Bill of Rights or Marco Civil da Internet, establishes the principles, guarantees, rights and obligations for the use of Internet in Brazil. Its regulation (Decree 8,771/2016) sets rules on the transparency in the request of registration data by the public administration; procedures for storage and protection of personal data by providers of connection and applications; and supervision and verification of infringements.

It is also important to mention that the registration of the Brazilian country code top-level domain '.br' is subject to the rules issued by the Brazilian Internet Management Committee (CGI), an entity represented by the government, society and private enterprise; and the operation of the Brazilian Public Key Infrastructure (PKI-Brazil) regulated by Provisional Measure 2,200/01.

**Chile:**

Scattered regulations in the Chilean Consumer Law, e-signature and Telecommunications regulations; new Data Privacy bill pending in Congress.

**Colombia:**

In Colombia Law 527, 1999 defined e-commerce, the access and use of data messages and digital signatures. However, it cannot really be categorized as a regulatory framework or a detailed regulation on the subject.

Regarding e-commerce, in article 2 of Law 527,1999 e-commerce is defined as follows:

*"Article 2. Definitions. For the purposes of this law, the following definitions shall apply: (...) b) Electronic commerce. It covers the issues raised by any relationship of a commercial nature, whether contractual or not, structured from the use of one or more data messages or any other similar means. Commercial relations include, but are not limited to, the following operations: any commercial operation for the supply or exchange of goods or services; Any distribution agreement; Any commercial representation or mandate; All types of financial, securities and insurance operations; Construction work; Consulting services; Engineering; Of licensing; Any agreement granting or operating a public*

*service; Joint ventures and other forms of industrial or commercial cooperation; Transport of goods or passengers by air, sea and rail, or by road."*

In accordance with the latter definition, both commercial and consumer protection laws apply to such relationships. The enforcement of one or another will depend if the economic relationship between the parties encompasses an asymmetry of information or not, pursuant to the Superintendence of Industry and Commerce ("SIC") decisions.

Law 1480, 2011 (General Consumer Protection Statute) does address specifically ecommerce relationships at least on four issues:

- i. It defines e-commerce as "distance offerings" which leads to the duties to allow right to withdrawal to consumers in accordance with the terms of Article 47 and subsequent sections;
- ii. E-commerce companies have to guarantee payment reversals when any debit, credit or electronic payment system is used to conduct any purchase through the mobile or website;
- iii. Special protection for underage consumers using e-commerce and;
- iv. Contact platforms.

Law 1581 of 2012 about data protection, establishes certain guidelines for electronic transactions in which personal data is used, namely the authorization requirement for the processing of personal data, the obligations of Controller and Processor, among others.

Law 1266 of 2008 as to the processing of financial data and information processed for credit score purposes. Law 1341 of 2009 referred to information, technology and communications aspects, as to the services related to telecommunications such as Internet.

Also it shall be dully noted that there are specific-industry regulations in regard to ecommerce such as tax withholding regulations for payment gateways, certain administrative levies to e-commerce travel sites, as well as specific tax issues that will be addressed on a following question.

Finally, there has been a de facto legal barrier to cloud computing as the Data Protection Authority had not established legal directives for international

data transfer and transmission, despite the fact that the data protections laws of Colombia do allow such transfers.

**Ecuador:**

On April 17, 2002, the National Congress of Ecuador approved the Law of Electronic Commerce, Electronic Signatures and Data Messages.

The Law is based on the Model Law of UNCITRAL and comparative law, adapting these norms to the legal reality of Ecuador.

The Law contains different topics for its analysis, such as: general principles related to data messages, electronic signatures, certificates and certification bodies for electronic signatures, computer procurement and penal reforms

Among the most important articles of the law, we can say that are in the general principles, the legal recognition of data messages, applying the principle of functional equivalence. Incorporation by referral is also enshrined to approve information not contained directly in a data message with the use of hyperlinks.

Intellectual property is respected by expressly recognizing international and national regulations

It highlights an important right such as confidentiality or reservation that opens in a wide range to protect personal privacy against possible violations by electronic means.

The written and original information require as a foundation to be accessible after its creation and the integrity of its content. This article is the basis for the dematerialization of documents

The preservation of data messages is essential as it establishes the requirements for archiving electronic documents and will guide the validity of digitized documents.

The door opens to the legislation on the protection of personal data, with an article that establishes its principles, especially the authorization.

In order to better apply the Law and electronic commerce, several principles are established that regulate the time, place of sending and receiving of

data messages, based on the input or output of the information system.

The definition of electronic signature was based primarily on the Model Law on Electronic Signatures of UNCITRAL. It is granted the same validity as the handwritten signature and it is presumed the will to be bounding when signing a document

In line with the Model Law on Electronic Signatures of UNCITRAL, the definition of electronic signature is established as generic conceptualization, giving way to other species of signatures such as numerical or digital, which is based on public key certificates and private key

The requirements imposed on electronic signature certificates are based on the standard observed by the International Telecommunication Union and the International Standards of Standardization. Due to the responsibility of the certification bodies, they established the obligations that they must maintain in the fulfillment of their functions.

It is authorized to provide certification services through third parties, which will help the administration of the services of companies that are not located in the country.

The consumer of electronic services is also protected by requiring their consent to accept the use of data messages, regarding the clarity and accuracy of information relating to the good or service requested or offered.

Data messages are accepted as a means of testing and their assessment will be submitted to compliance with the Law.

**Mexico:**

In Mexico there are no specific regulations for e-commerce. However, diverse legislation has been modified in order to recognize and regulate e-commerce. As a Civil Law jurisdiction, in Mexico the general principles that apply to e-commerce are established in our Federal Civil Code, Federal Civil Procedure Code, Commerce Code and the Federal Consumer Protection Law. All these laws were amended in the year 2000 in order to include e-commerce regulations. The general principles of law applicable to e-commerce may be summarized as follows: (i) an offer proposed by telephone, electronic or optical means or any other technology,

if no specific term for its acceptance is established, must be accepted immediately, otherwise, the offeror shall have no obligation to honor such offer; (ii) the acceptance and/or proposals done by telephone, electronic or optical means or any other technology, require no previous agreement among the parties for its validity; (iii) when the law establishes that certain contract must be in written or formalized before a notary public, and the parties grant their consent using electronic means, optical means or any other technology, the contract shall be valid if the information provided is attributable to each party and accessible for further consultation. The notary public shall mention the elements/information attributable to each party and keep under his/her custody a complete version for further consultation; and (iv) the information generated or provided by electronic or optical means, or using any other technology, is admissible as evidence in a legal procedure.

**Panama:**

Commerce Code (Law 51/2008).

**Peru:**

Regulation applicable to e-commerce: Civil Code on electronic agreements, Digital Signatures and Certificates Act, Cybercrime Act, Consumer protection (fully applicable to e-commerce transactions), Data protection Act, Antispam Act and Do-not-insist registry regulation.

**Puerto Rico:**

There are no specific regulations for e-commerce in the United States or Puerto Rico. However, e-commerce is governed by a number of federal and state laws on subjects such as contract, cybersecurity, consumer, and privacy law.

In terms of contract law, the federal E-Sign Act, 15 USC 7001, provides that, with respect to any transaction in or affecting interstate or foreign commerce “a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form.” This has the effect of providing assurance for signatures provided in electronic form such as click wrap agreements (assent through click or checkbox), browse wrap agreements (assent through use of website) or public notice (email or other notification stating that continued use of a website or service implies acceptance of terms and conditions). Puerto Rico state law also regulates

electronic signatures similar to the federal E-Sign Act. In particular, Article 7 of Act 259-2004 recognizes the validity of electronic signatures and states that an electronic signature has the same effect as a handwritten signature.

In Puerto Rico, the Electronic Transactions Act, Act 148-2006, as amended, also regulates digital signatures issued by certification authorities and more related to e-commerce, the notices necessary to inform consumers of their right or option to receive written documentation for transactions. The Electronic Transactions Act follows the Uniform Electronic Transactions Act which has been adopted in virtually all of the states of the United States.

In terms of cybersecurity law, depending on the type of e-commerce, there may be a duty to notify cybersecurity breaches. This is because there is no uniform data breach notification law in the United States or Puerto Rico which means that most data breach notification laws in the United States are industry-specific.

For instance, covered entities under the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) are required to maintain “protected health information” (PHI) under administrative, technical, and physical safeguards to ensure its confidentiality. In case of breaches, the covered entity must notify the individuals whose information has been accessed and to inform the individual what measures are being taken to investigate, mitigate, and protect against unauthorized use of the PHI.

Similarly, the Gramm-Leach-Bliley Act (GLBA) governs companies engaged in financial services. Under the GLBA, when a financial organization becomes aware of an incident of unauthorized access to personally identifiable information, the organization must notify the affected customer and conduct a reasonable investigation to ascertain whether the likelihood that the information has been or will be misused. The GLBA may also apply to particular websites that offer credit facilities or those that perform their own processing of electronic transfer of funds.

At the state level, in Puerto Rico any entity that is the owner or custodian of a database that includes unencrypted personal information of citizen

residents of Puerto Rico must notify said citizens of any breach of the security of the system pursuant to the Citizen Information on Data Banks Act, Act 111-2005, as amended.

In terms of consumer and privacy law, the Federal Trade Commission and the Department of Consumer Affairs of Puerto Rico regulate deceptive and/or fraudulent practices in commerce. All of the same deceptive practices that apply to consumers in

traditional commerce also apply in ecommerce. Furthermore, the issue of terms and conditions and privacy policies in websites is also viewed from a standpoint of deceptive practices. In other words, an ecommerce's terms and conditions and privacy policy must reflect exactly what is done by the ecommerce. Any deviation between the disclosure in those documents and the company practices may result in fines.



**2. Does your jurisdiction follow any international e-commerce model such as the "UNCITRAL Model Law on Electronic Commerce" or "Directive 2000/31/EC of the European Parliament ("Directive on electronic commerce")"?**

**Argentina:**

Argentina does not follow any international e-commerce model such as the "UNCITRAL Model Law on Electronic Commerce" or "Directive 2000/31/EC of the European Parliament ("Directive on electronic commerce").

**Bolivia:**

While this jurisdiction has signed some of the UNCITRAL model laws for certain commercial aspects, it is not part of the UNCITRAL Model Law on Electronic Commerce. It does not necessarily follow that it will not follow such model, especially in absence of other re-commerce regulation, but it is not a part to it.

**Brazil:**

Brazil is a member of UNCITRAL, but the current legislation applicable to e-commerce does not follow UNCITRAL Model Law on Electronic Commerce. Since 2001 there is an important bill of law in discussion by the National Congress (PL 4906/2001) which aims at complying with UNCITRAL Model Law on Electronic Commerce but its approval is not forecasted.

**Chile:**

Not applicable.

**Colombia:**

Colombia adopted the UNCINTRAL Model Law on Electronic Commerce through the issuance of Law 527, 1999, regulated by Decree 1747, 2000. Decree 2364, 2012 regulated the creation, security mechanisms and contracts in regard to electronic signatures.

On November 9th, 2009 the Council for National Economic and Social Policy enacted the "Framework for the Development of E-commerce in Colombia". The document is a general policy working document that has not actually enforceable laws against private agents. Nevertheless, it does contain certain principles that should be followed by public entities when enforcing regulations against e-commerce businesses.

**Ecuador:**

Ecuador Follows "UNCITRAL Model Law on Electronic Commerce" as the prime reference.

**Mexico:**

The UNCITRAL Model Law on Electronic Commerce was the model for implementing certain provisions on e-commerce in our laws. There are some opinions that assure that such model was not fully adopted and that important definitions/concepts are missing.

**Panama:**

Not applicable.

**Peru:**

Even though Peru issued legislation on digital signatures on 2000 it did not follow the UNCITRAL Model Law on Electronic Commerce. On 2012 entered into a free trade agreement with the UE; however there is no specific endorsement for Directive 2000/31/EC of the European Parliament.

**Puerto Rico:**

Puerto Rico has not approved legislation in accordance to the UNCITRAL Model Law on Electronic Commerce.

**3. Are there specific regulations regarding e-commerce liability or does your jurisdiction apply general liability principles of law?**

**Argentina:**

There is no specific regulation regarding e-commerce liability, the general liability principles of law are applicable.

On the other hand, specific liability rules established in the CPL may apply to e-commerce operations in the event of consumer contracting. In connection with this, Section 40 of the CPL states that there is joint liability between those involved in the supply chain for damages resulting from defects or risks associated with a good or service.

**Bolivia:**

There is no specific regulation regarding e-commerce liability and this jurisdiction applies the general liability principles contained in the more traditional statutes.

**Brazil:**

E-commerce liability follows the general liability principles and rules of law, which is provided by the Federal Constitution, the Civil Code, the CDC and the Internet Bill of Rights. Moreover, administrative and criminal liabilities are also applied to e-commerce.

It bears to mention that the Internet Bill of Rights sets forth that internet access service providers (IPs's) will not be held liable for damages related to content made available by third parties.

On the other hand, ISP's (as defined by law, which include, in general, hosting ISPs, content ISPs, and others) will have liability over content made available by third parties, only if, after receipt of judicial notice, it does not take any action to, notwithstanding the technical limitations of the service, make the infringing content unavailable. However, when it comes to the unauthorized disclosure by third parties of content that violates the intimacy of individuals, such as the unauthorized disclosure of nude and sexual images or videos, ISP's liability will be subsidiary upon non-performance of any action after the receipt of notice by the injured individual.

**Chile:**

General liability plus specific regulations in the Chilean Consumer Law.

**Colombia:**

Since the signing of the Free Trade Agreement between the United States and Colombia, pursuant to the obligations contained thereof, there have been several attempts to impose third party liability to Internet Service Providers.

Nevertheless, such draft bills have all failed approval by senate or invalidated by the Constitutional Court of Colombia for privacy considerations.

Despite the latter, it is expected that a new draft bill will be introduced on 2017 that will impose certain special liability regulations for internet intermediaries.

Before such regulation does come into effect, civil liability and consumer protection laws will regulate e-commerce conflicts.

**Ecuador:**

We do not have a specific regulations regarding e-commerce liability but we follow the objective liability. The objective responsibility of who provides content or who provides services.

**Mexico:**

The Federal Consumer Protection Law regulates the relation between vendors and consumers; therefore, it is also applicable to e-commerce liability. The Consumer Protection Law has a special chapter establishing the consumers' rights when using electronic means.

**Panama:**

Not applicable.

**Peru:**

Any type of conflict derived from an e-commerce transaction is subject to the agreement among parties, the Civil Code (general liability principles) and consumer protection regulation when applicable.

**Puerto Rico:**

Puerto Rico does not have any specific regulation regarding e-commerce liability. General Puerto Rico tort law and court jurisdiction case law applies to e-commerce.

**4. Are there any governmental agencies regulating and controlling e-commerce? Is there any chamber of commerce representing e-commerce companies?**

**Argentina:**

Argentina does not have a specific governmental agency regulating and controlling e-commerce. However, the National Consumer Protection Agency of the Ministry of Production (Dirección Nacional de Defensa del Consumidor del Ministerio de Producción) protects consumer rights and controls consumer relations in general. Therefore, to the extent consumer law is applicable, electronic commerce activities will fall within its scope.

Conversely, there is a chamber of commerce representing e-commerce companies specifically. The Argentine Chamber of Electronic Commerce (Cámara Argentina de Comercio Electrónico) was established in 1999 to defend and represent e-commerce companies and to educate and promote the use of the new technologies in transactions. Currently it has over 600 members.

**Bolivia:**

There are no governmental agencies regulating e-commerce as such. What exists is a hierarchy of institutions to implement the digital signature, which is a requirement for valid transactions in which e-commerce is encompassed.

Article 87 of Law 164 stipulates that digital documents in order to be valid and have an evidentiary weight require a digital signature. This means that a certified digital signature is required for electronic transactions and the law so far only provides for a digital signature validation.

This hierarchy starts with the telecommunications agency and that will enable certification entities and these, in turn, will have registration agencies where a digital certificate for electronic transactions will be obtained.

Currently, the administration is trying to implement the digital signature at a public level (for public entities) but they still have to materialize the digital signature so there is almost no real experience on how this infrastructure works.

**Brazil:**

There is not a specific governmental agency regulating and controlling e-commerce in Brazil. However, the National Telecommunications Agency (Anatel) is the governmental body responsible for regulation of the telecoms services that support internet access, and acts under Law 9,742/1997 (Telecommunications Law). The Consumer General Secretariat, subordinated to the Ministry of Justice, acts as regards themes treated in the Consumer Protection Code. The Administrative Council for Economic Defense (CADE) acts in case of violations against the economic order. Such bodies, as well as other bodies and entities of the federal public administration, shall act in a collaborative manner following the guidelines fixed by the Internet Steering Committee (CGI.br), which is also responsible for the registration of domain names.

The Information Technology Institute, which is a government agency linked to the Presidency, regulates and controls the Brazilian Public Key Infrastructure ("PKI-Brazil").

**Chile:**

Servicio Nacional del Consumidor (SERNAC).

**Colombia:**

E-Commerce business have to interact with several regulatory agencies depending on the industry they focus on.

The governmental agency with which they have the most regulations and controlling is the Superintendence of Industry and Commerce (“SIC”). This agency is the consumer and data protection agency in Colombia and therefore it issued the most decisions in regard to e-commerce issues.

Another agency currently refereeing indirectly to e-commerce regulations is the Communications Regulation Commission which conducts several studies that may affect certain aspects of e-commerce.

The “Camará Colombiana de Comercio Electrónico” is the main guild of e-commerce business in Colombia. They represent through several committees all the interested and participating parties of the Colombian e-commerce industry. There are other chapters in industrial and commercial guilds, but the CCCE is the only one dedicated one hundred percent to e-commerce issued.

**Ecuador:**

We do not have a government agency that regulates or controls Ecommerce. This is regulated by the general rules and the Law of Electronic Commerce.

**Mexico:**

The Federal Consumer Protection Bureau is a governmental agency in charge of protecting consumers’ rights in general. When vendors use electronic means for selling a product or rendering a service, consumers have the protection of this Bureau. The Mexican Association of Online Sales (Asociación Mexicana de Venta On Line) is the main association in Mexico representing e-commerce companies.

**Panama:**

Dirección de Comercio Electrónico del Ministerio de Comercio e Industrias de Panamá.

**Peru:**

No, there are no governmental agencies regulating and/or controlling e-commerce as an specific matter. Regarding Chambers of Commerce representing e-commerce companies we can list the following: (i) American Chamber of Commerce through its Internet Committee (Comité de Internet), (ii) Lima Chamber of Commerce through its ICT Committee (Gremio TICÁ) and (iii) Cámara Peruana de Comercio Electrónico (CAPECE).

**Puerto Rico:**

Puerto Rico does not have any governmental agencies regulating and controlling e-commerce specifically.

**5. Do electronic documents have express legal recognition in your jurisdiction? Are there any specific requirements they must meet to qualify as electronic documents?**

**Argentina:**

Under the CCC, electronic documents have express legal recognition. There is, however, no definition of electronic document, nor are there specific requirements for a document to qualify as such.

Section 1106 of the CCC states that whenever the CCC or any special laws require that a contract be in written form, this requirement shall be satisfied if the contract with the consumer or user has electronic support, or support in a similar technology. This provision is contained in a chapter dealing with types of consumer contracts, which subsequently regulates distance contracts entered into between consumers and suppliers.

In addition, Section 288 of the CCC establishes that in electronic documents, the requirement of a signature shall be met if a digital signature is used, ensuring beyond doubt the authorship and integrity of the document. It follows that electronic documents are recognized, and that their effects can vary depending on whether they are signed digitally or electronically, which will be discussed in more detail in question (i).

Therefore, agreements and consent can be granted electronically. However, if a digital signature (which under Argentine law is the equivalent of a handwritten signature) is not used, some enforcement issues may arise.

In that connection, some measures could be taken to assist proving the other party's consent in the event of enforcement problems. These include presenting the terms of the agreement clearly prior to acceptance, making them easy to read and print or save a copy of, granting the option to decline as prominently as the option to agree, and making the agreement available online for future reference. It would also be helpful to save documentation which tracks the other party's consent. Keeping a log with the party's electronic activity that records their viewing of the terms, agreeing to them, and saving of a copy, could also be useful.

**Bolivia:**

Electronic documents have express legal recognition in this jurisdiction as long as they have a digital signature. Documents lacking a digital signature will not be held as valid documents and will not carry full evidentiary weight.

A digital signature will need to be obtained for certified entities but, as mentioned above, the digital infrastructure does not exist yet and, therefore, there are no available certifying entities to enable e-commerce transactions.

**Brazil:**

Yes. The Provisional Act 2,200/2001 sets forth that any electronic document signed with a private key issued by the Brazilian Public Key Infrastructure ("PKI-Brazil") is valid, and presumably authentic with regard to the signatory. It also provides for that electronic documents using authority and integrity verification means other than the PKI-Brazil's will also be valid as regards the relationship between the parties.

PKI-Brazil establishes that any public or private entity may become a certifying authority within the scope of PKI-Brazil, provided that it meets the specific requirements set forth in the PKI-Brazil Regulations. Brazilian laws do not prohibit the creation of other certification infrastructures unrelated to PKI-Brazil. In this case, the entities are free to establish their own regulations, security measures and policies – the existence of a reliable system of authorship and integrity verification is the only requirement made by Provisional Act 2,200/2001 to ensure validity of electronic documents. All entities involved in the delivery of this kind of service will be liable for the damages they might cause whether during or as a result of their activities.

**Chile:**

Not applicable.

**Colombia:**

Yes, Article 6 of Law 527, 1999 states that any information, which under the law should be presented in written form, may equally be filed by means of electronic/data messages.

In addition, under Article 244 of Colombia's General Procedure Code (Law 1564, 2012) documents submitted by means of electronic/data messages will be presumed authentic if: (i) there is certainty as to who produced the document; and (ii) no accusations of its falsehood have been made.

Note: For the purpose of the answers above, electronic/data messages are defined under Article 2 of Law 527, 1999 as any information generated, sent, received, stored or shared by electronic, optical or similar means, such as Electronic Data Interchange (EDI), Internet, e-mail, etc.

**Ecuador:**

They are expressly recognized in a generic way by article 2 of the Law of Electronic Commerce. For its validity it is necessary that they comply with the requirements of the law in terms of integrity and access when it comes to file or originality.

**Mexico:**

Yes they do. Our law will recognize as electronic document any document generated or transmitted by electronic or optical means, or using any other technology.

**Panama:**

Not applicable.

**Peru:**

Yes, they have express recognition in Peruvian jurisdiction given by the Law No. 27269 (Digital Signatures Act). Supreme decree No. 052-2008-PCM (Regulations to the Digital Signatures Act) provides that electronic documents will be admitted as evidence in court proceedings and administrative procedures as long as they have been digitally signed using a digital certificate issued by a certified entity.

**Puerto Rico:**

Yes. Pursuant to the Electronic Transactions Act, Act 148-2006, as amended, defines electronic document broadly as "a file created, generated, sent, communicated, received or stored in any type of electronic media." The Electronic Transactions Act also establishes that "no legal effect or validity shall be denied to any electronic documents or signatures solely because they are in electronic form" and "no legal effect or validity shall be denied to a contract because an electronic document was used in its formation."

The Electronic Transactions Act follows the Uniform Electronic Transactions Act which has been adopted in virtually all of the states of the United States.

**6. Are ancillary documents hyperlinked to main agreements valid in your jurisdiction? If no, is the entire agreement invalid or just those documents to which it redirects? (As for example Terms of Use, Privacy Policies or Software End User Agreements).**

**Argentina:**

Agreements containing provisions redirecting to separate documents are valid in Argentina, however there are limitations that apply to adhesion (boilerplate) contracts.

The CCC defines adhesion contracts as those in which one of the parties adheres to terms set unilaterally by the other party or by a third party, and holds them to certain requirements. They must have comprehensible and self-sufficient clauses, and be written in a clear and complete fashion; ambiguous clauses are interpreted against the party that has set the terms.

In addition, under Section 985 clauses which refer to texts or documents which are not provided to the adherent party before or during the conclusion of the contract are null. The CCC specifically states that this rule is applicable to contracts carried out by telephone or electronically. This means that in the case of e-commerce contracts, redirecting to other content by the use of links would be invalid. The agreement in itself would remain valid but the clause which redirects elsewhere, and consequently those documents to which it refers, will be considered non-existent.

**Bolivia:**

Yes, agreements containing provisions redirecting to separate documents, which are or are not hyperlinked at the time of executing the agreement are valid in this jurisdiction.

**Brazil:**

Agreements containing provisions redirecting to separate documents which are or are not hyperlinked at the time of executing the agreement are valid in Brazil. However, such agreements must highlight the separate documents and make them available as soon as possible. From the consumer protection perspective, CDC provides as a consumer right the adequate and clear information about the services agreed, as well as any risk involved.

**Chile:**

This should be evaluated on case by case basis, but generally the invalidation will be partial (only redirected documents).

**Colombia:**

In regard to documents and contracts involving consumer relationships, which usually are the most common in e-commerce, consumer protection laws will require that the offeror provides sufficient and enough information in regard to the terms and conditions of the product or service offered. Therefore, if there are certain provisions redirecting to other documents which are not hyperlinked at the time of executing such terms would be considered as not written and also it could amount to a violation of consumer protection laws, for providing insufficient or deceptive information.

Also it shall be duly noted that Data Protection Laws require to that each person provides an informed consent. This means that all information regarding the uses, security, access, update or suppression of the data shall be properly and duly informed. Therefore, any practice that does not provide with full and sufficient information regarding who, how and when is the data collected is going to be used can amount to a violation of Data Protection Laws.

Therefore, it is important for the e-commerce companies to abide with the consent regulations contained in Law 1581, 2012 and Decree 1377,2013. In regard to EULAs, we have provided full answer in Question 9.

**Ecuador:**

Yes, they are legally valid when it contains a hyperlink that leads directly to the content to which the redirect refers.

**Mexico:**

Yes they are. However, when ancillary documents are not attached to the main contract, we always recommend including a clause in the main agreement obtaining the consent/acceptance of the respective party to such ancillary documents.

**Panama:**

Not applicable.

**Peru:**

Yes, as a general rule redirecting to separate documents not hyperlinked at the time of the

agreement are valid in our jurisdiction, as long as, those separate documents are specifically mentioned in the agreement and were effectively agreed among the parties.

**Puerto Rico:**

Agreements which redirect to separate documents not hyperlinked at the time of executing the agreement are not invalid per se but may be subject to impugnation in Puerto Rico courts of law. Ordinarily, all documents pertaining to material agreements or covenants between must be made available for them to have effect.



**7. Does your jurisdiction have a consumer protection regulation? Is it applicable to e-commerce? If yes, how? Are there any other regulations protecting consumers in respect of e-commerce?**

**Argentina:**

Argentina has consumer protection regulations which apply to e-commerce.

As previously mentioned the protections the CPL grants apply to consumers dealing in the e-commerce market. If the commercial activity carried out electronically involves a consumer relationship, the CPL and other regulations stemming from it will be applicable.

The CPL is a national regulation that defines the consumer as the individual or legal entity which acquires or uses goods or services as a final recipient, for its own benefit or for the benefit of its family or social group. Those who, despite not being parties to a consumer relationship acquire or use goods or services as final recipients for their own benefit or for the benefit of their family or social group, or who are in any case exposed to a consumer relationship, are also considered consumers.

The CPL defines the supplier as the individual or legal entity that professionally, even though occasionally, performs the following activities: production, assembly, creation, building, transformation, import, concession of brands, or distribution and marketing of goods and services targeted at consumers and users. All suppliers are governed and bound to comply with the CPL whenever the consumption act takes place in Argentina, even if their domicile or place of business is located abroad.

Some central aspects of general protection consumer law which may be relevant to e-commerce are the following:

- Under the CPL, every description of the service or product advertised by any means of communication is considered part of the offer and a binding term of the contract.
- The CPL and Resolution No. 53/03 ("R-53") list a number of clauses that are considered 'abusive' and are prohibited. If included, they will be unenforceable against the consumer. Abusive clauses may include (i) disclaimers and liability limitations; (ii) consumer rights waivers, restrictions or supplier extension of rights; (iii) clauses providing for the unilateral modification of the contract; (iv) clauses providing for the

unilateral termination or suspension of the contract by the supplier without a reasonable cause, and; (v) choice of law and jurisdiction clauses.

- Suppliers are forbidden from compelling the consumer to reject a good or service in order to avoid the payment of a fee.
- The CPL entitles the consumer to terminate the contract by the same means used to agree upon it (i.e. telephone, internet, etc.).

In addition, Resolution No. 104/2005 of the Ministry of Economy expressly regulates commercial transactions carried out on the internet. Like the CPL, it is only applicable when there is a consumer relationship involved. It mostly focuses on information that must be made available to the consumer, listing data that must be included in commercial websites. Moreover, Section 4 establishes that the consumer must have a way to correct data entry mistakes and expressly confirm the decision to finalize the transaction, so that its silence cannot be taken for consent.

As previously mentioned, the CCC incorporated provisions on electronic consumer contracts. Section 1105 of the CCC defines distance consumer contracts as those in which the parties exclusively use means of communications which do not require simultaneous physical presence. They expressly include those celebrated by electronic means. Further, Section 1106 indicates that whenever a written contract is required by law, a contract with a consumer or user will meet this requirement if it has electronic support.

The CCC then regulates consumer distance contracts celebrated by electronic means. It establishes that the burden of informing the other party of all pertinent information in relation to the contract, including information on the technical means by which the contract is entered into and the assignment of risks, will by default rest with the supplier of goods. Although there is no express legal rule requiring it, considering that the supplier is under a heavy obligation to inform the consumer, it would be a good practice to have the user/consumer/subscriber scroll down the text of the contract or terms and conditions, and tick an unchecked box to express acceptance.

In addition, Section 1108 states that an electronic offer should include the time frame in which acceptance is required. If such a time frame is not provided, the offer will remain in place for as long as it is accessible to the consumer. Suppliers are required to confirm electronically that they have received the consumer's acceptance. There is no particular information that the electronic confirmation must contain, as long as it confirms the acceptance.

An important issue regulated by the CCC concerns withdrawal rights. Under Section 1110 consumers hold an irrevocable ten (10) day period in which to withdraw/ revoke their acceptance of the contract. The supplier is required to inform the consumer of his right to revoke. Failure to do so will result in the time limit to the consumer's right to revoke not starting to run. A consumer wishing to exercise the right to revoke must inform the supplier in writing (by paper, electronically, or by a similar method) or by returning the goods. If the contract is revoked, both parties will be free of their obligations and must return what they have received as a consequence of the agreement. The consumer will bear no cost as a consequence of exercising this right.

On the other hand, Section 1116 of the CCC lists a few exceptions to the right to revoke. These include i) products made according to specifications, personalized, or which based on their very nature cannot be returned; ii) the supply of audio recordings or videos, records or computer programs which have been decoded by the consumer, as well as computer files, supplied electronically, which can be downloaded or reproduced immediately for their permanent use; and iii) the supply of daily press, periodical publications or magazines.

**Bolivia:**

This jurisdiction has consumer protection regulation. Those laws are silent on e-commerce but, in our opinion, they can be applicable to e-commerce provided the e-commerce transaction is valid. Once an e-commerce transaction is deemed valid (because it has a digital certificate) then the transaction itself is a commercial transaction that can be subjected to the existing legislation for ordinary transactions.

There are no specific regulations protecting consumers in e-commerce transactions.

**Brazil:**

Brazil has a very robust consumer protection law, which has the character of a juridical micro system. Besides, the Consumer Defense Code (CDC) is both an interdisciplinary and multidisciplinary type of law to the extent that it warrants an effective protection to the consumer by encompassing several areas of law such as civil, criminal, administrative, and civil procedure. The CDC is also considered a law of public order and social interest, which means that its rules transcend private interests and cannot be annulled by the will of the parties to the consumer relationship.

Some of the most significant aspects of the CDC are the principles which guide the National Policy for Consumption Relationships and the institution of consumers' basic rights. Its main principle is the recognition of consumer vulnerability in the consumer market, which means that it is initially necessary to recognize an unbalance between consumer and producer arising from the economic power and financial capacity on the suppliers' side.

In view of this, the CDC is applicable in B2C transactions (depending on the case, in B2B as well), jointly with Decree 7,962/2013, which grants consumer rights in e-commerce. According to the Decree, suppliers shall expressly inform in the websites their names, taxpayer registration numbers, physical and electronic addresses, as well as all essential information about the products or services offered including any eventual charge or restriction applied to the offer.

The decree also imposes on suppliers:

- Obligation to present to consumers a summary of the contract prior to concluding the acquisition;
- Obligation to promptly confirm receipt of acceptance of the offer and other consumers' demands;
- Obligation to keep an adequate and effective service for answering consumer demands, and to submit an answer within a maximum period of five days; and
- Obligation to ensure the right of regret through the same form used by the consumer to contract the service or product and to promptly inform the use of such right to the applicable financial institution, so as to avoid any charge or to ensure prompt reimbursement. The right of regret was established by article 49 of the

Consumers' Protection Code, which allows the cancellation of acquisitions made outside commercial establishments within seven days counted as from acquisition or receipt of product or service.

It bears to mention that there is an important bill of law (PL 281/2012) pending in the National Congress which aim at amend the CDC establishing mechanisms for consumer e-commerce protection; regulating electronic sales of products and services; and establishing criteria for the operation of e-commerce companies.

**Chile:**

Yes, as stated above. See <http://www.sernac.cl/>.

**Colombia:**

Law 1480, 2011 is the framework regulation for consumer protection. The provisions therein are generally applicable to all consumer relationships in Colombia, save for sectors that have special consumer protection regulations. For example, this is the case for the aviation sector where consumer relations are primarily regulated under the Colombian Aviation Regulations, and the Consumer Protection Act only applies upon silence of the relevant regulation.

Furthermore, Chapter VI of the Consumer Protection Act specifically refers to consumer protection in e-commerce. Namely, the aforementioned chapter includes provisions on the following matters: (i) consumers' rights to receive information from providers and manufacturers; (ii) consumers' right to reverse electronic payments; (iii) special protection of children and teenagers in e-commerce; and (iv) contact platforms.

**Ecuador:**

Ecuador has the so called Ley Orgánica de Defensa al Consumidor (Organic Law of Consumer Protection) and the Law of Electronic Commerce has a whole chapter dedicated to the protection of consumers (chapter III).

**Mexico:**

Yes. Our Federal Consumer Protection Law has a special chapter regulating e-commerce; the main characteristics are: (i) vendor must use consumers' information as confidential; such information cannot be transferred by vendor without the express consent of the consumer; (ii) prior to carrying out the transaction, vendor must inform to consumers the technology used for protecting information, likewise, it shall provide a physical domicile, telephone number and any other contact information for the event consumer has a future claim or requires certain clarification; and (iii) vendor must not use misleading advertisement.

The Federal Consumer Protection Law establishes a special process for claims filed by consumers against vendors. If the result of such process is not satisfactory for the consumer, depending on the nature of the contract, consumer may start a civil/mercantile/administrative legal action before competent Courts against vendor.

**Panama:**

Yes, we do. Law 29 of 2008. But it is not applicable for e-commerce.

**Peru:**

Yes, Consumer Protection Law, Law No. 29,571. Even though it does not offer specific e-commerce regulation it remains applicable to e-commerce transactions. Moreover, recently the consumer protection agency, INDECOPI, issued a statement expressly adopting the OECD e-commerce principles as guidelines for the promotion of consumer protection online.

**Puerto Rico:**

Yes. The Federal Trade Commission and the Department of Consumer Affairs of Puerto Rico regulate deceptive and/or fraudulent practices in commerce. All of the same deceptive practices that apply to consumers in traditional commerce also apply in ecommerce. Furthermore, the issue of terms and conditions and privacy policies in websites is also viewed from a standpoint of deceptive practices. In other words, an ecommerce's terms and conditions and privacy policy must reflect exactly what is done by the ecommerce. Any deviation between the disclosure in those documents and the company practices may result in fines.

**8. Having in mind agreements such as Terms of Use and/or EULA (most of them drafted and governed under US Law), are clauses providing for limitation of liability, limitation of warranty, services or goods provided "as is", limitation on the statute of limitations or on time to exercise rights, choice of law and jurisdiction (including binding arbitration), valid in your jurisdiction? Please explain; would you say that your jurisdiction is US-like? Yes/No/Why?**

**Argentina:**

Regarding liability, Section 1743 of the CCC prohibits prior limitations or exemptions when they affect rights which cannot be renounced, when they are against good faith, good customs, public order laws, or when they are abusive. Provisions that establish the prior limitation of liability for damages caused with willful intent by the debtor or by persons it must respond for are also invalid.

Also, Section 1533 of the CCC establishes the mandatory nature of the statute of limitations, stating that limitations cannot be modified by the agreement of the parties.

Additionally, clauses on limitation of warranty, services or goods provided "as is", and limitations on time to exercise rights could be questioned in adhesion (boiler plate) contracts and in consumer contracting. The CCC specifies certain clauses which are considered abusive, and therefore non-existent, in adhesion and consumer contracts. These may include: i) clauses which distort the obligations of the party which set the terms; ii) clauses which restrict the rights of the adherent party, or extend the rights the other party has, and; iii) clauses that because of the way they are drafted or presented or because of their content are not reasonably foreseeable. Since the CCC came into effect recently (August 2015), there is no significant case law to assess or otherwise anticipate what terms might be considered abusive by the courts.

Moreover, if consumer law applies to the transaction other limitations will exist. Regarding liability, R-53 establishes that clauses that exclude or limit supplier's liability for damages caused to the consumer by the product or service, and/or any compensation or refund it is legally entitled to, are considered abusive. Furthermore, as previously discussed, consumers in electronic contracts hold an irrevocable ten (10) day period in which to withdraw/revoke their acceptance of the contract. In addition, provision of goods "as is" and limitations on the statute of limitations or time to exercise rights could also be questioned on the basis that

they may be considered abusive under consumer law. On these issues, please see question (i).

Under Argentine law there also exist limitations regarding choice of law and choice of jurisdiction, as well as arbitration. Please see question (I).

**Bolivia:**

Most always, clauses providing for limitation of liability, limitation of warranty, etc., are permitted because under local contract law the terms of the agreement govern the relation between the parties. Now, there is an exception and the exception applies when the agreement is in clash with certain public policy statutes that the parties cannot override.

For example, choice of law or choice of jurisdiction will not be valid even if agreed because this issue, for example, cannot be decided to the contrary of what the statutes determine. This would mean that even if a party has signed a contract that provides for a certain forum and the law says differently then that party can act in opposition to what he agreed to initially precisely because that clause would not be valid.

So in this jurisdiction many agreements will be valid but certain may not if they run contrary to public order provisions.

We would say, in general, that this jurisdiction is different to the US jurisdiction because one follows the Civil Law system and the other one follows the Common Law system. There may be certain aspects in which there are coincidences but in general the two systems are different.

**Brazil:**

Pre-formulated standard agreements (contratos de adesão) are permitted by the Brazilian law but clauses that limit consumers' rights must be specially highlighted, so that they can be quickly and easily understood. However, agreements such as Terms of Use and/or EULA that contain clauses that violate Brazilian law, specially the CDC, are abusive and will be nullified. Article 51 of the CDC provides several types of clauses that may be considered abusive, such as (i) remove, exonerate, or lighten the liability for defect product or service, or renounce any rights, (ii) establish any obligations considered unfair, abusive or that may place the consumer in an exaggeratedly disadvantageous situation or be incompatible with the principles of good faith and equity; (iii) determine the compulsory use of arbitration.

It bears to mention that the Internet Bill of Rights establishes, as a principle on internet use, the liability of the agents according their activities; and, as a right of internet users, the application of consumer protection rules in the consumer interactions that take place in the internet.

**Chile:**

Not necessarily, since mandatory regulations in the Chilean Consumer Law may apply to all providers doing business in Chile.

**Colombia:**

Colombian jurisdiction, establishes some limitations for the application of some of the mentioned clauses in Terms of use Agreements:

1. **Limitation of liability:** In Colombia, as a general rule, clauses that attempt to limit liability are taken as non-written clauses. In most of the cases, the supplier of electronic services or products establishes limitations of liability before the User, but in case of non-compliance of the EULA by the supplier, the User can claim before the civil authority regardless the existence of the limitation of liability clause.
2. **Limitation of warranty:** The subject of warranty limitation clauses, must be analyzed from the most general perspective to the specific cases. Under this understanding, it is necessary to know that in Colombia there is a presumption of warranty for products and / or services in general, no matters the acquisition channel, either if it is physical or electronic. Article 8 of the Consumer Statute (Law 1480 of 2011), states as a general rule, that every product or service must have a warranty that must be in accordance with the quality, suitability and safety of the specific product or service. Now, this warranty presumption can disappear in some specific events, since in many cases the warranty of the product or service can be established by the seller and not by legal mandate. Thus, it is important to understand that the issue of the warranty or non-warranty clause should be studied in the specific case, since there may be specific scenarios in which the seller is allowed to offer no warranty or limitation warranty clauses, depending on what is sold and under what specific conditions the transaction. In conclusion, it can be said that the warranty limitation clauses can exist, depending on the particular scenario where it is studied; accordingly it will be subject to the quality, suitability and safety of the product or service.
3. **Limitation on the statute of limitations or on time to exercise rights:** This type of limitations are valid under the scope of the Colombian Consumer Statute (Law 1480, 2011), as long as the specific timing is agreed by the parties or the User knows the timing since the begging of the electronic transaction.
4. **Choice of law and jurisdiction (including binding arbitration):** The choosing of Law and Jurisdiction, including the arbitration clause, can be agreed by the parties.

**Ecuador:**

It is not valid when referring to consumers but in commercial matters it is valid, except in the case where it is proven that there was abuse.

**Mexico:**

Yes. However, it is very important for vendors carrying out e-commerce transactions in Mexico, to make sure that consent of the Mexican consumer to the Terms of Use is obtained. This is typically obtained by scrolling down the Terms of Use and using an “accept button”. Terms of Use must include express submission to US law (or any other governing law) and competent Courts (or in its case, binding arbitration) in order for the Mexican consumer to validly submit to such jurisdiction.

**Panama:**

Not applicable.

**Peru:**

Limitations of liability are allowed in our legal framework, as long as they comply with the Civil Code restrictions. For example article 1328 of the Civil Code states that any provision that excludes or limits liability for fraud or inexcusable fault of the debtor or third parties that act on his behalf is null. It is also null any agreed limitation of liability to cases where the debtor or such third parties violate obligations under rules of public order.

Limitations of warranty services or goods provided "as is" are not allowed in our jurisdiction due to the fact that consumer protection regulation require that providers of goods and/or services must offer either express or implied warranty.

Time to exercise rights. Consumer protection laws establishes the consumers have two years since the infringement date committed by the supplier to initiate a punitive administrative proceeding.

Choice of law and jurisdiction. Parties are free to choose applicable law and jurisdiction.

**Puerto Rico:**

Puerto Rico is US-like in terms of limitations of liability, warranty, “as is” clauses, and statute of limitations. Said clauses are valid but may not have the desired effect in Puerto Rico courts of law. In other words, although those clauses are not invalid (and do not make the agreement invalid), they may not be enforceable in a particular case. In the case of choice of law and jurisdiction, Puerto Rico courts of law there are little to none exceptions to the enforceability of those clauses.

## 9. Is there any specific tax regulation applicable to e-commerce? If yes, please explain.

### Argentina:

The Argentine tax legislation has not yet regulated e-commerce, nor levied any specific tax on transactions related to it. General tax regulations would be applicable.

However, a first approach on the matter, distinguishes two classes of e-commerce:

- i. Indirect e-commerce: when traded goods are delivered by traditional means of distribution (i.e. postal service, courier).
- ii. Direct e-commerce: when the purchase, payment and shipping of intangible assets and / or services are executed through the world wide web.

The second class of e-commerce is the one triggering more queries and, as we mentioned, has no specific regulation. For the purpose of assessing the tax treatment under applicable general tax regime, the legal nature of the underlying transaction should previously be defined, such as a rendering of a service, an operating license, a right to use, etc. The applicable tax scope will vary according to each case.

### Bolivia:

No, there is no specific tax regulation for e-commerce so the normal tax provisions for transaction where applicable would apply.

### Brazil:

The e-commerce operation is generally treated as a regular purchase and sale transaction. However, the characterization of the transaction may vary according to the nature of the product sold and the terms and conditions of the transaction, notably those transactions associated with software programs. In the event of a cross-border transaction where the seller is a Brazilian non-resident, overall the taxation of online products will be subject to:

- Brazilian customs duties and import taxes on the tangible products or media, as well as other indirect taxes associated with the import transaction;
- Withholding income tax and other indirect taxes levied on the intangible element; or
- Both.

In case of internal interstate B2C transactions, Brazil has changed the way goods purchased remotely (over the internet or by phone) are taxed by State VAT-like tax (ICMS – Imposto sobre Circulação de

Mercadorias e Serviços). Under the new rule, the ICMS levied on these transactions shall be split between the State where the seller is located and the State of the consumer until 2018. On another words, the seller has become the responsible party for splitting the ICMS payment between the origin and destination States of the goods. From 2019, the total amount of the ICMS will have to be collected to the State where the consumer is located.

Another topic that is important to highlight is the e-commerce related to transactions involving software programs. Brazilian tax legislation provides a somewhat different treatment than the Organisation for Economic Co-operation and Development (OECD) guidelines and US rules for such operations. The following is a summary of potential scenarios associated with this sort of transaction:

- Purchase and sale: the import will be subject to customs duties and Brazilian import taxes, and will be calculated based on the total amount of the invoice, including the intangible if this is an embedded software (eg, hardware cannot work without this specific program). In case of a shrink-wrap type of software, the legislation is unclear and it can be viewed either as merchandise (in which case duties and import taxes are levied on the total amount of the invoice) or a licence (duties and associated import taxes are imposed on the media only and withholding tax is levied on the intangible);
- License: the taxation of intangibles under a licence agreement is subject to withholding taxation on the fees (the non-resident licensor as the taxpayer) and Brazilian indirect taxes levied on fees paid under a licence agreement (the resident payer as the taxpayer); and
- Service: the service fee will be subject to withholding taxation (the non-resident seller as the taxpayer) and Brazilian indirect taxes levied on import transactions of services.

If the software is downloaded from a website, the characterisation continues to follow the assumptions above to define the nature of the transaction. Nonetheless, for software imported through download, these programs would not be subject to taxation specifically imposed on the tangible element, as taxable events such as customs clearance or the circulation of goods would not take place in that case.

**Chile:**

Not applicable.

**Colombia:**

Currently there are no specific regulations applicable to the e-commerce in Colombia. The Colombian Tax Office (“DIAN”) has been interpreting and regulating e-commerce transactions with general rules for determining Colombian source income.

In general terms, an item of income is deemed Colombian sourced when (i) exploiting assets inside the country, (ii) rendering services in Colombia, or (iii) transferring of assets located in Colombia, at the time of disposal.

Please note there are specific rules on withholding tax on income tax purposes applicable to payments made with a credit or debit card.

Additionally, value added tax would be triggered upon sale of movable assets and render of services within Colombian territory. New tax rules related to e-commerce (i.e., VAT withholding agents on certain kinds of services rendered from outside of Colombia) were included in the tax reform that is expected to be approved by the Congress before year-end.

**Ecuador:**

There is no specific rule, general rules and international principles apply.

**Mexico:**

No.

**Panama:**

Not applicable.

**Peru:**

No. However, item i) of the article 9 of the Supreme Decree No. 179-2004-EF (Income Tax Law) provides that digital services provided abroad but used within Peru are considered Peruvian taxable income.

**Puerto Rico:**

No, there are no specific tax regulations applicable to e-commerce. In general, an e-commerce operating in Puerto Rico must collect sales tax applicable to a transaction if selling to a Puerto Rico customer. There is no obligation to collect taxes on behalf of any other jurisdiction.



**10. Are electronic and digital signatures recognized in your country? If yes, please briefly explain how each of them work. Are they interchangeable terms or are there differences between them?**

**Argentina:**

Both electronic and digital signatures are recognized and regulated by Digital Signature Law No. 25,506 (“DSL”). In Argentina, there is a distinction between these two concepts, which have different effects.

An electronic signature refers to a set of data that is integrated, linked or associated with other electronic data, as a means the signatory uses to convey his identity. It lacks some necessary requirements to be a digital signature and, according to Section 5 of the DSL, any individual alleging the validity of an electronic signature will have the burden of demonstrating its authenticity.

Consequently, an electronic signature is not the equivalent of a handwritten signature, and a document signed with an electronic signature does not have the enforceability of a signed document. This does not mean, however, that agreements which are signed electronically are invalid, since the CCC acknowledges the validity of non-signed instruments. In those cases, the issue would be to eventually prove the authenticity of the signature.

On the other hand, a digital signature is defined by Section 2 as the result of the application of a mathematical procedure that requires information known only to the signatory to a digital document. A digital signature must be susceptible to third party verification in such a way that both the identity of the signatory and the detection of any subsequent alterations can be corroborated simultaneously. The signing and verifying procedures are determined by an administrative authority.

Under Section 3 of the DSL, whenever a handwritten signature is required by law, a digital signature will satisfy the requirement. This equivalence was later reflected in Section 288 of the CCC, which attributes digitally signed documents the same enforceability than documents signed by hand. Moreover, Section 7 and 8 of the DSL establish a presumption that the digital signature belongs to the holder of the certificate and that it has not been altered, hence warranting non-repudiation by the signatory.

It should be noted, however, that the DSL is not applicable to death provisions, family law and personal acts in general, and any acts that imply

requirements that are not compatible with digital signatures.

The weight attributed to digital signatures is reflected in the more rigorous legal framework established for them by the DSL. Digital signatures must be accompanied by a digital certificate approved by a state-approved Certifying Authority in order to be valid. Until recently, this was an important obstacle to the implementation of digital signatures in Argentina, since no private entity had successfully completed the procedure to become a Certifying Authority. This void meant that for a long time the DSL was applicable to the private sector only in theory. In 2015, after a change in the regulatory framework, companies began obtaining licenses to operate as Certifying Authorities.

**Bolivia:**

Digital signatures are recognized in this country though they are not operational. As explained above, no action has been taken after the passing of the law and its bylaw. The law does not talk specifically about electronic signatures. They use in addition to digital signature the term digital certification so they are all interchangeable terms.

**Brazil:**

Yes. E-signatures are recognized in Brasil, as explained in our answer to Question 5 above. However, for certain documents Brazilian law does not permit e-signature, i.e. real state agreements. On the other hand, e-signatures are mandatory for income tax return and in electronic judicial proceedings.

Brazilian law does not differentiate the terms “electronic” and “digital” signatures. However, electronic signature is understood as the genre for all methods used to sign an electronic document. To be legally recognized, the electronic signature must have three essential elements: verification of the integrity of the signed document, the author's identification and authentication of signature and registration of the subscription. In turns, digital signature is a kind of electronic signature, as a result of a mathematical operation that uses encryption and allows you to assess the origin and the integrity of the document. The digital signature is so linked to

the electronic document, that if any amendment, the signature becomes invalid.

**Chile:**

Yes. Law 19,799 (Ley Sobre Documentos Electrónicos, Firma Electrónica Y Servicios de Certificación de Dicha Firma) applies, and its regulations issued by the Ministry of Economy. See [http://www.guiadigital.gob.cl/sites/default/files/reglamento\\_ley19799\\_documento\\_electronico.pdf](http://www.guiadigital.gob.cl/sites/default/files/reglamento_ley19799_documento_electronico.pdf).

**Colombia:**

Yes, both electronic and digital signatures are recognized in Colombia, as follows:

- Electronic signature - Pursuant to Article 3 of Decree 2364, 2012, any signature required by law may be fulfilled by means of electronic signatures. Article 1 of said Decree defines electronic signatures as “methods which allow to identify a person that has produced or delivered a particular electronic/data message”. These methods include, without limitation, codes, passwords, biometric data or private cryptographic keys. In order to be valid, electronic signatures must be provided via electronic/data messages subject to two conditions: they must (i) come from a trustworthy source; and (ii) be presented in accordance with the purpose for which they were created.
- Digital signature - As per Article 2 of Law 527, 1999 digital signatures are defined as numeric values that are linked to a specific electronic/data message. It is an essential feature of digital signatures that it be possible to determine (through known mathematical processes) that the numeric value has been generated using the sender’s password and that the text of the message has not been modified since the generation said number. Pursuant to Article 28 of Law 527, 1999, digital signatures may fulfill the requirement for a written signature if: (i) only one person uses, and controls the use of, that signature; (ii) it can be verified; (iii) it is linked to the information or message in such a way that if these are modified, the signature would be null; and (iv) it is in compliance with the relevant regulation.

Considering this, in terms of signatures, electronic signatures are the genus and digital signatures are the species. Therefore, these concepts are not always interchangeable.

**Ecuador:**

Yes, the electronic signature is recognized. We have the digital signature based on public key and private key certificates; and we have the generic electronic signature. Each one must fulfill its requirements, being that the digital must meet the generic requirements and the special ones for its species.

**Mexico:**

Yes. Our legislation establishes that digital signatures are a sort of electronic signature; however, only the electronic signature is regulated. Mexican legislation defines the electronic signature as “electronic data contained in a data message, which are used to identify the signatory of such message, as well as his/her approval to the information contained in such message”.

Our legislation also recognizes the advanced electronic signature, which is an electronic signature that incorporates the exclusive control of electronic means used by the signatory at the time of its creation, which allows the detection of any subsequent modification to the signature.

Both signatures produce the same legal effects than a handwritten signature and are acceptable as proof in a legal proceeding. Governmental entities have the authority to determine in which events the advanced electronic signature may be used.

**Panama:**

Yes. Laws 82 and 83 of 2012.

**Peru:**

Yes. Law No. 27269 (Digital Signatures and Certificates Law) defines electronic signatures in broad terms as any symbol based on electronic media used or adopted by a party with the intention to authenticate a document observing all or some of the functions of a handwritten signature. A digital signature under Peruvian law is an electronic signature that uses the technique of asymmetric cryptography, based on the use of a single pair of keys (higher security standard). Digital signatures require undergoing a public and private key validation process (public key infrastructure also known as PKI) and upon compliance with all the legal requirements described in the Digital Signatures and Certificates Law, they are born with a legal validity presumption. Electronic signatures are subject to private agreements between the parties but do not benefit from a legal validity presumption as digital signatures.

**Puerto Rico:**

Puerto Rico law recognizes both electronic and digital signatures pursuant to the Electronic Transactions Act, Act 148-2006, as amended. An electronic signature is defined as the “totality of data in electronic format consigned in a message, document or electronic transaction, or attached or logically associated with said message, document or transaction that may be used to identify the signatory to identify the signatory and indicate that he/she approves the information contained in the message, document or transaction.” In turn, a digital signature relates to a type of electronic signature that is created by an asymmetric public/private key pair.

**11. What are the remedies available to the parties in the event of a breach of an online agreement? Are there any major differences in respect of the remedies available for hard copy agreements? Are punitive damages available? If yes, under what conditions?**

**Argentina:**

There are no specific remedies in place in connection with breach of e-commerce agreements. The remedies available will be the same that in the case of hard copy agreements.

If there is an essential breach of the contract by a party, the other party can serve notice requesting compliance within 15 days, and terminate the agreement if the breach continues. Under Section 1088 of the CCC, no notice is required if an essential deadline has been missed, the party in breach has made known its intention not to comply, or compliance is impossible. When faced with a breach the compliant party can also sue the party in breach and attempt to obtain specific performance of its obligations. In any case, the party in breach can be sued for damages.

There is additional regulation which will apply if the commercial activity falls within the scope of consumer law.

The CPL establishes that the failure by the supplier to comply with the offer or the agreement, except in the event of act of God or force majeure, empowers the consumer with the following options: (i) request specific performance of the obligation whenever such performance is possible; (ii) accept another product or the rendering of equivalent services, or; (iii) terminate the agreement with a right to reimbursement of any payments made irrespective of the effects already verified and considering the agreement in its entirety. These remedies are available to the consumer, notwithstanding the judicial actions for damages.

In addition, in Argentina both class actions and punitive damages are available to consumers. Punitive damages are regulated by Section 52bis of the CPL, which establishes a five million Argentine pesos (5.000.000 \$) cap on the amount of punitive damages that can be imposed.

**Bolivia:**

The remedies available to the parties in the event of a breach of an e-commerce agreement provided the e-commerce agreement was signed with the appropriate digital signature, are those available for

hard copy agreements. This is to say, once the agreement is held as a valid binding agreement, all the contractual remedies available under the law are available as this would be just another contract.

Punitive damages can also be available depending on what the contractual provisions determine. There are no statutory punitive damages just because it is an e-commerce transaction but punitive damages can be applied if the contract itself provides for them.

As mentioned throughout this document, please bear in mind that as of yet there are no digital-signature certifying agencies so there are no valid electronic transactions until the implementation is carried out.

**Brazil:**

The remedy available in the event of a breach of an e-commerce agreement is a judicial action for indemnity of material and moral damages. In this regard, there is no major different in respect of the remedies available for hard copy agreements.

The theory of punitive damages is not provided by the Brazilian law but it has been a polemic issue for legal community. There is a jurisprudential trend in states and superior courts to applying punitive damages and attribute a punitive character to civil liability for moral damages. However, Brazilian doctrine understands that the applicability of punitive damages is not appropriate whereas article 944 of the Civil Code, which establishes that indemnification is measured by the extension of damages, expressly states the so-called "principle of restitution" according to which the function of civil liability is to indemnify the victim for loss. In turns, criminal law should deal with punishing the injurer.

**Chile:**

No major differences, general rules apply (no punitive damages in general).

**Colombia:**

In Colombian law, there are no punitive damages established. In the e-commerce regulation, there are only specific remedies in consumer protection law, such as the right to demand the reversal of the payment made in the event in which the product is not received, or to require contractual compliance the guarantee. If an e-commerce trader breach an agreement the consumer protection authority could impose fines, in an administrative procedure.

There are two major differences for e-commerce agreements; first one is the right reversal of payment that is established for e-commerce transactions, settled in Article 51 of Law 1480, 2011, and the second one is that The consumer protection authority, ex officio or at the request of a party, may impose a precautionary measure for up to thirty (30) calendar days, extendable for a further thirty (30) days, temporary block access to the electronic commerce medium, if there are serious indications that consumer rights are being violated, while the corresponding administrative investigation or procedure is being carried out.

**Ecuador:**

The breaching of contracts are subject to general rules. The existence of the obligation must be proved and in case of objection, the legal validity of the electronic documents. The recognition of damages and fines observe the general rules, that is to say: the existence of the damage, bonding with the party involved and the determination of the damage.

**Mexico:**

In the event of a breach, the non-defaulting party has the right to rescind the agreement or require the mandatory compliance of the agreement by the defaulting party. The nature of electronic or hard copy of the agreement makes no difference as to the exercise of rights; terms and conditions of the agreement are the basis. Punitive damages were accepted by the Supreme Court a couple of years ago, therefore, Civil Courts have now the possibility of imposing punitive damages in the cases they consider appropriate.

**Panama:**

Arbitration. Negotiation between the parties or civil or commercial process.

**Peru:**

Remedies will depend on the agreement among parties and will be the same for an e-commerce agreement or not. Any agreement infringement may give rise to civil remedies or consumer protection remedies.

**Puerto Rico:**

Breach of an e-commerce agreement remedies are available under the general contractual breach law (Article 1054 of the Puerto Rico Civil Code) and tort law of the Puerto Rico Civil Code (Article 1802 of the Puerto Rico Civil Code). Both statutes are of general nature and may, in particular cases, give rise to punitive damages. However, because of their general nature, any remedy available is analyzed on a case-by-case basis.

## 12. What are the general principles governing e-commerce jurisdiction?

### Argentina:

Under Argentine law, the general principle is that the parties may extend jurisdiction (forum election) into foreign courts or arbitrators, except for those cases in which Argentine courts have exclusive jurisdiction (Section 2605 of the CCC). Exclusive Argentine jurisdiction exists in the following cases:

- Real estate rights regarding property located in Argentina;
- Validity or invalidation of registrations made in a public Argentine registry;
- Validity or invalidation of intellectual property rights when they have been registered or deposited in Argentina.

Additionally, Section 2651 sets that parties are free to choose the applicable law.

However, there are exceptions to these general principles that may affect e-commerce operations, since under consumer contracting the parties cannot freely determine the forum and applicable law.

More specifically, Section 1109 provides that in consumer distance contracts jurisdiction is determined by the place of fulfillment of the contract, which is where the user received or should have received the goods or services.

Under Section 2655 the general rule is that the place of fulfillment also determines the applicable law in consumer contracts, unless it cannot be determined in which case the law of the place of conclusion of the contract will apply. However, the law of the domicile of the consumer will be applicable if (i) the conclusion of the contract was reached after an offer or advertisement or activity was made in the State in which the consumer is domiciled, and the consumer has carried out there all necessary acts to conclude the contract; (ii) the supplier has received the request in the State in which the consumer is domiciled; (iii) the consumer was induced by the supplier to move to a different State in order for him to make the request from there, or; (iv) there is a travel contract which has a global price and covers both transportation and accommodation.

Furthermore, in accordance with the terms of Section 1651 of the CCC, conflicts based on consumer contracts and/or adhesion contracts cannot be submitted to arbitration.

### Bolivia:

There are no specific e-commerce provisions regarding jurisdiction so the general principles applied to agreements in general would be applied. Jurisdiction would be open or refused following the conflict of jurisdiction provisions. For issues that can only happen in an electronic setting or because of the electronic possibilities and where traditional approaches are clearly not applicable there would be a gap that would need to be filled through specific legislation or through court decisions but since the electronic signature has not been implemented yet there is no case law.

### Brazil:

Brazilian courts will have jurisdiction over a judicial action when: (i) the defendant is domiciled in Brazil; (ii) the obligations are to be fulfilled in Brazil; and (iii) the judicial action originates from an action or activity that occurred or was carried out in Brazil (section 88, I, II and III of the Code of Civil Procedure).

In Brazil, as a general rule, the relevant authority to exercise jurisdiction will be the competent body where the defendant is domiciled. However, the Consumer Protection Code (CPC) establishes that lawsuits claiming the liability of the supplier of products and services in consumer relationships may be brought in the plaintiff's domicile. If there is a consumer relationship, the Brazilian courts may be competent to judge the case, even if the service provision does not occur in the country.

In so far as the applicable law is concerned, obligations are governed by the law of the place where the contract is formed. Contracts entered into through the internet are considered to have been executed 'in absentia' and, therefore, obligations arising therefrom are regarded as having been made in the place where the proponent is domiciled. However, the courts have been making firm decisions that Brazilian law will apply and that Brazilian courts will have jurisdiction whenever services or goods are offered in Brazilian territory and to Brazilian citizens through the internet.

### Chile:

General provisions in the Chilean Commerce Law/Code.

**Colombia:**

Under a general view, we can conclude that there are no specific principles that govern e-commerce in Colombia.

It is important to note, that the Colombian regulation regarding to e-commerce, does not cover the whole spectrum or steps or participants that this commercial channel entails, in fact, the regulations that have been structured, have been precisely developed for certain matters that have had a rapid evolution in our country, but it has not been a completely structured legal framework. Accordingly - and up to this date- there is not a compiled text that regulates all of e-commerce matters.

From the above, in Colombia it can be concluded that there are no specific guiding principles regarding to how e-commerce should operate. Do consider that Colombia has been regulating e-commerce possible issues, as it has evolve and as it has an effect in commercial relationships involving from how a contract is valid celebrated and executed in the online environment, as to how consumer protection should operate, among others as referred to above in question 1.

In terms online payment intermediaries, it is relevant to say that up to this date it has not been addressed by any governmental initiative, nonetheless this is supposed to change sooner than later. On November 2016 the Financial Superintendence is circulating a regulation draft which will develop new definitions and extend provisions about mobile banking, credit cards user obligations and about “no presence sale environment” (venta a distancia o ambiente de venta no presente).

In this way, it is evidenced that e-commerce in Colombia is not governed by basic principles but on the contrary it is moderately regulated by rules that are contained in many sources that come from different scenarios and authorities.

Now, it could be said that the functional equivalence of electronic documents, could be a guiding principle for e-commerce in Colombia. This principle, under the parameters of Law 527, 1999, gives electronic documents, especially data messages, the same legal and evidential validity and effectiveness as physical documents, so it could be said that functional equivalence is applicable in general, to all electronic

texts that are used in electronic transactions, as long as the electronic documents fit within the good use established by the corresponding rules in each case.

**Ecuador:**

We apply the General Rules as the place of performance of the contract and additionally others established in the Law of Electronic Commerce as the place where the parties are, the address that appears in the certificate of electronic signature or the place where the defendant is.

**Mexico:**

The first principle is the consent of the parties. Our Commerce Code establishes that the parties may submit expressly to the following jurisdiction: (i) domicile of one of them; (ii) place where one of the obligations must be satisfied; (iii) location of the thing. If the parties did not agree on a specific jurisdiction, the Commerce Code establishes that the competent court shall be: (i) the location appointed by the defendant for receiving notices and payment requests; (ii) the location established in the agreement for satisfying the obligation; (iii) the defendants’ domicile; if defendant has several domiciles, plaintiff shall decide the competent Court.

**Panama:**

We don’t have principles because we don’t have a law.

**Peru:**

There are no principles governing specifically e-commerce jurisdiction.

**Puerto Rico:**

In general, Puerto Rico follows the applicable law of jurisdiction over the person dictated by federal courts. However, the Puerto Rico Supreme Court has not yet delineated any factors applicable to the e-commerce context. Therefore, general jurisdiction would be granted over any e-commerce business residing (or in the case of legal entities, incorporated or organized) in Puerto Rico. On the other hand, specific jurisdiction would exist subject to the Puerto Rico long-arm statute, when the e-commerce business purposefully avails itself to the Puerto Rico jurisdiction and there is a nexus between the claim and the e-commerce’s activities in Puerto Rico, to the fullest extent permitted by the Due Process Clause of the United States Constitution.

**13. To what extent are national courts willing to consider, or bound by, the opinions of other national or foreign courts that have handed down decisions in similar cases?**

**Argentina:**

In Argentina, national courts are not bound by decisions rendered by other national courts. This being said, courts are sometimes willing to consider prior rulings or decisions as a way to ground their own. The case law of the Argentine Supreme Court in cases dealing with constitutional rights, for example, has strong influence of decisions rendered by foreign courts.

On occasions, the Federal Court of Appeals in Civil and Commercial Matters has considered opinions rendered by foreign courts. In some rulings it has also taken into account legislation and case law of the European Union. In addition, in some instances it has also considered US case law. However, national courts do not feel bound by opinions handed down in similar cases by foreign courts.

**Bolivia:**

Given that there is no experience in deciding e-commerce cases or e-commerce jurisdictional issues it is uncertain how open would they be but it would seem logical national courts should be open to consider other courts' findings. Those decisions would certainly not be binding but would be influential.

**Brazil:**

Brazilian law does not prohibit judges to adopt foreign juridical theories, concepts and doctrine to ground their sentences in view of a vacancy in Brazilian law. However, this is a polemic issue for the Brazilian legal community to the extent that in certain cases the foreign law is not properly applied and conflicts with constitutional principles and rules.

**Chile:**

Highly exceptional.

**Colombia:**

National courts are not bound by opinions or decisions of foreign courts. However, generally they consider that these decisions are doctrine or auxiliary sources, to structure their own. But if it is intended to apply a judicial decision of a foreign authority in Colombia, it should be followed by a procedure called Exequatur.

With regard to national courts, the decisions of the Constitutional Court must be followed, and the judgments of the Supreme Court are judicial precedent, from which a national authority could set aside, justifying its decision.

**Ecuador:**

They can be taken as references to better explain a case, however the Lower Courts must be subject to the norm; The National Court has the power to interpret and apply international principles. In no case they are considered mandatory precedents.

**Mexico:**

If the decision comes from a Court of superior hierarchy, it is mandatory to consider such resolution. Decisions coming from foreign Courts are very unlikely to be considered, although certain jurisdictions may be better accepted (i.e. Spain, Argentina, etc.), but only as a guideline and by no means the judge will be compelled to observe such resolutions.

**Panama:**

Not applicable.

**Peru:**

National courts may take as a reference resolutions of other national or foreign courts in similar cases. However, decisions are issued on a case-by-case basis and subject to Peruvian law.

**Puerto Rico:**

Puerto Rico is bound by the opinions of the United States Federal Courts.



**14. Are there in your jurisdiction any significant judgments regarding e-commerce? Are the courts familiar with e-commerce and technology in general? Please explain.**

**Argentina:**

There have been some significant judgments by Argentine courts regarding e-commerce.

In 2013, the Argentine Supreme Court dismissed a request for appeal and left in place a ruling issued by the National Court of Appeals on Civil Matters against the e-commerce platform MercadoLibre SA (“MercadoLibre”). The company was held liable for the sale to an unsuspecting buyer of two stolen concert tickets.

Mercado Libre argued that it was a mere intermediary in the transactions carried out through its website. The Court decision held that MercadoLibre was liable because it intervened in the transactions, since it charged for the offers uploaded by users and for the sales made. It therefore profited not only from providing the space offered for users, but also from the transactions themselves.

In addition, the Federal Court of Appeals in Civil and Commercial Matters issued two important rulings on the liability of e-commerce platforms in 2015. Divisions I and III issued decisions finding DeRemate.com de Argentina SA (“DeRemate”) and Compañía de Medios Digitales CMD SA (“CMD”) liable for trademark infringement as a result of allowing the users of their e-commerce platforms to sell counterfeit NIKE goods.

DeRemate and CMD (i) held that they were not responsible because they were neutral virtual markets which allowed third party users to convene and carry out transactions; (ii) refuted the notion that they were an online store; (iii) denied owning any of the products sold on their websites, and; (iv) denied any participation in the transactions themselves.

Both Divisions concluded that the defendants were not mere intermediaries but had an active role in transactions. To that end, and relying on a case decided by the European Court of Justice, the Court of Appeals found that DeRemate had an active role because it used the term “Nike” as a keyword redirecting users to its website and provided a payment method that enabled the illicit transactions. The Court of Appeals also found that CDM had an active role because it helped promote

the products on its website and took a 5% commission of every transaction.

In both cases, the Court also concluded that the filters that CMD and DeRemate had in place to avoid counterfeits were insufficient, as in some cases the postings clearly identified the goods as being “replicas” or “not original” and they were not taken down. It placed obligations on the parties, establishing that the defendants were to implement filters to eliminate blatant trademark infringements, while Nike had the burden of informing infringing goods to the defendant.

In general, Argentine courts cannot be said to be familiar with e-commerce and technology. It is uncommon for judges to have a technical background. They usually analyze the technological issues they find necessary on a case by case basis, and apply general principles of civil law. In our experience, courts sometimes find it difficult to understand the technical aspects of discussions and the specific activities of e-commerce platforms. Consequently, lawyers and experts involved in a judicial proceeding have a very important role in explaining more technical aspects of a case.

**Bolivia:**

No, in this jurisdiction there are no judgments on e-commerce and courts are not familiar with e-commerce and technology in general.

If an e-commerce transaction is not disputed as to the validity of the terms then such a transaction would be solved pursuant to the general principles of the law pertaining to the given subject or to contractual law.

**Brazil:**

Most of judgments regarding e-commerce involve civil liability on B2C transactions. In this regard, it bears to mention several judgments providing for that Buscapé (a private website that compares prices of products) is jointly liable for frauds and non-delivery of products announced in the website to the extent that it is part of the supply chain and obtains profits as a dealer.

Also, there are several judgments cancelling electronic banking contracts in view of the absence

of customer's express consent on the credit grant and the existence of abusive clauses charging excessive interests. Such judgments are grounded by the CDC, which is also applied on banking contracts (electronic or not).

**Chile:**

Non-specialized forum; very few precedents mainly in general Consumer Law and constitutional actions regarding Data Privacy.

**Colombia:**

SIC's Legal Opinion 14-218349 - This year the SIC issued legal opinion 14-218349, by which it changed its position in regard to Colombia Data Protection Laws compliance by foreign entities that conduct or may conduct business in Colombia. The legal opinion determines that although some companies are not legally domiciled in Colombia, they are obliged to comply with Colombian regulations in this matter as they do perform the recollection in Colombian territory. The decision took into consideration the Constitutional Court's decision on 2011, which stated that in a globalized world, enforcement of local laws to international agents is a must in order to safeguard the fundamental rights of Colombian Citizens.

Porcelain White Case - Artist Margarita Ariza was sued with an order to takedown its art which was being exhibited in various places such as Facebook and other internet sites. The work of the artist was a recollection of her family's history and their obsession with "Porcelain White" color skin, as a reflection of racism in Colombian society. The work was very successful and generate the reaction expected, nevertheless her relatives sued her for violation of their privacy as intimate moments of their own life was being published without their consent. As a consequence of the judge order, the artist took down several pieces of her work. On 2015, Constitutional Court of Colombian order that the work could be uploaded again as freedom of expression and artistic nature involved in the art, could lead to a limitation of intimacy and privacy of the people involved as the work itself did not reveal any sensitive data of theirs. Although the case did not directly refer to e-commerce it does set a precedent for certain limitations of privacy, intimacy and data collection and use in digital platforms.

Right to be Forgotten and Internet Intermediaries Liability - On 2013, the Constitutional Court of

Colombia issued decision T-040,2013. The case referred to a person asking Google to rectify certain information relating to a news report that contained certain details on how he had participated in a crime. The criminal action had expired by means of the statute of limitations and therefore he was never convicted of such crime. The court considered that Google as an internet service provider had no liability as the news was published by local media, and hence his petition should address such subjects but not Google. Again, the case did not refer directly to e-commerce but it definitely referred to internet intermediaries' liability. Following this precedent, by decision T-277,2015 the Court confirmed that there is no liability for Google as "it is not the agent responsible for publishing or producing the information". Hence, in both cases the Court has recognized that this type of online service providers have a passive role and therefore should not be held responsible for any related violations committed by offerors or clients that use them.

**Ecuador:**

There are not many disputes about e-commerce or technology so judges are not familiar with such issues; however, if they exist, judges rely on experts to help them understand cases.

**Mexico:**

Not really. However, every time more and more electronic evidence is filed by the parties in all kind of processes and accepted by the Courts. Regarding technology used in the judicial system, it is important to highlight that, recently, criminal procedures in Mexico were amended in order to include orality as a prevailing element in the process; this modification represented the implementation of new courtrooms and, certainly, new technology for carrying out hearings, filing evidence, etc.

**Panama:**

No, there are not.

**Peru:**

Not regarding e-commerce specifically to the related regulation mentioned in question 1. Courts are not familiar at all with e-commerce and technology issues in general.

**Puerto Rico:**

There are no significant judgments regarding e-commerce in Puerto Rico.

**15. Do you believe that your jurisdiction is e-commerce friendly? Please identify the most problematic pitfalls dealing with e-commerce and provide any other information of interest to the topic.**

**Argentina:**

Argentina is a reasonably friendly jurisdiction for e-commerce, despite the fact that there is no specific regulatory framework for commercial transactions carried out through electronic networks. E-commerce has experienced exponential growth in the last few years, and the recently enacted CCC takes important steps towards updating regulations directly related to electronic commerce.

The most problematic pitfalls when dealing with e-commerce relate to problems arising out of inadequate Terms and Conditions or Privacy Policies. These documents should be drafted in such a way as to comply with Argentine law, and should be made separately available to the user. It is advisable for users to have to scroll down the texts of both documents, and click on an unchecked box to express consent. In addition, to avoid enforcement problems, there should be a system that registers the user's acceptance.

Regarding Privacy Policies, it is worth noting that Argentine Data Protection Law No. 25,326 ("DPL") is similar to the regulations which exist in the European Union. The DPL considers any information related to an individual or a company that is identified or identifiable to be personal data. The treatment of personal data requires prior, express, informed and freely given written consent. Consequently, e-commerce platforms should have a mechanism which ensures that consent is clearly given and that all pertinent information is made available.

In addition, under Section 12 of the DPL international data transfers to countries which do not meet an adequate level of protection are not permitted, unless an international transfer agreement providing such levels of protection is in place or the data subject consented to such a transfer.

Moreover, the DPL grants data subjects the right to access their data, as well as to correct, amend, or delete inaccurate information.

**Bolivia:**

There is no experience in how courts would treat e-commerce activities, as e-commerce has not been implemented yet.

We do not see why this jurisdiction would be adverse to e-commerce though there may be issues with new concepts courts have never dealt with before. In general, issues arising out e-commerce dealings are not necessarily all that different from hard copy issues so pitfalls would revolve around issues that are new and specific to e-commerce such as, i.e., jurisdictional issues.

**Brazil:**

Brazil is the leading Latin American country in terms of internet users and e-commerce transactions. It is also one of the countries with the greatest internet growth potential.

Within this context, the government has been undertaking initiatives in a number of sectors to assist the development of the information society in Brazil. These initiatives include the establishment of tax incentives for information technology goods, the deployment of social programs to provide information technology resources to communities that do not have access thereto, and the establishment of agreements and partnerships with private enterprises with the aim of expanding telecommunication networks – in particular, broadband access networks – throughout Brazil.

The Brazilian government has invested considerable resources to migrate its public services into the internet environment. Brazil is recognized as a country with highly successful e-government solutions, facilitating bureaucratic procedures within society and the rendering of public services via the internet, as well as making its internal and external procedures more efficient (including electronic bidding procedures, which result in enormous savings for the state).

**Chile:**

Uncertainty regarding the pending new Data Privacy bill is probably the most problematic.

**Colombia:**

In general Colombian e-commerce regulations are still developing. There are definitively some laws that have imposed certain burdens on e-commerce which are not applicable to regular trade or business.

One of the most problematic pitfalls is the enforcement of the right of withdrawal to e-commerce business just because of its nature, rather than application based on the actual cast that the withdrawal might actually cause following the United States precedents.

Likewise, although Law 1341, 2009 has definitely determined that e-commerce and technology based business are a priority in Colombia the government still has fallen behind in keep up with incentives to develop the industry. Hence there is not a clear position or policy from the government.

The current proposed tax reform will definitely increase the burden for e-commerce, both web and mobile, as access to internet, devices and services taxes will increase.

**Ecuador:**

The Ecuadorian jurisdiction is friendly with cases of electronic commerce. The main problem is the lack of knowledge of judges on technology, but the Law allows them to rely on experts approved by the Court to receive an explanation of the discussion. There is still a need to develop a culture of e-commerce and that judges are familiar with the technology. With the passage of time and generational change, it is easier to find judges who have the necessary knowledge.

The Ecuadorian Law of Electronic Commerce is quite broad and enables the application of technological rules in the law. Our standard approves the most complicated technical issues, leaving the general principles and special rules, guiding the way of understanding electronic commerce.

**Mexico:**

It is improving. In my opinion, the greatest problems e-commerce companies are facing in Mexico are: (i) internet penetration; (ii) lack of trust by consumers; (iii) cybersecurity. According to certain publications, e-commerce in Mexico represents approximately 2% of total sales. As long as millennials integrate to formal economy and payment systems grant security to electronic transactions, e-commerce activity will increase in Mexico representing a great opportunity for vendors/retailers.

**Panama:**

Not applicable.

**Peru:**

Even though Peru has a developed diverse legislation related to e-commerce there are still many legal and policy issues that need to be addressed in order to consider our legal framework as e-commerce friendly. One of the main problems with e-commerce in Peru is focused in the delivery of physical good from a different country. Given our customs regulation, it is common that goods bought through a foreign e-commerce site are not promptly delivered or are subject to additional requirements or charges.

Peru is currently facing an important startup digital entrepreneurship moment that frames a good opportunity to develop a public-private agenda intended to promote e-commerce initiatives. Moreover when Peru has entered into highly relevant international agreements such as Protocol for the Alianza del Pacífico, Peru-USA Free Trade Agreement, EU-Peru Free Trade Agreement and more recently Trans Pacific Partnership Agreement.

**Puerto Rico:**

Because of Puerto Rico's relatedness to the United States, Puerto Rico tends to be an e-commerce friendly jurisdiction. The most common pitfalls of e-commerce in Puerto Rico relate to the incipient technology industry, which finds itself obstructed by a stagnated permits process. However, there have been recent improvements such as providing tax incentives for exportation of goods and/or services, which make Puerto Rico very attractive for technology companies.