I. Introduction

There are currently no laws in Argentina that address directly e-commerce transactions, with the exception of certain special laws such as the Consumers Act referred to in Part IV below and the Privacy Act referred to in Part VIII below. However, the government is in the process of drafting or adopting several pieces of legislation.\(^1\) In the meantime, traditional laws would be applied to any disputes involving Internet-related transactions.

The application of traditional laws may create problems, since those laws cannot easily be applied to Internet transactions. Indeed, rapid changes in telecommunications have resulted in practices that are vastly different from those contemplated by the legislators when drafting the existing legislation. For instance, some agreements require handwritten signatures.

II. Regulated Areas of E-Commerce

The lack of e-commerce legislation does not mean that online transactions are exempted from the application of the existing laws and regulations applicable to the trade involved. Thus, existing laws and regulations must be carefully analyzed on a case-by-case basis.

A. Securities Regulation

Securities laws apply to online brokers and offerings. The Argentine Securities Exchange Commission (CNV) allows mutual funds to trade their portfolio online, provided they file a description of the marketing system and the safety and backup procedures.\(^2\) Potential investors are to receive by mail the prospectus and open an account either personally or by e-mail. In the latter case, the signature must be certified by a notary. Argentine securities regulations apply to online offerings to Argentine residents of foreign securities not listed in Argentina.

B. Auctions

Since typical "auction" sites do not perform auctions in the way that that activity is defined by applicable law and regulations, they do not need to comply with such law and regulations. Nevertheless, in order to avoid eventual confusion and potential claims of using misleading information under consumer legislation, "auction" sites should clearly indicate that they do not perform auctions, as the term is defined by applicable law and regulations.

C. Tourism

The sale or marketing of tourist services via the Internet is subject to the traditional laws that regulate tourist services.\(^3\)

D. Online Banking

There are currently no specific provision regarding online banking.

III. Domain Names

A. Registration of Domain Names

NIC-Argentina\(^4\) is the registrar of the Argentine domain names.\(^5\) Any person interested in obtaining an ".ar" domain name must file online a sworn affidavit. Domain names are granted free of charge to the first applicant for a one-year period and are subject to renewal.\(^6\) NIC-Argentina may prevent the registration of domain names that may cause confusion with corporations or with an individual's famous name, and may prevent the registration of domain names that are immoral.

Since the registration of domain names is free of charge and relatively few specific requirements are asked for the registration, Argentina is currently the sixth-ranked country in the world\(^7\) in terms of the most domain names registered.\(^8\)

Following WIPO's recommendations, and in order to counter the problem of cybersquatting, NIC-Argentina recently requested more accurate and reliable contact details from registrants.\(^9\)

B. Domain Names vs. Trademarks

Argentine courts have allowed certain trademark owners to trump a private domain name registrant and oblige the registrant to assign the domain name to the trademark owner.\(^10\) In Heladería Freddo S.A. v. Sport Network,\(^11\) Heladería Freddo successfully restrained an individual from using an identical domain name registered by the latter. It was held that the owner of a trademark has also the right to use it in order to sell its products via the Internet.\(^12\)

The Freddo case should be a deterrent to potential squatters, since any person who deliberately registers a domain name identical to the trademark of an unconnected, well-known company for commercial gain must expect to find itself on the receiving end of an injunction.

Notwithstanding the foregoing, there is currently no case law concerning claims of trademark or trade names owners against holders of confusingly similar, albeit not identical, domain names, nor against bona fide holders of identical or similar domain names.\(^13\)

IV. Consumer Legislation\(^14\)

Consumer legislation applies \textit{inter alia}, to the following aspects of click-wrap agreements:\(^15\)
A. The Offer

Any offer addressed to the public at large is binding on the offeror. The offer must clearly state its expiration date as well as its terms and conditions. Offerees are to receive accurate and detailed and efficient information on the main features of the goods or services provided accurately and objectively. Unconscionable provisions and disclaimers of offeror’s liability or restrictions to offeree’s rights are void, and opt-out provisions are restricted.

B. Withdrawal of the Offer

Any offer made via mail, phone or the Internet must specifically indicate that the offeree may withdraw the acceptance within five days after the execution of the agreement, or the reception of the product. The return expenses are to be borne by the offeror.

C. Warranty

All durable goods sold to consumers must have a three-month warranty against any kind of defects, running from delivery date. The warranty may not be waived.

Within thirty days after a certain service is provided, service suppliers must rectify any defects in the service, unless the parties specifically provided otherwise in writing.

D. Advertisements

Advertisements are not to be misleading and are deemed to be a part of offeror’s subsequent contract with offeree.

E. Breach of Contract

If the offeror does not comply with the offer or the contract, the offeree may either demand specific performance, accept another good or equivalent service, or terminate the agreement. The offeree is entitled to claim for reimbursement of paid amounts and for damages. Investigations may be carried out ex officio by the regulator or at the request of an adversely affected individual or entity.

V. Electronic Contract Acceptance

In the absence of a digital signature law, general principles and rules regarding contract law, as provided in the Argentine Civil Code and the Argentina Commercial Code, apply to electronic contract acceptance.

A. Validity and Evidence of Click-Wrap Agreements

Although the Argentine Civil Code provides that those agreements which must be entered into in writing must bear a handwritten signature as an essential condition for their existence, the issue boils down to proving the existence of the contract. In the absence of a document bearing the signature of the obligee, the existence of such contract may be proved by other means of evidence only if (i) the party that invokes the contract has performed its obligations thereunder or (ii) there are other documents prepared or signed by the obligee or by a third party, related to the purpose of the agreement.

B. Acceptance by an Offeree that Is Not Present when the Offer is Made

If the offeree is not present when the offer is made—for instance, when the offer is sent by an electronic mail—the contract is concluded when the acceptance to the offer is sent, provided the acceptance is not revoked before the acceptance is known to the offeror or the offeror does not die or lose his or her legal capacity before knowing of the acceptance. In this case the offer can only be revoked by the offeror before conclusion of the contract takes place.

Acceptance can be either explicit or through conduct. Mere silence, however, does not impose any binding obligations upon the offeree, except in cases where there is already a legal duty to explain or whether there is a connection between the present silence and the previous statements. Moreover, as indicated in Part V.A. above, the CPA specifically prevents opt-out clauses.

The offeree may withdraw the acceptance before it is known to the offeror.

C. Acceptance by an Offeree that is Present when the Offer is Made

Some commentators consider “click-wrap” agreements to fall within this category. In these cases, the rules indicated in Part V.B. above do not apply, since the contract is closed as soon as the offeree accepts the offer made when he was “present.”

D. Consumer Legislation

The consumer legislation provisions concerning the offer, withdrawal, warranty and advertisement mentioned in Part IV are applicable to click-wrap agreements.

E. Damages

An offeree that accepts an offer before knowing of its withdrawal by the offeror, or upon hearing of the offeror’s death or legal incapacity, is entitled to claim compensation for losses and expenses.

The withdrawal of acceptance by the offeree after it was known to the offeror entitles the latter to claim compensation for losses and lost profits, if the contract—which has already been concluded—cannot be performed.

VI. Digital Signature

Although currently no digital signature law has been adopted, six different bills are currently being considered by the Argentine Congress.
The first bill was prepared by the Ministry of Justice based on the method of asymmetrical cryptography proposed by the Utah Act in the United States. It provides for a private password for the signature encryption and a public password for its decodification, as well as a certificate of public passwords for every signature issued by a public password comptroller.

The three latest bills—following the new trend—are technology-neutral and have a minimalist regulatory approach in order to allow electronic commerce to develop in the private sector without constraints. The bills provide for, inter alia, (i) statutory recognition of the validity of digital signatures and electronic records, (ii) a voluntarily recognized certification authority scheme whereby a digital signature is only given legal recognition if it is supported by a certificate, and (iii) rules for the creation of electronic contracts. Digital signatures are given the same status as handwritten signatures, provided they are supported by a certificate. Electronic records and digital signatures are given similar legal status to that of their conventional paper-based counterparts. "Electronic records" is defined and its admissibility in evidence set out.

VII. Liability of Intermediaries, Sellers and Internet Providers

A. Liability of Intermediaries

Pursuant to the Consumer Protection Act, manufacturers, importers, agents, distributors, suppliers, sellers and carriers are jointly and severally liable for any damages resulting from product liability or lack of compliance with their duties. These liabilities cannot be waived. Although one party may contractually indemnify the other, the indemnity is not valid vis-a-vis third parties.

B. Liability of Internet Service Providers

There are no specific regulations or precedents concerning the liability of ISPs.

Although there are no precedents, one could predict that a court would uphold a claim against an ISP only in the event of gross negligence, since the Internet was granted rights similar to those granted the media by the Argentine government.

VIII. Confidentiality and Preservation of Electronic Data

The Argentine Federal Constitution grants each individual the right to request from any public or private registry the disclosure of its personal data and the reason why the data were collected. An individual can also request the suppression, amendment, update or confidentiality of such data if the data are false or discriminatory.

On 5 October 2000, the Argentine Congress passed a privacy law (the "Privacy Act"). The Privacy Act addresses, inter alia, the following issues.

A. Purpose

The personal data can only be used for the purpose for which they were obtained.

B. Owners’ Consent

The collection, conservation, classification, amendment, co-relation with other information, processing or transfer of personal data requires the user’s specific consent. The consent must be given in writing or any other equivalent form.

C. Processing of Personal Data Without Authorization of the User

The name, ID, tax ID, profession, occupation, date of birth and domicile of the user may be disclosed without requiring the consent of the user.

D. Information

Companies that collect personal data must indicate to the user why the data were collected, the identity and domicile of the registrar, whether the request of data is mandatory, and the possibility to access, amend or suppress the data.

E. Security and Confidentiality

The registrar must adopt all necessary measures to guarantee the safety and confidentiality of the personal data.

F. Professional Secrecy

The registrar and any other party to which the information is disclosed must keep the personal data secret.

G. Sensitive Data

The collection of information related to ideology, political or religious ideas or affiliations, race, racial origin, personal or sexual habits is expressly forbidden. Nevertheless, sensitive data may be used for statistical or scientific purposes, provided the information cannot be tied back to a specific individual.

H. Anonymous Data

Anonymous data may be freely transferred, used and shared in aggregate form with third parties for commercial purposes.

I. Onward Transfer

Personal data may not be transferred to countries that do not comply with adequate protection standards.
IX. Privacy

The Argentine Federal Constitution provides protection to all individuals in regard to intimacy and privacy as well as specific protection for correspondence and private documents.29

The Argentine Civil Code restricts the invasion of privacy and the publication of pictures and private correspondence, and prohibits hurting other persons’ feelings or habits. Although there are no precedents, this provision could be applied to restrict the use of “cookies” as well as spam mail or targeted advertisement based on private data obtained without the user’s authorization.

X. Taxation of E-Commerce Transactions

Generally the same tax laws applicable to traditional commerce apply to e-commerce.

A. Tax System

While resident taxpayers are subject to tax on their worldwide income, non-resident taxpayers are taxed only on their Argentine-sourced income. A tax credit system has been adopted to mitigate double taxation on resident taxpayers. Taxation of non-residents is made through income tax withholdings, which apply on a fixed presumed income basis.

Argentine resident corporate taxpayers, in general terms, are subject to:

- Thirty-five percent income tax on their net worldwide income;
- Twenty-one percent value added tax on the value of the goods sold or the services rendered;
- One percent minimum presumed income tax on the value of its assets at the end of the fiscal year;
- Three percent gross receipts tax;30 and
- Some other miscellaneous taxes.

B. Customs Duties

The tax basis, for customs purposes, of goods imported into Argentina is the transaction value. Most imports are subject to taxes and duties.

C. Downloads

Customs regulations consider downloadable software as a “good” subject to customs duties.

XI. Intellectual Property Rights

A. Intellectual Property Protection

Argentina has long recognized intellectual and industrial property protection. The Argentine Federal Constitution provides that authors and inventors are the exclusive owners of their works, inventions or discoveries during the period set forth by the law. Federal laws such as the Trademark Act, the Invention Patents Act, the Copyright Act and the civil and criminal codes set the legal framework for intellectual property protection. Besides, Argentina officially adheres to most treaties and international agreements addressing these issues, including the Paris Conventions for the Protection of Industrial Property, the Universal Copyright Convention, the WTO Agreement and its Uruguay Round (TRIP),31 specifically protecting patents, trademarks and copyright.

1. Trademarks32

Ownership and exclusive right of trademark is obtained by registration. Protection of trademarks lasts ten years and may be renewed indefinitely for periods of ten years if said trademark has been used within a period of five years prior to each renewal in commercialization of products, or rendering of service, or as part of the name of an activity.

The Trademarks Act grants every legal owner of a registered trademark an exclusive property right and prevents its use, forgery and imitation by third parties. The Act also protects “commercial designations,” such as names, signs or designations used to identify a particular activity, provided such use has been public, specific and uninterrupted for at least a year. Non-registered notorious trademarks also receive protection in Argentina pursuant to the Paris Convention.

Individuals or corporations requesting registration for a trademark in Argentina are granted a six-month priority period for the registration of such trademark in other member states under the Paris Convention.

Neither names, words nor signs given to products or services by their manufacturer describing their nature, operation or qualities, and neither names, slogans of general usage before application for registration, nor those that would produce confusion with other products, may be used as trademarks.

2. Patents and Business Methods33

Any invention of products or proceedings in any technological field which is novel, represents an inventive step and is susceptible of industrial application is patentable.

The Patent Law34 provides that “rules and methods for performing ... economical and commercial activities” shall not be considered an invention. Therefore business methods may not be patented. Neither may software programs, although, as we indicate in Part XI.A.3. below, they are specifically included within the scope of copyright protection.
3. Copyright

The Intellectual Property Act\textsuperscript{35} protects intellectual work,\textsuperscript{36} but not the idea itself. All intellectual works are entitled to registration with the Copyright Office by means of depositing excerpts thereof.

The layout of a web site is copyrightable, as well as sounds, images, videos, databases and other multimedia components. Moreover, software is specifically included within the scope of copyright protection.

For instruction or scientific purposes, citations of up to one thousand words—or eight bars in musical works—of the indispensible parts of literary and scientific works are allowed. Photographs of a person cannot be published without consent, except in connection with scientific or other cultural works or matters that occurred in public.

B. Deep Linking, Metatagging and Trade Secrets

1. Deep Linking

In case a link is designed to avoid or hide the content's source or its owner's ID or trademark ("deep linking"), the practice may violate the Trademark Act, the Paris Convention or the Commercial Loyalty Act. The Paris Convention\textsuperscript{37} prohibits any confusion with a competitor's products or commercial activities and the Loyalty Act\textsuperscript{38} sanctions any misleading advertisement concerning products or their marketing. Moreover, such practices may be penalized pursuant to the Argentine Criminal Code,\textsuperscript{39} which sanctions anyone that tries to obtain clients from a third party with fraudulent methods or illegal advertisements.

2. Metatagging

The Metatag is a form of computer code\textsuperscript{40} that is analyzed by the search engines but is not visible in the natural viewing layout of a web site page. Illegal use of trademarks as metatags by a third party may violate the Paris Convention, the Trademark Act, the Criminal Code and the CPA.

3. Trade Secrets

A trade secret is defined as any formula, pattern, device or compilation of information which has a commercial value while it is not known or used by third parties.

Law No. 24,766 and Law No. 24,425 protect undisclosed information under the provisions of the WTO/TRIPS Agreement.

Employees and contracting parties are not to use trade secrets without the authorization of the owner. The owner of the trade secret may request an injunction in order to prevent its disclosure and claim loss of profits and expenses to anyone infringing the law.

Trade secrets are also protected by the Criminal Code,\textsuperscript{41} which prohibits any disclosures of a secret that may cause damages, as well as the opening of confidential documents addressed to a third party.\textsuperscript{42}

C. Enforcement of Intellectual Property Infringement

The Trademark, Patent and Intellectual Property laws set forth, \textit{inter alia}, the following sanctions in the event of infringement of intellectual property rights: (i) attachment and seizure of the items whereby the trademarks are being infringed; (ii) dispossession of the goods and other items bearing the counterfeited trademarks; (iii) destruction of the counterfeited trademarks and denominations and of all the items bearing such trademarks and denominations; (iv) seizure of the original works published without the authorization of the author or his/her successors; (v) seizure of edited works sold or copied omitting or changing the author's name. WTO/TRIPS\textsuperscript{43} also provide for other summary measures to prevent the goods bearing the counterfeited trademarks from entering the market.

Notwithstanding the foregoing, software piracy is still a problem in Argentina. However, in the last few years, civil and criminal courts have taken some highly publicized and aggressive measures to enforce intellectual property laws. In 1996, the Argentine Congress passed a law that substantially strengthened patent protection, addressed infringement and extended patent duration to twenty years.

XII. Labor Law

A. Use of the Internet in the Working Environment

Employers may prevent the use of the Internet in the working environment, but may only monitor the use of the Internet if they have previously notified the employees.

B. Telecommuting

Employees that work in their home are regulated by the same labor laws as apply to those employees working in the premises of their employers. There are no specific laws governing telecommuting.

C. Content Providers

Under certain circumstances providers of content to a Web site might be considered to fall within the scope of labor legislation applicable to journalists. In that case they might be entitled to certain special benefits and higher severance payments.

Endnotes

1. Resolution 412/99 of the Argentine Ministry of Economy recommended that the respective governmental agencies adopt legislation to resolve, \textit{inter alia}, problems arising in connection with
user's privacy, trademarks and domain names, safety of online transactions, digital signature and electronic documents, jurisdiction and tax issues. The Model Law of UNCITRAL, which establishes guidelines to overcome some of the legal obstacles that even now are imposed on electronic commerce, is being used as a basis for proposed legislation in Argentina.

4. An agency of the Argentine Ministry of Foreign Affairs.
5. Pursuant to NIC-Argentina's internal regulations and Resolution No. 221/2000 of the Ministry of Foreign Affairs.
6. Due to the large number of domain names registered, and the lack of resources of NIC-Argentina, the renewal process is temporarily suspended.
7. More than 320,000 domain names were registered as of October 2000.
8. After the U.S., the U.K., Germany, the Netherlands and South Korea.
9. The World Intellectual Property Organization has made recommendations to domain name administrators that accurate and reliable contact details of the domain name owners are to be made available and that, if the domain name owner cannot be contacted through the details supplied, the domain name registration should be cancelled.
10. In October 2000, more than thirty-five cases were filed before the Argentine Federal Courts against cybersquatters who deliberately registered a domain name on account of its identity to the trademark of an unconnected well-known organization for commercial gain, based on the Argentine Trademark Law and Section 50 of the TRIPS.
11. A popular ice-cream parlor chain.
12. In September 1999 the Federal Court of Appeals in Pugliese Francesco v. Perez Carlos upheld the same legal argument.
13. A few claims by trademark owners against bona fide holders of domain names have been settled. In most of these cases, the defendant registered the domain name without the knowledge of the trademark owner, which coincidentally was identical or confusingly similar to plaintiff's trademark or trade name.
14. Consumer rights are protected inter alia by the Consumers Protection Act (CPA), Law 22,240; and the Commercial Loyalty Act, Law 22,802.
15. Click-wrap agreements are generally considered "adhesion" contracts, since they do not allow amendments or customization.
17. In the case of an international sale of goods, if the parties have their "places of business" in different contracting countries or the conflict of law rules lead to the application of the law of a particular contracting country, the UN Convention on Contracts for the International Sale of Goods may be applicable. In that case, Section 16(1) of the UN Convention establishes that an offer may be revoked if the revocation reaches the offeree before the acceptance is dispatched.
18. Argentine Civil Code, Sections 1145 and 1146, Sections 917 and 918; Section 18 et seq. of the UN Convention.
19. Argentine Civil Code, Section 919.
20. Argentine Civil Code Section 1155; Section 22 of the UN Convention.
22. There are some precedents on electronic signature. For instance, Decree 427/96 regulates the use of digital signatures by public administrations.
23. Electronic signatures are relatively easy subject to tampering as compared to their hard copy counterparts. In addition, the lack of face-to-face contact makes it more difficult to verify the identity of the author of the electronic message. To counter this, many parties conducting business electronically have begun to use cryptographic techniques to digitally "sign" electronic messages. This means that a signature can verify the identity of the author. In addition, digitally signed messages are tamper-evident.
25. This method is the one proposed by the Digital Signatures Act promulgated by the U.S. Congress in June 2000 and accepts more than one method for the recognition of a digital signature's validity.
26. The CPA exempts manufacturers that acquired assets in order to make new products.
27. Argentine Federal Constitution Section 43.
28. As of date of this paper the Executive Power had not yet enacted the Privacy Act and, therefore, if partially or totally vetoed by Executive Power, the provisions may change. The Privacy Act takes into account Directive 95/46 of the European Union, which restricts the international transfer of data to countries that do not have an equivalent level of protection to the country where the data was originated.
29. Argentine courts have indicated that the protection should be extended to electronic mails.
30. The tax rate and taxable base varies depending on the province or provinces where the activities would be deemed to be conducted.
31. Law 24,425.
34. Section 6 c).
35. Law No. 11,723 of 28 September 1933 as amended. Argentina subscribed to the Berne Convention of protection of literary and artistic works by Law 17,251 of 25 April 1967.
36. Defined as original works of authorship fixed in any tangible medium of expression, from which they can be perceived, reproduced or otherwise communicated.
37. Paris Convention Section 10 bis 3.1.
38. Law 22,802 Section 9.
40. Invisible keywords describing the content of a web site.
41. Criminal Code Section 156.
42. Criminal Code Section 153.
43. Section 50.

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