

Chile

## Development of E-Commerce in Chile:

### Overview of Legal Issues

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# Summary

- Economical facts.
- An overview of Internet, E-Commerce and E-.Government.
- The Digital Signature Act.
- Other issues related with the E-Commerce
  - Privacy Act.
  - Consumers Protection Act.
  - Cybercrime act.
  - Spam.
- Conclusions





# Economical facts

- 15 millions of inhabitants.

- **Corruption**

The Report of International Transparency 2003, it locates at Chile among the **20 less corrupt countries of the globe**, surpassing countries like France, Spain, Japan or Israel and with a very near qualification to that of Germany, Belgium, Ireland and United States.

Price Waterhouse Coopers threw in 2001 a meter of transparency of the markets, with Chile and United States **in the second place** behind Singapore.

Country rank	Country	CPI 2003 score	Surveys used	Standard deviation
1	Finland	9.7	8	0.3
2	Iceland	9.6	7	0.3
3	Denmark	9.5	9	0.4
	New Zealand	9.5	8	0.2
5	Singapore	9.4	12	0.1
6	Sweden	9.3	11	0.2
7	Netherlands	8.9	9	0.3
8	Australia	8.8	12	0.9
	Norway	8.8	8	0.5
	Switzerland	8.8	9	0.8
11	Canada	8.7	12	0.9
	Luxembourg	8.7	6	0.4
	United Kingdom	8.7	13	0.5
14	Austria	8.0	9	0.7
	Hong Kong	8.0	11	1.1
16	Germany	7.7	11	1.2
17	Belgium	7.6	9	0.9
18	Ireland	7.5	9	0.7
	USA	7.5	13	1.2
20	Chile	7.4	12	0.9
21	Israel	7.0	10	1.2
	Japan	7.0	13	1.1
23	France	6.9	12	1.1
	Spain	6.9	11	0.8
25	Portugal	6.6	9	1.2
26	Oman	6.3	4	0.9
27	Bahrain	6.1	3	1.1
	Cyprus	6.1	3	1.6
29	Slovenia	5.9	12	1.2
30	Botswana	5.7	6	0.9
	Taiwan	5.7	13	1.0
32	Qatar	5.6	3	0.1
33	Estonia	5.5	12	0.6
	Uruguay	5.5	7	1.1



- **Growth of the GDP**

It has allowed it that the country has presented a half annual growth of the GDP that overcomes **6%** approximately during the **last 20 years**.

For the year 2004, the Central Bank of Chile foresees a growth that rotates around **5,5%**

- **The most liberal economies in the globe.**

The Index of Economic Freedom that every year The publishes Heritage Foundation, with the periodic The Wall Street Journal qualifies Chile in the 2004 like one of the **13 freer economies**, for on countries like Finland, Germany or Spain, being leader in Latin America

**PRODUCTO INTERNO BRUTO**  
1984-2000  
(Millones de pesos de 1986)

Año	PIB	Variación Anual (%)
1984	3.160.569	
1985	3.238.003	2,5
1986	3.419.209	5,6
1987	3.644.681	6,6
1988	3.911.154	7,3
1989	4.324.181	10,6
1990	4.484.071	3,7
1991	4.841.447	8,0
1992	5.435.881	12,3
1993	5.815.646	7,0
1994	6.147.610	5,7
1995	6.800.952	10,6
1996	7.305.141	7,4
1997	7.845.130	7,4
1998	8.153.011	3,9
1999*	8.059.767	-1,1
2000*	8.493.402	5,4

**Crecimiento Promedio Anual (%)**

1984-1989	6,5
1989 -2000	6,3

\*Cifras provisórias

Fuente: Banco Central de Chile

# International perspective

## FTA partners



## FTA candidates



## Economic associations



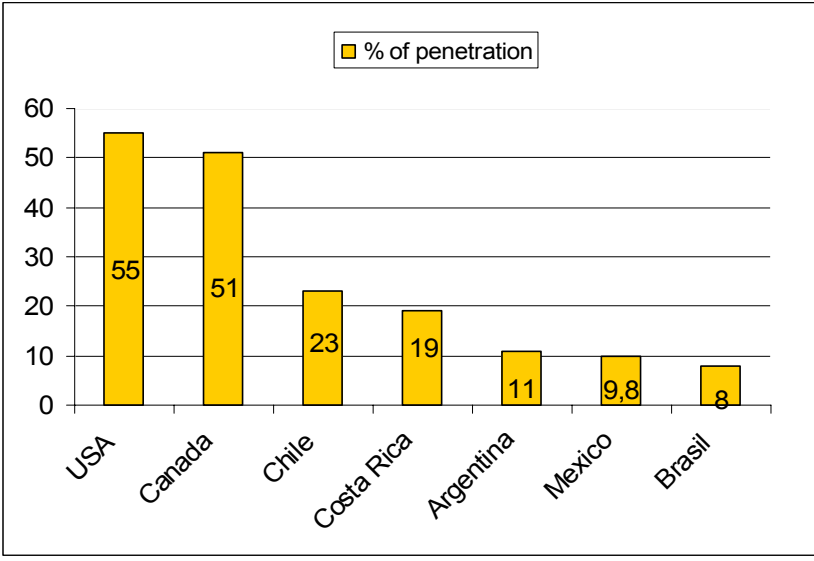
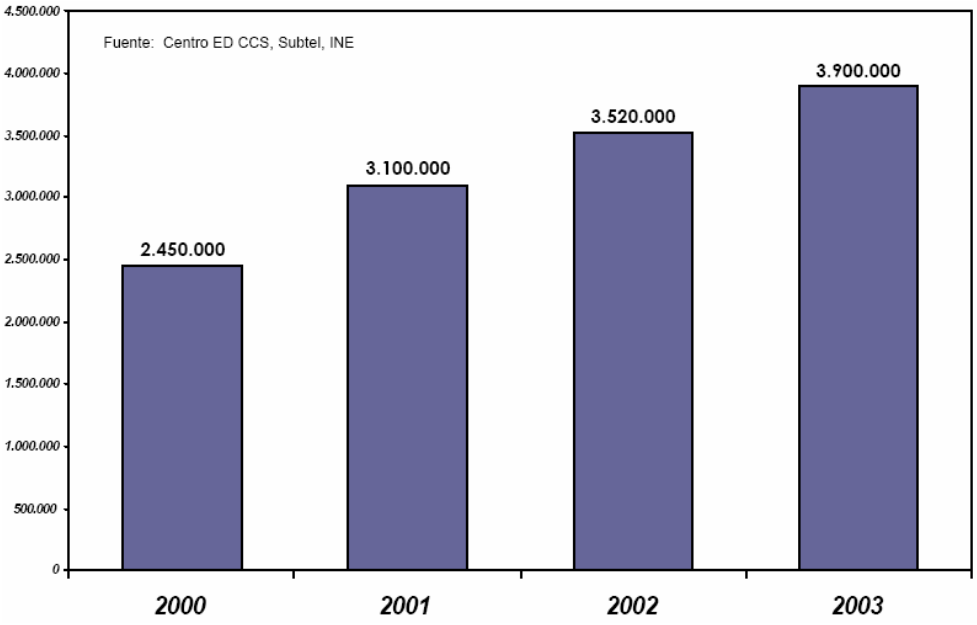
Asia-Pacific Economic Cooperation Forum



Mercado Común del Sur  
(Common Market from South)

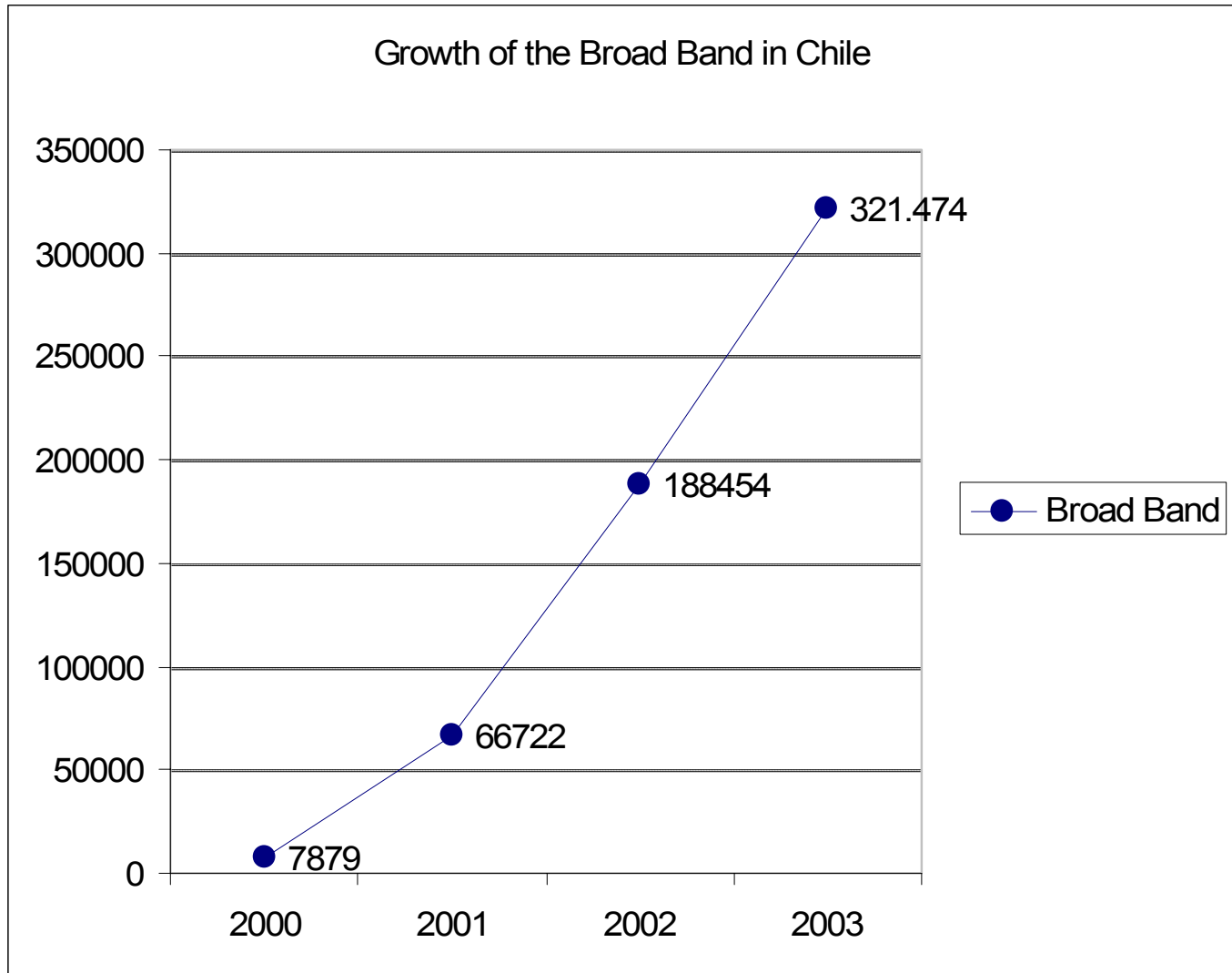
# Internet Users in Chile and his comparison with other American countries.

Source: Centro ED & ITU



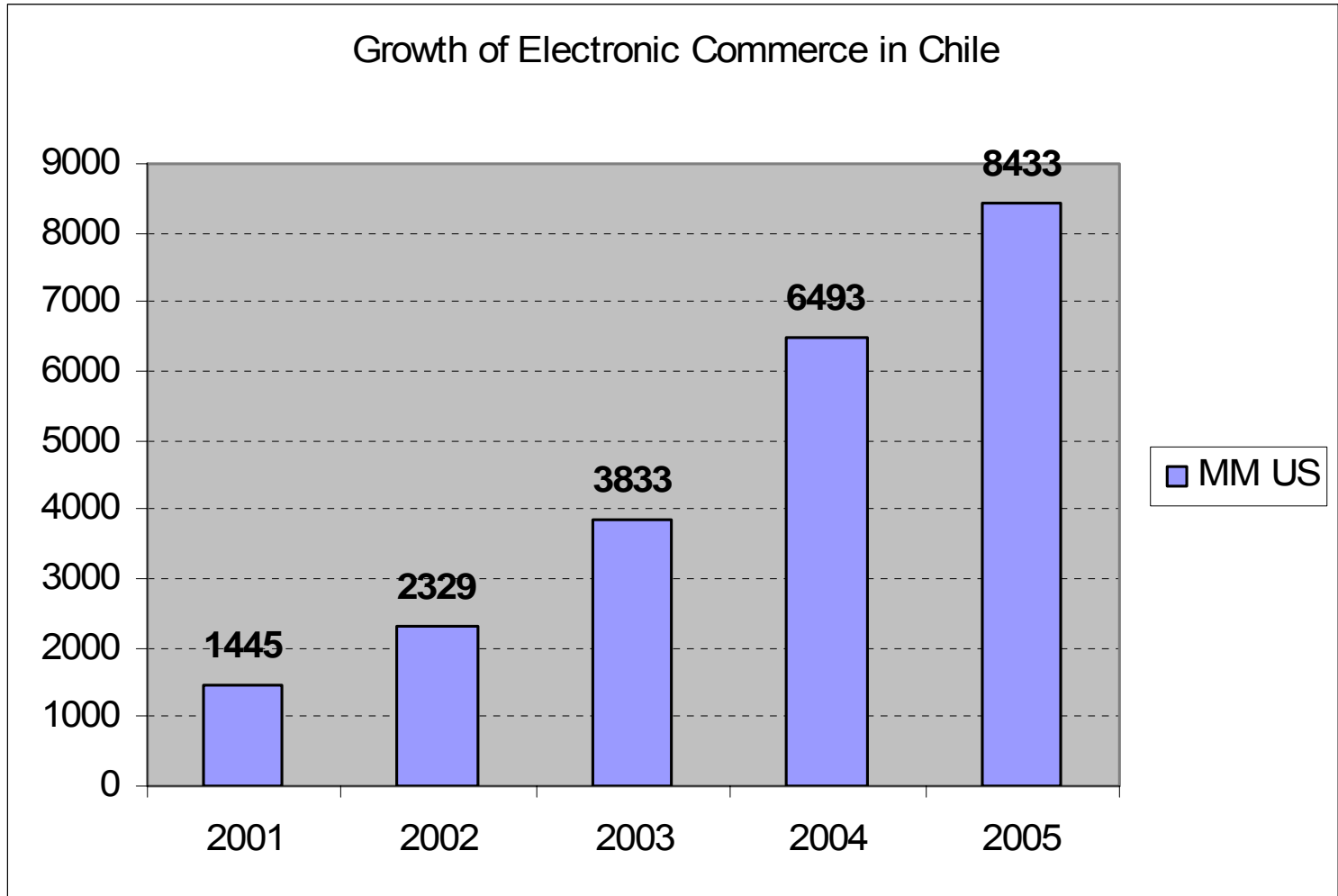
# Broad Band in Chile.

Source: Centro ED, El Mercurio



## Growth of the E-Commerce in Chile

Source: Centro ED





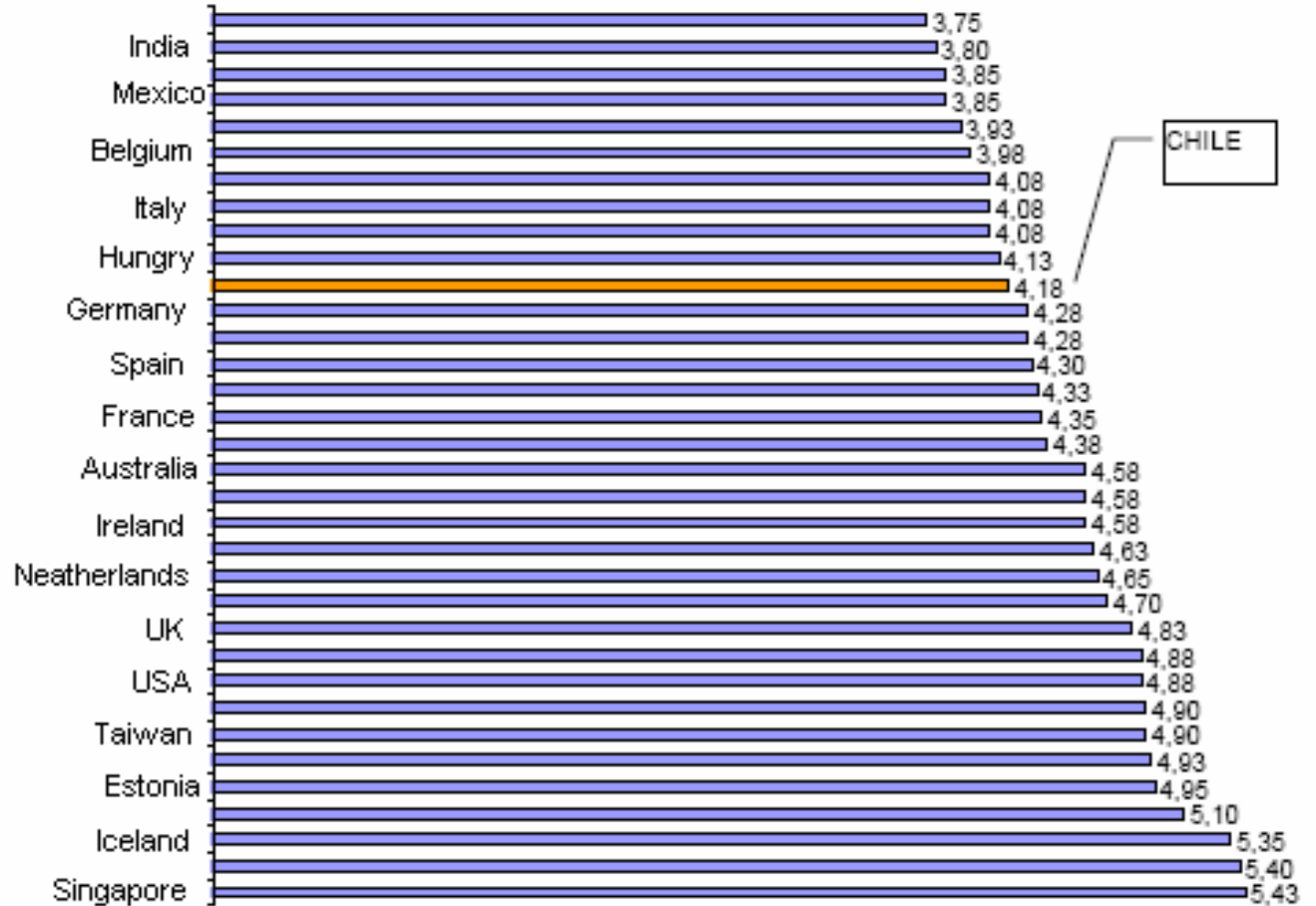
**Ranking of E-Government, Brown University.**

Source: Centro ED

1	Taiwán
2	Corea del Sur
3	Canadá
4	EE.UU.
5	Chile
6	Australia
7	China
8	Suiza
9	Gran Bretaña
10	Singapur

**Ranking of E-Government, Harvard University.**

Source: Centro ED



www.sii.cl

Servicio de Impuestos Internos - Chile

Digitally signed by Fernando J. Fernández Aoevedo

et: Boleta de honorarios electrónico@ e inicio de actividades por Internet

**Siiinternet** www.sii.cl  
Facilitando el cumplimiento tributario

et: Boleta de honorarios electrónico@ e inicio de actividades por Internet

**ACTUALIDAD TRIBUTARIA**

**Noticias**

Se amplía hasta el 15 de marzo presentación de declaraciones juradas 1826 y 1827 necesarias para usar franquicia de capacitación (26-febrero)

Últimos días para presentar declaraciones juradas necesarias para usar franquicia de capacitación (19-febrero)

Rentas externas e impuestos pagados o retenidos en el extranjero deberán declararse por Internet antes del 15 de marzo (18-febrero)

Retenciones de Impuesto Adicional hechas por contribuyentes residentes o domiciliados en Chile deben declararse por Internet antes del 15 de marzo (18-febrero)

**Más Noticias**

**OFICINA VIRTUAL SII**

**Registro de Contribuyentes**  
Obtención de Clave Secreta,  
Recuperación de Clave Secreta,  
Inicio de Actividades,  
Modificaciones y Avisos. [...]

**Impuestos Mensuales (IVA-F29, F50)**  
Declaración Sin Movimiento, Declaración Formulario Electrónico,  
Declaración por Software,  
Corregir o Rectificar Declaraciones,  
Declaración Formulario 50. [...]

**Declaraciones Juradas**  
Declaración Formulario Electrónico,  
Bajar Software Gratuito,  
Declaración Mediante Software,  
Consultar Estado de Declaración,  
Preuntas Frecuentes. [...]

**Renta**  
Corregir o rectificar declaración,  
Consultar estado de declaración,  
Información de sus ingresos,  
Guía paso a paso para corregir,  
Declarar utilizando propuesta. [...]

**Factura Electrónica**  
Descripción,  
Consultar Empresas Autorizadas

**ASISTENCIA AL CONTRIBUYENTE**

**Contribuyentes**

**Empresas por tamaño**

- Microempresas
- Pequeñas y medianas (PYMES)
- Grandes Contribuyentes

**Empresas por Sector**

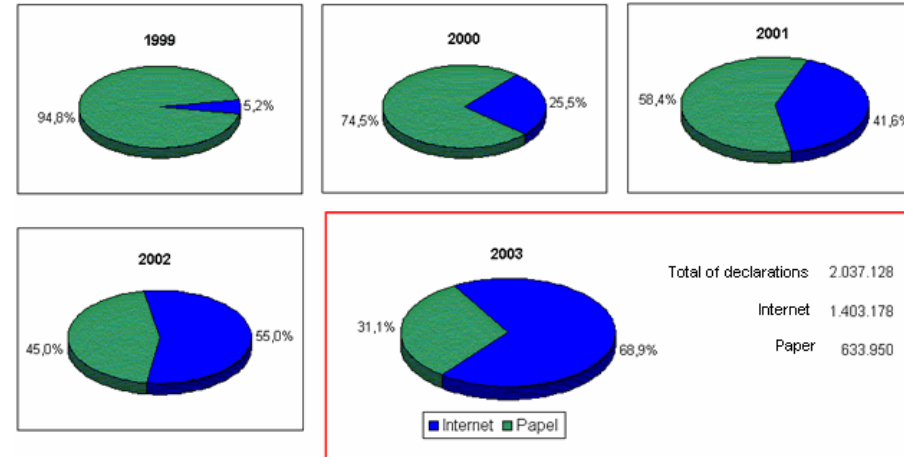
- Agropecuario-silvícola
- Pesca
- Minería
- Industria manufacturera y empresas de servicios
- Energía
- Electricidad, gas y agua
- Construcción
- Comercio
- Transporte y comunicaciones
- Servicios financieros
- Entidades fiscales

**Contribuyentes Individuales**

- Profesionales y Trabajadores independientes
- Empresario individual
- Empleados, pensionados
- Extranjeros y chilenos sin domicilio ni

## Comparison of the declaration of Direct Taxes in Chile

Source: SII



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10 | marzo | 2004

**NOVEDADES**

**Novedades en Plataforma de Compras**

Conozca las nuevas funcionalidades de la plataforma electrónica de compras, que simplifica la interacción comercial entre proveedores y organismos públicos, y garantizan la eficiencia y transparencia en el mercado de las Compras Públicas. Ver [Detalle](#)

**NEWSLETTER CHILECOMPRAS**

Ver [Detalle](#)

ChileCompra instala nueva Plataforma Electrónica. Ver [Detalle](#)

Gradualidad de Incorporación de Municipios a ChileCompra partirá en junio de 2004. Ver [Detalle](#)

teléfono de atención 680-420-1010

www.chilecompra.cl

www.tramitefacil.cl

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- Inscripciones
- Postulaciones
- Envío de Información
- Obtención de Información
- Obtención de Documentos

¿Cómo Buscar?

- Buscador
- Búsqueda por Instituciones

GOBIERNO DE CHILE

Portal Trámite fácil  
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2002



Trámites en Línea

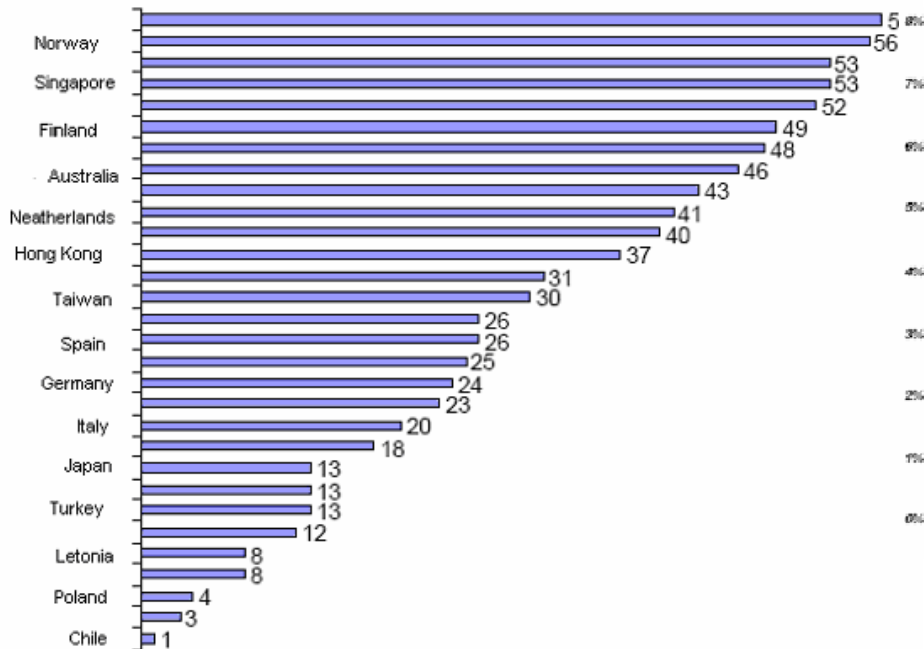
Formularios

Visitantes:  
34162

# The individual User: The Paradox

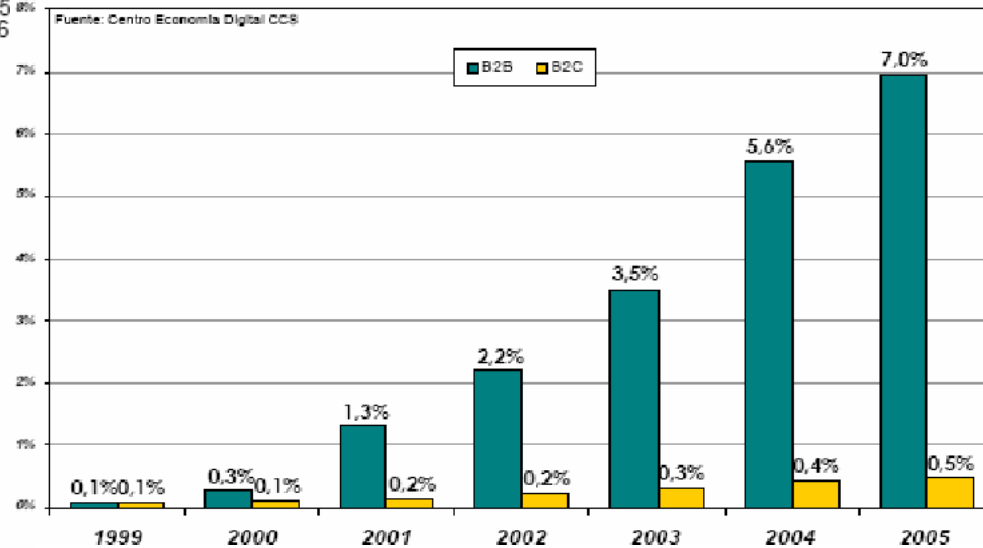
## % of population that use E-Government.

Source: Taylor Nelson Sofres



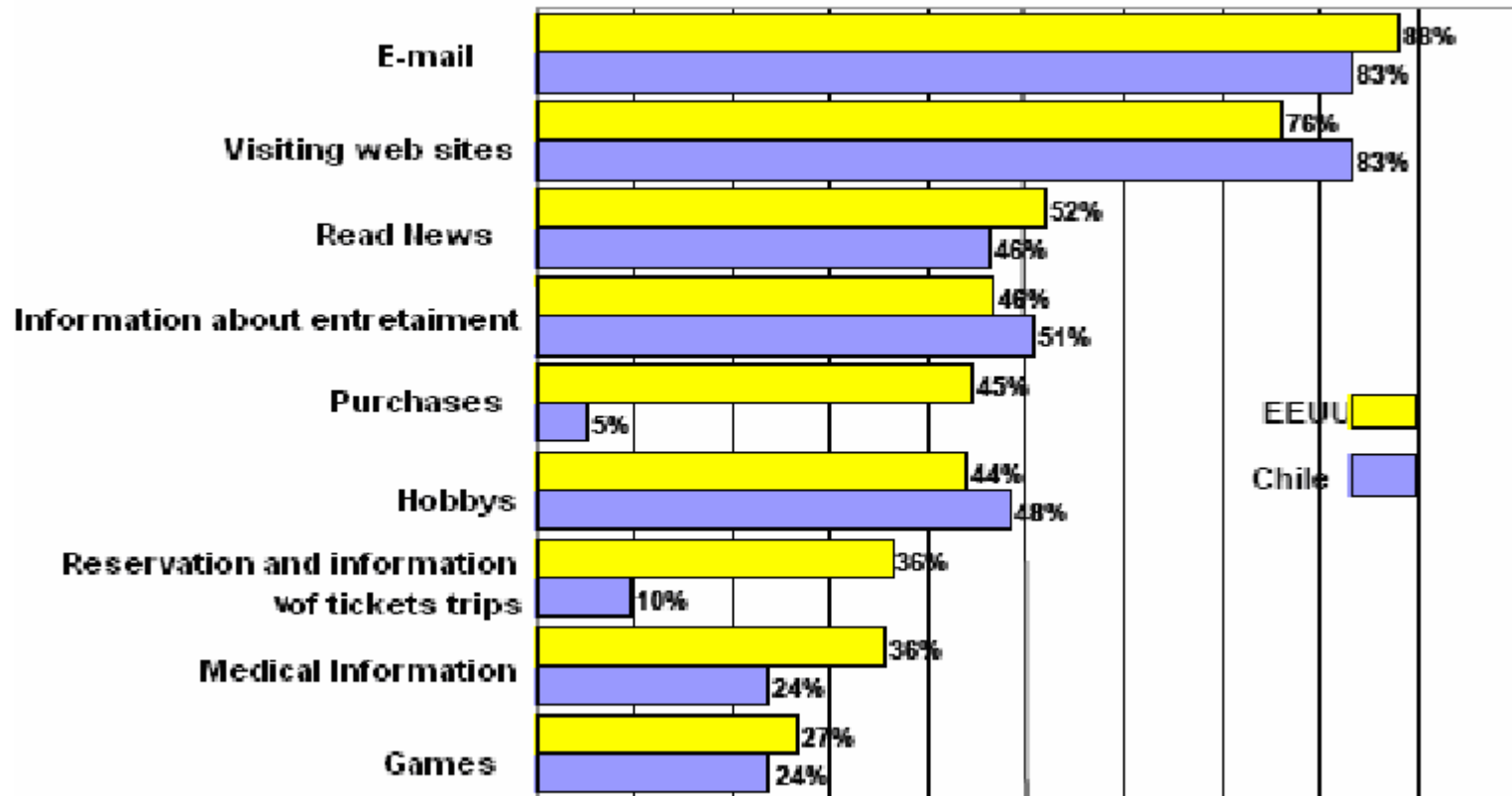
## Penetration of B2B and B2C Commerce.

Source: Centro ED



## Principal activities of individual users Chile v/s USA

Source: Centro ED



## **Reasons for the less utilization of Internet from the individual users**

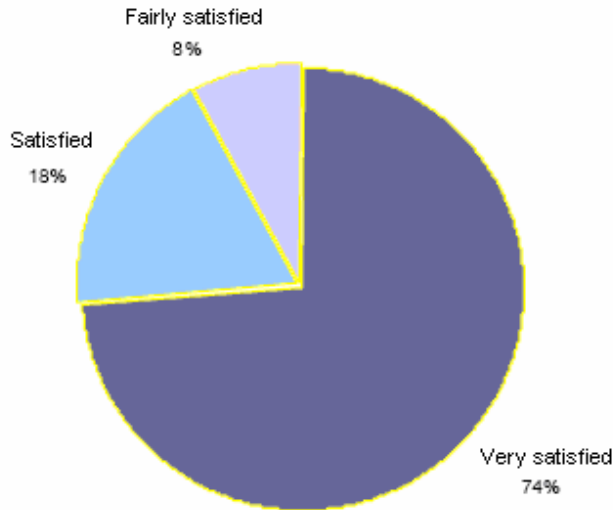
- The short time that they take connected to Internet (6 hours).
- The level of knowledge in terms of handling of Internet (55% regular users, 17% experts).
- Other outstanding reasons are of cultural type: the purchase in a mall or commercial house has a recreational and symbolic connotation.
- It doesn't exist of buying for catalog, but rather the tendency exists to play and to see the things that are bought.
- The great apprehension exists for the security of the personal data.

**However....** E-Banking and Declaration and payment of taxes

# HOWEVER...

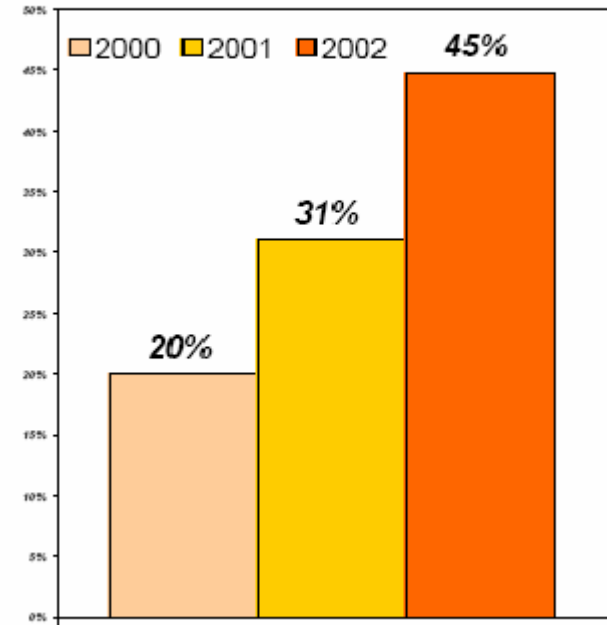
## Grade of satisfaction with E-Bankig

Source: Centro ED



## Penetration in the current account users

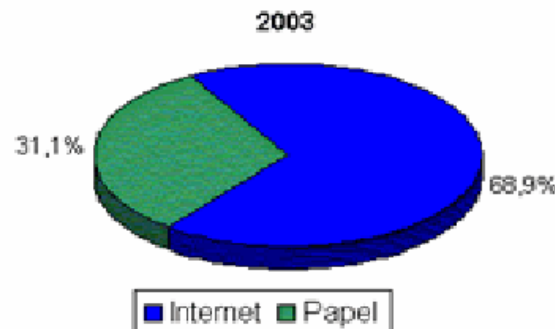
Source: SBIF, Centro ED, CCS



- In December of 2002 a total of **687 thousand people** was connected to the platforms offered by the banks, what represents an increase of **49%** in twelve months.
- Also in that month, they were reported more than **20 million transactions**.

% Cta Correntistas

## The tax experience



Total of declarations	2.037.128
Internet	1.403.178
Paper	633.950

## Digital Signature Act 2002

**Act N° 19.799 "of electronic documents, electronic signatures and the certification of this signature" 12th April of 2002**



This legislation has 25 articles, which regulate five aspects fundamentally:

1. Establishment of a series of principles which will inspired the law, and that will prevail specifically on the interpretative rules of Civil Code (a. 19 & ss)
2. Juridical recognition of the electronic documents signed electronically,
3. Recognition of the electronic signature,
4. The use of the electronic signature by the State.
5. Regulation of Certification Authorities.



# Juridical recognicement of the Electronic Documents

**Definition:** "Article 2º. - For the purpose of this Act:

d) Electronic document: all representation of a fact, image or devises that it is created, send, communicated or received by a electronic form and stored in a suitable way for their later use;

## **Importance of the juridical recognition:**

- General Rule: all contract concluded by electronic means are perfectly valid : agreement of wills  
However article 1.709 of the Civil Code: the civil obligations over 2 UTM (£ 54 approximately) should be in written form (in paper).  
Hence, **electronic contracts are valid BUT can't be proven in trial** because it is not considered as "document".
- Solemn Contract (exception): Some contract require for their validity being in written form (ex. Purchase of a property). So Electronic Document will **not be valid** for this purpose.

## The E.D. granted by way of solemnity (art.3)

**General Rule:** Art. 3º: *"The acts and granted contracts or taken place by natural or juridical people, undersigned by means of electronic signature, will be valid in the same way and they will produce the same effects that those taken place in writing and in paper support. This acts and contracts will be reputed as writings, in the cases in that the law demands that the same ones consist in that way, and in all those cases in that the law foresees juridical consequences when they consist equally in writing."*

1. Be signed by an electronic signature.
2. They will have the same legal effects as of "paper" docuemnts.
3. They will be considered as written, where the law demands.

### Exceptions:

a) Where the law demands a solemnity that is not susceptible from being completed by means of electronic document →

#### **Registers**

b) Those in that the law requires the personal concurrence of some of the parts, and

c) In relation to the Family Law

**Result:** Almost any solemn contract cannot be made it in electronic form

## Recognition E.D. as a valid prove (art.5)

In explicit terms establishes that the E.D. can be presented as an evidence. Also regulates the valuation of E.D. as evidence.

The article recognizes three classes of electronic documents:

1. Public E.D. (art. 5, nº 1).
2. E.D. private signed by means of Advanced Electronic Signature (art. 5, nº 2)
3. E.D. private that signed **but** not by means of A.E.S. (art. 5, inc. final).

# Judicial recognition of Electronic Signature

## Electronic Signature

**Concept:** *"any sound, symbol or electronic process that it allows to the receiver of an electronic document to identify its author at least formally" (art. 2, letter f of the Act N° 19.799).*

- Principle of technological Neutrality.
- This definition, not necessarily fulfills the requirements for authenticity, integrity, no rejection and confidentiality.

## Advanced Electronic Signature:

### **Concept:**

*"that certified one for a credited C.S.P. that has been created using means that the holder maintains under his exclusive control, so that it is only linked to the same one and the data to those that refers, allowing the later detection of any modification, verifying the holder's identity and impeding that he ignores the integrity of the document and his responsibility. (art. 2, letter g)) "*

### **Elements:**

- signature is certified by accredited C.S.P
- signature has been created using means that the holder maintains under his exclusive control, linking the user's identity with the signature.
- allows the later detection of any modification (Integrity). (P.K.I.)
- impedes the rejection about the integrity and the responsibility by the signatory.

# Certification Service Providers:

**Concept:** *"... national or foreign, public or private juridical people that grant certificates of electronic signature, without damage of the other services that can carry out" art. 11, inc. 1º*

## Obligatory services:

1. The emission of the certificate (art. 11, inc. 1º).
2. The keeping of a directory of certificates (art. 12, letter b))
3. Revocation service and suspension of the certificates (art. 16, nº2 of the Law, art. 27,28 and 30 of the Regulation).
4. Elimination in the registration of the certificate that has been without effect (art. 16)
5. Upgrade of the certificates (art. 24 of the Law, art. 6, d) of the Regulation)
6. Creation of a couple of keys of a digital signature (art. 25 of the Regulation)

## Obligations:

1. Common obligations (art. 12)
2. Obligations for the accredited CSP (art. 12 y 17)

## Accredited Service Provided (art. 17)

The legislator established a voluntary system for the C.S.P., by means of the Accreditation before the Subsecretary of Economy for also called "Accreditation Entity" according to the art 2, letter and)

**Registration Authorities:** State Agencies.

## Liability of the CPS (art. 14)

- Subjective responsibility
- In case of dispute C.S.P have to prove that he acted without blame.
- C.S.P. limits its civil responsibility for the "uses" that it determines for each certificate in its CPS.
- Insurance 5.000 UF (€ 76.000). Just Accredited CPS.
- Exention of responsibility of the State.

## **Criticism of the Act**

1. Restricted recognition of the E.D.
2. Limitation of the C.S.P. “use” → amount of \$. End of the insurance or acotate it.
3. Registration Authorities.
4. Liability of the State → unconstitutional.
5. No initiatives for the mutual recognition of the electronic signatures with other countries.

# Act nº 19.628 SOBRE PROTECCION DE LA VIDA PRIVADA (1999)

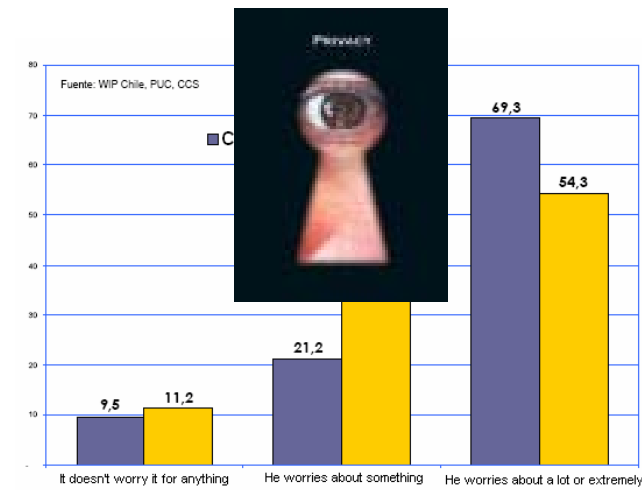
## Privacy Act:

Art. 4º: “Right to privacy”.

The **BIG** exception. The confidential data is illegal to use without authorization. It is only considered “confidential” for: bank, taxes, political parties.

There is no special authority that control the accomplish of the act

Concern for the privacy when buying for Internet.  
Source: Centro ED



## Other legal issues

### Spam:

- There is no Civil (Consumer Protection) and Criminal law that punish the Spaming
  
- The Transatlantic Consumer Dialogue (TACD), in *Report of online survey on spam, Oct - Dec 2003*, **52%** said that **they shop online less or not** at all because they are worried about **spam**





**Consumer protection act:** Act N° 19.496: SOBRE PROTECCION DE LOS DERECHOS DE LOS CONSUMIDORES (1997)

- Doesn't contemplate the explicit recognition of the e-commerce.
- Is not applicable to the majority of the application form contracts on web (use & terms), because they not contemplate "a payment". But even they have commercial propositis.

# Conclusions

- As we see, there is not enough protection to the individual user to trust in B2C
- The measures that are adopted from now on should spread to be made in a holistic way in order to generate the enough trust. Not everything is money.
- The Chilean experience should be model for other nations in order to avoid that the same errors take place, mainly in the countries in the developing countries.
- Recently the rushed "Digital Calendar 2004 - 2006"....