

A GREEN PAPER ON ELECTRONIC COMMERCE FOR SOUTH AFRICA

*Co-ordinated and compiled by the
Department of Communications
Republic of South Africa*

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INVITATION TO COMMENT

The public is invited to respond to the national Green Paper on Electronic Commerce. Written responses should reach the Department of Communications at the address below not later than 31 February 2001.

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FOREWORD

Dear Colleagues

I am very happy to introduce this Green paper on electronic commerce and communications to you.

We embark on an extraordinary and challenging period in the history of our world. In just a few decades, we have been rocketed into a new Information Society. Changes that have occurred in the past decade supersede what has transpired in the past fifty years. A society driven by a technology that is taking us, daily, into new ways of being; new ways of understanding, interpreting and living in our world, revolutionising society, culture, politics, the economy and technological innovations.

It offers us new potential for development and progress. In the process, it has thrown up new and demanding challenges; exciting challenges. Sometimes alarming challenges. Challenges that demand that we seriously re-think the economic paradigm shift to post industrialism and how we view our place in it.

An Electronic commerce has, in many ways, created a marketplace without conventional rules; a marketplace, indeed, that challenges many of our preconceived notions and practices. It is also a marketplace that may seem to defy regulation yet at the same time requiring regulation as an enabling tool. It requires that we think carefully about its implications, both positive and negative, for our society, our country and our continent.

The Green Paper raises some of the questions and issues embedded in e-commerce. There may be many more. This is why we have opened this discussion to as wide an audience as possible. It is, in particular, crucially important that we include the previously marginalised majority of our people in our discussions and thinking, for this is a debate that affects all South Africans.

We hope and expect that all those who will be affected by the e-commerce will play a role in helping us move forward on some of the crucial issues this document raises and others that you may feel to be important. Together we can begin to contextualise the kind of challenges confronting us and the opportunities that may accrue.

Allow me to take this opportunity to thank those of you who tirelessly contributed to the process of developing a policy framework for electronic commerce. My sincere gratitude goes to the members of the working groups

for their inputs and to the members of the technical task team for drafting the Green paper. Your continued contribution and extended participation is extremely critical for the path that lies ahead.

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EXECUTIVE SUMMARY

Electronic commerce (hereinafter referred to as e-commerce) touches all major aspects of economic life and presents a series of complex issues. It involves the integration of many elements of technology, infrastructure, business operation and public policy. All these elements need to operate together as smoothly as possible to yield the maximum benefits to public. Most importantly, e-commerce requires new skills and forms of industrial organisation, it therefore also needs to be looked at from social and political angles.

As a starting point, a discussion paper on e-commerce was prepared and it is available at the following website: <http://www.ecomm-debate.co.za>. Issues and questions raised in the e-commerce Green paper are targeted at two distinct audiences; people who are knowledgeable in the subject, such as experts and professionals; and individuals and enterprises who use e-commerce as a medium to communicate, produce, sell and deliver. The issues are contentious and are being debated at the national and international level.

The Green Paper is divided into four categories listed below. Each category contains key issues or areas of concern that need serious consideration in e-commerce policy formulation:

- the need for confidence in the security and privacy of transactions performed electronically;
- the need to enhance the information infrastructure for electronic commerce;
- the need to establish rules that will govern electronic commerce;
- the need to bring the opportunities of e-commerce to the entire population.

Each chapter gives a general background to a specific issue, discusses challenges and problems, paints the international as well as national scenario and pose policy questions relating to the issue. The document seeks answers and proposals relating to some of the challenges and pressing questions regarding the development and implementation of e-commerce.

Chapter 1 introduces the subject of e-commerce in the context of globalisation and the information society. It highlights the importance of e-commerce and hence the need for faster adoption of e-commerce by individuals, enterprises and governments. This chapter further introduces the rationale behind government involvement in developing policy framework for e-commerce.

Chapter 2 begins to layout a legal foundation for e-commerce. Questions and uncertainties concerning the validity, legal effect and enforceability of transactions conducted through electronic means are raised. Other areas involving legal issues relevant to e-commerce include taxation, customs duties, intellectual property rights, data protection, consumer protection, authentication, and jurisdiction and liability issues.

Chapter 3 discusses issues fundamental to establishing the validity, recognition and enforcement of electronic contracts and communications. The chapter is based on the United Nations Commission for International Trade Law (UNCITRAL) Model Law document on electronic commerce. Some of these issues ensure the legal recognition for data communications; evidence; formation and validity of contracts and the recognition of electronic documents by parties; time and place of dispatch of electronic messages; signature.

Chapter 4 explores issues around e-commerce and taxation, including classification of income, source based Vs residence based taxation, administration and compliance issues. New technologies such as the Internet have effectively eliminated national borders on the information highway and these poses inherent problems of jurisdiction and enforcement. This chapter will attempt to explore the implications of not taxing Internet sales and whether new taxes should be introduced.

Chapter 5 concentrates on discussions of e-commerce within the World Trade Organisation. This chapter emphasises the importance of determining how the WTO provisions apply to the various forms of electronic transactions. In embarking on a national policy development initiative on e-commerce, it is imperative that South Africa, as member, takes cognisance of its WTO commitments. Firstly, to ensure that such as policy is compatible with the relevant WTO rules and regulations, and secondly, to determine the impact of e-commerce on these commitments, thirdly, to influence the WTO processes and programmes in the development of e-commerce rules.

Chapter 6 deals with some of the intellectual property protection issues raised by electronic commerce. It has become relatively easier to infringe intellectual property rights through the use of electronic technology. This

chapter shows that the implementation of copyright, trademark and patent protection in an electronic environment constitutes a serious challenge to the development of e-commerce. These new technologies pose challenges to the existing legislation and enforcement mechanisms. The chapter further reviews recent international developments in the areas of intellectual property protection and electronic commerce.

Chapter 7 addresses concerns over lack of privacy on the Internet and security fears. These two concerns deter an adoption and use of e-commerce by individuals, organisations, enterprises and governments. If electronic commerce is to expand, trust needs to be established between parties. This chapter explores ways of establishing the integrity, authenticity, confidentiality and non-repudiation of information and transactions. Legal, procedural and technical means to ensure security and protect privacy are discussed. The discussions cover ways of providing a balance between the ability to combat on-line criminal activities while providing opportunities for users to use the new technologies.

In Chapter 8, consumers must be assured of confidence when conducting on-line transactions. This chapter investigates and identifies the possible mechanisms of protecting consumers against dangers resulting from the easy and convenience of buying on-line. Ways to resolve dispute between buyers and merchants, redress and enforcement mechanisms are required to gain consumer confidence in the electronic environment.

Chapter 9 deals with the information communication infrastructural requirements for e-commerce. The chapter highlights the major challenges and barriers presented by the infrastructure requirements of a digital economy. Access and affordability are discussed as one of the major pre-conditions to be satisfied if individuals and enterprises are to participate in e-commerce. The growth of e-commerce depends on broad and affordable access to infrastructure, enabled by convergence of technologies, forward looking telecommunications policy, robust network infrastructure, sufficient bandwidth and support for targeted applications.

Chapter 10 discusses aspects of Internet governance and in particular the assigning and management of domain names within the South Africa country-level domain. This will be increasingly important as e-commerce expands and domestic companies establish Internet-based marketing and services that will be associated in the public mind with their brand name and hence their on-line domain. Issues around dispute resolution (i.e. trade marks Vs domain names) and security concerns are addressed. Organisational framework and possible structures are dealt with.

Chapter 11 discusses the infrastructure for electronic payments. Instruments such as credit and debit cards and smart cards are discussed in this chapter. Questions surrounding the security of these forms of payment are among the key concerns. The Reserve Bank's position Paper on electronic payment systems serves as a key reference to this chapter.

Chapter 12 highlights the benefits that can be gained from ecommerce especially with the implementation of successful strategies and the contribution that e-commerce can make to sustainable socio-economic growth. Strategies of promoting new business opportunities, market development, education and training, awareness and enablement, skills and jobs are identified.

Chapter 13 concentrates on how can the South African government become a model user of ecommerce. The chapter emphasises the importance of delivering government services on-line and using e-commerce applications in procurement and service delivery. It further investigates what actions need to be taken in becoming an electronic government. The challenges are vast and need the development of a comprehensive e-government strategy.