

# Role of IP and e-commerce legal frameworks



## Media lawyer Luca Rinaldi highlights IP and other e-commerce-related legal frameworks and their harmonisation as a means of inclusive trade

The digital revolution of last decades has completely changed the way we communicate, learn and trade. In 1991 the internet had less than 3,000,000 users worldwide and almost no application to trade. By 1999 it reached 300,000,00 users with roughly a quarter of them making purchases online.

Also, as online transactions are increasingly embraced by enterprises and consumers at opposite ends of the world, Developing Countries (DCs) assume a more prominent role as both buyers and sellers of goods and

services online. E-trade grew from 2003 to 2013 by 120% per year in China and from 1.6 to 43 billion USD in Latin America.

But despite such growth rate, huge differences still exist, with the percentage of individuals who have made at least one online purchase in their life ranging from more than 60% in UK, Denmark and Australia to less than 5% in Mexico and Thailand. What is that hampers e-commerce's further development on a global scale?

This is the question that Luca Rinaldi (picture), member of AIPPI's Standing Committee on TRIPs and Partner of the IP&TMT Department at Gianni, Origoni, Grippo, Cappelli & Partners Law firm, addressed at the workshop "IP and other e-commerce-related legal frameworks' harmonization as a means of inclusive trade", held at the 2017 WTO Public Forum (information here).

The global e-commerce legal framework lacks of multilateral compulsory rules and uniform national legislations. At the international level the WTO and the UN played a significant role in building awareness on the need for a uniform e-commerce regulation.

The Declaration on Global E-Commerce (1998) urged for the first time the WTO General Council to establish a comprehensive working program to address all trade-related issues of global e-commerce, but a new multilateral regime has not been agreed yet.

The UN contributed to the creation of national rules in several jurisdictions through UNCITRAL model legislation (f.i. Model Law on Electronic Commerce (1996), on Electronic Signatures (2001)) and through training programs and exchange of good practices among DCs' government officials, businesses and consumer organizations (e.g. COMPAL program, for Latin American consumer law).

At the regional level, the European Union shows the most regulated legal framework, with f.i. Directives on E-Commerce (2000), Intellectual Property Rights ("IPRs") Enforcement (2004) and Unfair Commercial Practices (2013), the Regulation on e-Identification and Trust Services for e-Transactions (2014) and several other instruments to be adopted in the framework of the Digital Single Market.

Relevant harmonization efforts have been also made by the Association of Southeast Asian Nations, the Economic Community of West African States and the African Union. However, despite these attempts, the panorama is still fragmented.

In a digitalized world, transactions occur among people who do not know nor see each other. Therefore, an e-transaction could not take place if its players do not trust each other; and different national legal requirements affect such trust. In fact, an e-commerce platform would rather not offer its services in countries with an unclear ISP liability regulatory framework.

A customer would rather not buy from a seller who does not have a bank account to receive a credit card payment, and a vendor would rather not accept a cash-on-delivery payment from a cross-border sale.

This is why harmonizing e-commerce national legislations, i.e. the rules related to, inter alia, IPRs enforcement, ISP liability, payments, electronic signature, is key to build multilateral trust and ultimately to allow e-commerce's further development and inclusivity towards DCs.

Setting worldwide, compulsory harmonized rules takes time and while soft law and the exchange of good practices are, as seen, encouraging the process from above, alternative solutions devised in the practice can help enhancing trust and inclusiveness from below.

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One of these is e-Residency, a digital identity issued by the Estonian government that empowers entrepreneurs from around the world to set up and run a location-independent business operating within the EU legal framework.

E-residents access the same secure and trusted online services available to EU citizens, such as the possibility to open an Estonian bank account, use international payment services like PayPal, digitally sign, authenticate and encrypt documents anywhere.

E-residency better integrates businesses worldwide into global trade by facilitating transactions with the European market and allowing them to overcome domestic policy and infrastructural deficiencies.

A set of practical solutions to improve e-commerce despite a poor or inexistent legal framework has been developed on the field by MercadoLibre, the first Latin-American e-commerce platform active in 19 countries.

MercadoLibre devised in-house solutions in order to simplify the existing legal framework (f.i. more than 27 state laws on shipping in Brasil) and fill in its blanks (f.i. only few countries like Brasil and Costa Rica have an internet law).

An integrated shipping system allows fast and cost-efficient deliveries; internal payment intermediary services allow vendors to accept any credit card and purchasers to see their payment safe until they receive a compliant item; a system of facilitated loans allows historical vendors to grow their businesses.

As to IPRs protection and enforcement, despite most Latin American countries do not have ISP liability rules so that platforms cannot be held liable for the contents hosted, MercadoLibre requires each vendor to accept its IP-related terms and conditions in order to avoid infringing products being offered for sale.

The platform also takes care of assessing the notices and vendors' proofs of rights it receives in the framework of the internal "notice and take down" procedure available to its members; which could result, should an infringement be found, in the take down of the listing, suspension or expulsion of the vendor and cooperation with enforcement authorities.

Looking at numbers (more than 5000 e-residents in less than three years, with Ukraine and India in the top 10 of countries of origin, and 170.000.000 MercadoLibre users in 17 years), e-residency and in-house integrated solutions proved to be means of e-commerce improvement and inclusiveness.

Still, the final answer is the harmonization of national e-commerce-related legal frameworks, a path to be walked down by appropriately adapting and integrating existing offline frameworks to the different needs of the online environment.



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