

LETTER OF SUBMITTAL

Dear,

Herewith, submitted for your consideration and for submission to the Senate for its advice and consent to ratification is the United Nations Convention on the Use of Electronic Communications in International Contracts (the "Convention"). The Convention was adopted by the United Nations General Assembly in 2005; it has since been signed by [eighteen] countries. The United Nations Commission on International Trade Law produced the Convention after three years of work. United States experts in the law of electronic commerce and uniform state law were involved in the drafting process at every stage.

The Convention is derived principally from the United Nations Model Law on Electronic Commerce (the "Model Law"). Applicable United States law, embodied in the Uniform Electronic Transactions Act ("UETA") promulgated by the Uniform Law Conference (also known as the National Conference of Commissioners on Uniform State Laws) (the ULC) in 1999 and adopted by 47 states to date, as well as the federal Electronic Signatures in Global and National Commerce Act of 2000 ("E-Sign") (the UETA and E-Sign are together referred to herein as "Domestic Legislation"), are also based predominantly on the Model Law. As a consequence of this common legal source, existing United States law is substantially consistent with the provisions of the Convention.

The Convention will improve the reliability of electronic media used in international commerce in transactions that are governed by the law of other countries. By and large, United States industry has arranged its commercial transactions in a way that complies with the provisions of E-Sign and UETA. With trading partners located in Europe and more developed areas of Asia, business parties are governed by legal regimes that have laws effectuating the use of electronic media in commerce that to some extent are consistent with United States Domestic Legislation. However, there remain countries in the developing world that lack a legal infrastructure to validate electronic commerce. For many countries, as well as the broader arena of global commerce, the Convention will provide consistent, uniform legal rules and a legal framework to assure that communications conducted electronically in international transactions will have the same efficacy regardless of the location of the parties. Furthermore, the flexibility of the Convention, like that of Domestic Legislation, will accommodate future development in the law of electronic commerce better than other more highly regulated legal regimes.

It is important to remember that the Convention has a limited scope, i.e. business contracts between parties located in different countries. Domestic Legislation will govern the use of electronic records and signatures in all transaction, of which contracts is but a subset, and all communications outside the limited scope of the Convention. Finally, since the Convention closely parallels United States law in substance, parties in the United States will be comfortable with the Convention and will welcome it as the law where, for some reason, there is no similar applicable law to effectuate their electronic transactions.

The following organizations support the ratification of the Convention: the Uniform Law Commission, the American Bar Association, [insert others]. No opposition to ratification of the Convention has been expressed.

SUMMARY OF THE CONVENTION

The Convention will apply to the use of electronic communications in connection with the negotiation, formation, or performance of any contract entered into between parties whose businesses are in different countries. Article 2 does exclude transactions undertaken in certain regulated environments where sophisticated parties have implemented systems rules to address the issues of electronic commerce, and also excludes negotiable instruments and documents of title. Of greatest significance is the exclusion of “contracts concluded for personal, family, or household purposes.” Consequently, the scope of the Convention is limited to international, business to business, and business to government, contracts.

Article 3 states the principle of party autonomy, or freedom to alter, or contract out of, the substantive provisions in the Convention. Party autonomy under the Convention will be preserved through ratification of the Convention as a self-executing treaty[, or through enactment of appropriate implementing legislation].

Articles 4 and 5 set forth definitions and interpretive rules for the application of the Convention. As can be seen in the attached Appendix A [the Section by Section Analysis with United States Commentary], the definitions in the Convention, though using different words, are wholly consistent with terminology in Domestic Legislation. Further the tenets of interpretation articulated in Article 5 are also consistent with the broad interpretive constructions to be applied to both E-Sign and the UETA.

Article 6 sets forth rules for determining the location of parties to a contract. This is particularly important for parties seeking to determine the applicability of the Convention to a particular contract. Together with Article 1, unless information regarding a party’s location is disclosed or evident that shows the parties are located in different states, the Convention will not apply.

Articles 8 and 9 contain the core of the Convention validating the use of electronic communications and electronic signatures in international contracts, in lieu of pen and ink requirements. These provisions are consonant with the rules found in Domestic Legislation effectuating the use of electronic records and electronic signatures.

Article 10 sets forth rules for determining when an electronic communication is sent or received. These rules are not inconsistent with the sending and receipt rules found in the UETA. E-Sign does not contain any similar rules governing the timing of sending and receipt.

Article 11 sets forth a substantive rule regarding the effect of wide scale communication as an offer to enter into a contract. The rule articulated in Article 11 is substantively consistent with the law of contracts found in all 50 states (Restatement of Contracts 3d, Section 26, Comment b). In any event, this rule under the Convention will be preserved through ratification

of the Convention as a self-executing treaty[, or through enactment of appropriate implementing legislation].

Article 12 clarifies the efficacy of contracts formed through the use of interactive communication devices. This is consistent with provisions in Domestic Legislation.

Article 14 provides rules for resolution of limited computer errors involving individuals when interacting with automated communication systems. The provisions of Article 14 are consistent with the UETA but have no counterpart in E-Sign.

AMERICAN DECLARATION

The Committee on the Implementation of the UN E-Commerce Convention formed by the ULC (the “ULC Committee”) recommends the following declarations be included in the United States instrument of ratification¹:

Article 19(1) Declaration

The ULC specifically recommends that the United States of America not make a declaration under Article 19(1) of the Convention.

NOTE – A declaration under Article 19(1) would unnecessarily restrict the scope of application of the Convention. One of the benefits of the Convention is that it provides a legal infrastructure to validate the use of electronic communications in international contracts. A declaration under Article 19(1)(a) would limit the efficacy of the Convention because only parties in states that have adopted the Convention would receive the benefits. Of course the choice of law rules applicable to the parties must result in application of the Convention, however, that is a broader realm of application than requiring both parties to be in Contracting States.

A declaration under Article 19(1)(b) would also unnecessarily restrict application of the Convention. Though the UETA requires parties to agree to conduct transactions electronically, that agreement can be found through the actions of the parties and surrounding circumstances. While a declaration under Article 19(1)(b) would seem to be consistent with the UETA, such a declaration is unnecessary. The provisions on Party autonomy in Article 3, the ability to derogate from the provisions of the Convention by implication (See Convention Explanatory Notes 86 and 89) and the provision that no one need agree to use electronic communications in Article 8(2), are sufficient to assure that the parties will manifest some agreement to conduct their contracts electronically without requiring the sort of explicit agreement that may be required by the declaration under Article 19(1)(b). While concern was expressed by the Committee that some agreement be required, it was believed that the provisions of the

¹ The United States Department of State may seek further declarations limiting the applicability of the Convention to certain treaties not excluded in Article 20(1) of the Convention.

Convention on party autonomy protected parties from the unexpected use of electronic media without some manifestation of assent, express or implied. See Articles 3 and 8(2) and Explanatory Notes 131 and 132.

Article 19(2) Declaration on the Scope of Application.

The United States, in accordance with Article 21 of the Convention, makes the following declaration:

The Convention shall apply to electronic communications related to, or used in a contract or other record to the extent it is governed by Sections 1-107 (Revised section 1-306) and 1-206 (deleted from Revised Article 1), Article 2 or Article 2A of the Uniform Commercial Code, as in effect in any jurisdiction in the United States of America.

The Convention shall not apply to electronic communications related to, or used in:

1. A contract or other record to the extent it is governed by
 - a. A law governing the creation and execution of wills, codicils, or testamentary trusts;
 - b. A law governing adoption, divorce, or other matters relating to family law; or
 - c. The Uniform Commercial Code, as in effect in any jurisdiction in the United States, other than Sections 1-107 (Revised section 1-306) and 1-206 (deleted from Revised Article 1) and Articles 2 and 2A.
2. Court orders or notices, or official, court documents (including briefs, pleadings and other writings) required to be executed in connection with court proceedings;
3. Any notice of
 - a. The cancellation or termination of utility services (including water, heat, and power);
 - b. Default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or rental agreement for, a primary residence of an individual;
 - c. The cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities);
 - d. Recall of a product, or material failure of a product, that risks endangering health or safety.
4. Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

NOTE – It has been suggested that the opening affirmative statement of coverage relating to UCC Articles 2 and 2A be included as an aid to a clearer understanding that the Convention will apply to Sales and Lease transactions. The balance of the exclusion is retained to track the E-Sign exclusions parallel with Domestic Legislation.

AMERICAN UNDERSTANDINGS

With the exception of the above declaration under Article 19(2) of the Convention limiting the transactional scope of the Convention, the Convention does not deviate from Domestic Legislation sufficiently to justify the United States adopting additional Declarations.

However, the ULC Committee has identified areas where the United States should adopt Understandings concerning the meaning of terms in the Convention.

These Understandings relate to the manner in which party autonomy under Article 3 may be recognized, and the determination of the time and place of dispatch of an electronic communication; and implementation of Article 11 as a matter of domestic law.

The Committee recommends the following four understandings be included in the United States instrument of ratification:

Article 3. Party Autonomy

The United States understands as follows: Parties to a contract to which the Convention applies may exclude the application of the Convention or derogate or vary the effect of any of its terms expressly by the words used or by implication.

NOTE – This understanding is intended to make clear that the application of the Convention may be excluded by the parties through implication.

Article 10. Time and place of dispatch and receipt of electronic communications

The United States understands as follows: In determining the time and place of dispatch under Article 10(1), an electronic communication will be dispatched only if the communication is properly directed or addressed to an addressee/recipient. The United State further understands that Article 10(2) creates a rebuttable presumption of receipt of an electronic communication.

NOTE – This understanding clarifies that dispatch requires some kind of direction to the recipient. This need for addressing or directing of a communication is implicit in the concept of dispatch. The Committee further felt that this understanding was important to clarify the United States position that the last sentence of Article 10(2), in combination with the first sentence of Article 10(2), was intended to create a rebuttable presumption of receipt. This view is consistent with the construction of most countries involved in the preparation of the Convention. See Explanatory Notes 179, 180, 183, and 184.

CONCLUSION

The widespread adoption of the Convention will make the law on the use of electronic communication in international business dealings clearer, sounder and more reliable than current law. Because of its close coincidence with E-Sign and the UETA, the text of the Convention will

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EXHIBIT A

be familiar to American lawyers. Because of its deference to parties' intentions as well as its deference to international practice, the Convention will readily adapt even to the most unique and unusual transaction. Ratification of the Convention will facilitate international trade by American companies and sensible development of law dealing with international business transactions in courts all over the world.

Respectfully Submitted,