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UN Convention 2005, Art. 4(c): “Data message” means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex or telecopy;

UN Convention 2005, Art. 4(b): “Electronic communication” means any communication that the parties make by means of data messages;

UN Convention 2005, Art. 4(a): “Communication” means any statement, declaration, demand, notice or request, including an offer and the acceptance of an offer, that the parties are required to make or choose to make in connection with the formation or performance of a contract

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UNCITRAL Model Law 1996 Article 9. Admissibility and evidential weight of data messages 11.

11, 11 11, 1111, 11, 11 1 ‘1111’ 11111 11, ‘111’ 1111 11 111111 11 11 1111 11

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1111, “1111 1111 1111 1111 1111 1111 1111 11”, 1111 11111 1 36 1 1 2 1 (2013) 307-334

11 Interpretation Act 1 “writing” 11:  
“Writing” includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form, and expressions referring to writing are construed accordingly.

“Communication” 1 ‘111111’, ‘111111’, ‘111’ 1111 111111 1111 ‘111’1111 11 11 11. ‘111111’ 1111, 1111 11. ‘111’ 1111 1111 111111 1. ‘111’ 111111 1 1111 11111111111 11111111 1111 1111 11. cf. 1111, “UN11111111111 11 111111 11”, 1111111 11, 1191 111(2010), 87; 1111, “UNCITRAL 1111111111 11 111111 1 11 111111111111 11”, 1111111111, 1131 41(2006), 97; 1111, “UNCITRAL 11 11111111 11111111 11”, 1111111111, 1161 21(2009), 52-53

## 2. 11 1111 ‘111’

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“...”, “... 19”; “... (2000) ...

..., ... 13 3, 32 ...

UNCITRAL Model Law 1996 Article 15(1)

Unless otherwise agreed between the originator and the addressee, the dispatch of a data message occurs when it enters an information system outside the control of the originator or of the person who sent the data message on behalf of the originator.

UN Convention 2005, Art. 10(1)

The time of dispatch of an electronic communication is the time when it leaves an information system under the control of the originator or of the party who sent it on behalf of the originator or, if the electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the time when the electronic communication is received.

#### 4. ...

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UNCITRAL Model Law 1996 Art. 15(2)

... : when the data message enters the designated information system

数据消息 由 收件人 检索 时: when the data message is retrieved by the addressee.

数据消息 进入 收件人 的信息系统 时: when the data message enters an information system of the addressee

UN Convention 2005 Art. 10(2)

指定地址 时: when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee.

该地址 时: when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address.

电子通信 被 推定 为 能够 被 收件人 检索 (An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.)

## 5. 数据消息 的 发送

第901条: 数据消息 的 发送 应当 符合 下列 条件 (An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.)

第902条: 数据消息 的 发送 应当 符合 下列 条件 (An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.)

UNCITRAL Model Law 1996 Art. 14(3)

Where the originator has stated that the data message is conditional on receipt of the acknowledgement, the data message is treated as though it has never been sent, until the acknowledgement is received.

UNCITRAL Model Law 1996 Art. 14(4)(b)

if the acknowledgement is not received within the time specified in subparagraph (a), [the originator] may, upon notice to the addressee, treat the data message as though it had never been sent, or exercise any other rights it may have.

## 6. Attribution

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presumption of irrebuttable presumption of fact (‘‘The purpose of article 13 is not to assign responsibility. It deals rather with attribution of data messages by establishing a presumption that under certain circumstances a data message would be considered as a message of the originator’’ p. 49)

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UNCITRAL Model Law 1996 Art. 13

data message to be deemed to be that of the originator

1. if it was sent by the originator itself.
2. if it was sent by a person who has the authority to do so
3. if it was sent by an information system programmed by, or on behalf of, the originator to operate automatically.

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## UNCITRAL Model Law 1996 Art. 13(3)

(a) (if ) the addressee properly applied a procedure previously agreed to by the originator for that purpose (= to ascertain whether the data message was that of the originator)

(b) (if the received data message) resulted from the actions of a person whose relationship with the originator or with any

agent of the originator enabled that person to gain access to a method used by the originator to identify data messages as its own.

#### UN Convention 2005 Art. 12

A contract formed by the interaction of an automated message system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

#### 7. ☐

#### UN Convention 2005 Art. 14

☐ ☐, ☐

Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party

the automated message system does not provide the person with an opportunity to correct the error

☐ ☐ + has not used or received any material benefit or value  
☐ ☐ ☐ ☐.

#### 8. ☐

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#### UNCITRAL Model Law 1996 Art. 7

Where the law requires a signature of a person, that requirement is met in relation to a data message if:

(a) a method is used to identify that person and to indicate that person's approval of the information contained in the data message; and

(b) that method is as reliable as was appropriate for the purpose for which the data message was generated or

communicated, in the light of all the circumstances, including any relevant agreement.

“the risk of tying the legal framework provided by the Model Law to a given state of technical development.” [ ] p. 38

appropriate [ ] [ ] [ ] [ ]:

- (1) the sophistication of the equipment used by each of the parties;
- (2) the nature of their trade activity;
- (3) the frequency at which commercial transactions take place between the parties;
- (4) the kind and size of the transaction;
- (5) the function of signature requirements in a given statutory and regulatory environment;
- (6) the capability of communication systems;
- (7) compliance with authentication procedures set forth by intermediaries;
- (8) the range of authentication procedures made available by any intermediary;
- (9) compliance with trade customs and practice;
- (10) the existence of insurance coverage mechanisms against unauthorized messages;
- (11) the importance and the value of the information contained in the data message;
- (12) the availability of alternative methods of identification and the cost of implementation;
- (13) the degree of acceptance or non-acceptance of the method of identification in the relevant industry or field both at the time the method was agreed upon and the time when the data message was communicated; and
- (14) any other relevant factor.

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[UNCITRAL Model Law on Electronic Commerce 1996](#)



## UN Convention on the Use of Electronic Communications in International Contracts 2005

□□□, “□□□□□□□□ □□□□”, □□□□□ 2001□3□□

□□□, “UN□□□□□□□□ □□ □□□□ □□”, □□□□□□ □□, □19□ □1□(2010)

□□□, “UNCITRAL □□□□□□□□ □□ □□□□ □□□ □□□□□□□□□□ □□”, □□□□□□□, □13□  
4□(2006)

□□□, “UNCITRAL □□□□□□□□ □□□□□ □□”, □□□□□□□, □16□ 2□(2009)

□□□, “□□□□ □□□□□□ □□□□□□□□ □□ □□”, □□□□□□ □28□ □3□(2011)

□□□, “□□□□□ □□□ □□ □□ □□□□” □□□□ □48□(2010)

□□□, “□□□□□□□ □□□ □□□ □□ □□□□□”, □□□□, □□□□□ □□□ □□ □□□ (2001)

The Electronic Communications Act 2000

Law Commission, Electronic Commerce: Formal Requirements in Commercial Transactions (2001)

[http://www.lawcom.gov.uk/wp-content/uploads/2015/09/electronic\\_commerce\\_advice.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/09/electronic_commerce_advice.pdf)

Ian Lloyd, Information Technology Law, 456-457 (Cryptography service provider □□□; □□ □□□ □□. 5□ □ □□ □□)