

**Access to Microfinance & Improved Implementation of Policy Reform
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**E-Commerce Policy
A Concept Paper**

Draft Report

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Executive Summary

Electronic commerce (“e-commerce”) will be a major driver of business development into the future, and a major determinant of its success. H.M. King Abdullah has recognized the importance of information technology (IT) to Jordan. He has shown his commitment to making Jordan a world class IT center through his leadership at the recent IT Dead Sea forum and in his speeches at other venues. The importance of IT to Jordan has also been articulated in *Jordan Vision 20/20*, a private sector strategy which provides a roadmap to Jordan’s economic future and in the *REACH* document, which describes in rich detail the opportunities and requirements for Jordan’s IT sector to achieve world class status.

There is an immense gulf, however, between what H.M. King Abdullah has articulated and the reality that exists in Jordan’s IT sector today. The Jordanian Government’s role in closing this “digital divide” should not be underestimated. Perhaps the Government’s most important task is to encourage, through a true independent and fair regulatory framework, a revamping of telecommunications infrastructure and operations so as to support a new digital economy with first-class services at internationally competitive rates. The Jordanian Government -- through its procurements, operations and personnel development -- must strive to facilitate access to and use of the Internet and information technologies. Finally, working closely with the private sector, the Government must propose and support the enactment of a body of legislation enabling the growth of e-commerce and e-government.

This document presents and discusses the policy issues that must be addressed for realization of H.M. King Abdullah’s vision of Jordan as an important center for e-commerce. If facilitated properly, e-commerce offers the opportunity for Jordan to overcome many of the trade, business and employment challenges that a small developing country faces in an increasingly global society. It also provides the opportunity for Jordan to build upon its strengths, such as craft and cottage industries, tourism and intellectual industries built upon its educated workforce. Note that this document focuses on e-commerce as it will provide the underpinnings and applications for e-government. Separate distinct regulations or amendments to regulations will have to be written on a case-by-case basis to implement e-government within specific ministries and departments. A summary of key issues is outlined below.

Governing Principles: The establishment of Jordan as an e-commerce business jurisdiction requires:

- 1) Advancing the development of e-commerce through the provision of legal, regulatory and infrastructural environments that create a stable, secure commercial environment (e.g., legislation creating a duty-free Internet, ensuring the legitimacy and enforceability of electronic signatures and contracts, and providing for an electronic evidence and dispute resolution regime);

- 2) Promoting e-commerce principles in government administration and procurement, and in the provision of public services and the use of e-government technologies;
- 3) Bridging the “digital divide” by partnering with industry and non-profit organizations, and “incentivizing” the use of e-government by the public and private sectors.
- 4) Providing individuals with the skills and education necessary to contribute to an e-commerce society;
- 5) Pursuing global cooperation and adopting consensus frameworks in the regulation of e-commerce; and
- 6) Evaluating national performance in the digital age and examining options for participation in research and development on an international basis.

Policy Issues: The Jordanian Government’s approach to regulating e-commerce will tremendously impact its ability to implement H.M. King Abdullah’s vision of Jordan a world class IT sector. To fulfill His Majesty’s goal, the Jordanian Government should:

- 1) Establish a truly independent authority to regulate telecommunications, including e-commerce (WTO understandings with regard to telecommunications should be the guide);
- 2) Allow the private sector to continue to lead in the development of e-commerce;
- 3) Support and enforce a predictable, minimalist, consistent and simple legal environment for e-commerce;
- 4) Adopt a non-regulatory, market-oriented approach to electronic commerce policy, but provide for coordination between the public and private sectors; and
- 5) Adopt the policies and efficiencies of e-government, leading the private sector by example.

Financial Issues: The policy issues related to the financial aspects of e-commerce are simple and straightforward. They are as follows:

- 1) Declare the Internet a duty-free environment whenever products or services are delivered across it to or from Jordan; and
- 2) Avoid premature and prescriptive regulation of rapidly evolving fields, such as in electronic payment systems.

Legal Issues: There are a myriad of legal issues that must be tackled in adopting a coherent and comprehensive business environment for e-commerce. Key issues include:

- 1) Subscribing to a uniform commercial code for commerce conducted over the Internet (e.g., *UNCITRAL Model law on Electronic Commerce With Guide to Enactment*);
- 2) Providing protection of intellectual property rights appropriate to e-commerce, including the adoption of a global system for assigning domain names;
- 3) The adoption of industry-led information security management systems, including privacy protection of personal information, and the adoption of encryption policies;
- 4) Ensuring the legitimacy and enforceability of electronic signatures and contracts (e.g., UNCITRAL document entitled, *Planning of Future Work on Electronic Commerce: Digital Signatures, Certification Authorities and Related Legal Issues*);
- 5) Clarifying liability issues for intermediaries – those that act as mere conduits - facilitating or providing access between one party and another;
- 6) Developing electronic evidence and dispute resolution regimes; and
- 7) Establishing an enforcement regime for e-commerce, including a regime to combat hacking.

Market Access Issues: It is essential to the growth of e-commerce that the Jordanian Government provide for a marketplace in which e-commerce can thrive. This includes:

- 1) Liberalizing the telecommunications market to enhance Jordan's broadband connectivity to the global telecommunications network and achieve first class services at internationally competitive prices;
- 2) Establishing laws to protect the consumer participating in e-commerce (e.g., *OECD Guidelines for Consumer Protection in the Context of Electronic Commerce*);
- 3) Providing open access to information and avoid unnecessarily restricting content;
- 4) Allowing the marketplace to dictate software and hardware technical standards; and
- 5) Providing for a seamless electronic to physical marketplace infrastructure.

A PLAN FOR ACTION

It is one thing to pontificate about what should be done, but another to take action. This plan is an action plan. It outlines the basic steps necessary to begin implementing H.M. King Abdullah's vision of Jordan as a world class IT center. These steps are as follows:

- Establish a truly independent telecommunications regulatory authority by 12/31/00;
- Float the remaining Government Jordan Telecommunications Corporation shares on the Amman Stock Exchange by 7/31/00;
- Adopt a uniform commercial code of commerce by 4/30/01;
- Enact legislation to make the Internet duty free by 9/30/00;
- Enact legislation or regulations, as appropriate, to provide protection of intellectual property rights specific to e-commerce by 6/30/00;
- Adopt legislation to ensure the legitimacy and enforceability of electronic signatures and contracts by 3/31/01;
- Adopt legislation or regulations, as appropriate, to provide protection to the consumer participating in e-commerce by 12/31/00;
- Adopt legislation or regulations, as appropriate, to clarify e-commerce liability issues by 10/30/00;
- Adopt legislation to provide for an electronic evidence and dispute resolution regime within Jordan by 5/30/01;
- Adopt legislation or regulations, as appropriate, to provide for an e-commerce enforcement and penalty regime by 2/28/01; and
- Begin implementing e-government in all Jordanian ministries, departments and offices by 8/30/00.

Governing Principals

Establish an advantage for Jordan as an e-commerce business jurisdiction in the Middle East by developing a secure and conducive legal environment.

E-commerce (“e-commerce”) will be a major driver of business development into the future, and a major determinant of its success. The Internet is forecast to create over 300 million computer-based consumers worldwide by 2003. Currently, the worth of electronic commerce transactions is estimated at over \$100 billion per year. The value of these transactions is expected to exceed \$1.3 trillion, by 2003.¹

Jordan can not afford to miss the e-commerce boom. If facilitated properly, e-commerce offers the opportunity for Jordan to overcome many of the trade, business and employment challenges that a small developing country faces in an increasingly global society. It also provides the opportunity for Jordan to build upon its strengths, such as craft and cottage industries, tourism and an educated workforce.

H.M. King Abdullah has recognized the importance of e-commerce to Jordan. He has shown his commitment to making Jordan a world class information technology (“IT”) center through his leadership at the recent IT Dead Sea forum and speeches at other venues. The importance of IT to Jordan has also been articulated in *Jordan Vision 20/20*, a private sector initiative which provides a roadmap to Jordan’s economic future and in the *REACH* document, which describes in rich detail the opportunities and requirements for Jordan’s IT sector to achieve world class status.

E-commerce is a fundamentally new way of conducting business. In transforming business strategies and structures, it has implications for all aspects of business activities from operations to marketing. E-commerce affects businesses previously sheltered from international competition in home markets, but also offers significant new business and inward investment opportunities. Businesses that are responding quickly to e-commerce are gaining a market advantage.²

The policy environment in which e-commerce can grow and thrive is different than that of traditional business. Throughout the world, governments are putting new policies in place to capture the exceptional economic and social benefits (e.g., new job creation at above average wages) that e-commerce provides. Jordan should implement similar policies to develop the building blocks for a digital economy.

The Jordanian Government should take the steps necessary to create the best regulatory and business environment in order to maximize the development of e-commerce. More specifically, the Jordanian Government should ensure that business enjoys a clear, consistent and predictable legal environment, while avoiding unnecessary regulations or restrictions on electronic commerce.

The Jordanian Government also has a direct stake in e-commerce by virtue of the fact that the public sector is the largest single procurer of goods and services. Increasingly, the general trend in most countries is for government to seek private-sector sources for products and

services. As governments seek to increase their own implementation of e-commerce solutions, they become subject to the same kinds of pressures for organization and managerial change as do private firms.³ In fact, a four-year Swedish study showed that investment in e-commerce principles substantially cut government procurement costs and improved government efficiency.⁴ In many respects, interaction between the public and private sectors is an important driver of e-commerce.

The Jordanian Government should facilitate the development of e-commerce and the establishment of Jordan as an e-commerce business jurisdiction by:

- 1) Advancing the development of e-commerce through the provision of legal, regulatory and infrastructural environments that encourage the development of e-commerce; and
- 2) Promoting e-commerce principles in government administration and procurement, and in the provision of public services.⁵

Bridge the digital divide by partnering with industry and non-profit organizations.

For developing nations, the productivity potential of the digital economy offers both hope and worry. With sufficient investment, it can provide the means to accelerated development, but without the needed investment, developing nations may find themselves falling even further behind in an increasingly wired world.⁶ Even for developed nations, unequal access to technology and high-tech skills by income, educational level, race and geography has the potential to deepen and reinforce divisions.⁷

The Jordanian Government's role in closing this "digital divide" should not be underestimated. One of its most important roles is to ensure universal access to telecommunications services, particularly for low-income and rural consumers.⁸ Government should broaden access to e-commerce technologies (i.e., computers, the Internet, and high-speed networks) and make them widely available at public institutions (e.g., schools, libraries, and community centers). Government should also provide skilled teachers and the training needed for individuals to master the information economy. It should promote online content and applications that will help empower all individuals to use new technologies to their fullest potential.⁹ Closing the digital divide will require the Jordanian Government to forge creative partnerships with industry and non-profit organizations.¹⁰

Provide individuals with the skills and education necessary to contribute to an e-commerce society.

Technical skills are one of the most critical areas in developing a solid foundation on which e-commerce can be built as an intrinsic part of an information society.¹¹ E-commerce requires information technology expertise, coupled with strong business applications. It makes necessary specialists in e-commerce operations, production management, logistics, graphic design and multimedia disciplines.¹²

Skills shortages and increasing competition on wage levels in parts of the information and communications technology labor market are making it difficult for new and emerging companies to retain high-skilled staff. Encouraging profit sharing and employee share option schemes through the tax system could significantly increase the incentives for entrepreneurship, improve the survival rates of new information technology start-ups through retention of staff, and restrain high-skill wage inflation.¹³

Small and medium sized businesses should be made aware of the opportunities and threats of e-commerce. Businesses need to ensure that key personnel have had appropriate training on Internet applications. They also need to ensure that company strategies are developed to exploit the technologies associated with e-commerce.¹⁴

Government, business and consumer representatives should work together to educate consumers about electronic commerce, to foster informed decision-making by consumers participating in electronic commerce, and to increase business and consumer awareness of the consumer protection framework that applies to their online activities.¹⁵ Government should also make certain that public educational institutions have the ability to provide individuals with the training and skills necessary for them to fully participate in an e-commerce society.

Promote e-commerce principals in government administration and procurement.

Electronic commerce enables governments to provide services to their citizens in a more effective and efficient manner. Governments can also contribute to the development of the information economy by acting as role models and market catalysts. Business and user confidence can be enhanced by effective use of electronic payments systems.¹⁶ The use of e-commerce by government has been shown to significantly reduce government procurement costs and improve government efficiency. The Jordanian Government should develop innovative methods for providing their services through e-commerce.

Long- range goals for e-government should also include: 1) offering a full menu of electronically delivered services and information from government ministries, departments and organizations; 2) providing access to the web in every home, school, and business; and 3) making university level education available online.¹⁷

Pursue global cooperation and adopt consensus frameworks in the regulation of e-commerce.

E-commerce is becoming pervasive throughout the global economy and the Internet is emerging as a global marketplace. As a fundamentally new way of conducting business, e-commerce demands a legal regime that leads to predictable results regardless of the jurisdiction in which a particular buyer or seller resides. The legal framework supporting commercial transactions on the Internet should be governed by consistent principals across state, national, and international borders.

There are currently a number of international efforts afoot to put in place a framework for e-commerce on a global basis. These efforts include those of the United Nations, such as the *UNCITRAL Model Law on Electronic Commerce*, and recommendations of the Organization for Economic Coordination and Development (OECD) on consumer protection guidelines and

cryptography policy. At a minimum, adoption of these policies should be considered as a first step in establishing a viable e-commerce business environment. A rigorous exchange of information and policy coordination among different nations should also be promoted.

Evaluate national performance in the digital age and examine options for participation in research and development on an international basis.

Accurate and timely statistics are vital for effective policy development in the digital age. There is also a need to continuously benchmark against international best practice. Information to be gathered and analyzed should include the number and classification of e-commerce companies, the turnover and volumes of online transactions, international e-commerce trade, investment in information technology sectors in the economy, employment and occupation trends in e-commerce industries, e-commerce sub supply, and consumer purchases.¹⁸

The leadership of the U.S. in e-commerce has been fueled by the innovative and commercial sharing and use of technological research between the research community and industry. It has also been based on the continuous flow of new developments and applications in telecommunications and information technology arising from research programs.¹⁹ The future of the Internet will be closely related to the work carried out in third level institutions and advanced research laboratories. The Jordanian Government should monitor and examine options for participation in international research efforts, such as in the development of Internet II and Next Generation Internet (“NGI”).²⁰

Policy Issues

Establish an truly independent authority to regulate telecommunications, including e-commerce.

E-commerce is changing the world. It has already transformed businesses and government in developed countries. It has generated new jobs and made businesses and government more productive and efficient. E-commerce has contributed billions of dollars to national economies. For example, in 1997 analysts forecast the value of Internet retailing could reach \$7 billion by 2000. This level was surpassed by nearly 50 percent in 1998, and last year forecasters tripled their previous estimates of the near-term growth expected in business-to-business electronic commerce.²¹

E-commerce is a complicated issue to regulate because it is based on both emerging and rapidly changing technologies. It is also complicated because it is a global issue that for its success -- even on a national basis -- requires coordination with other governments.

E-commerce is one of the most important issues of this generation and advanced telecommunications is one of the most fundamental requirements for its successful development. The Jordanian Government should capture the moment and facilitate the digitization of Jordan by liberalizing the telecommunications market and by providing the legal, regulatory and infrastructural environments that encourage the development of e-

commerce. This should be accomplished by establishing a truly independent authority to regulate telecommunications, including e-commerce.

Allow the private sector to continue to lead in the development of e-commerce.

The private sector must be allowed to continue to lead in the development of electronic commerce and in establishing business practices.²² The dramatic success of the IT sector in India has been because the Indian government, traditionally one of the world's most bureaucratic, stood aside and let the private sector lead. Innovation, expanded services, broader participation, and lower prices will arise in a market-driven arena, not in an environment that operates as a regulated industry.²³

Nevertheless, the changes being brought about by e-commerce require new frameworks for conducting business. The Jordanian Government's role should be one of encouraging evolving industry self-regulation and supporting efforts of private sector organizations to develop mechanisms to facilitate the successful operation of the Internet.²⁴

Support and enforce a predictable, minimalist, consistent and simple legal environment for e-commerce.

In some areas, Jordanian Government actions will be necessary to facilitate electronic commerce. These actions should be transparent, minimal, non-discriminatory, and predictable to the private sector.²⁵ Where Government action or intergovernmental agreements are necessary, private sector participation should be a formal part of the policy making process.²⁶ The legal regime should be based on a decentralized, contractual model of law rather than one based on top-down regulation. It should focus on protecting customers from fraudulent sales, protecting intellectual property from piracy, protecting privacy, ensuring competition, fostering disclosure and creating simple means for resolving disputes.²⁷ Support for the concept of liberalized electronic services markets must be backed up with real changes in regulatory practices. Legal definitions and practices and structures that pertain to commercial activities in an electronic environment should be clarified or amended. The legal regime should be supported by policing and enforcement mechanisms.²⁸

Adopt a non-regulatory, market-oriented approach to electronic commerce policy, but provide for coordination between the public and private sectors.

Governments can have a profound effect on the growth of e-commerce. By their actions, they can facilitate trade or inhibit it. Knowing when not to act as well as when to act is crucial to the development of electronic commerce. For example, governments must act quickly, transparently and fairly to put in place a truly independent telecommunications environment which will treat all participants fairly, for the alternative will ensure expensive, lower quality services which will inhibit growth in e-commerce and the IT sector, in general. On the other hand, governments should encourage the private sector to meet public interest goals through codes of conduct, model contracts, guidelines, and enforcement mechanisms developed by the private sector.²⁹ The public sector should create the conditions for building the "Information Society" by promoting the development of knowledge, the protection of the individual and balanced regional development.³⁰

Government should refrain from imposing new and unnecessary regulations, bureaucratic procedures, or new taxes and tariffs on commercial activities that take place via the Internet. Impeding commercial activities in these ways will limit unnecessarily the availability of, and raise the prices of, products and services to consumers the world over. It will distort development of the electronic marketplace, and reduce natural competitiveness.³¹

Financial Issues

Declare the Internet a duty-free environment whenever products or services are delivered across the Internet.

Commerce over the Internet lacks the clear and fixed geographic lines of transit that historically have characterized physical trade of goods. It is most desirable to not impose customs duties on electronic transmissions.³²

Notwithstanding, any taxation of electronic commerce which may arise should be clear, consistent, neutral, non-discriminatory and enforceable.³³ It should be consistent with the established principles of international taxation, should avoid inconsistent national tax jurisdictions and double taxation, and should be simple to administer and easy to understand.³⁴ The general principle that the tax system should not distort trade between electronic and traditional means should prevail.³⁵

Approaches to taxation should be based on principles relating to the source and destination of products, be they tangible or intangible, and of residency of the companies.³⁶ Any value added tax ("VAT") should be in keeping with the basic principles of VAT. VAT on digitally supplied services to consumers should be levied at the rate applicable in the country of residence of the consumer and remitted back to that member state.³⁷

Avoid premature and prescriptive regulation of rapidly evolving fields, such as in electronic payment systems.

It is difficult to develop timely and appropriate regulations in rapidly changing fields, such as in electronic payments systems. In early stages of development, inflexible and highly prescriptive regulations are inappropriate and potentially harmful to technology-based solutions.

For example, new technology has made it possible to pay for goods and services over the Internet. Some of these methods would link existing electronic banking and payment systems, including credit/debit card networks, with new retail interfaces via the Internet. At this early stage in the development of electronic payment systems, where the commercial and technological environment is changing rapidly, prescriptive regulations would stifle development of the systems.³⁸

In a situation such as in electronic payments, case-by-case monitoring of the system is preferred in the near term. For the longer term, government action may be necessary, as marketplace and industry self-regulation alone may not fully address all issues.³⁹ Policy approaches in highly evolving fields should recognize the importance of private sector

leadership, and promote both a competitive market for and user confidence in such technologies.⁴⁰

Legal Issues

Subscribe to a uniform commercial code for commerce conducted over the Internet.

E-commerce offers the potential to significantly increase international trade across all sectors of the economy. While recognizing the difference in national legal systems, the legal framework supporting commercial transactions on the Internet should be governed by consistent principles that lead to predictable results regardless of the countries in which the buyer or seller reside. For example, the United Nations Commission on International Trade Law (“UNCITRAL”) drafted a model law that supports the commercial use of international contracts in electronic commerce.⁴¹

E-commerce brings with it a strong impetus towards harmonization of international regulatory frameworks in areas such as accreditation, licensing, and restrictions on activity for newly tradable products. In general, parties should be able to do business with each other on the Internet under whatever terms and conditions they agree upon.⁴²

Consideration should be given to adopting the principles embodied in the UNCITRAL law. The development of simple, predictable domestic and international rules that will serve as the legal foundation for commercial activities in cyberspace should be encouraged.⁴³ Agreements on open market principles with key leading e-commerce countries including Japan, Australia, Singapore, Canada and the United States should be forged.⁴⁴

Provide Protection of Intellectual Property Rights.

Copyright protection is fundamental to e-commerce and the digital distribution of content. The Jordanian Government has recently adopted World Trade Organization directives on intellectual property. The Government must now take the extra step of determining the specifics necessary to ensure the protection of intellectual property rights (e.g., as pertain to copyrights and patents) in the digital world. Some such steps include ensuring that national copyright legislation:

- 1) makes it an offence to post copyright material on public web sites without the copyright owner’s consent; 2) provides protection for technical designs posted on the Internet; and 3) enhances the enforcement powers and penalties for electronic breach of copyright.⁴⁵

Adopt a global system for assigning domain names.

Courts have begun to attribute intellectual property rights to domain names as source identifiers as the use of domain names has burgeoned. This is because courts have recognized that misuse of a domain name could significantly infringe, dilute, and weaken valuable trademark rights.⁴⁶

Conflicts between trademark rights and domain names have been resolved through negotiations and/or litigation to date. This indicates that it may be possible to create a global contractually based self-regulatory regime that deals with potential conflicts between domain name usage and trademark laws without the need to litigate.⁴⁷

The system for registering, allocating and governing domain names should be global, fair and market-based. It should reflect the geographically and functionally diverse nature of the Internet. The system should give business the confidence that trademark rights will be protected in a self-regulatory regime on a global basis.⁴⁸

Encourage the adoption of industry-led information security management systems.

Effective information security, including the security of transactions and payments, is essential for the development of electronic commerce, and should be implemented in a manner consistent with business needs and public safety. The awareness and adoption of industry-led best practice approaches on information security management should be encouraged.⁴⁹

Information security depends on: 1) secure, reliable and competitively priced telecommunications networks supported by Government by a truly independent, fair and transparent regulatory regime; 2) effective means for protecting the information systems attached to those networks; 3) effective means for authenticating and ensuring confidentiality of electronic information to protect data from unauthorized use; 4) well-trained users who understand how to protect their systems and data,⁵⁰ and 5) a restructuring of the prevailing Jordanian salary/incentives schemes to improve the retention of competent personal .

There is no single “magic” technology or technique that can ensure the reliability and security of information over the Internet. Accomplishing this goal requires a range of technologies (e.g., encryption, authentication, password controls, firewalls) and effective, consistent use of those technologies, all supported by globally trustworthy key and security management infrastructures.⁵¹

Protect the privacy of personal information by supporting private sector initiatives.

An effective means of protecting the privacy of individuals’ personal information is essential to the confidence in use of e-commerce. These means, such as the use of encryption and password controls, should not inhibit the development of electronic commerce or impede the free flow of information. Effective privacy protection can be achieved by private sector development, implementation and enforcement of privacy policies.⁵²

Privacy initiatives should incorporate the principles of fair information practices, awareness, choice and dispute resolution. Businesses gathering data should inform consumers about what information they are collecting, and how

they intend to use it. They should also provide consumers with a meaningful way to limit the use and re-use of personal information. Consumers should be entitled to redress if they are harmed by improper use or disclosure of personal information or if decisions are based on inaccurate, outdated, incomplete or irrelevant personal information.⁵³

Adopt encryption policies with a global perspective.

Cryptography is one of the technological means to provide security for data on information and communications systems. Cryptography is critical to the development and use of national and global information and communications networks and technologies, as well as the development of electronic commerce.⁵⁴

Cryptographic methods must be trustworthy in order to generate confidence in the use of information and communications systems. Cryptographic methods should be developed in response to the needs, demands and responsibilities of individuals, businesses and governments. Users should have a right to choose any cryptographic method, subject to applicable law.

The fundamental rights of individuals to privacy, including secrecy of communications and protection of personal data, should be respected in national cryptography policy and in the implementation and use of cryptographic methods. National cryptography policy should allow lawful access to plain text, or cryptographic keys of encrypted data. The policy should also clearly state the liability of entities that offer cryptographic services or hold access to cryptographic keys.

Technical standards, criteria and protocols for cryptographic methods should be developed and promulgated in co-ordination with other countries.⁵⁵ For example, in December of 1997 the OECD issued guidelines for cryptography policy. No country should use cryptography policy as an unjustified obstacle to trade, or enforce national encryption policies on firms in other countries as a condition of market entry.⁵⁶

Ensure the legitimacy and enforceability of electronic signatures and contracts.

The legitimacy and enforceability of e-commerce contracts should be ensured. Contracts made and signed electronically should have the same force in law as if they had been made and signed physically. Parties to transaction should have the opportunity to prove in court that the authentication technique used in the transaction is valid. They should also be permitted to determine the appropriate technological and business methods of authentication for their transaction.⁵⁷

There has been significant effort at the international level to craft a legal regime regarding electronic signatures and contracts. The Jordanian Government should review these efforts, including those of UNCITRAL as contained in *Planning of Future Work on Electronic*

Commerce: Digital Signatures, Certification Authorities and Related Legal Issues. The Jordanian Government should also work with the private sector in adopting practical and enforceable laws governing electronic signatures and contracts.

Clarify liability issues for intermediaries.

The number and characteristics of intermediaries involved in e-commerce transactions differ from those in traditional commerce. Uncertainty on the issue of liability can deter the establishment of intermediaries. Liability of intermediaries should be clarified. Intermediaries that act as mere conduits by simply facilitating or providing access between one party and another should not incur liability for the sale of a product or service.⁵⁸

Develop electronic evidence and dispute resolution regimes.

There are two key issues relating to the use of electronic evidence. The first is its admissibility, and the second is the legal weight assigned to it and the parameters for its use. Electronic evidence in civil proceedings should be addressed by national legislation.⁵⁹

An effective dispute resolution regime may also provide Jordan the opportunity for development as a regional center for the arbitration of disputes on electronic transactions. This would require, among other things, a trained pool of arbitrators.⁶⁰

Establish an enforcement and penalty regime for e-commerce, including one to combat hacking.

An important part of any legal regime is its enforcement mechanisms. Unlawful interference with the business resources of e-commerce users can be a serious problem for companies, particularly where confidential information is involved. In this “Information Age,” interdependent computer networks are an integral part of doing business. In many countries, these networks control essential services such as banking and finance, electricity and gas, and transportation.⁶¹

Protecting critical infrastructures requires Government involvement. When specific incidents or cyber events occur, they should have the capacity to issue warnings, investigate the incident, and develop a case to punish the offenders.⁶² Hacking and other infringements to the established e-commerce legal system should be deterred by penalties, with a strong investigative and enforcement regime.⁶³

Market Access Issues

Liberalize the telecommunications market to enhance Jordan’s broadband connectivity to the global telecommunications network and achieve first class services at the best price.

Advanced telecommunications is one of the most fundamental requirements for the successful development of e-commerce. Advanced telecommunications includes the availability of broadband telecommunication services in all parts of the country, with high capacity international links.⁶⁴ Increased private investment in high-speed networks will facilitate the

distribution in availability of information, particularly bandwidth-intensive applications that use graphics and video. The availability of this increased bandwidth will enable web-sites to more closely mimic the “real store” shopping experience as well as encourage Internet innovators to construct multimedia environments and deliver them with little delay.⁶⁵

Competition in all information and communications markets should be promoted since this results in lower prices, more customer choice, and faster deployment of new technologies.⁶⁶ For example, Japanese Internet users have noted that the cost of local phone calls is a major disincentive to greater use of the Internet. Conversely, a factor facilitating e-commerce growth in the United States is the flat rate pricing structure of local residential phone calls.⁶⁷ A national policy framework for advanced telecommunications deployment should be developed and implemented.⁶⁸ The starting point for this is a truly independent, fair and transparent telecommunications regulatory authority.

Establish laws to protect the consumer participating in e-commerce.

Trust is essential to all commercial undertakings, but particularly in e-commerce where the parties to the transaction may never meet. The buyer wants assurance that the seller a) exists and b) is worth doing business with. The seller likewise wants to know that the buyers are who they say they are and that the payment is secure.

Businesses engaged in electronic commerce with consumers should provide accurate, clear and easily accessible information about themselves. This information should allow for identification of the business, prompt, easy and effective communication with the business, appropriate and effective resolution of disputes, service of legal process, and location of the business and its principals by law enforcement and regulatory officials.⁶⁹ The information should also provide sufficient information about the terms, conditions and costs associated with a transaction to enable consumers to make an informed decision about whether to enter into the transaction.⁷⁰

Consumers should have the right to prior information on the identity of suppliers, on the characteristics of goods and services being offered, on price and delivery costs, the duration of offers, and the right to withdraw.⁷¹ The consumer should be able, before concluding the purchase, to identify precisely the goods or services wished to be purchased, identify and correct any errors or modify the order, express, informed and deliberate consent to the purchase, and retain a complete and accurate record of the transaction. Consumers should be provided with easy-to-use, secure payment mechanisms and information on the level of security such mechanisms afford.⁷² They should also be provided with meaningful access to fair and timely dispute resolution and redress without undue cost or burden.⁷³ Consumers should be assured that false, deceptive and fraudulent commercial practices in cyberspace will be prosecuted.⁷⁴

A variety of consumer protection laws exist that govern business practices. Many countries have begun to review existing consumer protection laws and practices to determine whether or not changes need to be made to accommodate the unique aspects of electronic commerce. Countries are also examining ways in which self-regulatory efforts can assist in providing effective and fair protection for consumers.

For example, one self-regulatory regime envisions a system whereby organizations are accredited to certify the existence of individuals and companies. The accreditation would be on a voluntary basis with the assurances that companies are worth doing business left to the market.⁷⁵ This type of system is intended to provide transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.⁷⁶

Government action is necessary to ensure that consumers have confidence in the goods and services offered over the Internet. Current consumer protection laws should be examined and their appropriateness to e-commerce assessed. Jordan should establish a clear framework for transparent and effective consumer protection in e-commerce.

Provide open access to information and avoid unnecessarily restricting content.

The Internet provides unprecedented access to information. For the first time, a means of communication enables an individual to select what he or she wishes to view from among millions of pages of information posted on hundreds of thousands of web sites all around the world. In instances where users do not wish to receive certain types of content, such as information inappropriate for children, filtering systems or other tools should be made available so that the individual consumer can exercise his or her choice.⁷⁷ On-line service providers should not be asked to monitor all the content being transmitted over their network, but should be expected to work with domestic law enforcement authorities as well as with their international counterparts to stem the transmission of illegal content.⁷⁸

Companies wishing to do business over the Internet, and to provide access to the Internet are truly concerned about liability based on the different policies of every country through which their information may travel. These different laws can impede electronic commerce in the global environment.

Countries that have adopted laws to restrict access to certain types of content (e.g., hate speech, violence, sedition, pornography) through the Internet emphasize different concerns as a result of cultural, social, and political differences. Although cultural diversity is a valid issue it should not serve as a disguised trade barrier or be used as an excuse to justify unnecessarily burdensome regulation.⁷⁹ Cultural and linguistic diversity should be promoted without limiting content. This should be accomplished through subsidy programs that rely solely on general tax revenues and that are implemented in a nondiscriminatory manner.⁸⁰

Truthful and accurate advertising should be the cornerstone of advertising on the Internet. Businesses engaged in electronic commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices.⁸¹ Advertising should not be unduly restricted. The rules of the “country-of-origin” should serve as the basis for controlling Internet advertising to alleviate national legislative roadblocks and trade barriers.⁸²

Spamming is the practice of sending unsolicited commercial material, such as mass mailings, to communities or individuals across the Internet. This use of Internet capabilities causes problems for Internet Service Providers and disrupts the provision of efficient services to business. National codes of practice should be developed to differentiate between direct

marketing activities and spamming. This should help encourage customer relationship marketing activities and the positioning of global Internet within countries seen as having a favorable business environment.⁸³

Allow the marketplace to dictate software and hardware technical standards.

Standards are critical to the long term commercial success of the Internet as they can allow products and services from different vendors to work together. The marketplace is best able to determine technical standards and other mechanisms for interoperability.

Areas in which such standards will be necessary include: electronic payments; security (confidentiality, authentication, data integrity, access control, non-repudiation); security services infrastructure (e.g., public key certificate authorities); electronic copyright management systems; video and data-conferencing; high-speed network technologies; and digital object and data interchange.⁸⁴ However, it is crucial to national success in e-commerce, and the IT sector in general, that proprietary standards do not become barriers to market entry or impediments to further innovation.

Provide for a seamless electronic to physical marketplace infrastructure.

Where electronic commerce is applied to the production and distribution of tangible goods, a close relationship exists between the electronic and non-electronic components of the commercial infrastructure. Costly and inefficient systems for the physical transportation of goods could slow down the development of the electronic marketplace. For example, the explosion of e-commerce in the United States would not have been nearly as large if there had not been available a corresponding availability of low-cost, fast and efficient transportation options to deliver the goods purchased electronically. The benefits to the non-electronic segment of the economy have also been enormous and have contributed to the high level of international competitiveness in the U.S. economy. The Jordanian Government has a major role to play in ensuring that physical transportation infrastructures are developed in coherent, coordinated ways, such that they complement the transaction efficiencies generated by e-commerce and do not interfere with speedy process.⁸⁵

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