

ICTRP

**Legal and Regulatory Reform for ICT in Egypt
Specialist Report**

by
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1 Analysis & Findings

Overview

Electronic commerce ("e-commerce") raises a whole new dimension to the traditional commercial law and policy framework of a country. Although perhaps extreme, one viewpoint actually characterizes e-commerce as the "dehumanization of business relations." More moderately stated, it is certainly true that a significant difference between electronic commerce and traditional commerce is the fact that electronic transactions are far more impersonal, anonymous, and automated than transactions made between people in-person, in a departmental store, at a bank or even over the telephone. This alteration of traditional business relationships, combined with accompanying increased opportunity for fraud and abuse using the underlying technological means, has given rise to a sense of caution, if not outright distrust, in many aspects of electronic commerce.

Consequently, to build trust in this new form of doing business and to advance the level of acceptance among businesses and consumers, government entities and the private sector must develop coherent policies to overcome real and perceived risks to businesses and consumers of engaging in electronic transactions. Issues that can have a crippling effect on electronic commerce activity in a country are the accountability and reliability of electronic transactions, the legal validity of electronic transactions, security and integrity of electronic networks, privacy of electronic communication and personal information, and fraud in distance selling of products and services. Individuals and businesses will more readily engage in electronic transactions if they are confident that their transactions in the electronic medium will be as valid as traditional activities, if there are fewer legal uncertainties, and the electronic environment is no less secure than the traditional environment to which are accustomed. Therefore, a transparent, predictable, and secure legal environment that establishes ground rules on national and international level is vital to the growth of electronic commerce. For what is known as the business-to-business type of electronic commerce, additionally, an open, liberal and stable business investment and market environment is essential.

E-commerce, which involves moving from a paper-based system of commercial transactions to one where electronic transactions predominate, raises a variety of legal issues and challenges that may not fall squarely within the established traditional commercial legal framework. Most of these frameworks were conceived in an era before the advent of advanced electronic communications systems, and are designed for trade in tangible goods. In contrast, e-commerce tends to accentuate the intangible aspects of commerce. This may call for the creation of a new legal paradigm, either by amending the existing concepts or by creating an entirely new framework that addresses legal resolution of issues unique to electronic commerce. Issues unique to electronic commerce are: the validity of electronic transactions; admissibility

of electronic evidence; electronic signatures; certification authorities; privacy protection; intellectual property rights and domain names; consumer protection; customs and taxation; and alternate dispute resolution. These issues are discussed in more detail later in this section.

In Egypt, electronic commerce market is fairly small and undeveloped. One of the main reasons cited for the lack of flourishing electronic commerce in Egypt is the lack of a predictable legal and regulatory framework that recognizes, facilitates and enforces electronic transactions. There is a widespread lack of trust and confidence in the security, integrity, reliability, and enforceability of electronic transactions, arising from a number of factors - some real and some imagined. It is clear that for electronic commerce to reach its full potential in Egypt, GOE, with private sector participation, will first and foremost have to formulate policies that build trust and establish ground rules that provide confidence and direction to the users of electronic transactions.

This Assessment of Egypt's legal and regulatory framework surveys the existing commercial legal environment pertinent to electronic commerce, identifies legal constraints, and provides recommendations for legislative interventions to eliminate barriers to electronic commerce and ensure that Egyptian business is given the opportunity to be at the forefront of electronic commerce internationally. These recommendations are based upon our interviews with various representatives of Egypt's private and public sectors.

1st Problems & Issues

Egypt has an extensive legal and regulatory framework that governs its business and investment climate.¹ Over the past several years, Egypt has gradually, though progressively, liberalized its business environment to facilitate private sector activity in Egypt.² Egypt continues to streamline its commercial laws, remove trade and investment barriers, and actively encourage investment in several sectors, including the ICT sector. For investment in the ICT sector and the development of electronic commerce in Egypt, it is key that the legal and regulatory environment be predictable and investment-friendly. In addition, the legal and regulatory framework should enhance the telecommunications infrastructure and provide a safe and secure environment for electronic transactions.

¹ For a general background on legal business and investment climate in Egypt, please refer to various documents attached in the Annex of this document. Particularly relevant and useful for a detailed insight into Egypt's commercial legal framework is the 1994 assessment report prepared by John Bentley, titled, Egyptian Legal and Judicial Sector Assessment. This report presents a detailed analysis of the existing commercial legal environment, identifies legal constraints in Egypt's legal system and makes recommendations for reform.

² The USAID-funded U.S. Commerce Department's Commercial Law Development Program (CLDP), through technical assistance, contributes to the development of the legal environment for business and investment in Egypt.

Egypt's existing commercial legal framework imposes several constraints on the private sector activities. To highlight a few, the level of corporate taxation in Egypt is 40% which is very high; setting up of business operations is overly complex; level of taxation for advertising is very high (about 36%) which makes it prohibitively difficult for new and smaller businesses to effectively advertise their products in the domestic marketplace; labor laws are antiquated and do not consider technology protection or intellectual property, fundamental to the protection of the assets of high technology companies; firing of incompetent employees is difficult which limits the employers ability to recruit new skilled professionals; there is no basic competition law in place (we have been advised that such a law is currently being drafted which will address aspects of monopolies, dumping and price fixing). Various tax incentives, however, are made available for investments in designated areas ranging anywhere from 5-20 years, dependent on the location of the company.

Lack of adequate intellectual property protection is another significant barrier to trade in the high technology sector in Egypt. The current Egyptian legal system for protection and enforcement of intellectual property rights (IPRs) is weak and ineffective.³ In 1997-99, the U.S. Trade Representative identified Egypt's lack of adequate IPRs protection and enforcement as a significant foreign trade barrier and placed Egypt on the "Special 301" Priority Watch List. Litigation is slow and penalties are not severe enough to constitute a sufficient deterrent for IPRs infringement. Inadequate patent protection has been the biggest barrier to technology transfer in Egypt. Copyright piracy is rampant, affecting most categories of work including computer software, motion pictures, sound recordings etc. The legal system does not have enough judges and lawyers that understand intellectual property laws related to high technology such as the ICT. It is our understanding that new legislation is currently being drafted to strengthen the IPRs regime in Egypt and bring Egypt in compliance with its obligations under the World Trade Organization - Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs Agreement). It is expected that the draft legislation will be submitted for parliamentary approval before the end of year 2000. The GOE has recently taken steps to curb computer software piracy and increase the authorized use of legitimate software by government departments.

Key administrative impediments to business and investment in Egypt include red tape, arbitrary decision-making, complex government regulation and opaque regulatory system, corruption, customs delays, high market-entry transactions costs, and an unresponsive overburdened court system. Most decision making is top-down. It is reported that there are only about 6000 magistrates in the whole of Egypt, and that each of them handles approximately 500 cases per day. This results in enormous delays and arbitrary judgments. To improve Egypt's business and investment climate, there is an urgent need for "fast track" procedures for effective and efficient dispute settlement.

³ The on-going USAID project - Strengthening Intellectual Property Rights in Egypt (SIPRE) provides technical assistance to Egypt for strengthening its intellectual property regime and removing barriers to the effective and meaning enforcement of IPRs.

Additional impediments, which specifically hinder the development of electronic commerce in Egypt include the lack of secure electronic payment system, inefficient local postal system, restrictive telecommunication infrastructure, and lack of awareness at the consumer and business level. These are discussed in greater detail in the following section, and possible opportunities for legislative interventions are identified.

2nd Opportunities Possible Intervention

It is clear from our review of the existing Egyptian law that there is lack of a legal and regulatory framework applicable to electronic commerce issues. There is a need for law and administrative reform to create an environment that will facilitate, support and promote electronic commerce in Egypt. If legal uncertainties are left unresolved, it will severely affect the growth of e-commerce in Egypt.

The legal and regulatory reform should be undertaken in two phases. In the first phase, GOE, with private sector participation, should develop a ground-floor legal and regulatory framework that recognizes, facilitates and enforces electronic transactions. This will provide critical and essential support to the budding electronic commerce activity in Egypt through building trust and confidence in the public and private sector. The second phase of the reform should involve developing a more comprehensive set of laws and regulations in response to specific market needs. As the market develops, more extensive legislation and regulation can be developed to deal specifically with market failures and other issues that may emerge with respect to consumers, corporate market needs, law enforcement and public concerns. Until electronic commerce activities assume greater significance in Egypt, GOE should proceed cautiously by not over-regulating electronic commerce and by using and building upon the existing legal framework to remove constraints where ever feasible.

The following sections identify legal constraints and areas that need legislative intervention, and recommend specific activities for reform to create a basic legal infrastructure to facilitate, support and promote electronic commerce, both in Egypt and the global marketplace.

a) **Joint Statement Signed by Egypt and the U.S. on Electronic Commerce**

In October 1999, Egypt and the United States signed a joint statement on electronic commerce designed to facilitate and support electronic commerce in Egypt ("Joint Statement"). To guide the growth of e-commerce, Egypt's reform policy should adopt the fundamental principles set forth in the Joint Statement, which are briefly described below. These principles provide a consistent philosophical underpinning that appears to have contributed to the remarkable success of the Internet and e-commerce in countries such as the U.S., the United Kingdom, Australia and many countries in Europe.

One) Five Fundamental Principles

- (1) Private sector should lead after initial financing of development by the government. Accordingly, Egypt should encourage industry self-regulation where appropriate and support the private sector to develop mechanisms to facilitate the successful operation of the Internet. Where governmental action is necessary, private sector participation should be a formal part of the policy making process.
- (2) Government should avoid undue restrictions on e-commerce.
- (3) Where governmental intervention is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce. Where ever feasible, the government should refrain from creating new and unnecessary regulations, bureaucratic procedures, taxes and tariffs.
- (4) Government should recognize the unique qualities of the Internet. Widespread competition and increased consumer choice should be the defining features of the new digital marketplace.
- (5) E-commerce over the Internet should be facilitated on a global basis.

Two) Policy Issues

The Joint Statement identifies policy issues that may need special attention to preserve the Internet as a non-regulatory medium, some of which are tariffs; taxes; electronic authentication/signatures; privacy; social and regional challenge; open access to information, cultural diversity and content; government services and information; security; electronic payments; intellectual property rights; consumer protection; telecommunications infrastructure and information technology; technical standards; and enforcement.

Three) Coordinated Strategy

The Joint Statement pins the success of electronic commerce on effective partnership between the private and public sector, with the private sector in the lead. Furthermore, government participation must be coherent, cautious and have a targeted approach to avoid inefficiencies and duplication in developing and reviewing policy. Changes in technology and marketplace should

determine optimal environment in which electronic commerce and community can flourish

b) Government Role in Regulating Electronic Commerce

It is recognized that GOE has a critical role in the development and growth of electronic commerce in Egypt. Unlike in countries such as the U.S., where the government's role is primarily that of a facilitator encouraging self-regulation by the private sector, GOE will have to take the lead and play an aggressive role in policy-making and regulating electronic transactions and establishing consumer confidence. It will have to provide the strategic direction and the necessary infrastructure and infrastructure for electronic commerce in Egypt. Such GOE initiative is necessary in the initial stages to build a secure and stable business and legal environment in which electronic commerce can grow. GOE intervention should gradually phase out as the market matures and the private sector develops an acceptable capability to self-regulate. Having said that, over-regulation should be avoided at all costs and any policy formulation should involve private sector participation. GOE's goal should be to ensure competition, protect intellectual property rights and privacy, prevent fraud, foster transparency, support commercial transactions, and facilitate dispute resolution – in as open market environment as possible.

c) Necessary Legal and Regulatory Reform

As mentioned previously, one of the issues that has repeatedly surfaced in our discussions with both the GOE and the private sector, on the current status and potential of electronic commerce in Egypt, is the lack of stable and predictable legal and regulatory environment for electronic commerce. Egyptian businesses and consumers are wary of conducting business over the Internet because there are presently no laws, regulations or guidelines that govern electronic transactions, or provide clear direction with respect to their validity, security, integrity, privacy and/or enforceability.

Legal and regulatory reform should be directed at establishing certainty of legal effect and building business and consumer confidence in the security of electronic transactions. Achieving these goals may or may not necessarily require new legislation. For areas that do not need reform, clarifying that there will be no need for new legislation can provide the certainty that is required to encourage investment.

One) Established Key Principles for Developing Rules for Electronic Transactions. In formulating new rules that govern electronic transactions, legislators should adhere to the following established key principles:

- (1) In most situations, parties should be free to order the contractual relationship between themselves as they see fit without government intervention.

(2) Rules should be technology-neutral, flexible and forward-looking. This will allow new technologies to develop in the market. Over-specifying rules on matters such as electronic signatures can make it more difficult for a legal regime to incorporate more efficient technologies in the future. A further argument in favor of technology-neutrality is that legislators today are not necessarily in a position to predict the future with respect either to technological or legal developments.

(3) Existing rules should be modified and new rules should be adopted only as necessary or substantially desirable to support the use of electronic technologies.

Two) Specific Areas For New Legislative Drafting. GOE will have to draft new laws in the following areas to spur electronic commerce activity. Any proposed legislation should be uniform and conform to existing international standards. This thrust will be key to enable businesses to trade confidently with overseas partners. It would be prudent to take cognizance of the work undertaken in other countries and by international organizations, such as the U.S., the United Kingdom, Malaysia, Singapore, the Model Computer Commerce Law, and the Model Law on Electronic Commerce created under the auspices of the United Nations Commission on International Trade Law (UNCITRAL). In addition, it is important to ensure that there is interagency/ministry coordination in these endeavors to avoid duplicative efforts. One effective way to facilitate inter-ministry coordination is to have computerized network so that the ministries can communicate effectively.

(1) **Validity of Electronic Documents.** Egypt does not have any law that either explicitly recognizes or denies the general principle that information and signatures in electronic form should be given legal effect. Egyptian law includes, however, a number of form provisions that require documents to be in writing, for documents to be signed, or documents to be original, or a combination of these. An electronic form of a document or a signature would appear not to satisfy these requirements, and likely be viewed as a source of unacceptable commercial risk of use for businesses and consumers. In fact the Egyptian law only recently amended to recognize the uses of facsimiles and to grant legal effect to their use. There is also legal uncertainty about the admissibility and evidentiary probity of electronic documents and data messages. GOE should remove this legal uncertainty by either drafting a new legislation or an executive regulation that recognizes that information and signatures in an electronic form should not be denied legal effect solely on the grounds that it is in an electronic form. It should ensure

functional equivalence between electronic and other forms of communication, where feasible. Admissibility and evidentiary probity of electronic information and data messages can be addressed through amendments to Egypt's code of evidence, if necessary.

(2) **Electronic Signatures and Contracts.** Many countries are attempting to tackle issues arising in the context of electronic contracts and signatures, and are drafting laws and guidelines addressing legal effect and validity of electronic contracts and signatures. President Clinton has just this month signed America's first federal e-signature law that provides legal validity to online contracts. Korea, Malaysia and Singapore are other examples. Legislation in this area should deal simply with the legal effect of electronic signatures in a technology-neutral manner. Any legislation drafting regarding electronic signatures must be considered with caution as there is a risk that an inappropriate legislative regime may be adopted without regard to market-oriented solutions. Uncertainty as to the validity of the use of data messages for contract formation should be clarified.

It is our understanding that IDSC has initiated the drafting of a new law on electronic signature which is likely to be completed by the end of year 2000.

(3) **Certification Authority.** One means to providing some fundamental measure of confidence in companies doing business on-line, and a means to distinguishing from among those companies in terms of their legal compliance, would be to establish certification requirements for companies, services, and business practices that meet clear set of standards of performance, reliability, quality and integrity. Consumers will be much more confident about conducting electronic commerce with companies bearing certification if it carries a reputation for rigid oversight and enforcement of high standards within the industry or the market. In the U.S., certification authorities are generally private companies. There is no federal legislation to regulate certification authorities, only a few states, e.g., Utah, have addressed this issue. Utah has established the Division of Corporations and Commercial Code which has authority to making rules governing certification authorities. For now, however, electronic signatures are only as reliable as the certification authority, and it is the consumer's obligation to assess whether certificates are issued by certification authorities they are willing to rely.

It is clear that the issue of safety and security of electronic transactions is at the forefront of all discussion on electronic commerce in Egypt. GOE may wish therefore to put in place a system for a certification authority (CA). GOE should determine the most suitable and effective institutional mechanism for defining and issuing such certificates, and whether the CA should be a governmental entity, an NGO, or a private firm.

(4) **Encryption and Security.** To fully realize the potential of electronic commerce, parties need to be assured that they are transacting business in an environment free from illegal attack and trespass. The most reliable means to secure business conducted electronically is through cryptography i.e., encryption and decryption techniques. Strong encryption is necessary for consumer protection and consumer confidence in electronic commerce.

Encryption technology has long been treated as sensitive good, with both civil and military potential. Consequently, many countries have adopted regulations restricting the use, import and export of encryption technology, including the U.S. Having recently recognized the importance of encryption to the growth and spread of electronic commerce, however, many governments are in the process of liberalizing those restrictions.

Egypt currently has little legislation that regulates electronic transactions and there is no law regulating encryption. Egypt should take measures to ensure that electronic commerce is as robust as traditional forms of transactions. Since it is typically the private sector that leads in the area of encryption technology, GOE should ideally work in partnership with the private sector to develop a comprehensive policy on the standards of encryption permitted while importing and exporting data and also encryption standards for transactions within the country.

Three) Reform in the Existing Legal Framework

(1) **Intellectual Property Rights.** Electronic commerce has opened up entirely different dimensions of legal issues affecting intellectual property rights. Adequate protection of IPRs are critical for the growth of electronic commerce. Major issues are adequate protection and enforcement of (i) technology patents, (ii) copyrights and related rights, and (iii) trademarks and domain names. Since electronic commerce involves selling and licensing of information, intangible

products and technology protected by IPRs. this medium is especially susceptible to risks of theft or misuse.

Cybersquatters routinely hijack well-known trademarks as their Internet domain names. This has resulted in increasing infringement litigation involving domain name use and trademark laws. Egypt should recognize through legislation domain names as a use of trademarks and further consider how to best develop the governance of the domain name system to settle conflicts between domain names and trademarks. Egypt should also provide adequate intellectual property protection and enforcement to owners and inventors, and bring its IPRs regime in compliance with the WTO-Trade Related Intellectual Property Rights (TRIPs) Agreement. Egypt should also consider signing and ratifying the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

(2) **Privacy.** Globally, the potential of the electronic medium to intrude into the privacy of individuals has received considerable attention; collection and usage of personal information by online merchants is a high-profile policy issue among both the public and policy makers. Technology increasingly facilitates obtaining detailed, personal information without the knowledge or consent of the consumer. Most privacy regimes in developed countries, whether of prescriptive or voluntary nature, revolve around the principles of notice and consent. Some of these regimes can have an extra-territorial impact. For instance, the European Union Directive on Data Protection is likely to have a significant impact on non-member countries.

The U.S. does not have a comprehensive set of privacy legislation that addresses the collection, storage, transmission or use of personal information on or from the Internet or in other business environments. While certain basic privacy interests arise from the U.S. Constitution, privacy protection has generally been provided through "ad hoc" legislation and common law principles. As new technologies develop, new laws have been enacted to target specific privacy related issues. One of many federal legislation is the recently enacted *Electronic Communications Privacy Act* that codifies privacy protection for electronic communications. The U.S. government has taken the position that privacy protection with respect to electronic commerce should be industry-led, not government regulated. The industry continues to develop guidelines and policy statements concerning online privacy, and is motivated to self-regulate because of the threat that government-imposed laws may be more burdensome than elf-

regulation. The U.S. Federal Trade Commission (FTC) has espoused four necessary elements to protecting consumer privacy on the Internet: Notice, Choice, Security and Access. Some organizations have taken an "official stamp" approach by offering "privacy marks" to sites that comply with their privacy standards and may audit sites for compliance. Examples are BBB Online and TRUSTe.

Egypt should monitor these developments carefully to ensure consistency with its own policies. It should prepare a feasibility studies on the privacy protection model that would be most suitable for Egypt's business and legal environment. A study should be undertaken to determine if there is a need for more direct and detailed legislation to protect the privacy of communications, since most of the existing laws only generally address the privacy of individuals.

(3) **Alternate Dispute Resolution.** In electronic commerce, with transactions becoming more global, both businesses and consumers are becoming wary of the costs they may incur if they need to engage in cross-border litigation of their rights. Therefore, Alternate Dispute Resolution mechanisms (ADR) are becoming customary and popular as consumers and merchants can settle their dispute through a trusted third party in a low-cost and speedy way.

Egypt has a well-established system for commercial arbitration. Arbitration, including other ADRs such as conciliation and mediation, should be promoted as a preferred mode for resolution of electronic commerce disputes. Support and guidance can be drawn from several international organizations that are involved in international dispute settlement for electronic commerce – International Court of Arbitration of the International Chamber of Commerce, and the World Intellectual Property Organization's (WIPO) Internet-based WIPO-Net, which has been set up to arbitrate IP-related electronic commerce issues.

(4) **Taxation and Customs.** The question of taxation and customs duties on electronic transactions when they cross international boundaries is one of the most difficult that governments must confront.

(a) Taxation. Electronic commerce has revolutionized the way businesses operate and has challenged the adequacy and fundamental validity of principles of international taxation such as physical presence, place of establishment etc., that have traditionally formed the basis for assessing tax liability.

It also presents significant income tax and VAT or sales tax issues. There is a need to review and clarify the tax treatment of Internet-related transactions, without introducing new taxes or uncertainties. Specific rules may need to be developed for classifying the tax nature of electronic transactions. For income tax purposes, one basic issue is whether the activities undertaken in or with respect to a taxing jurisdiction provide sufficient basis for the jurisdiction to impose tax. The classification of transactions is also critical for VAT and sales taxes.

Considerable work on this subject has been already done by many countries, including the U.S., the U.K., and a few other European countries. Most of these countries have advocated principles of neutrality, certainty, avoidance of double taxation and low compliance costs. Egypt should keep these principles in mind while formulating policies on taxation of electronic commerce.

Under the existing tax environment, Egyptian tax authorities routinely face tax evasion and avoidance issues. Because of the nature, volume and speed of electronic commerce transactions, tax authorities will face an even greater challenge to monitor and deal with such occurrences. To tackle some of these problems, Egyptian tax authorities will have to develop a new form of record keeping to track all transactions and taxpayer identity so as not to erode the revenue base. International coordination and cooperation amongst tax authorities will be required to enforce Internet-related taxation and to resolve tax liability and compliance issues.

(b) Customs. In the U.S. and many other countries, delivery of goods purchased via electronic commerce is primarily implemented by postal and courier services. The Egyptian postal system is both inefficient and unreliable and international courier services operating in Egypt charge very high rates for delivery. In addition, the administrative regulations with respect to Customs value and Customs duties is confusing, inconsistently applied and Customs duties unpredictable. This poses a barrier to electronic commerce. GOE should identify customs and accounting procedures that pose obstacles, simply and clarify customs rules and regulations, improve delivery services for both domestic and international products and services, and streamline

procedures that will ensure efficient movement of goods through customs at predictable tariff schedules.

The U.S. supports a "duty-free cyberspace," i.e., things sold on the Internet (electronic transmissions which are either services such as banking services or goods imported electronically such as software) are free from tariffs or customs duties. Currently, no World Trade Organization (WTO) member considers electronic transmissions as imports subject to customs duties. The WTO members in May 1998 agreed to continue to refrain from imposing duties on electronic transmissions.

(5) **Consumer Protection.** In the U.S., consumer protection related to electronic commerce is governed by the FTC Act that prohibits unfair methods of competition, unfair or deceptive acts affecting commerce and false advertising. Another important recent legislation is the Uniform Computer Information Transactions Act ("UCITA") which provides safeguards for consumers online. The FTC promulgates and enforces rules to protect consumers, and works with private organizations to alert consumers to deceptive trade practices.

- GOE does not have standard consumer protection laws or enforcement agencies in place. For electronic commerce to develop, it will be critical to have laws assigning liability for improper or fraudulent business practices. GOE should develop laws and clear guidelines to protect consumer interests in the electronic environment and establish safeguards such as disclosure requirements, warranty guidelines, return of merchandise and refund system. But this does not have to be a strictly governmental activity. Partnership with private firms should be sought. For instance, there are two private firms in the US that ensure consumer privacy, Online Privacy Alliance and BBBOnline, by offering a "seal of approval" and third party enforcement of self-established privacy rules.

(6) **Law Enforcement.** Modern sophisticated technologies make electronic commerce more susceptible to online scams and abuse. The powers of the law enforcement agencies are routinely undermined by the new technological developments and the increasingly widespread ability to encrypt electronic information. Effective law enforcement will be critical to ensure that electronic commerce environment is safe and secure, which is necessary for e-commerce to reach its full potential.

The existing Egyptian penal code may need amendments in order to include crimes against "intangible" property within its ambit. Adequate protection will need to be provided to *online consumers from illegal activities such as piracy, espionage, identity theft etc.* Law enforcement agencies will have to upgrade training and skills of their own personnel to allow them to understand, identify and take into custody, if appropriate, and ultimately prosecute the violators of consumer trust and welfare. Several countries have created units within their law enforcement agencies to specifically deal with computer-related illegal activities that include activities over the Internet. Such units have been quite successful in monitoring, investigating, and prosecuting Internet-related crimes. This serves as a significant deterrent to Internet abuse and activities such as "computer hacking".

- In Egypt, it may be useful to create a specialized unit within its law enforcement agency, through technical training, to monitor, investigate and prosecute deceptive and fraudulent e-business practices and Internet-related criminal activities. Such a unit will establish a cooperation and information-sharing mechanism with its foreign counterparts to deal with cross-border Internet-related crimes. For instance, in the U.S., the Federal Trade Commission (FTC) has taken the leadership role in law enforcement and policy development to protect consumers from deceptive and fraudulent e-business practices. The FTC has developed a Web site (www.imsnrcc.org) to facilitate international cooperation in law enforcement.

Four) Administrative Reform

To realize the full and intended effect of the above mentioned law reform, other bottlenecks that hinder effective implementation and enforcement of the legal infrastructure should also be eliminated. Such bottlenecks include lack of coordination within the government agencies, undue bureaucratic discretion and delays, prevalent practice of bribery and corruption, lack of transparency in the legislative process, undue delays in the court system for case resolution, shortage of qualified judges, lack of trained personnel including the judiciary, government regulators and administrators, policy makers and private practitioners, should be removed.

2 Key Policy Issues for USAID and/or GOE

1st Linkages to other USAID RP

There are several on-going USAID-funded projects aimed at enhancing the legal environment in Egypt, specifically for (i) Strengthening Intellectual Property Rights in Egypt (SIPRE); (ii) Administration of Justice; (iii) Decision Support Services Project for the Egyptian Parliament. Several undertakings in these projects are complementary to the purpose and objective of this ICTRP. Therefore, corresponding linkages can be established with the relevant project programs in order to complement activities under all projects and to avoid wasting resource on duplicative efforts.

In January 2000, the U.S. Department of Commerce initiated a Trade and Commercial Law Reform Program in Egypt, to support the GOE in enhancing Egypt's legal climate for trade and investment for both domestic and foreign businesses. The program is one of the priorities of the Gore-Mubarak Partnership (U.S. – Egypt Partnership for Economic Growth and Development). Specifically, planned activities under this program involve assistance to GOE in developing laws, regulations, procedures and policies that will enhance Egypt's global competitiveness. Many of these activities will directly support the planned activities under this ICTRP and complement each other. Therefore, linkages should be developed with this program which will be mutually beneficial.

3 **Recommendations**

1st Activities/Outcomes

One U.S. technical advisor with strong prior experience and legal background and one local counterpart will be full time resident experts for a period of five years to coordinate the following six activities with corresponding organizations mentioned in the following activities. The U.S. technical advisor will train the local counterpart in aspects of law reform, program management and activity coordination such that at the end of five years, the local counterpart will be fully enabled and equipped to continue the law reform activities on a need basis. This will ensure sustainability of the proposed law reform activities in Egypt. The cost and time of the U.S. technical advisor and a local counterpart is evenly split between the following six activities under the Inputs/Resources section.

- a) **Sub-committee on E-Commerce.** The activity of legal reform in Egypt would greatly benefit through establishing or supporting the establishment of a Sub-committee on E-Commerce that could be housed either in the proposed ICT "Federation" or at one of the two ministries: MOCIT or MOEFT. In case the above alternatives are not feasible, such a committee could be housed at a well-established research center or a think tank in Egypt. The committee will be staffed with 4-6 private and public sector legal and technical experts, with a mandate to monitor electronic commerce issues relating to soft infrastructure. Specifically, this committee will work with GOE in creating a stable and predictable business and legal environment conducive for electronic commerce. This committee will also play an important role with respect to certification

authority issues, encryption and security policy issues and Internet domain name system. The committee will collaborate with international partners to identify common cross-border issues to support and protect electronic commerce in Egypt and abroad. A critical assumption underlying this activity is that at present there exists no coordinated entity on e-commerce law and policy in Egypt.

Technical assistance is designed to build in-house technical expertise and capability within this committee so that it is well-equipped to undertake feasibility studies and analysis of complex legal and regulatory issues that arise in the context of electronic commerce in Egypt. This goal can be achieved by providing for short-term and long-term technical advisors to work with the committee and GOE, by providing grants for feasibility studies and white papers. In addition, training workshops on electronic commerce will be organized in-country, and overseas study trips will be funded for committee members during which they will learn a variety of problem-solving approaches through consultation and in-depth discussion with their foreign counterparts.

Inputs/Resources:

- 1) One full-time U.S. Resident Technical Advisor for five years [1.6 x \$ 250,000 = \$416,600 x 5 (years) = \$ 2,083,300]
- 2) One full-time Egyptian Technical Advisor for five years [1.6 x \$ 50,000 = \$83,300 x 5 (years) = \$ 416,600]
- 3) Short Term Technical Advisors (international and local consultants)
10 international advisors; one month each
[10 x \$40,000 x 5 = \$ 2,000,000]
20 local advisors; two months each
[20 x \$ 20,000 x 5 = \$ 2,000,000]
- 4) Training Workshops in Egypt
20 two-week workshops [20 x \$ 10,000 = \$200,000]
- 5) Study Trips Overseas
10 one-month trips [10 x \$ 20,000 = \$ 200,000]
- 6) Grants for 5 feasibility studies
5 feasibility studies; one month each [5 x \$ 40,000 = \$ 200,000]

TOTAL = \$ 4,800,000 (approx.)

b) **Law Reform and Legislative Drafting.** Technical assistance is designed to support the process of legislative and regulatory reform that will remove barriers to electronic commerce in Egypt. This goal can be achieved by providing short-term and long-term technical advisors (both local and international) to GOE to assist in identifying key legal and regulatory issues that are critical to supporting electronic commerce in Egypt, preparing feasibility studies, and in the legislative drafting process to formulate appropriate responses at the national and international level. Additionally, training workshops and overseas study trips will be

organized for policy makers and government regulators. The reform activity should particularly focus on the following legal issues.

- Legal Validity of Electronic Information and Data Messages
- Electronic Signatures
- Encryption and Security
- Technology/Computer Related Crimes
- Intellectual Property Rights
- Privacy
- Consumer Protection
- Taxation and Customs

A critical assumption in specifically identifying only the above areas for legal reform to enhance the electronic commerce environment in Egypt is that the existing commercial law framework is generally conducive for business investment. The 1994 report prepared by John Bentley, titled, "Egyptian Legal and Judiciary Sector Assessment," identifies constraints in Egypt's legal and judicial sectors that inhibit commercial activity in Egypt, and makes numerous recommendations for reform of Egypt's commercial laws. It is assumed here that several identified legal constraints to Egypt's commercial environment have been eliminated to make Egypt attractive to investors.

Inputs/Resources:

- 1) One full-time U.S. Resident Technical Advisor for five years
[1/6 x \$ 250,000 = \$41660 x 5 (years) = \$ 208,330]
- 2) One full-time Egyptian Technical Advisor for five years
[1/6 x \$ 50,000 = \$8330 x 5 (years) = \$ 41,660]
- 3) Short Term Technical Advisors (international and local consultants)
5 international advisors; one month each
[5 x \$40,000 x 5 = \$ 1,000,000]
10 local advisors; two months each
[10 x \$ 20,000 x 5 = \$ 1,000,000]
- 4) Training Workshops in Egypt
10 two-week workshops [10 x \$ 10,000 = \$100,000]
- 5) Study Trips Overseas
10 one-month trips [10 x \$ 20,000 = \$ 200,000]
- 6) Grants for 5 feasibility studies
5 feasibility studies; one month each [5 x \$ 40,000 = \$ 200,000]

TOTAL = \$ 2,700,000 (approx.)

c) **Effective Law Enforcement.** Simultaneously while engaging in legislative reform, Egypt must make efforts to implement and enforce the new laws and ensure a safe and secure business environment. Only then will the legal reform activity be meaningful. Technical assistance is designed to provide training and support for implementation and enforcement of these new laws. There is a need to train and build

capability within the law enforcement agencies to deal with the legal and technical complexities of technology-related crimes. Technical support is also provided to enable the local law enforcement agencies to establish links with their foreign counterparts to actively reinforce police and judicial cooperation to prevent and combat illegal content and Internet-related crimes. This goal is achieved through targeted training of the law enforcement officials, both in-country and overseas. Overseas study trips for law enforcement officials will be necessary for them to engage in consultation, in-depth discussion, and possible work relationships with their foreign counterparts.

Inputs/Resources:

- 1) One full-time U.S. Resident Technical Advisor for five years [1.6 x \$ 250,000 = \$41660 x 5 (years) = \$ 208,330]
- 2) One full-time Egyptian Technical Advisor for five years [1.6 x \$ 50,000 = \$8330 x 5 (years) = \$ 41,660]
- 3) Training Workshops in Egypt
20 two-week workshops [20 x \$ 10,000 = \$200,000]
- 4) Study Trips Overseas
10 one-month trips [10 x \$ 20,000 = \$ 200,000]

TOTAL = \$ 600,000 (approx.)

d) **ICT Law and Policy Awareness.** Any law reform can only be successful if involved parties are educated and equipped with the skills and knowledge to deal with the change. Upon passage of enabling electronic commerce legislation, it will be critical to provide specialized training to the judiciary, government regulators, policy makers and law practitioners to build expertise and capability in the legal community so that laws are implemented and enforced in a meaningful way. The Egyptian judiciary, policy makers, government regulators and private practitioners are not well equipped to deal with complex legal and regulatory issues related to ICT in Egypt. In view of the legal complexities involved and Egypt's relative inexperience in the ICT sector, training programs in substantive areas of law, policy making and enforcement procedures should be the focus of technical assistance in this activity.

Technical assistance is designed to enable utilization of experienced consultants who have hands-on experience in conducting targeted training workshops in-country and overseas. Supporting study trips to other countries will also be an integral part of this activity. The two resident technical advisors will also work with their counterparts at the University of Cairo and/or other interested educational institution to assist in introducing postgraduate diploma courses in various aspects of technology law (telecommunications law, e-commerce etc.) so that the new generation of lawyers graduating from the University of Cairo and/or other interested educational institution will be better trained to interpret and understand the legal complexities in this dynamic area of law.

Inputs/Resources:

- 1) One full-time U.S. Resident Technical Advisor for five years [1.6 x \$ 250,000 = \$41660 x 5 (years) = \$ 208,330]
- 2) One full-time Egyptian Technical Advisor for five years [1.6 x \$ 50,000 = \$8330 x 5 (years) = \$ 41,660]
- 3) Training Workshops in Egypt
20 two-week workshops [20 x \$ 10,000 = \$200,000]
- 4) Study Trips Overseas
10 one-month trips [10 x \$ 20,000 = \$ 200,000]

TOTAL = \$ 600,000 (approx.)

e) **Electronic Dispute Resolution.** Egypt has a well-established system for commercial arbitration in both domestic and international disputes. Cairo Regional Center for International Commercial Arbitration is an independent non-profit international organization that facilitates dispute resolution through arbitration for regions including West Asia and Africa. The Center handles approximately 25 international cases and 30 domestic cases every year. On an average, a case may take one year or more to be resolved. At times, delays in dispute resolution are caused by the fact that arbitrators, often a mix of national and international experts, are not able to synchronize their physical presence at the same time. This can be a significant barrier to electronic commerce activity. One way to eliminate this barrier is to use Internet as a medium for dispute resolution so that logistics such as the arbitrators' physical presence does not cause unnecessary delays in the final disposition of cases. Currently, there is no online facility for dispute settlement at any institution in Egypt, including the Arbitration Center.

Technical assistance is designed to provide support to Cairo Regional Center for International Commercial Arbitration in developing an online mechanism for dispute resolution through providing technical training to its staff, both in-country and overseas. In addition, initially funding is provided for commodities, including video conferencing equipment, computer hardware and software and language translation system etc.

Inputs/Resources:

- 1) One full-time U.S. Resident Technical Advisor for five years [1.6 x \$ 250,000 = \$41660 x 5 (years) = \$ 208,330]
- 2) One full-time Egyptian Technical Advisor for five years [1.6 x \$ 50,000 = \$8330 x 5 (years) = \$ 41,660]
- 3) Training Workshops on Online Arbitration in Egypt
10 two-week workshops [10 x \$ 10,000 = \$100,000]
- 4) Study Trips Overseas re Arbitration and the Internet
5 one-month trips [5 x \$ 20,000 = \$ 100,000]

- 5) Commodities [video conferencing equipment, computer hardware and software, translation equipment etc.]
\$10,000

TOTAL = \$ 400,000 (approx.)

f) Electronic Database of Laws, Regulations, and Decisions.

Access to information can be key in creating transparency, investor confidence and attracting foreign investment. At present, it is very difficult to have access, particularly from overseas, to Egyptian laws and regulations as they are not freely and easily available. IDSC has developed such a legal database but its access is fee-based and is available only in Egypt. To enable free access to Egyptian laws and regulations, there is a need to develop a web-based database that would enable online access to such resources. Similarly, it would be very beneficial to make available a comprehensive digest of reported cases, and regulatory agency decisions that would help both domestic and foreign businesses, consumers and the legal community to keep up with legislative developments in electronic commerce in Egypt. Draft laws, pending bills and regulations would also be posted for wide electronic circulation and distribution enabling public access and feedback. The outcome of such an activity will be a coherent and transparent legislative process enabling public involvement in the formulation of law and policy in areas that will most affect the public's interest. Development and/or free access to such a database should be undertaken either by the IDSC, the ICT Federation or by another appropriate GOE agency.

Technical assistance is designed to provide support and initial funding for enabling international access and/or web hosting of the electronic legal database.

Inputs/Resources:

- 1) One full-time U.S. Resident Technical Advisor for five years [1.6 x \$ 250,000 = \$41660 x 5 (years) = \$ 208,330]
- 2) One full-time Egyptian Technical Advisor for five years [1.6 x \$ 50,000 = \$8330 x 5 (years) = \$ 41,660]
- 3) Commodities (including computer hardware and software, computer storage system etc.) \$ 15,000

TOTAL = \$ 200,000 (approx.)