

The IBSL Strategic Global Summit for E-Commerce

E-Commerce Guide to Argentina

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1. Introduction

This paper will help you understand what it is like doing business through the Internet in Argentina.

As a preliminary comment, the e-purchase of goods from foreign companies (imports) is not prohibited thus the seller may be either a local or a foreign company or individual.

2. Argentina as a country

2.1. Culture/Idiosyncrasies

It is worth becoming aware that doing business in a foreign country usually requires the need to get accustomed to a different culture and divergent idiosyncrasies. Argentina is a federal country, with uniform civil and commercial codes applicable throughout the entire territory.

As in many other countries, there are several reasons why people trade through Internet: comfort, the time- saving factor and, in some cases, the option of access to better prices. There are likewise various causes dissuading people from trading through the net: unreliable means of payment, scant knowledge and poor levels of know-how to handle computer science tools, lack of experience in catalog purchasing and of basic structural logistics to remit products to their intended destination. All these failings prevent the consumer from adapting to the usage of internet for purchasing from web sites.

However, there are instances leading us to believe in the progressive growth of Internet and e-commerce in Argentina. For example, recent reforms in tax and financial policies have made it mandatory to use electronic systems in the capital market, with the ensuring greater and improved handling of means of payment such as credit and debit cards. Moreover, now that the telephone market has been opened to competition – after a decade of monopoly - Internet connection costs have dropped

considerably, both by means of reduced rates as well as the implementation of free-
ISPs.¹

Likewise, the introduction of a digital signature infrastructure is a fundamental tool to expedite authentic identification of the pertinent parties, it is of particular assistance to lessen distrust of the means of payment.

Furthermore the growth in training and specialization of professionals engaged in the programming and design of web pages enhance the opportunity to create sites dedicated to e-marketing.

To conclude, modern government policies aimed at fostering the education of the population of the subject of new technologies and access to Internet, doubtless encourage the ongoing advancement of the e-market.

2.2. Argentina in figures.

A few figures and statistics follow to further brief you on Argentina's potential and current economic situation. Out of 38 million inhabitants, 3.6 million are surfing on the net.

There are 521,360 ".ar" domain names registered: 521,360² and 200 ISP's³, and 495,920 web sites⁴.

The best sellers are books, audio CDs, software and subscriptions.

3. A very important step before offering goods through the Net.

The structure and operation of an Internet web site dedicated to e-Commerce involves the need for contracts or agreements to be entered into by and among external agents, such as telephone companies, the ISPs, the carriers, the insurers, designers, computer science expert technicians, the advertising market, credit card companies, trademark and technology licenses, suppliers, the registration of domain names, diverse purchase and sales agreements, contracts for the performance of work and rendering of services, insurance, licensing, amongst others. Save for exceptional issues, the commercial relationships involved in these agreements are governed by civil and commercial legislation enacted prior to the phenomenon we know as e-Commerce, since they do not possess any feature at variance, differentiating them from traditional commercial guidelines.

¹ Such as AlternativaGratis, Full Zero, Tutopia, amongst others.

² Source: Internet Software Consortium (www.isc.org).

³ Source: CIA in www.opinamos.net.

⁴ Source: Internet Software Consortium (www.isc.org).

Doing good business in Argentina is protected by uniform consistent legislation. The principles upheld by the National Constitution, by international treaties, by the Civil and Commercial Codes and by specific laws such as the Antitrust, Fair Trade, Credit Card and other Laws, jointly furnish an appropriate framework protecting property and individual rights in any commercial relationship, including those ensuing from e-Commerce.

3.1. Registering a domain name in Argentina. Description of NIC-Argentina.

One of the main steps, inherent in implementing an e-Commerce site consists in the registration of a domain name.

In Argentina, the management of domain names under ".com.ar", their registration services, the furtherance of infrastructure and technology on Internet, form part of a public service, rendered by the Ministry of Foreign Affairs, International Trade and Worship, which channels them via the Network Information Center Argentina (NIC-Argentina).

In discharging its duties, this Ministry issued Resolution No. 2226/2000 establishing the rules and regulations governing the registration of Internet domain names in Argentina, which were published on August 29, 2000 in National Official Bulletin No. 29,471 (the "Rules"). The Rules may be the subject of consultation on www.nic.ar jointly with a description of registration procedures and forms.

The procedure to register a domain name under ".com.ar" is carried out entirely on the screen, by completing the forms available at the NIC-Argentina web site. Once the registration application has been sent it is deemed that the Rules have been implicitly accepted. After all technical requirements for authorization have likewise been fulfilled, it takes approximately fifteen minutes to conclude the remaining steps of the procedure on the computer. Subsequently, the procedural stage reached may be verified on the web site, by quoting the respective number assigned. To conclude, should no specific obstacle arise, the procedure is concluded and the new domain name is obtained within roughly seven business days.

In this way a domain name is registered. It remains valid during a one-year term as from its registration date and application for renewal thereof must be requested during the last month of its enforcement since otherwise it will automatically lapse (Rule No. 5). However, due to operative reasons, the application of this Rule No. 5 has been suspended until further notice (Record of Amendment No. 1, dated 08/29/00).

Physical and corporate persons, whether resident in Argentina or abroad may register domain names under ".com.ar". Foreign residents must furnish an identity document or tax classification in the country of residence and establish legal domicile in Argentina. For that purpose, a document must be submitted to the Register's General

Bureau of Legal Affairs, bearing the signature affixed by the entity's legal representative, certified by Notary Public⁵, jointly with the pertinent legalizations and translations. (Rule No. 4).

For the time being, the procedure to register a domain name is free of charge. The Government intends to set a fee to register and renew domain names, both to defray the costs incurred by the service as well as to discourage the unfair practice of indiscriminate registration of domains for speculative purposes (“*cybersquatting*”)

3.2. Certain issues connected with registration

In accordance with its own rules, NIC-Argentina, in order to register domain names, adopts the assignment system and the rule “*the first to apply enjoys the right of priority*”, that is to say, ownership of the domain name is granted with its registration and is vested in whomsoever is the first applicant therefore (Rule No. 1).

Furthermore the representations and data furnished by the registering party are deemed to be in the nature of a sworn statement, since it is the sole person liable for ensuing consequences of all kinds, both sustained itself as well as by third parties, which may result from the fact of registration, except for the joint and several liability of the applicant when it is a different person (Rule No. 9). In this respect, it is required that the applicant swear under oath that the registration and use of the domain name do not detrimentally affect third parties' rights and are not implemented for illegal purposes (Rules Nos. 12 and 13).

NIC-Argentina holds itself harmless from any kind of liability by reason of rendering the service and limits itself exclusively to register the domain name requested without evaluating whether the registration or use of the domain name may violate third parties' rights and/or generate any kind of intellectual property conflict by reason of registered or unregistered trademarks (Rules Nos. 9, 10, 16, 17 and 18).

Argentina has not remained unscathed by the problems arising from the registration of domain names and intellectual property rights, particularly trade names and trademarks, which have been sustained by the majority of international registers. Consequently, it is possible that conflicts of this nature will arise upon the registry of a domain name, whether due to the impossibility of obtaining a name which has already been assigned, despite being the owner of a previously registered similar trademark; or otherwise by reason of a claim filed against the owner of a domain name who believes it has a greater right to hold it.

⁵ Being a country that used to be a Spanish colony until the beginning of the XIXth. century, Argentina has inherited the so-called continental legal system: amongst other consequences of the latter, there is the importance of the certification role exercised by Notaries.

Unfortunately NIC-Argentina does not, within the subjects in its competence, include a settlement of controversies referred to the registration or use of domain names. On the contrary, in its Rule No. 8 it expressly states that the Register will not act as mediator nor as arbitrator; it will in no way mediate in those controversies which eventually may arise among the registering parties and/or applicants and/or third parties, concerning the registration or use of a domain name. What is more, Argentina did not become a supporting member of the mechanism implemented by ICANN via the so-called “[Uniform Domain-Name Dispute-Resolution Policy](#)”

However, it must be stressed that Argentina possesses voluminous expert legal doctrine on the subject which allows a practical and legal criterion to be followed in solving these conflicts. The first advice given in these circumstances is to consult a lawyer who is an expert on the subject in order to avoid any abuse and/or negligence in upholding the rights which may be vested in the party and attempt to reach a fair settlement of the interests at stake.

In our experience, the normal sequence of events so far is: (i) there is a formal summons addressed to the party who allegedly infringed the Rules and (ii) the parties reach a settlement agreement (based upon the principles developed by case law).

Important progress has been achieved in enforcing eventual agreements to change the ownership of a domain name, via the incorporation and regulation by NIC-Argentina of a system for the transfer of domain names via a short and simple procedure. To transfer ownership it is necessary to file an assignment contract bearing signatures certified by Notary Public with the NIC-Argentina General Bureau of Legal Affairs. It has been established that if any one of the parties resides abroad and does not have a legal representative in Argentina, the documents with the required legalizations, the Apostille and the pertinent translations must be addressed thereto and further a legal domicile must be established in Argentina. This procedure takes, save for unforeseen circumstances, approximately thirty days following the presentation of the required documents.

On the grounds of all the foregoing, in the event the attempt to reach an agreement between the parties fails, the interested party is obliged to resort to the Courts in order to obtain a ruling on its rights.

3.3. Case law principles and trends.

Concerning those conflicts arising when it is wished to register domain names which coincide with registered trade names or trademarks, several cases have been lodged and resolved⁶.

⁶ For illustrative purposes, those cases resolved in Argentina were: “Heladerías Freddo S.A.I.C.A. v. Spot Network re/Precautionary Measures” National First Instance Federal Civil and Commercial Court No. 7, Court Clerk’s Office No. 13, 11/26/97; “Camuzzi de Argentina S.A. v. Arnedo, Juan Pablo re. Precautionary

The cases settled by the Courts were initially lodged as precautionary measures aimed at expediting suspension of the domain name under the ownership of the defendant and authorization to be temporarily used by plaintiff. Usually, once a precautionary measure has been ordered, a settlement is subsequently reached, thus putting an end to the judicial procedure.

It is important, likewise, upon embarking on a joint analysis of the court rulings rendered in the lawsuits described above, to distinguish the predominating legal doctrine followed: there is a trend by the Courts to rule in favor of a registered trademark when a domain name resembling the trademark is registered.

Furthermore, the current modern interpretation and criterion shown by the Judges should be stressed, particularly when considering the new business reality implied by Internet. Special emphasis has been placed on the current status of communications and the possibilities and advantages offered to companies via their access to Internet to market their products and services in the virtual market. In addition, it is noticeable that there is a trend for judges (case law rulings) to commence affording certain recognition to e-mail messages as evidence in trial cases. This trend followed by National Courts has also been reflected in rulings on the use and features of e-mail⁷.

On another occasion an application was filed before the commercial courts of the City of Buenos Aires for judicial verification of the defendant's hardware and software to ascertain the existence of e-mails in which the plaintiff appeared as the sender, addressee or copy recipient, for the purpose of avoiding their possible destruction and ensuing damages to the latter.⁸ Over and above the outcome of the petition, which was actually dismissed, the opinion upheld by judicial doctrine is of importance insofar as the virtues of e-mail are concerned: the Judge resolved the issue by likening e-mail to traditional postal mail, subjecting it to the same legal effects. As a consequence, e-mail

Measures" (Dossier No. 2723/99), National First Instance Federal Civil and Commercial Court No. 4, Court Clerk's Office No. 8, 06/04/99; "Errepar S.A. v. Besana, Guillermo Antonio re. Precautionary Measures", National First Instance Federal Civil and Commercial Court No. 3, Court Clerk's Office No. 6, 03/05/99; "Pines S.A. v. Nexus Internet Services re. Precautionary Measures" (Dossier No. 2740/99), National First Instance Federal Civil and Commercial Court No. 5, Court Clerk's Office No. 9, 06/02/99; "Pugliese Francisco Nicolás v. Pérez Carlos Enrique re. Precautionary Measures" (Dossier No. 5.050/99), National First Instance Federal Civil and Commercial Court No. 5, Court Clerk's Office No. 10, 12/30/99.

⁷ In re: "Lanata, Jorge", National Criminal and Petty Offences Court of Appeals, Panel VI, 1999/04/03, ("LA LEY", 1999-E, 70, "El Derecho", 182-478). In this outstanding case it was upheld that *"it is in order— for the purposes of protecting private papers and correspondence as provided for by Sections 153 thru 155 of the Criminal Code, to liken "e-mail" to traditional mail, since the former possesses features protecting privacy that are more stringent than usual postal channels, whilst for the purpose of using it a server is required, the name of the user and an access code which prevents alien third parties from interfering with data that may be issued or filed thereby"*.

⁸ "G., D. E. v. C. S.A. re. Preliminary Measures" (Dossier No. 39749), National Commercial First Instance Court No. 18, Court Clerk's Office No. 36, 10/23/2001.

became subject to current legislation governing business correspondence, acknowledging it to be effective evidence of contracts between businessmen.

From another standpoint, a clear manifestation of the adaptation and use by the Judicial Branch of the benefits enjoyed via new technologies is shown by the online consultancy services referred to court cases. At Federal levels the civil, commercial and social security Courts as well as several local jurisdictions within the Provincial sphere possess their own respective Internet sites, where court rulings and the status of lawsuits are published.

4. Other Federal State Branches

In addition to the rulings handed down by the Courts, the other two Federal State Branches (e.g. the Executive Branch and Congress) have, since 1997, been observing this “new business reality” with interest, aimed at promoting e-Commerce from and through the governmental structure and agencies.

The Government plays a very important role in furthering the development of the technical infrastructure and the legal framework required for the development of e-Commerce in Argentina. This factor, added to the favorable updating by the Judicial Branch, foster the furtherance of information science technologies and the initiatives and programs drawn up by the Executive and Legislative Branches.

4.1. The Executive Branch.

In 1997 the Federal Government declared that it was of national interest for all inhabitants of Argentina to enjoy access to Internet, in equitable social and geographical conditions, at reasonable rates and quality parameters in accordance with modern multimedia applications (Decree No. 554/97, issued by the National Executive Branch).

Subsequently, amongst the varied activities incumbent upon the Federal Government, the creation of the so-called National Information Program for the Community played an important part (Decree No. 252/2000). The main aim is to draw up national policies and projects to direct and coordinate public efforts and to foster appropriate conditions to incorporate and expand new information and communications technology.⁹

⁹ Decree No. 252/2000, Section 6 —The National Information Program for the Community includes those activities connected with the design and implementation of public policies intended to universalize Internet and other digital data networks, to develop e-Commerce, to train specialized human resources to manage same, to foster investments and to develop, in general, telecommunications, computer science, electronic means, software and other similar technologies.

Decree No. 103/2001 approved the National Plan for the Modernization of the Federal Administration, contemplating amongst other objectives and projects, the formation of an “*Electronic Government*” in order to take advantage of technological resources to bring the Government closer to the citizen, to foster the progressive instrumentation of digitalized administrative procedures which will progressively eliminate the use of paper, instrument a system to follow up dossiers by computer and rationalize the development of gateways within the Federal Administration.

At present, most of the Federal Agencies have interactive gateways on Internet which simplify the access and exchange of information, the processing of formalities and the viability of claims between the Government and citizens, enhancing the transparency of the public sector and furthering the use of new technologies in all sectors of the population. In this respect, a visit to the site identified under domain www.gobiernoelectronico.ar is recommended.

One of the most outstanding points for the growth of e-Commerce in any society, particularly in Latin America, is the training and education of citizens insofar as concerns knowledge and use of computer technologies. In Argentina there are different educational and professional training plans sponsored jointly by the Federal Government and the private sector. One of the most outstanding initiatives is the gateway identified in Internet under the domain www.educ.ar intended to render educational services via Internet, in order to incorporate new technologies to education and promote educational quality and equity. One of its principal objectives is to ensure that educational circles enjoy greater access to Internet benefits, as a means of communication and information.

On the other hand, and for illustrative purposes, the School of Law of the Buenos Aires University is gradually incorporating to the curricula of the graduate levels, as well as to postgraduate courses, issues connected with the new technologies (e-Commerce, digital signatures, domain names, computer offences, among others).

4.2. Congress: its sphere of competence.

In order to create an appropriate environment for the growth of the electronic market, a legal framework is required in accordance with new requirements – it is the Government which is in charge of generating surroundings imbued with legal security via its legislative apparatus.

In this respect, one of the outstanding steps taken was the enactment, in 2001, of Digital Signature Law No. 25,506. Its provisions acknowledge the electronic document and digital signature vesting them with legal validity. Substantive Civil and Commercial legislation is amended, equating the electronic document and digital signature, once certain technical requirements have been met, with the traditional written document on paper with its holographic signature, in all cases when these are

demanded, save for those exceptions that are restrictively established by the law in question.

At present, the law is in force and insofar as is pertinent, is regulated by Decree No. 2628/2002¹⁰. However the system is not yet fully operative, since rules must still be enacted which will be specifically applied within the regulatory framework of the licensing system and implementation of the technological infrastructure. It is expected that this legislation will shortly be completed and that the infrastructure of the digital signature will enter into full force and operation in Argentina.

Without detriment thereto, since 1998, as authorized by Decree No. 427/98, the Federal Administration has been using the digital signature infrastructure to implement internal activities by the Federal Administration which do not individually and directly generate legal effects. Although at present this Decree has been repealed by digital signature Law No. 25,506, the Federal Office for Computer Technologies was temporarily authorized, by means of Decree No. 283/2003, to issue digital certificates for use throughout the internal circuits of the Federal Administration until the digital signature infrastructure is implemented within the federal sphere in accordance with the terms of Law No. 25,506.

The definitive implementation of the Digital Signature Law will represent a great stride forward in the development of e-Commerce sites, by reinforcing the identification and authenticity of the different parties, particularly insofar as concerns means of electronic payment.

5. Shared Policies. MERCOSUR

This tariff agreement known as MERCOSUR¹¹ (Southern Cone Common Market) has been covering different areas beyond merely tariff aspects: it has expanded its focus to cultural and educational fields, as well as to the business conditions prevailing in each member country. To illustrate, one of its study groups has been formed exclusively to analyze matters that may help foster the use of e-Commerce in the entire region. This group is known as “*Sub-Grupo XIII*” (Group or Committee number XIII).

Within the MERCOSUR area there are some technological and scientific development support committees, fostering joint cooperation to develop new technologies within the region.

¹⁰ Some laws in Argentina need to be regulated by Decrees.

¹¹ The MERCOSUR area involves more than 300 million inhabitants approximately, comprising the countries of Argentina, Brazil, Uruguay and Paraguay.

Insofar as concerns the Computer Science Information and Cooperation Association Committee, the following objectives and work and investigation proposals for the period 2002/2003 are outstanding:

- Creation of a MERCOSUR Observatory Office, aiming at forming a virtual network comprising research centers specialized in the development of specific areas related to the development of Computer Information and Communications Technologies, as well as the respective Government Agencies.
- Study of the laws which govern computer information associations in each country.
- Study of development aimed at “*Evaluating and Comparing the experience of Telecenters*”¹², as a means to guarantee that the population has access to new information and training levels, particularly within the Electronic Government sphere.
- Support to economic development, e-Commerce, by engaging in the following activities: (a) implementing a Regional Security Key (PKI) and (b) a pilot experience of MERCOSUR’s e-Commerce.

Moreover, the activity in which the “MERCOSUR’s e-Commerce Group XIII” engages is outstanding, its program includes amongst others, the analysis of mechanisms to promote and develop cross-border e-Commerce at MERCOSUR levels, particularly taking into account the subjects of digital signatures, taxes, means of payment and consumer protection.

6. Conclusions

Compared to other member countries of the Latin American region, Argentina is a country possessing great powers of foresight. This is evidenced by the activities in which its three Federal Branches engage.

The European Parliament has recently declared that Argentina is SPAM-free, that is to say, we are vested with certain credibility in our anti-SPAM protective methods.

The development of e-Commerce in Argentina is set at full speed ahead. Support by the Government and business sectors, via corporate, economic and legal policies and activities is of the utmost importance and encourages the growth of the electronic market.

Statistics are coherent with this idea and trend, since a considerable increase in transactions and e-Commerce is predicted within the Latin American area, and Argentina is one of the countries possessing the greatest probabilities of progress. In

¹² “Telecenters” are shops located throughout different cities or towns where people can get access to phone services as well as internet services at very low cost.

this respect eMarketer predicts that the Latin American region¹³ will have approximately 43 million users this year, and it is deemed that Argentina, Brazil and Mexico will comprise 65% of the full Internet population in the area by 2004.

In short, with the passage of time, Argentina will become aligned with the international e-Commerce trends which foster protection of this magnificent tool invented by traders¹⁴.

¹³ Source: eMarketer-TM (www.emarketer.com).

¹⁴ My special thanks to Mariana Miglino, a young e-commerce matters researcher, full of potential, for her cooperation with this paper.