

# The Proposed Computer Laws of Uganda: Moving Toward Secure E-Commerce Transactions and Cyber-Crime Control

Stephen E. Blythe, New York Institute of Technology, United Arab Emirates  
ITLawForever@Netscape.Net

*Uganda drafted three proposed computer laws in 2004 which remain under consideration: The Electronic Signature Bill would provide for legal recognition of all types of E-signatures, but the digital signature enjoys most-favored status. Certification Authorities (“CA”) issue certificates and confirm the authenticity of E-signatures to third parties. They must maintain a repository of certificates and public keys, and may incur legal liability for publishing a certificate with inaccurate information. All CA’s are required to hold a license issued by the Controller of Certification Authorities. The Electronic Transactions Bill would provide a legal foundation for E-commerce transactions. The electronic form may be used to satisfy statutory requirements pertinent to handwritten signatures and paper documents. The E-contract rules cover all necessary points, but the E-government rules are only rudimentary. The consumer protections are first-rate; the E-commerce buyer has a 14-day window in which to withdraw after the consummation of an E-contract. The Computer Misuse Bill would prohibit several types of computer crimes: unauthorized access; modification of contents; theft of computer service; obstruction of use of computer; disclosure of access code; breach of confidentiality; enhanced punishment pertinent to national security, using a computer to disseminate child pornography; and attempts and abetments.*

---

## INTRODUCTION

The objectives of this article are to: (1) analyze Uganda’s proposed Electronic Signature Bill, Electronic Transactions Bill, and Computer Misuse Bill; and (2) make recommendations for improvement of those bills.

## ELECTRONIC SIGNATURE BILL

The Electronic Signature Bill (“ESB,” Republic of Uganda, 2004) is under consideration. The ESB distinguishes an E-signature, an advanced E-signature, and a digital signature.

### Fulfillment of Statutory Requirements

If a statute requires a handwritten signature, that requirement will be deemed to have been met if a reliable E-signature is attached to an E-document. The digital signature is the only type of E-signature one deemed to be sufficiently reliable (ESB s 3).

### Certification Authorities

Uganda’s Minister of Communications (“Minister”) appoints the Controller of Certification Authorities (“Controller”), who is responsible for regulation of Certification Authorities (“CA”) (ESB s 20). All CA’s must hold a license issued by the Controller (ESB s 21). A CA is legally liable for ensuring that information on certificates is accurate and for publishing of that information; however, subscribers and relying third parties also have responsibilities (ESB ss 4, 6, 8). The ESB contains application procedures, and a CA’s license may be revoked if good cause exists (ESB s 26). A CA may also provide date/time stamp services (ESB s 48). All CA’s must submit to an annual operational audit and are forbidden from engaging in activities which would increase the probability of loss to its subscribers (ESB s 79).

### Crimes

It is a crime to: perform CA services without a license (ESB s 21); violate one’s duty of confidentiality of information after having obtained knowledge of the information pursuant to the ESB (ESB s 80); make a false declaration pertinent to a legal requirement under the ESB (ESB s 81); and, as a corporate officer or

director, to use a corporation to carry out a violation of the ESB (ESB s 82). If the ESB does not provide for a specific punishment for a violation, then the general penalty will be applicable (ESB s 91).

### **ELECTRONIC TRANSACTIONS BILL**

The Electronic Transactions Bill (“ETB,” Republic of Uganda, 2004) is also under consideration. The objectives of the ETB include: promotion of E-commerce and E-government; heightened security of E-transactions; and attainment of technological neutrality (ETB s 2). The Minister of Communications is responsible for implementation of the ETB and may promulgate regulations to that effect (ETB s 33). The ETB is inapplicable to these types of documents: wills; testamentary trusts; powers of attorney; documents creating an interest and conveyance of an interest in real property which must be filed to apply to third parties; and negotiable instruments (including negotiable documents of title). The ETB does not override any other law which explicitly authorizes, prohibits or regulates the use of E-documents. The ETB should be interpreted according to what is “commercially reasonable under the circumstances (ETB s 3).”

### **Fulfillment of Statutory Requirements**

If a statute requires information to be in a paper document, that requirement will be deemed to have been met if the information is in an E-document, provided it is readily accessible for subsequent reference (ETB s 5). If a statute requires the presence of a handwritten signature on a paper document, that requirement will be deemed to have been met if an E-signature is attached to an E-document (ETB s 6). If a statute requires information to be produced or retained in its original form, that requirement will be deemed to have been met if the original information is produced or retained as an E-document, provided: the integrity of the information is maintained; and it may be accessed for reference by the person to whom it is presented (ETB s 7). If a statute requires the storage of information or a document, that requirement will be deemed to have been met if an E-document is stored, provided: it is accessible for subsequent reference; it is stored in its original form, or one that reasonably depicts the information; the time/place of transmission/reception are indicated; and, if a government department requires the retention, that department has consented to use of the electronic form (ETB s 9). If a statute requires the production of information or paper documents, that requirement will be deemed to have been met with production of an E-document, provided: the method of generation of the E-document reliably ensures its integrity; and the E-document is readily accessible for subsequent reference (ETB s 10). If a statute requires a signed document to be notarized, that requirement will be deemed to have been met if the Notary Public’s “advanced or secure electronic signature” is attached to an E-document which has the subscriber’s E-signature also attached. If a statute requires the production of a certified copy of an E-document, that requirement will be deemed to have been met with production of a “printout certified to be a true reproduction of the document...” If a statute requires the production of a certified copy of a paper document, that requirement will be deemed to have been met “if an electronic copy of the document is certified to be a true copy thereof and the certification is confirmed by the use of an advanced electronic signature (ETB s 11).” If a statute requires multiple copies of a paper document to be delivered to one person at the same time, this requirement will be deemed to have been met if one E-document is sent to that person, provided: the E-document may be reproduced by that person. If a statute requires a seal to be affixed to a paper document, and the statute does not mention a method of electronic sealing, that requirement will be deemed to have been met with an E-document, provided: the E-document expresses that it is mandated to be under seal; and the advanced E-signature of the person by whom it is required to be sealed, is attached. If a statute requires or permits a paper document to be sent by registered/certified mail, that statute will be deemed to have been met if an E-document is sent to a service provider authorized by the Minister of Communications, is registered by that service provider and sent by the service provider to the E-mail address provided by the sender (ETB s 12).

---

### **Admissibility and Evidential Weight**

The ETA modifies the rules of evidence pertinent to authentication and best evidence. Information in electronic form cannot be denied admission into evidence: (1) merely because of its form; or (b) if it is the best evidence, merely because it is not in its original form. The party seeking to have an E-document admitted into evidence has the burden of proving the E-document's authenticity, which requires a showing that the document is what the person claims it to be. If the best evidence rule is applicable, the party introducing an E-document must prove the integrity of the computer information system in which the E-document was recorded or retained. Factors for the court to consider in determination of the evidential weight of an E-document include: the reliability of the computer information system; the reliability of methods used to maintain the integrity of the E-document; and the method used to identify the sender or retainer of the E-document (ETB s 8).

### **E-Contracts**

The legal validity of information in an E-message cannot be denied merely because of its electronic form (ETB s 4). A contracting party may express his intent electronically. An E-contract is legally valid. The E-contract comes into existence at the time and place that the offeror receives the acceptance from the offeree (ETB s 15). For information incorporated by reference to become part of an E-contract, it must be: (1) referenced in such a manner that a reasonable person would have noticed it and incorporated it; and (2) accessible for the other party to read, retain and retrieve it, either in electronic form or in a physical printout (but the information must be capable of reduction to electronic form by the party incorporating it) (ETB s 4). Commonplace rules are provided for: automated transactions (ETB s 13); time and place of transmission and receipt (ETB s 19); and attribution (ETB s 18).

### **Consumer Protections for E-Buyers**

An E-seller must post complete and accurate information at its website to potential E-buyers, including: its identity; membership in accrediting organizations; its code of conduct; number and address of registration; officers; descriptions of goods and services offered; price, payment method, terms of agreement and delivery time; manner used to access a record of the transaction; exchange and refund policy; alternative dispute resolution method; privacy policy and security procedures used; and minimum duration of the agreement (if it an ongoing contract). After placing an order, but before it becomes final, the E-buyer must be allowed to review the order in order to correct any mistakes or to cancel the order (ETB s 23). The E-seller is required to execute the order within thirty (30) after its receipt, unless the parties have made a contrary agreement. If the seller fails to do so, the buyer may cancel the contract after giving the seller seven (7) days' written notice. If the seller is unable to complete the contract because of unavailability of the goods, then the seller must immediately inform the buyer and refund all payments made within thirty (30) days of that notification (ETB s 26).

If the E-seller fails to comply with the obligations stated in the preceding paragraph, the E-buyer may cancel the order within fourteen (14) days after receipt of the goods and services. This is a noteworthy provision; the ETB would grant the E-commerce buyer some of the best protections in the world. If cancellation occurs, the E-buyer must return the goods or stop using the service.

Whereupon, the seller must refund all payments to the buyer less any transportation and handling cost incurred by the seller in return of the goods (ETB s 23).

The E-seller is required to use a secure payment system. If the E-seller fails to do so, it is liable for any pertinent damages incurred by the E-buyer due to the insecure system (ETB s 23).

The aforementioned consumer protections are inapplicable to: financial and investment service transactions; auctions; purchases of food and drink to be ordinarily consumed at a worksite or at home; services beginning with the consumer's consent before the end of the seven (7) day period mentioned in the next paragraph; transactions in which the price is dependent on the vagaries of the financial markets;

custom-made goods; perishable goods; audio/video recordings or software that has been unsealed by the consumer; reading materials; gambling; and when the transaction relates to “accommodation, transport, catering or leisure services” and the E-seller has agreed to provide them on a date certain or during a period certain (ETB s 23).

An E-buyer may cancel the contract within seven (7) days of receipt of the goods, on in a service contract, within seven (7) days of the date the contract was consummated. If payment has already been made, the buyer is entitled to a full return of the amount paid, less any transportation and handling charges incurred by the seller in return of the goods. These provisions do not prejudice any consumer right created by other laws (ETB s 24).

If a party sends unsolicited advertisements to a consumer by E-mail, the receiver must be given the option of removing his name from the mailing list and must be informed the source from which the party obtained the consumer’s name and E-mail address. If the offending party fails to do so, he is punishable with a maximum fine of 1,440,000 shillings and/or three years’ imprisonment. If the party continues to send unwelcome E-mail advertisements after being advised not to do so, he may be punished further with an additional fine of 1,440,000 shillings and/or three years’ imprisonment (ETB s 25).

The aforementioned consumer protections will be effective irrespective of whether domestic or foreign law governs the interpretation of the contract (ETB s 27). The aforementioned consumer protections may not be avoided by agreement of the parties (ETB s 28).

### **Liability of Internet Service Providers**

As a general rule, an internet service provider is not criminally or civilly liable for mere dissemination of infringing or offensive material on behalf of another party (ETB s 29), or merely providing a link whereby a user may obtain access to infringing or offensive material (ETB s 30). There is no general obligation to monitor the material which is disseminated over the internet by the service provider (ETB s 32). If a person believes offensive or infringing material is being disseminated by the service provider, that person should give written notice to the service provider (ETB s 31).

### **E-Government**

A government department may elect to accept or issue E-documents or E-payments (ETB s 20). The implementation of E-government is not mandatory. If it elects to offer E-government services, format and other requirements may be specified by each department (ETB s 20).

### **COMPUTER MISUSE BILL**

The Computer Misuse Bill (“CMB,” Republic of Uganda, 2004) is also under consideration. The CMB would prohibit: obtaining unauthorized access to a computer (CMB s 9); obtaining unauthorized access for the purpose of commission of a further crime (CMB s 10); unauthorized modification of computer data (CMB s 11); unauthorized theft of a computer service (CMB s 12); unauthorized obstruction of use of a computer (CMB s 13); unauthorized disclosure of a computer access code (CMB s 14); violate one’s duty to maintain confidentiality of information obtained pursuant to the CMB (CMB s 15); use of a computer to access, obtain, disseminate or sell child pornographic material (CMB s 18); and acts of aiding or abetting the commission of the aforementioned crimes (CMB s 17). More stringent punishments are provided for if the computer is “protected (CMB s 16).” Law enforcement authorities are empowered to conduct search and seizure operations (CMB s 19), and the CMB would provide for “long arm” jurisdiction over offending foreign parties (CMB s 21).

### **CONCLUSIONS**

The Electronic Signature Bill is third-generation and provides for compulsory licensing of CA’s. The Electronic Transactions Bill contains ordinary E-contract rules for automated transactions, attribution,

acknowledgement of receipt, and time/place of transmission/reception; and ordinary E-government and internet service provider rules are listed. One of the ETB's distinguishing positive aspects concerns fulfillment of statutory requirements relating to notarization, certification, and contract under seal. However, the most impressive portion of the ETB is its comprehensive list of consumer protections for E-commerce buyers: required information of the E-seller to be listed at its website; final review of agreement by buyer before consummation; 14-day window to cancel the contract if the information or final review is not given; utilization of a secure payment system by seller, with seller liable to buyer for damages caused by its failure thereof; 7-day, "no-questions-asked" window to cancel the contract after it has been consummated, with buyer merely having to return goods to seller; and prohibition against sending unsolicited E-mail advertising to a consumer after being asked to cease doing so.

The Computer Misuse Bill is a good computer crimes law. It is potentially far-reaching because it provides for "long arm" jurisdiction.

## **IMPLICATIONS: RECOMMENDATIONS FOR IMPROVEMENT OF UGANDA'S PROPOSED COMPUTER LAWS**

### **Electronic Signature Bill**

Most international E-commerce laws now provide for various forms of legal recognition of foreign CA's and certificates issued in foreign countries, the ESB fails to do this. This is essential because E-commerce transactions often straddle international borders. Turkey's Electronic Signature Law is a typical example of a statute which provides for legal recognition of foreign CA's and foreign certificates; that statute can be used as a model (Republic of Turkey, 2004).

It is unusual in international E-signature law to find as much limitation of a CA's liability as in Uganda. This needs to be changed. Too much responsibility is placed upon the shoulders of the subscriber, and too little responsibility is assigned to the CA. Some of the burden of potential liability should be transferred from the subscriber to the CA. The computer law of the Republic of Vanuatu can be used as a model (Republic of Vanuatu, 2000).

### **Electronic Transactions Bill**

Because of the specialized knowledge often required in the adjudication of E-commerce disputes, Information Technology ("I.T.") Courts should be established as a court-of-first-instance for them. The I.T. Courts would be tribunals consisting of three experts. The chairperson would be an attorney versed in E-commerce law, and the other two persons would be an I.T. expert and a business management expert. The attorney would be required to hold a law degree and be a member of the bar with relevant legal experience; the I.T. person would be required to hold a graduate degree in an I.T.-related field and have experience in that field; and the business management expert would be required to hold a graduate degree in business administration and have managerial experience. The E-commerce law of Nepal can be used as a model (Kingdom of Nepal, 2005).

In order to reduce cost and to make governmental functions more convenient for citizens, E-government needs to be emphasized and mandated. By established deadlines, governmental departments should begin to convert to provision of online services if possible.

The ETB excludes wills from its coverage. The result is that a will is required to be in paper form with a handwritten signature affixed to it in order to be enforceable. This exclusion should be eliminated. Electronically-signed wills should be recognized.

### **Computer Crimes Bill**

The following crime should be added to the CCB: Intentional Injection of a Virus Into a Computer System. This crime is especially heinous because of its potential for infliction of extreme damage to the

Ugandan economy as well as to the international economy. The punishment should be stringent, as follows: first offense, mandatory ten years' imprisonment, without parole; second offense, mandatory twenty years' imprisonment, without parole; and third offense, mandatory life imprisonment, without parole.

#### **REFERENCES**

- Kingdom of Nepal. (2005). *Electronic Transactions Ordinance*, ss 60-71. Retrieved on 2 February 2009 from <http://www.hlcit.gov.np/pdf/englishcyberlaw.pdf>.
- Republic of Turkey. (2004). *Electronic Signature Law*, art. 14. Retrieved on 2 February 2009 from [http://www.tk.gov.tr/eng/pdf/Electronic\\_Signature\\_Law.pdf](http://www.tk.gov.tr/eng/pdf/Electronic_Signature_Law.pdf).
- Republic of Uganda. (2004). *Computer Misuse Bill* ("CMB"). Retrieved on 2 February 2009 from <http://www.sipilawuganda.com/downloads/computer%20misuse%20bill.pdf>.
- Republic of Uganda. (2004). *Electronic Signatures Bill* ("ESB"). Retrieved on 2 February 2009 from <http://www.sipilawuganda.com/downloads/electronic%20signatures%20bill%202004.pdf>.
- Republic of Uganda. (2004). *Electronic Transactions Bill* ("ETB"). Retrieved on 2 February 2009 from <http://www.sipilawuganda.com/downloads/electronic%20transactions%20bill.pdf>.
- Republic of Vanuatu. (2000). *Electronic Transactions Act*, s 23. Retrieved on 2 February 2009 from [http://www.paclii.org/vu/legis/num\\_act/eta2000256/](http://www.paclii.org/vu/legis/num_act/eta2000256/).