



Security and Prosperity Partnership of North America

***ELECTRONIC COMMERCE, INFORMATION AND COMMUNICATIONS TECHNOLOGIES  
WORKING GROUP***

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***FRAMEWORK OF COMMON PRINCIPLES FOR ELECTRONIC COMMERCE***

***INTRODUCTION***

The Department of Industry of Canada, the Ministry of the Economy of the United Mexican States, and the Department of Commerce of the United States of America (hereinafter referred to as the “Participants”) recognize the crucial role electronic commerce plays in stimulating economic growth and fostering international trade.

Growth prospects and benefits of the North American online market are substantial (Annex A). Electronic commerce is currently deployed across virtually all sectors of the economy as a means of enhancing corporate productivity and spurring marketplace innovation. Streamlining distribution systems and back-office operations reduces operating costs, lowers prices for the consumer and increases demand for products and services. Online ordering and delivery also stimulates competition and increases consumer choice and convenience.

The Participants share a common goal in fostering adoption of Internet-based business solutions (IBS) by enterprises and supporting an open environment for electronic commerce. Moreover, since an increasing volume of cross-border trade among the economies takes place in digital form or is electronically enabled through the use of the Internet or other network platforms, they also consider mutual cooperation essential in order to foster trans-border electronic commerce and trade conducted online and to maximize its potential benefit for industry and consumers.

The Participants recognize the need to work together to advance the use and practice of electronic commerce within and between their respective economies, and thereby support and endorse the following set of principles, policies and joint actions fundamental to electronic commerce diffusion and adoption throughout North America.

***GENERAL PRINCIPLES***

The continued growth of electronic commerce in North American economies has relied on collaboration by governments and the private sector, based on the following key elements:

- The need for governments to establish and maintain legal and policy frameworks for online commerce and electronic trade and facilitate agreements between jurisdictions on like approaches to domestic policy.

- The effective participation of the private sector in developing and implementing codes of conduct, model contracts, guidelines, and enforcement mechanisms is also important in order to complement governments' efforts in this area.
- An environment favorable to electronic commerce
- A modern, accessible and affordable information infrastructure including high-speed networks.

Considering the high levels of e-business integration between the Participants and the increasing importance of the online retail market and in order to make the North American online marketplace work, the Participants need to promote the growth of electronic commerce across the whole of North America through:

- Transparent and non-discriminatory policy, legislative and regulatory measures;
- Intergovernmental cooperation to ensure the creation of an environment conducive to uniform electronic commerce development and provide a reference point for engagement in multilateral forums;
- Recognition that existing WTO Agreements apply to electronic commerce as a means of doing business;
- Consistent with the Ottawa Taxation Framework Conditions developed by the OECD, the application to electronic commerce of the principles of neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility; and
- Support for making permanent and binding the current World Trade Organization (WTO) practice of not imposing customs duties on electronic transmissions.

## ***PROMOTING GROWTH OF THE NORTH AMERICAN ONLINE MARKETPLACE***

### ***A. Strengthening the Internet as a Medium for Electronic Commerce***

#### ***1) Countering illegal spam and other threats to e-commerce***

In the past decade, the Internet has emerged as the predominant network platform for the conduct of electronic commerce and e-business across North America and around the world. Thus, industry, governments and consumers have increasingly come to rely on a reliable, safe, and secure Internet as a medium for conducting business and for general communications. Abuse and misuse of the marketplace, however, in the form of illegal spam and spyware, phishing and other wrongful practices can seriously undermine its value, both for consumers and for business. The continued growth of electronic commerce therefore depends on governments and the private sector taking effective measures to counter such threats to the effective operation of online markets by creating a stronger, safer Internet.

In particular, fraudulent and deceptive practices constitute real threats to consumer confidence and raise the issue of how to ensure the protection of consumers using e-commerce. The Participants therefore recognize the importance of international cooperation in these areas, and each commits to cooperate on several technological and civil enforcement initiatives that seek to combat using the Internet as a tool for online fraud and other recognized illegal activities. Annex B includes illustrations of joint cooperation between the Participants on a bilateral and multilateral basis.

The seamless nature of the Internet means that the existence of vulnerabilities in one country affects stakeholders in all jurisdictions. International cooperation is therefore fundamental to deal effectively with threats to the viability of the Internet. Accordingly, the Participants intend to reinforce current initiatives to identify and take compatible technological steps to combat fraudulent and deceptive practices, illegal spam, spyware and other harmful behavior and to support measures that build consumer confidence in online markets, including through electronic authentication. The Participants also acknowledge the important work done by criminal and civil enforcement agencies in this domain and will urge the private sector to improve deterrence by reporting criminal and civil violations promptly to these agencies.

## **2) *Electronic Authentication and Certification***

The Participants should work toward an approach that supports, domestically and internationally, the recognition and legal effect of electronic transactions and electronic authentication methods (including electronic signatures). This approach should encompass all stakeholders and consider all aspects of authentication whether studied from a technical, legal or business perspective. At an international level, this should include working together to facilitate the development and implementation of common legal approaches that will support electronic transactions as well as a variety of authentication technologies and implementation models. This approach should:

- Remove paper-based obstacles to electronic transactions by adopting relevant principles from the UNCITRAL Model Law on Electronic Commerce;
- Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transaction, with assurance that those technologies and implementation models will be recognized and enforced;
- Permit parties to a transaction to have the opportunity to prove in court that their authentication technique and their transaction are valid;
- Take a non-discriminatory approach to electronic signatures and authentication methods from other countries.

## ***B. Building confidence in the online marketplace***

An important issue is how to handle domestic regulation as it impacts on the flow of cross-border transactions. The importance of the Internet as a platform for conducting commerce, by both consumers and business, poses new challenges for existing laws and regulations across various sectors of the economy. Increasingly, there is a strong need for governments and the private sector to establish clear and consistent marketplace frameworks for the conduct of Internet-based commerce and electronic trade by consumers and industry.

The Participants seek to coordinate their respective approaches in the following areas:

### **1) Privacy Protection**

Internet-based commerce and electronic trade relies increasingly on the collection and use of personal information in order to respond adequately to customer needs. As a result, a strong demand has emerged for governments and the private sector to adopt clear and consistent principles and practices for the protection of personal information. Moreover, since the flow of data often occurs across information networks that span national borders, effective privacy protection relies increasingly on cooperation at the international level. The Participants therefore recognize the importance of trilateral cooperation to address privacy issues based on the following principles:

- Governments should encourage the private sector to develop and implement self-regulatory mechanisms, including industry guidelines and effective verification and recourse methodologies.
- The private sector is also encouraged to develop and implement privacy practices appropriate to their business requirements and to the needs of their clients and the general public.
- Governments should provide enforcement backstop mechanisms, as necessary, to complement and strengthen industry initiatives and to ensure protection in the absence of private sector solutions.

### **2) Consumer Protection**

Consumers should receive effective protection in the online environment that can be promoted through enforcement of existing consumer protection laws and regulations, modification of these as necessary to accommodate the unique characteristics of the online environment, consumer education, and industry-supported mechanisms to enable consumers and resolve consumer complaints and concerns. The OECD's *Guidelines on Consumer Protection in the Context of Electronic Commerce* provides an appropriate basis for development of consumer protection policies for the online environment.

The Participants should explore measures to enhance consumer confidence in cross border e-commerce as illustrated by The *OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders* which calls on members to consider the development of redress mechanisms for victims of fraud.

### **C. Streamlining consumer and business use of electronic commerce**

Electronic commerce and e-business play prominent enabling roles in transforming industry supply chains, improving the speed and efficiency of product processing and delivery across the entire North American economy. The continued improvement and innovation in ICT enabled logistics will therefore significantly affect future competitiveness and productivity growth.

To promote the streamlining of electronic commerce and e-logistics on a North American-wide basis, the Participants will examine cross-border logistical issues relating to the online marketplace in North America, including their respective border practices and procedures, with particular emphasis on removing unnecessary impediments to efficiency and potential growth. *Both* the online retail market (B2C) and B2B transactions will be considered.

### ***FUTURE WORK***

The Participants will continue to work together to support the development of worldwide electronic commerce in the future, through:

- Close policy coordination between the Participants to encourage electronic commerce as another means of transacting business;
- Continuing substantive trilateral discussions at the experts level on issues regarding electronic commerce;
- Encouraging private sector leadership through dialogue and cooperation between our private sectors and our governments; and
- Close cooperation between the Participants at international fora to support the development of worldwide electronic commerce.

These initiatives will be developed according to a short term and medium term time frame outlined in Annex C.

The Participants to the Framework of Common Principles for Electronic Commerce do not intend to create legal obligations under international law.

Signed in triplicate, at Ottawa, on this day, 27 June 2005, in English, French, and Spanish languages.

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For the Department of Industry of Canada

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For the Ministry of the Economy of the United Mexican States

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For the Department of Commerce of the United States of America

## **ANNEX A**

In 2004, Canada registered combined private and public sector total e-commerce sales of CDN\$28.3 billion, representing an increase of 49.7 percent from 2003. Electronic sales from business to business (B2B) amounted to CDN\$19.8 billion, which represents about 75 percent of total e-commerce by private firms in Canada. For the same year, the total retail e-commerce sales for the U.S. totaled US\$69.2 billion, an increase of 23.5 percent from 2003. In Canada, Internet sales from business to consumer (B2C) were reported to be CDN\$6.6 billion.

## **ANNEX B**

### **EXAMPLES OF CROSS-BORDER COOPERATION** — *Combating fraudulent and deceptive practices and increasing consumer confidence in e-commerce*

- Canada's Competition Bureau, Mexico's Profeco, and the U.S. Federal Trade Commission have developed cooperative ties with each other and trilaterally against cross-border fraud. The Federal Trade Commission has signed memoranda of understanding with both the Competition Bureau and Profeco to improve cooperative efforts between the agencies.
- The Participants, via the aforementioned agencies, participate in the International Consumer Protection and Enforcement Network, and all are members of the *econsumer.gov* project, a Web site for gathering and sharing cross-border e-commerce complaints.
- The above agencies also participate in the London Action Plan – an international coalition of public and private entities that seek practical solutions against the problems caused by spam.

## **ANNEX C**

### **DRAFT PLAN FOR IMPLEMENTING THE COMMON PRINCIPLES FOR ELECTRONIC COMMERCE**

Within this context and according to an agreed upon 2 years time frame, the Participants have agreed to take the following steps:

#### ***In order to counter illegal spam and other threats to e-commerce:***

- Exchange information about technological policies and strategies related to spam and related threats to Internet-based commerce;
- Encourage the adoption of effective anti-spam technologies and network management practices to limit network harm, through industry codes of practice adopted by Canadian, Mexican and U.S. Internet Service Providers and major business network managers; and,

#### ***To facilitate electronic authentication and certification:***

- Develop an analysis of the respective regulatory regimes for electronic authentication;
- Identify solutions to reduce or eliminate these barriers;
- Identify approaches to barriers created by differences in electronic contracting; and
- Reach a draft agreement on mutual recognition of digital certificates issued by the Participants;

#### ***To promote the effective protection of personal privacy:***

- Establish a formal process for consultation on issues related to the protection of personal information and trans-border data flows, consistent with privacy goals, the needs of legitimate private and public sector business as well as the protection of public safety and national security.

#### ***To streamline the flow of cross-border electronic commerce and online trade:***

- Examine cross-border logistical issues relating to the online marketplace in North America, including their respective border practices and procedures, with particular emphasis on removing unnecessary impediments to efficiency and potential growth.

**Notes:** 1). All related criminal enforcement matters will be addressed by the Security Working Group; 2). In carrying out the work outlined in the Framework of Common Principles for Electronic Commerce, the Participants will consult with stakeholders, to identify barriers created by differences in regulatory approaches.