

Legal Issues Affecting E-Commerce

A Review of the Indian *Information and Technology Act 2000*



Subhajt Basu

Richard Jones

Liverpool John Moores University

Introduction

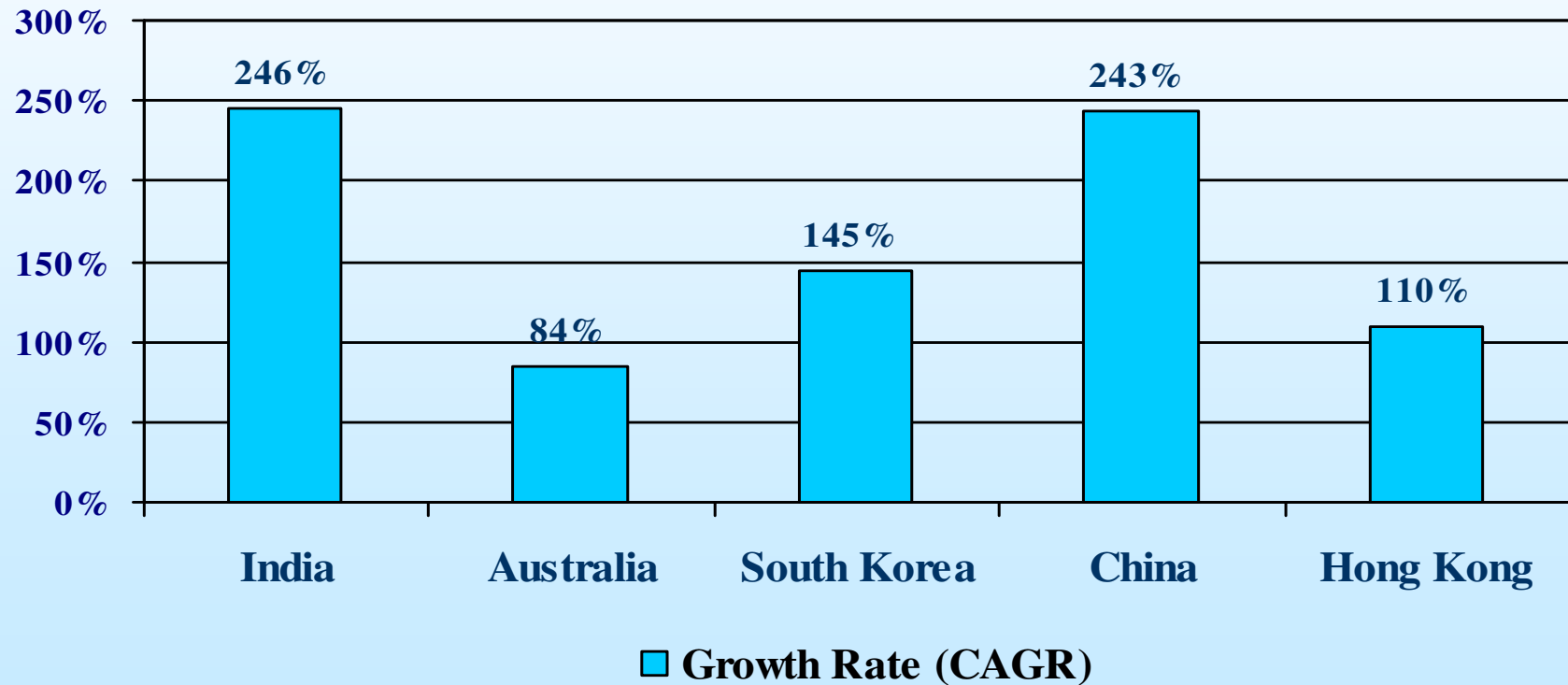


- **E-Commerce: significant impact on Global Economy, Europe and US the main beneficiaries**

- ***Information Technology Act, 2000***
 - The Act is prescriptive
 - Complex
 - Technology
 - Unilateral action

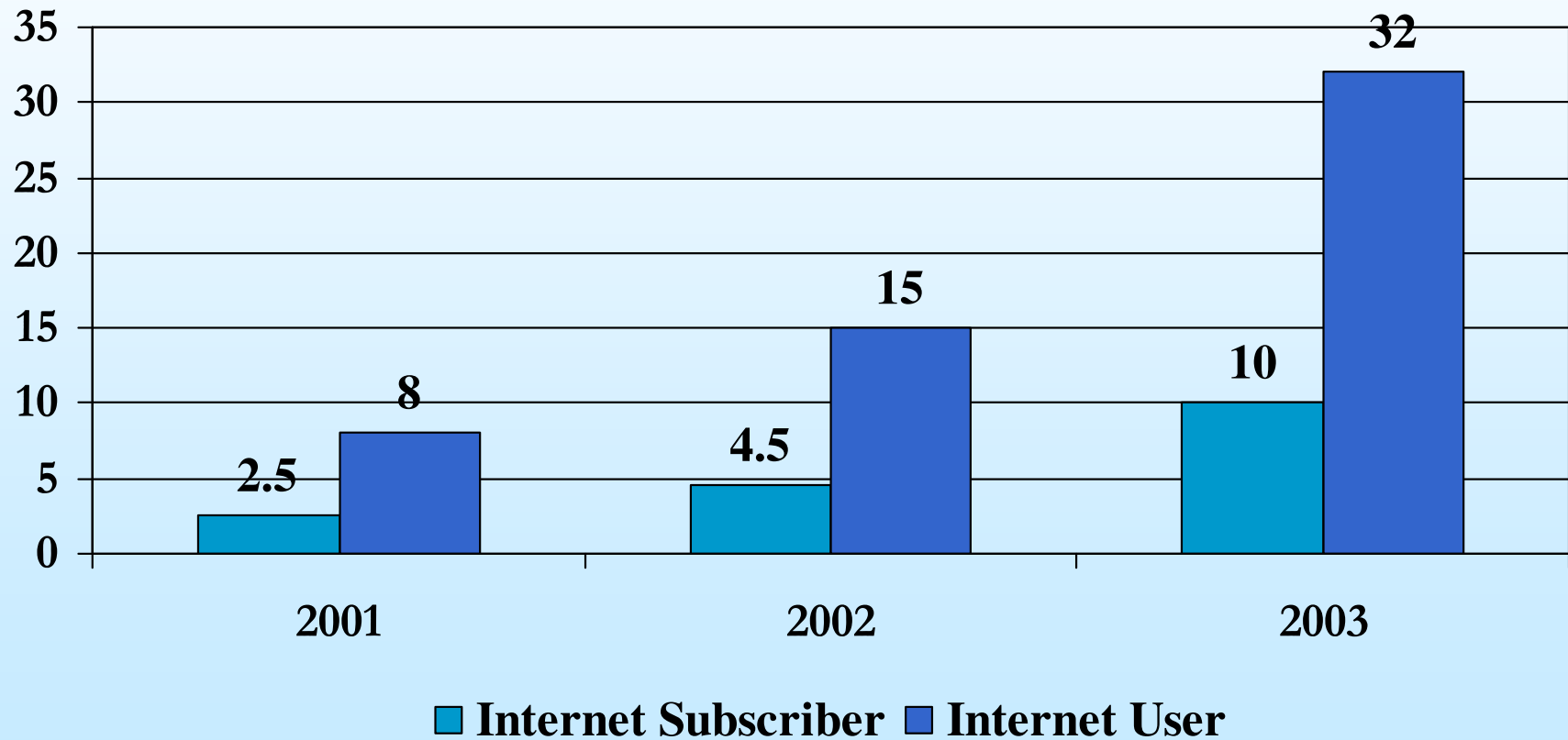
E-commerce Survey

Growth Rate of E-commerce Between 1997-2003:
Asia Pacific Region



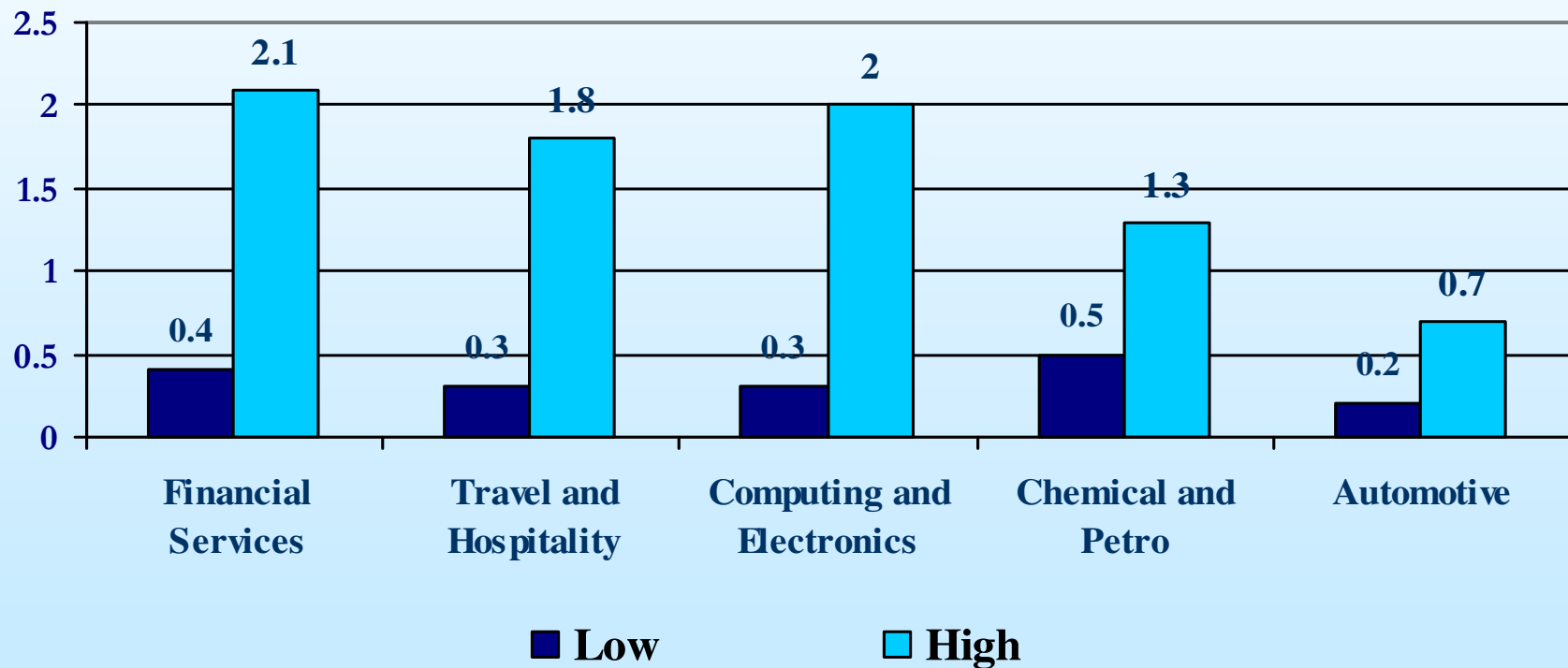
E-commerce Survey

NASSCOM Survey of Internet Users in India (Millions)



E-commerce:

Growth by the Year 2008 in US \$ (Billion): India



Information Technology Act, 2000



- **Model law on E-Commerce (UNCITRAL)**
- *Utah Digital Signatures Act, 1995*
- *Singapore Electronic Transactions Act, 1998*
- *Malaysian Electronic Signatures Act*

Information Technology Act, 2000



- **The Act has three significant elements**
 - **Legal recognition of electronic records and communications**
 - **Regulation of Certification Authorities ("CAs")**
 - **Cyber contraventions - civil and criminal violations**

Information Technology Act, 2000



■ Contractual Issues : Agreement

- Agreement and Form
- Offer
- Acceptance
- Revocation of Offer
- Revocation of Acceptance

Information Technology Act, 2000



■ Contractual Issues : Form

- Where the Contract is concluded
- Law relating to Written Documents
 - *Sec 4 "where a law requires information to be written or to be presented in writing or provides for certain consequences if it is not, an electronic record satisfies that rule if the information contained therein is accessible so as to be usable for subsequent reference".*

Information Technology Act, 2000



■ Contractual Issues - Evidence

- The Second Schedule (sec 91 IT act 2000) amendments to the Indian Evidence Act, 1872 states *"that a file produced by techniques that accurately reproduce the original will be admissible as the original itself"*.

Information Technology Act, 2000



■ Digital Signature and Encryption

- Transaction security in e-commerce
- Use of cryptography for confidentiality of message
- Use of cryptography in digital signature
- Public and private key encryption

Information Technology Act, 2000



■ Certifying Authorities

- Complex mechanism for the registration and operation of Certifying Authorities
- Not technologically neutral
- Certificates from International (Non-Indian) Certifying Authorities invalid

Conclusion



- **The Act is too Prescriptive**
- **Complex**
- **Not technologically neutral**
- **Unilateral enforcement of electronic commerce.**