BRUSSELS RECOMMENDATIONS

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TABLE OF CONTENTS

Global Business Dialogue on Electronic Commerce

GBDe Brussels Recommendations
Overview

October 29, 2002

INTRODUCTION

The year 2002 represented a period of major transition for the Global Business Dialogue on Electronic Commerce (GBDe).

Established in January 1999 as a worldwide, CEO-led, business initiative, the GBDe has continued to focus on the development of a policy framework for the global online economy.

Since its formation the GBDe has created a series of comprehensive, consensus-based recommendations on a range of crucial e-commerce issues. It has sought to give life to the concept of private sector policy cooperation with government and to promote market-driven solutions based on industry self-regulation where appropriate.

Despite a challenging business environment during 2002, the GBDe continues to assert the importance of e-commerce as a significant and growing contributor to global economic growth.

As part of its own evolution the GBDe has moved the focus from the concentration on policy development, which marked the first three years of its existence, to a more balanced work program including advocacy of its recommendations to stakeholders throughout the world.

For this reason, the GBDe's Brussels Recommendations of 2002 represent a significant progression from those of 2001.

In some areas there have been further advances in the policy work while in others, where past GBDe recommendations remain relevant or no further consensus agreement is probable, the emphasis has moved to advocacy.

In order to further enrich its work, the GBDe has also conducted comprehensive surveys of particular aspects of e-commerce. The findings of these surveys have helped to shape both its policy development and advocacy activities.

The 2002 work program of the GBDe featured the following:

- **Combating Harmful Internet Content (CHIC)**

During the year, the GBDe addressed the need to provide online users with safe content. The most pressing concern is the fear that children will access pedophile or pornographic web sites. Other forms of content are also considered harmful such as hate speech, expression inciting violence based on race, religion and nationality, and defamation.

The GBDe's CHIC Recommendations contemplate a number of means, available to ISPs and other Internet intermediaries, to block harmful content: codes of conduct, hotlines, assisting public authorities, notice and takedown, and acceptable user polices. These complement the formal procedures available to public authorities. An ISP should not be liable for its implementation of such a process.

- **Consumer Confidence**

The Consumer Confidence Working Group - encompassing trustmarks, alternative dispute resolution (ADR), protection of personal data, Internet payments and cyber ethics - concentrated its efforts in two key areas during 2002.

In the areas of ADR and privacy the GBDe sought both to encourage the adoption of its own guidelines among its members and business in

general. In addition, existing relationships with consumer groups were extended with the understanding, in particular, of the need to reach broad stakeholder agreement on the fundamental shape of ADR systems. With regard to Internet Payments, the GBDe Recommendations of 2001 were further reinforced with insights gained from a detailed survey of those involved in the development and operation of online payment systems.

- **Convergence**

Digital convergence has been a major component of the GBDe's advocacy activities during 2002. This is based on the belief that widespread broadband access to the Internet is one of the basic prerequisites for the successful establishment of a Global Information Society. In particular, the GBDe has identified the demand side as the key to boosting broadband and has urged governments to adopt a similar perspective. Furthermore, the GBDe has made specific recommendations about radio spectrum management and licensing in an effort to assist governments in creating an environment within which broadband access can flourish.

- **Cyber Security**

The issue of cyber security continues to be a key priority of the GBDe. In the current international environment, cyber security has received major prominence, and a considerable amount of effort has been expended on exploring global policy options in this areas.

The GBDe has adopted a cautious approach to the possibility of increased international cooperation among the private sector and governments with regard to cyber security. During 2002, the GBDe has developed recommendations relating to standardization of security measures, information sharing, corporate governance, Internet protection and electronic authentication. In addition, the GBDe has signaled its intention to explore many of these aspects of cyber security in greater detail as part of its 2003 work program.

- **Digital Bridges**

The effort of the Digital Bridges Working Group during 2002 was focused on three specific areas.

The first was aimed at establishing greater cooperation between private sector groups seeking to bridge the digital divide. There is a strong realization that coordination is necessary to ensure that meaningful results can be achieved. Secondly, the GBDe sought to promote a greater appreciation of the potential role of the private sector in enabling those from emerging economies to participate more fully in the benefits of the Information Society. Finally, the GBDe's approach to the challenge was to develop a "best practices" framework, based on a lengthy survey of member companies, to identify the parameters for the effective investment in digitally enabling projects.

- **e-Government**

There is a strong recognition that governments have an important role to play in stimulating e-commerce by increasing the opportunities for online interaction with their citizens.

The GBDe, during 2002, extended its previous recommendations involving the government-to-business relationship to provide a public sector checklist for widespread e-government implementation. In particular, the 2002 recommendations provide options for increasing the added value of e-government for citizens and also for enhancing the opportunities for business and government to interact profitably though the digital medium. Further effort was also directed towards enhancing the GBDe's existing e-government case study database and broadening its cooperation with other initiatives seeking to assist public authorities in this important area.

- **Intellectual Property Rights**

Following significant success in achieving private sector consensus on some of the most important Intellectual Property Rights issues, the GBDe has concentrated on advocacy and refinement of existing recommendations during 2002. As part of this forward-looking process, it has identified eight key principles regarding Intellectual Property Rights, which will be at the forefront of its worldwide advocacy activities during the next 12 months. There is a strong belief within the GBDe that the deployment of standard and interoperable technological protection measures will be a critical element in the fight against online piracy. For this reason, existing recommendations have been extended to address online enforcement mechanisms, revisiting a theme first raised by the GBDe in 1999.

- **Taxation**

During 2002, the GBDe Taxation Working Group continued to work towards international coordination in the development of tax policies that will promote global electronic commerce for the benefit of businesses and consumers. This was partly achieved through the adoption of a monitoring role by which the GBDe was able to respond rapidly to developments in taxation systems relating to e-commerce in important jurisdictions and also through deepening the dialogue with governments. Emphasis continues to be placed on the promotion of basic tax

2

principles and their practical application with regard to both direct and indirect taxation.

- **Trade/WTO**

The Trade/WTO Working Group's primary task during 2002 was to advocate the principles and recommendations presented at the Tokyo Annual Conference in 2001. As part of this effort, the GBDe increased its efforts to ensure e-commerce issues were considered during the continuing negotiation of trade agreements. In particular, the GBDe is seeking to ensure that e-commerce is considered an integral part of existing WTO agreements and that it should, as a minimum, receive trade treatment no less favorable than like products delivered in physical form. The GBDe is also investigating the highly complex issue of the classification of goods and services, and also the identification of trade barriers to e-commerce.

FUTURE DIRECTION

The GBDe continues to embody the spirit and dynamic features of the digital age. The business leaders who are the driving force remain committed to a process whereby industry and government can cooperate in the policy development process to achieve a result that benefits everyone.

Over the next year, the GBDe will continue to refine its focus to ensure it is increasingly recognized as one of the world's leading private sector voices on e-commerce policy. The GBDe is determined to make a positive contribution to the challenges facing an increasingly interconnected world.

Global Business Dialogue on Electronic Commerce

Combating Harmful Internet Content (CHIC)
Task Force
Recommendations
October 29, 2002

Task Force Chair (Europe/Africa)	*Cobus Stofberg* CEO MIH

INTRODUCTION

The GBDe is committed to fighting harmful content on the Internet. These recommendations propose that Internet intermediaries consider establishing processes for dealing with such content. The recommendations contain detailed suggestions addressed to Internet intermediaries and to public authorities.

In these recommendations, the GBDe

- covers a range of harmful content, which may be identified in the Internet intermediary's terms of use;

- proposes, based on the practices developed by the GBDe's members, a range of processes for dealing with this content; and

- recommends to public authorities that they should ensure that an Internet intermediary, which establishes and implements a process for combating harmful Internet content shall not, for that reason, be subject to liability in respect of such actions.

The GBDe believes that a single, unified "horizontal" approach is not appropriate given the need for intermediary flexibility and the variety of forms of harmful Internet content.

Overview. In its work on these recommendations the GBDe's goal has been to address the pressing concerns on the presence of harmful and illegal content on the Internet. This proposal is based on a broad cross-industry consensus informed by the practical experience of our member companies. In addition, the GBDe seeks to foster the continued growth of the Internet and its services by removing the risk of barriers to cross-border provision of services and increasing consumer confidence in our medium. These recommendations are also based on the spirit of policy cooperation, which the GBDe described in its Statement on Government and Industry Cooperation on Internet Policy[1], and on the expectation by some states that industry participates in the regulation of the Internet.

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[1] GBDe Statement on Government and Industry Cooperation in Internet Policy (Miami, 2000). This and other GBDe recommendations can be found at www.gbde.org

These recommendations build on other related work of the GBDe. As one of its first work items, the GBDe adopted a Recommendation on Liability[2] where it identified as one of its objectives the need to address "the issue of liability for most legally controlled content and activities [so as to] provide a foundation upon which to build a robust electronic commerce environment". The issue of online infringement of intellectual property rights was considered so pressing that the GBDe moved forward in 2000 with a separate recommendation on IPR notice and takedown procedure.[3] For this reason intellectual property rights are not covered by the present recommendations. In addition, in order to foster the Internet as a positive influence on the lives of people everywhere, the GBDe has addressed the issue of cyber ethics in a recommendation[4] adopted in 2001, in which GBDe members agreed to ensure that their services, materials and offers would not promote unethical material, such as child pornography, anti-Semitic, racist or xenophobic content (while fully protecting rights to free speech and expression as well as artistic and journalistic freedom).

Harmful content. In its work, the GBDe has not targeted specific forms of harmful content. There is, indeed, universal condemnation of child pornography, and international norms on unacceptable content are evolving. But it would be a difficult task today to attempt a comprehensive list, because of the little international harmonization of criminal law. Beyond criminal law, other rules on harmful content are often based on highly heterogeneous cultural, social and political values. Some expression prohibited by some states is entitled to legal protections in others.

For this reason, the GBDe gives great latitude to the Internet intermediary to define prohibited content. Indeed, the Internet intermediary could occupy the best position for identifying content unacceptable for its services. The GBDe believes that in many cases an intermediary's terms of use or other contractual arrangements are the best instruments for identifying harmful content and setting out the process which it uses to remove such content.

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[2] GBDe Recommendation on Liability (Paris, 1999).

[3] GBDe Recommendations of the IPR Working Group (Miami, 2000).

[4] GBDe Statement of Principles on Cyber Ethics (Tokyo, 2001).

Not all harmful content is equally opprobrious. As suggested below, the Internet intermediary may develop different responses to the varieties of content, ranging, for example, from child pornography to defamation.

Flexible process. In these recommendations, the GBDe does not provide a specific single process for dealing with harmful Internet content. The experience of Internet intermediaries has varied in the procedure each has adopted for harmful content and for the varieties of such content. This experience could be based on the blend of national legislation and local practice in the territory in which the intermediary is established, together with the means which the intermediary has available to deal with complaints on content. For this reason, the notion of a single, comprehensive "horizontal notice and takedown" procedure is not feasible. Our conclusion is that it is most practicable to foster informal, flexible approaches to responding to harmful Internet content.

The cooperation set out in these recommendations recognizes the different realms of government and industry, balancing the traditional adjudicatory role of public authority with the speedy informal process of the Internet intermediary. This meets the factors presented in the GBDe's Statement on Government and Industry Cooperation in Internet Policy. Moreover, the rules of the intermediary can be complementary, where the ultimate resolution of a dispute can be achieved in a recognised tribunal after action by an Internet intermediary using a process outlined in the Recommendations.

Intermediary liability; applicable law. The GBDe believes that the informal processes it advocates are best suited to addressing harmful Internet content disputes. This approach must be coupled to an explicit understanding on the freedom from liability for engaging in such a process. It is clear from GBDe members that if there is no protection from such liability, then an Internet intermediary is likely to respond only to a traditional formal order of a competent public authority (for example, a court of law). This would significantly add to the burdens and costs of the person claiming prejudice, possibly delay the remedy she seeks, and add to the caseload of the authorities. Instead, the GBDe is seeking, through its informal approach, which has in many territories demonstrated its viability, to offer a speedy, efficient process to the person claiming prejudice and the content provider.

Except in response to establishing and using a safe harboured process, these recommendations do not propose any view on liability for content.

Also, they do not address the issue of applicable law.

RECOMMENDATIONS

1. Combating harmful Internet content

1.1 **Scope**. Harmful Internet content injures, offends or violates the rights of Internet users and the public at large, and is a substantial burden on the growth and development of the Internet and electronic commerce. The GBDe recommends that Internet intermediaries and public authorities adopt one or more of the procedures, and take the other measures, set out in these recommendations.

1.2 **Definitions.** As used in these recommendations:

1.2.1 "Harmful Internet content" means content made available on the Internet which violates law or the rights of a person or is otherwise offensive. Harmful Internet content can include child pornography and other forms of pornography; hate speech and other expression capable of inciting violence based on race, religion and nationality; deceptive advertising including violations of securities laws; unlawful business practices, including e-commerce services promoting prostitution; defamation and libel; unfair competition; violation of data privacy; harassment of persons; and other forms of offensive content. An Internet intermediary may establish its own list of harmful Internet content, for example, pursuant to its terms of use, to which it applies a process for removal.

1.2.2 "Internet intermediary" means those furnishing access services to the Internet (linking a subscriber directly or indirectly to content on a web site), for example an Internet service provider, a telecommunications operator, a web site host, and a provider of automatic intermediary or temporary storage of contents. These recommendations apply to an Internet intermediary only if it is capable of usefully undertaking a process identified below.

1.3 **Other matters.** These recommendations do not cover:

(a) infringement of intellectual property rights, which is addressed in the GBDe Recommendations of the IPR Working Group (Miami, 2000);

(b) liability in respect of content (except for the safe harbour for processes to combat harmful Internet content, as specified in section 3.3); and

(c) applicable law.

2. Recommendations for Industry

2.1 **Process.** Internet intermediaries are encouraged to establish processes for combating harmful content. Among such processes, an Internet intermediary may consider one or more of the following:

(a) establishing an acceptable use policy and contractual terms with its customers on harmful and other content;

(b) working with other intermediaries in formulating a code of conduct on harmful Internet content;

(c) establishing hotlines, email contact points, or other methods for users to report harmful Internet content;

(d) facilitating transmission of a complaint to the proper public authorities (for example, by providing an email address to the complaining party);

(e) recommending to its hosting customers to rate or to label web sites for content suitable for children;

(f) maintaining a notice and takedown policy comprised of several of the following elements: setting a form of notice with specified information; permitting a person to give notice of harmful Internet content; contacting the content provider; taking down or disabling access to the content;

(g) making available to users, on a voluntary basis, software or other tools to help in identifying and filtering harmful Internet content;

(h) working with public authorities for the establishment of a content complaints body capable of handling issues relating to assertedly harmful content and of issuing takedown instructions;

(i) engaging in education programmes for customers and subscribers;

(j) depending on the nature of the harmful Internet content, forwarding on to public authorities, to the content provider or to both notice supplied by a complaining person or other information related to such content;

(k) serving as informal adjudicator between the person claiming prejudice and the content provider so that as between them they can resolve their dispute; and

(l) making available, acting alone or with others (including public authorities), a web page on the process it has adopted and the steps it proposes for combating harmful content.

The Internet intermediary may adopt different methods for dealing with different forms of harmful Internet content and different complainants (consumer, commercial customer, public authority). It should take action in respect of harmful Internet content in a timeframe commensurate with the nature of the content. Its procedure should not displace its obligation, if any, of service provision as a "mere conduit".

2.2 Technical measures. An Internet intermediary will accommodate and not interfere with widely adopted standard technical measures, whether software or hardware, to identify and filter harmful content provided such measures are standardized in a consensus-based, industry-driven process; do not impose a substantial burden on the network or system of the Internet intermediary; and are available to any person on terms fair reasonable and nondiscriminatory.

2.3 Other remedies. These informal processes are in addition to the procedures available under law followed by competent public authorities, for example a judicial tribunal, against harmful content. An Internet intermediary shall comply with the lawful orders of such authorities.

3. Recommendations for Public Authorities

3.1 Support for informal process. The GBDe seeks the support of public authorities for the establishment, by Internet intermediaries, of informal processes or codes of conduct for combating harmful Internet content.

3.1.1. Public authorities should recognize that these processes may not be capable of addressing all forms of harmful Internet content because, for example, an Internet intermediary may not be suited to offer a final resolution to every dispute.

3.1.2 In addition to the actions set out in these recommendations, the Internet intermediary may, in response to complaints, contact competent public authorities and thereafter take the action based on their lawful instructions.

3.2 Other legal principles. In the delivery to an Internet intermediary of instructions or a request for cooperation, public authorities should take account of other legal principles, including freedom of expression and data privacy.

3.3 Liability for informal processes. Public authorities should ensure that an Internet intermediary, which establishes and implements a process for combating harmful Internet content shall not, for that reason, be subject to liability in respect of such actions. Where a content complaints body has been established, the Internet intermediary should not be subject to liability for following its instructions.

3.4 Cooperation between public authorities and Internet intermediaries in regard to harmful Internet content. Public authorities should consider undertaking cooperative action consistent with these recommendations, for example in the preparation of a web page on the processes adopted by Internet intermediaries and the other remedies available to a complaining party. By means of such cooperation, the GBDe does not recommend, however, forms of cooperative action which impose a disproportionate cost on Internet intermediaries.

Global Business Dialogue on Electronic Commerce

Consumer Confidence
Internet Payments Sub Group
Recommendations
October 29, 2002

Leading Co-Chair (Europe/Africa)	*Dr. Klaus Mangold* CEO DaimlerChrysler Services AG & Member of the Board, DaimlerChrysler AG
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1. INTRODUCTION

Electronic, as well as mobile business to consumer (B2C) commerce, requires the availability of adequate payment systems. Hence, there is a strong need for e/m-payment systems.

Many existing payment systems cannot be used in the e/m-commerce environment, either because they are paper based (cash, check) or usually require a hand-written signature on some receipt (credit card payment). Some classical systems, most prominently credit cards, can be used for e/m-commerce if the merchant does not insist on a hand-written signature. However, this increases the fraud risk, causing potential loss for the merchant and inconvenience for the consumer (in case of dispute).

In recent years, many new payment systems have been invented that have been specially designed for e/m-commerce. However, none of these systems achieved a critical mass of users – merchants as well as customers – subscribed. Some of these systems have already ceased service since they were not able to create sufficient revenues. Electronic substitutes for cash (like digicash) are prominent examples. In addition, there are legal requirements and different banking systems that make cross border payments more complicated (and expensive) than domestic ones. As a consequence, payment systems are still a bottleneck for e/m-commerce.

Following the Tokyo conference, the GBDe has continued its research on Internet payments in order to identify, in more detail, the barriers to Internet payment systems and to explore possible solutions. Chapter 2 summarizes the results of this research. Chapter 3 contains some observations on the current situation and identifies the major problems. Finally, Chapter 4 draws some preliminary recommendations, based on this year's research results.

The GBDe will continue this work next year before producing final recommendations to business, consumers and governments. In this way it will be possible to evaluate more profoundly all relevant aspects of Internet payments including new e-payment systems and changes in technology, which may enhance some of the known systems.

2. STATUS QUO IN INTERNET PAYMENTS

The GBDe's own research produced the following findings:

2.1 Types of Internet Payment Systems

Currently, most Internet payment systems are either based on credit cards or on direct debiting (which requires the existence of a bank account). In general, systems based on credit cards have higher transaction costs than those based on direct debit. However, systems that rely on direct debit cannot be used cross border. Many new Internet payment systems make use of mobile devices such as mobile phones. Some of them use the billing engine of a telephone company for their purposes, others make use of the mobile phone for authentication purposes only.

There are only very few pre-paid systems that require neither a bank account nor a credit card, but they have not yet managed to get a significant share of the market.

In addition to a credit card, bank account or mobile device, some systems need the installation of software, new hardware (mostly smart card readers) or an offline initiation process that can be compared to opening a regular bank account. It can be seen that some form of enrollment is frequently necessary, sometimes online (spontaneous first use possible). In many cases, however, a formal registration process is required (precludes spontaneous first use). Some Internet payment systems require special hardware tokens, which may be smart cards and card readers, or have other special prerequisites, like paper TAN lists, special SIM cards, or an email address.

2.2 Liability and fraud protection

Due to the variety of systems and different legislation in different regions of the world, it is not possible to make a general statement on liability. In most Internet payment systems, the customer's risk is limited to a fixed amount for card losses like in real world applications. Whether the merchant or the payment service provider is liable for losses is up to the contract between them. In general, one can state that Internet payment service providers are willing to take over these losses if they obtain a compensation in terms of higher transaction fees and if the merchant takes certain security measures.

In order to provide protection against fraud, almost all Internet payment systems use cryptographic measures like SSL (secure socket layer) for end-to-end-encryption. Several payment providers are using customer authentication in general and consumer identification and authorization via a mobile phone number and a PIN. In addition, some providers take specific fraud protection measures like consumer scoring, credit card authorization, threshold supervision, or punishment after the fact, i.e. removing of offending parties from the Internet payment system.

2.3 Internationality

Since only credit card payments can be processed efficiently from anywhere in the world, the only Internet payment systems that work fully internationally are credit card payments. All other systems are still limited to one or two countries in which the services can be accessed.

2.4 Challenges

The insufficient number of customers using a particular payment system is still the major problem. Payment service providers state that this might be a lack of consumer trust, consumers' habits changing too slowly, and the lack of critical mass of users (customers and merchants) that is necessary to make the system attractive. As a consequence, payment service providers fear not getting a sufficient return on investment.

Furthermore, the lack of appropriate standards is another reason that hampers the success of Internet payment systems. The absence of open and global standards and of interoperability between Internet payment systems and with legacy systems as well as the lack of suitable standardized consumer equipment and infrastructures is seen as detrimental to the development of successful Internet payment systems.

Security in general is a field for concern to many payment providers – in particular insufficient facilities for reliable and cost-effective authentication of users.

Last but not least, inhomogeneous international trading rules and lack of interoperable central bank systems are still barriers to the evolution of Internet payment systems.

3. GENERAL OBSERVATIONS

3.1 The critical mass problem and its consequences

All payment systems face the problem of attracting a sufficient number of Internet merchants and customers. Clearly, the value of a payment system for a user increases dramatically with the number of merchants supporting it. Hence, a critical mass of participants is necessary. Subscription to a new payment system causes costs for the merchant (integration costs) as well as the customer (initiation effort). This hampers the start-up of any new payment system. If this critical mass cannot be obtained,

the costs for subscribing will exceed the benefit – no matter how innovative the system may be.

Over the last five years, many payment systems were developed that could not reach this critical mass, and therefore disappeared. Despite this consolidation, the e/m-payment market is still fragmented.

As a consequence, most consumers and merchants still prefer classical payment methods like credit card payment or invoicing. However, these systems were not designed for e/m-commerce. Invoicing causes a break of media (if not presented electronically via EBPP) and transfers the whole risk to the merchant. Credit card transactions are easily exposed to fraud since the payment is not authorized by a signature.

Although there seems to be a need for a payment infrastructure, the problem of critical mass has become a barrier to all e/m-payment solutions developed so far.

If there was an infrastructure that allowed authorization of electronic transactions like a PKI, then Internet payment systems could be built upon it. As long as each payment service provider has to create a new authentication infrastructure on his own, he will hardly achieve the necessary critical mass. Building such an infrastructure is a major challenge for the future of e-commerce and should be done in a joint effort with public authorities rather than by single payment providers.

Furthermore, global interoperability is an important issue to overcome the problem of critical mass. The GBDe advocates the development of international Internet payment systems to support world-wide and competitive global e-commerce. The GBDe encourages payment service providers to ensure interoperability between different systems by establishing global and open Internet payment system standards. The GBDe strongly recommends harmonized international trading rules, which are an essential prerequisite for global interoperability.

3.2 Special aspects of stationary Internet payments & mobile payments

3.2.1 Stationary Internet payments
In principle, PCs or other stationary end devices are very much qualified for any kind of online-transaction, in particular online-shopping, since they provide fast and cheap Internet access. However, the Internet protocol does not provide any features that allow secure user authentication. This causes problems for all post-paid systems in which the customer authorizes a payment that is later debited to some (bank or credit card) account. If there was an infrastructure that allowed user identification and authorization of transactions, such as a global PKI (Public Key Infrastructure), then payment systems would be able to build their services upon it. If, however, each post-paid-payment-provider has to set up his/her own authentication infrastructure – satisfying all legal requirements – then the cost would be too high, and one would run into the critical mass problem discussed above.

So-called pre-paid systems in which the customer buys some cyber coins or transfers money to an (often anonymous) account prior to his visit at the online-shop, do not need an expensive authentication procedure. However, such systems can only be used if the customer has transferred a sufficient amount of money before the purchase. Experiences with such systems show that it is difficult to convince users to exchange money into some cyber units before they wish to purchase a good.

Legal requirements (mostly based on money laundering laws) sometimes prevent instantaneous usage of Internet payment systems – simply because a paper-based user authentication is required. Such requirements easily become a barrier to the usage of such systems. Therefore, at least for micropayments and macropayments not exceeding some amount, the initiation process must be carried out in a way to ensure that spontaneous usage of the system is not prevented.

3.2.2 Mobile payments
Mobile payments (payments for goods or services that occur from a mobile device) include the purchase of not only content over the mobile network, but also the purchasing of goods and services from a third party merchant. These payment systems can be used for both face to face and remote payments, as well as for micro and standard payments. The high market penetration rates for mobile phone usage and the introduction of 3G networks and applications could make m-payments a standard feature in the near future.

A major difference between stationary and mobile Internet usage lies in the fact that the user of a mobile device has a business

relationship with his/her mobile network provider that can be used for identification. Furthermore, each mobile network provider has a billing engine that could be used – in particular for micropayments, where the credit risk is limited.

3.3 Public key infrastructures and general remarks on fraud

Like all other payment systems, e/m-payment systems have to face the problem of fraud, i.e. the criminal use of the payment system. Electronic money (like cyber coins) has a security level comparable to normal cash. However, such electronic coins are very rarely used. Payment systems like credit card payment or direct debit, in which the amount is charged to a (bank) account, have to ensure that the transaction is correctly authorized and that non-repudiation is guaranteed. Otherwise, a fraudulent customer could pretend to be someone else (e.g. stolen credit card number) or claim that he never authorized the payment. On the other hand, if the integrity of the payment information is not ensured, a fraudulent merchant could charge more than was actually agreed.

Although the problem of fraud comes along with any payment system, the problem is even more discussed in the e-commerce environment. The reason is that today most online purchases are still settled using a classical payment system like credit cards or direct debit. Fraudulent users can exploit the fact that the usual authentication process (via a hand-written signature) cannot be realized.

In case of micropayments, pre-paid systems reduce the risk of fraud since the money was transferred prior to the purchase. In particular, there is no risk for the merchant (as long as the cyber money itself cannot be copied). For the customer, the potential risk is limited to the deposit. Since cyber money (like cash in the real world) can be stolen, such systems do not solve the security problems for macro-payments.

Therefore, user authentication, data integrity, non-repudiation of a transaction and, last but not least, confidentiality of the data is essential for any kind of high-value electronic financial transactions. Only a public key infrastructure can solve this problem to complete satisfaction. The introduction of such an infrastructure that allows digital signatures would be the ultimate solution to this problem. Since setting up such an infrastructure comes along with high costs. Such a measure is most likely to be successful in a joint effort, e.g. the introduction of digital identity cards, issued either by government authorities or private companies under the patronage of the local government that can be used to authenticate electronic transactions including payments. If each identity card was fitted with a chip that could process digital signatures, one would obviously solve the hen-and-egg problem of reaching a critical mass of users.

The GBDe is aware of the fact that, as a first step, domestic authentication infrastructures will be built up rather than one single global authentication system. However, the initiators of such projects should bear in mind that it should be possible to link these "islands" in a second step.

3.4 Micropayments

Micropayments (USD 5 or less) are often stated as a crucial success factor for the development of electronic commerce. Electronic content and services are often low priced. Furthermore, micropayments seem to be important for the first step in the evolution of the Internet into an e-commerce platform.

Most classical systems (invoicing, credit card) fail in processing very small payments because of the minimum transaction costs. In particular, when dealing with payments less than 1 USD, these minimum transaction costs can exceed the total amount of payment.

Therefore, most micropayment solutions either use an existing billing engine (telco) or aggregate the payments. However, these aggregators are either based on a pre-paid system (and require money transfer prior to the purchase) or on usual credit/debit-card systems, which can be adapted to micropayments using a mobile device.

In particular, when dealing with micropayments, the effort to prevent fraud as well as to comply with legal regulations in general should be adequate compared to the size of the typical payment. Therefore, micropayment systems should not be over-regulated to avoid that innovative and promising initiatives become impossible to implement.

3.5 Cross border payments

Due to different legal systems (including different central bank systems) cross border payments are still much more difficult to process than domestic ones. As a consequence, many e/m-payment systems work only in one country or in some region. Even if the system allows cross border payments, the additional effort causes costs, which limits its usage for micropayments.

In order to allow efficient cross border payments, administrative barriers must be lowered. In particular, countries should harmonize their legal systems and their payment formats (e.g. for direct debit) as well as guarantee interoperability in their central bank systems.

3.6 Conclusion

Although there is a clear need for a secure and efficient e/m-payment infrastructure, the investment only pays off if the system is used by a sufficiently large number of customers and merchants. Therefore, the critical mass problem has become the most important barrier for Internet payment systems to evolve.

In order to overcome this stalemate, a joint effort seems to be most promising. Partnerships among private companies of different sectors as well as public-private-partnerships can be such initiatives. If, in addition, a payment system can be built upon an existing infrastructure – which might be a classical payment system, a mobile network, or a PKI that comes along with an ID-card – then this will be an important advantage.

RECOMMENDATIONS

Based on the current trends and general observations, the GBDe survey led to the following preliminary recommendations in order to stimulate the development of Internet payments and to overcome the problems identified.

The recommendations address the private sector as well as governments. They should be looked at as a further development of the GBDe Tokyo Recommendations on Internet payments (September 2001) and will be tested and elaborated further during the year to come.

1) The lack of critical mass is one of the main barriers for the development of Internet payment systems. Therefore, Internet payment systems should be built on open standards and common and interoperable specifications.

2) In order to overcome the problem of critical mass, governments should proactively assist in the development of infrastructures like PKI on which Internet payment systems can be built. Public authorities should stimulate joint projects with the private sector in order to create such an infrastructure. In particular, initiatives for the introduction of digital identity cards, issued either by government authorities or private companies under the patronage of the Government, that can be used to authenticate electronic transactions including Internet payments would be most useful.

3) For the adoption of an Internet payment system it is essential that the initiation process is simple and effective. Therefore, governments should develop an appropriate (international) legal framework that allows online registration to Internet payment systems.

4) The establishment of partnerships like those between the financial and telecommunications sectors in the development of mobile Internet payment systems are most welcome. Such collaboration allows each player to focus on its core competencies and to increase efficiency to the benefit of all, customers, merchants and payment service providers.

5) The level of regulation should be kept proportionate to the importance of the payments and to real life needs, i.e., light and simple micropayment systems, so that innovative and promising initiatives are not prevented from being developed. For macropayments, the best protection against fraud is not detailed and demanding regulation but an infrastructure that guarantees authentication and non-repudiation of the payment.

6) Together with the payment industry, governments should work on harmonization of payment formats (e.g. for direct debits) and promote that payment providers as well as central-banks guarantee interoperability in their systems."

Global Business Dialogue on Electronic Commerce

Convergence
Broadband Recommendations
October 29, 2002

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1. INTRODUCTION

Digital convergence allows content and service providers to deliver their products and services through multiple delivery channels and allows consumers to receive them using various kinds of multimedia terminals, as well as different content and services over the same terminal.

In this innovative environment, digital applications are starting to flourish based upon their ability to reach consumers across formerly rigid lines, which have separated communication services. Likewise, at the level of access, digital convergence allows telecommunication and broadcasting network operators to deploy complementary broadband access technologies that can ensure coverage in urban as well as rural areas.

Generalised broadband access to the Internet is indeed one of the basic prerequisites to the successful construction of a Global Information Society and will bring huge benefits to the world economy. Moreover, broadband deployment is key to the growth of the Internet and electronic commerce and it will condition the take-off of new services and applications for both work and leisure based on data, voice, music and video digital transmissions. Together with content,

broadband technologies, their access and infrastructure, are the major enablers for allowing innovative services for all businesses, consumers and governments.

In the present depressed economic environment, it is more important to restart the momentum towards a widespread deployment and usage of broadband access to the Internet with a flagship program involving both the private and the public sectors, which includes building consumer awareness and demand for broadband services.

More widespread deployment, coupled with an aggressive campaign to build consumer demand for broadband will lead to the advent of a mass market of new services and applications potentially capable of invigorating not only e-commerce but also the whole economy.

However, political and consumer awareness about the changes in technologies, their service potential and complementary character and the benefits they could bring is uneven and sometimes lacking. This is illustrated by relatively low take-up rate for broadband services, even in areas where they are readily available to a large number of households.

Moreover, obstacles that currently impede the deployment pace of broadband networks, such as regulatory uncertainty, contribute to a general decline in investment capital. Without challenging the fundamental GBDe principle that self-regulation by private enterprise is, in most cases, preferable to intervention by public authorities, governments do have a role to play here; by developing new broadband communications policies taking into account media and telecommunications policy considerations, they can ease the deployment of market-led broadband technologies, hence boosting the use of Internet and growth of e-business and e-practices. And by becoming an "early adopter" and user of broadband applications, governments can encourage consumer awareness of the benefits of broadband services.

The GBDe supports the European Commission's eEurope 2005 Action Plan which reflects many proposals that GBDe has put forward.

2. WORKING DEFINITION OF "BROADBAND"

In the light of recently published broadband policy reports (OECD, Canada, UK, European Union), a general consensus has emerged as to the necessity of viewing "broadband" primarily from the end-user perspective, namely, what broadband can deliver (end-user applications and services) as separate from the access platform (xDSL, cable, satellite, WLL, mobiles, etc.).

In the context of highlighting "consumer interests", the definition of broadband remains open and "dynamic", disregarding any specific transmission speeds. Focus should be on broadband's inherent capabilities such as interactivity, richness of content, quality of service and multi-modal video delivery. GBDe positions should build on the end-user perspective:

- to address more accurately and rapidly consumer interests and key factors of consumer confidence;
- to determine those mass-market conditions required for stimulating broadband growth.

3. RECOMMENDATIONS

The GBDe has identified the demand-side as the key to boosting broadband and it is demand-side which the GBDe urges governments to adopt as their focus for encouraging the adoption of broadband.

In particular, governments can greatly help moving towards a "critical mass" of end-users and applications, by offering new services online and by generating new broadband usage.

To this end, public authorities at all levels would be urged to:

- Aggregate public sector demand for broadband to ensure smart procurement using the combined purchasing power of public sector organisations as a catalyst for the private sector;

- Develop e-government applications and services (in the areas of tax, social security, health, education and transport) to allow citizens to interact with Government online from any kind of broadband terminal or access point.

Other urgent policy steps include:

- The regulatory environment should consider the need for payback of investments of both incumbent and competitive providers, without deviating from the important policy objective of establishing, maintaining and encouraging competition.

- Identification and elimination of obstacles to the development of online contents and activities, particularly regarding e-learning, e-health and e-business, by the private as well as public sectors;

- Facilitation of a secure information infrastructure;

- Setting-up a competitive framework giving rise to innovative and sound business models;

- Facilitation of open and interoperable standards for technological protection of content in order to support the supply of demand-oriented media-rich content to foster new forms of consumption;

- Education of citizens to the need for copyright protection.

On the supply-side of the equation, regional as well as central governments should pay continued attention to situations where there is no commercially sustainable business case to deploy broadband infrastructure.

Global Business Dialogue on Electronic Commerce

Convergence
Spectrum Management Policy
& Licensing Approaches Recommendations
October 29, 2002

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1. INTRODUCTION

Digital convergence allows content and service providers to deliver their services through multiple delivery channels. Correspondingly, consumers can access services via various terminals capable of consuming multimedia content. This blurs the borderlines between the conventional broadcasting industry and the communications industry and consequently has an effect on the future of media distribution and consumption. Industry has developed technologies that will finally make digital convergence a reality.

Traditionally, broadcasting, telecommunications and the Internet have been treated as separate vertical markets. Digital convergence will create a new horizontal market structure where content aggregation and ownership, service provision, network operation and terminals become separate activities. Digital convergence will also open up an abundance of new business opportunities.

For the first time, ubiquitous access is a realistic ambition where people can access the Internet and other multimedia services from all types of delivery platforms: fixed, mobile and digital TV. To facilitate this process, the existing political and regulatory barriers need to be reviewed taking into account the interests of all stakeholders. Regulation should allow multimedia service provision through all types of delivery networks and create a level playing field for all actors in the new horizontal markets.

Digital convergence will provide an opportunity for economic growth, job creation and social development. Regulatory policies need to create the right conditions to let this happen. For example, several regulatory impediments have already been removed in Europe as a result of the EU Telecommunications directive package, but some barriers still remain. An example of a new opportunity enabled by convergence but still prevented by current regulation is data casting, in which multimedia content is delivered over terrestrial digital broadcasting networks.

In this context, it is also important that enough spectrum will be made available to provide sufficient and appropriate delivery capacity for radio and broadband networks. In order to facilitate the development of global service and delivery, as well as interoperability, globally harmonized spectrum usage should be encouraged through spectrum management and licensing.

1.1 The importance of spectrum

Technological progress is increasing dramatically the services delivered over the fixed and radio networks. In particular, spectrum usage is becoming more and more important for economic prosperity and social welfare. Decisions on spectrum allocations will constitute an important platform for e-commerce in the future.

Global harmonization in the allocation of radio frequency is crucial as:

- there remains the possibility of spectrum congestion/interference; and,

- more developing countries can now leapfrog and take advantage of new wireless technologies.

1.2 Spectrum management policy and licensing policy

There is an important distinction between spectrum management policy and licensing policy. The latter refers to the procedure of attributing the right to use spectrum to applicants whereas the former refers to the organisation of spectrum resources according to the needs of all the technologies requiring access to spectrum. Spectrum management is a long-term process whereas licensing is rather short term.

Spectrum auctioning is one of the solutions adopted in some countries to allocate the licenses available for mobile services. But recent auctions, especially in Europe, resulted in the high cost of obtaining third-generation (3G) mobile licenses, which has had serious repercussions for the mobile industry as well as for individual operators, as the GBDe 2001 Recommendations pointed out.

1.3 Efficient use of spectrum

Efforts to put convergence into practice have been complicated by problems related to spectrum scarcity. As spectrum-reliant services are growing, the efficient use of the radio spectrum becomes important to the economy as a whole.

Inefficient use of the spectrum can deal a fatal blow to consumers, businesses and users of public services. Spectrum policy and regulation of access to the spectrum are becoming more complex. Conversely, GBDe believes that effective spectrum policy through efficient use and re-use could help pull the IT industry out of recession through the diffusion of new technology

and services, which in turn contributes to economic growth.

2. RECOMMENDATIONS

In the face of these challenges, GBDe puts forward the following recommendations, five regarding spectrum management and four addressing licensing.

2.1 More radio spectrum should be allocated for commercial use

The GBDe proposes that governments foster access to spectrum for commercial applications. Spectrum usage has always been a national issue, which is understandable as some spectrum usages are the result of national policy decisions, i.e. military and scientific, and that countries have to ensure avoiding cross-border interference. However, today parallel commercial applications increasingly need more spectrum in a globally-harmonized manner. National spectrum management should integrate this principle.

As an example, within the spectrum currently allocated to Mobile Services by the ITU a sufficient amount of spectrum could be made available for wide area radio networks, i.e. 2G and 3G/IMT2000. Particularly, for 3G/IMT2000, the ITU has identified spectrum bands that should be sufficient until 2010. However, not all countries and regions have been able to make available the spectrum originally allocated by WARC92 for 3G/IMT2000, and these regions will eventually face capacity problems.

The ITU is in the process of planning for the usage of the additional 3G/IMT2000 spectrum identified in the WRC2000. This additional spectrum should enable further deployment of 3G/IMT2000 and increased capacity as the market demand for the IMT2000 service increases.

The GBDe encourages various administrations to launch, without delay, a spectrum reallocation process that would allow spectrum-efficient technologies for 3G and systems beyond 3G that will become available after 2010. New applications and services with high data rates will be developed over the next 10 years.

Future generations of wide area radio networks (systems beyond 3G/IMT-2000) may need additional spectrum after 2010. However, it is important to start spectrum planning early enough to allow sufficient time for reallocation.

The GBDe supports the proposal to give a

mandate to ITU(R) for starting the studies and planning process in the WRC2003 in order to allow final decisions on new additional harmonized spectrum allocation for future systems after 2010 to be made in the WRC 2006, or later, depending on the market conditions.

2.2 Spectrum usage should be globally harmonized

Digital convergence will also increase the scope of globally-harmonized spectrum usage. Mobile users will need to be able to connect to various local area networks and national broadcasting networks. In order to use their own terminals, spectrum for these networks should be harmonized globally in the same way as spectrum for wide area radio networks has been harmonized. The WRC2003 ought to reach an agreement on a harmonized spectrum for wireless local area networks (W-LANs).

2.3 Technological solutions that facilitate the efficient use of spectrum should always be promoted.

Research undertaken by industry provides everyday more advanced solutions for spectrum sharing. Technological solutions that facilitate the efficient use of spectrum should always be promoted by encouraging industry to find solutions. Regulators would then devise, in cooperation with industry, a new legal framework that will evolve with new technology.

2.4 Any regulation which negatively affects the commercial use of the spectrum should be eliminated.

Some countries (such as the UK) have recently lifted the ban on provision of commercial service on certain frequencies (in this case 2.4 GHz band). GBDe strongly encourages regulators in other countries to follow suit.

2.5 Regulations restricting the delivery of some content over any delivery network should be removed.

Traditionally spectrum bands have been allocated by the ITU to specific purposes; national governments have then assigned the bands to specific operators. Spectrum licenses are generally granted for a specific type of service. With digital convergence it is now technically possible for similar content and services to be provided by many delivery networks – both wired (xDSL, cable, telephone, etc) and wireless (2G, GPRS, EDGE and CDMA, 3G, wcdma and cdma 2000, WLAN, Bluetooth, terrestrial and satellite DTV, etc.).

The borderlines between the content and services of traditional broadcasting, communications and the Internet become blurred. For example, new technologies allow data casting over terrestrial and satellite DTV networks which will bring Internet services and e-commerce to TV sets and mobile terminals in a cost-effective way. Another example would be the delivery of interactive broadcasting services as web casting over the fixed telecom network.

In these new conditions, regulations restricting the delivery of some content over any delivery network should be removed. This will allow service providers to access wider markets and new consumers. This will also allow people to use these services by means of a variety of delivery networks and terminals according to their choice.

Governments should also ensure that previous privileges in spectrum allocation or any change in the use of spectrum for the delivery of new services will not lead to inappropriate competitive advantage in the markets nor discrimination with respect to the rights nor new obligation to existing market players.

2.6 Proceeds from spectrum licenses on broadcasting or telecommunications services should be spent to improve spectrum usage and not used for unrelated sectors.

Part of the Radio Spectrum Knowledge Database, which the GBDe has created, shows some instances where auction proceeds were used to reduce national debt, etc. As a general rule, the GBDe suggests that proceeds from spectrum assignments be dedicated to the financial needs of spectrum management and improvement of spectrum usage.

2.7 The license distribution modes for any service requiring spectrum should be carefully analyzed.

Spectrum, once a limited resource, has now become a scarce resource. In order to distribute the rights to access the spectrum, several approaches have been adopted ranging from beauty contests to auctions.

Auctions are now a practice among a number of national regulatory authorities for some services. If auctions appear as an easy way out of the problem of selecting the licensees of a frequency band, they can also stifle a technology.

For example, 3G mobile licenses auctioned in UK and Germany ended up being extremely costly,

imposing a high financial burden on telecom operators with consequences for the whole telecom sector.

Spectrum licensing should not lead to unreasonably high up front payments. The GBDe Tokyo Recommendations suggested that public authorities' policies should not aim at transforming public debt to private sector debt. The experience since the GBDe 2001 Tokyo Conference has clearly shown the negative impact of high auction prices on innovation and market growth, in particular, in Europe.

The GBDe encourages governments to use spectrum-licensing methods, which emphasize low tariffs, innovation and market growth instead of maximizing short-term public revenue. In the long run, low entry costs to new markets will create economic growth and facilitate social inclusion, which will far outweigh the short-term fiscal benefits of high entry fees.

2.8 Spectrum assignment should involve sufficient flexibility.

The regulatory environment should facilitate flexible reassignment as technologies or market conditions change. The efficiency of spectrum usage will also require mechanisms to facilitate a smooth transfer of license and/or the spectrum right of use to market players as market conditions change. The rights of use of the spectrum should be allowed to be transferred and leased. This should, however, not be allowed to lead to a change of the basic spectrum usage and configuration. Network sharing, spectrum transfer and consolidation should also be allowed in the marketplace as long as these arrangements do not lead to a dominant market power and/or market behaviours incompatible with competition rules.

2.9 The method of paying should be comparable between telecommunications operators and broadcasters.

With digital convergence becoming a reality, offerings to consumers from traditionally differing sectors will probably become substitutable. To the extent that telecommunications operators and broadcasters offer services deemed substitutable by the public, then the method of paying should be comparable.

Global Business Dialogue on Electronic Commerce

Cyber Security
Recommendations
October 29, 2002

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1. BACKGROUND

The issue of cyber security has been one of the central parts of the GBDe work program since its origin. Since that time an effort has been made to promote a harmonized policy infrastructure to enable a robust and globally integrated e-commerce system capable of responding to threats in a coordinated and timely manner. In 1999, the Authentication and Security Working Group made a recommendation which focused on developing key principles including "Protection" and "Promotion". This recommendation was followed and supported by the GBDe Cyber Security Recommendations of 2000 and 2001, which mentioned the interoperability issue of digital signature and certification authority.

In 2000, the GBDe continued to examine the broader issues associated with cyber security and the prevention of cyber crime.

The recommendations of 2001 addressed issues and messages to governments and industry, and a set of recommendations was developed urging greater coordination between the private and public sectors. These recommendations were based upon the understanding that the solution of cyber security issues requires strong cooperation between business and government. For this

reason, the GBDe sought to define the extension of the relationship between business and government in this area.

After making these recommendations, cyber security issues were faced with the following significant new trends.

1. September 11
Although the attack of September 11, 2001 was not cyber terrorism itself, it created national interest in security in all fields, including cyber security. Not only the protection of information systems from the threat of terrorism but also from national espionage has attracted world attention and, furthermore, surveillance for cyber crime and human rights issues, including data protection, have become relevant topics since September 11.

2. European Cyber Crime Convention
As the GBDe recommended at the 2000 Miami Annual Conference, an international legal framework to combat cyber crime is necessary and such a framework should focus on comprehensive international solutions which are carefully tailored and balanced, taking into account the expertise and adequate involvement

of industry. Each government has continued discussions on how to establish such framework domestically and internationally. In November 2001, the Council of Europe adopted the Convention on Cyber Crime[5]. In order to fight cyber crime, there is a need to clarify what constitutes an offence or a crime, especially when we speak about a global scenario where definitions of illegal activities pursued worldwide are needed. Governments should agree on the definitions of certain crimes committed in the Internet environment.

Although there is a global agreement to work against child pornography, there are other crimes like money laundering, fraud, denial of services, spread of viruses and other related activities that should be agreed upon and condemned as crimes. There is a need to agree on the definition of what are the major dangers to the Internet. The European Convention on Cyber Crime should be implemented in a manner that balances the need for effective law enforcement with privacy and other important considerations.

3. Increasing damage by viruses and cyber attacks

The more people use the Internet, the greater the chance for increased cyber attacks and viruses. In East Asia, for example, always-on access to the Internet by Digital Subscriber Line (DSL) has multiplied the number of computers and information systems damaged by viruses and cyber attacks because many computers and systems are not sufficiently protected to face being connected to the Internet 24 hours a day, seven days a week. A similar situation may also occur in other areas outside of Asia (e.g., Eastern Europe, Africa, and Latin America), where the use of the Internet by DSL is expected to grow in the coming years.

1. CULTURE OF SECURITY

With respect to the new trends in cyber security, governments and international organizations have made further efforts to promote cyber security policies. Governmental concern has focused on a number of issues including combating and preventing cyber crimes, protecting critical infrastructure against cyber attacks and improving the security of government information systems. These legal and legislative activities have come to be discussed globally and therefore, international harmonization is also being considered.

In addition, many government initiatives for promoting Information and Communication Technology also mention cyber security as one of the top priority issues. For example, "e-Europe 2005" states that the private sector should develop good practices and standards and promote their consistent application in the context of "culture of security"[6]. The "e-Japan Priority Policy Program 2002" emphasizes "ensuring the security and reliability of the advanced information and telecommunications network" as one of priority policies, which recognizes the role of industry as important to some extent.

Government activities in cyber security have reached a new phase of development with the initiation of international business discussions to begin combating cross-border cyber crime. The private sector has also been involved in dialogues to investigate new methods and ideas in cyber security.

In addition, governments of the Organization for Economic Co-operation and Development (OECD) have drawn up new Guidelines for the Security of Information Systems and Networks. These guidelines are designed to develop a "culture of security" among government, business and users in an environment of worldwide expansion of communications network, increasing interconnectivity across national borders, converging technologies and ever more powerful personal computers.[7] The GBDe clearly supports and endorses promoting and implementing these new OECD Guidelines.

It is expected that the Internet will expand much more in all regions of the world with all kinds of users and that all generations will join the Information Society through the Internet. In such a situation, cyber security should be established as a significant part of information infrastructure worldwide. Cyber security should be implemented in a manner consistent with the values recognized by democratic societies, which include the freedom to exchange thoughts and ideas, the free flow of information, the confidentiality of information and communication, the appropriate protection of personal information, openness and transparency. To realize cyber security, all stakeholders of the Internet (governments, industries, academics, and personal users) should be aware of the need for information security and what they can do to enhance it. They are responsible for the security of information

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[5] For more information visit:
http://conventions.coe.int/Treaty/EN/WhatYouWant.asp?NT=185

[6] eEurope 2005: An information society for all, COM (2002) 263 final, 28 May 2002. Proposed actions of "3-1-3. A Secure Information Infrastructure"

[7] http://www.oecd.org/EN/document/0,,EN-document-13-nodirectorate-no-12-33186-13,00.html

systems and networks, and, therefore, should be accountable in an appropriate manner depending on their individual roles. For example, governments should establish legal and regulatory frameworks for public security, and provide secured information infrastructure as public services. Industries should not only develop and invent more secure technology for information and communication, but also adopt a comprehensive approach to security management.

For these reasons, the GBDe respects and endorses the OECD guidelines which were finalized through a discussion that has included representatives of industries, consumers, and civil society. The guidelines should provide a new framework for governments, industries, and consumers worldwide to join and enjoy the benefits of the Internet and Information Society.

Under these circumstances, the GBDe supports and endorses a "culture of security" from the GBDe's own perspective.

1. To propose a Framework for Cyber Security Discussions

There are many cyber security issues, and the greater the dialogue between government and industry to find solutions, the more often these issues arise. This year, the GBDe Cyber Security Working Group put cyber security issues into three categories depending on the respective roles of government and industry. The GBDe expects that the following structure will promote the discussion in other domestic and international fora, both for government and industries.

a. National Security
Combating cyber terrorism, protecting critical infrastructure against viruses and cyber attacks, national espionage, and related issues are a high priority for governments. Governments should take active initiatives on these matters taking into account the interests of industry. Industry should, in turn, cooperate with governments to find the best solution. The solution should not result in increased burden or the imposition of higher costs for business development.

b. Public Security
Cross border cooperation between law enforcement and international legal infrastructure for combating cyber crimes is crucial in making progress on this issue. Also for this kind of issue, governments should take initiative for settlement and industries should support government initiatives, which do not present an obstacle to business development.

c. Security for industries
There are many cyber security issues which companies should make efforts to resolve; for example, protecting information systems or enforcing security policy for security management among others. This kind of issue should be called "security for industries" and governments are expected to support such industrial activity and effective efforts.

2. GBDe Recommendations for Characteristic Features of Cyber Security

a. Global and International approach
Governmental approach in cyber security can be different in each country and region because of cultural and social diversity. By developing a common approach in global dialogues, such legal frameworks could be harmonized effectively in order to prevent cyber crimes, considering its cross-border nature. The GBDe expects each country to cooperate with each other through international dialogue, and an international approach should emerge from such efforts.

b. Business Approach
Industry could support such inter-governmental initiatives and, furthermore, industrial approaches are necessary and should be taken into account. The GBDe expects that government approach in cyber security should recognize the importance of industrial approach, which should be included as part of IT developing policies by government.

Through these discussions, the GBDe expects cyber security issues to be recognized as significant for IT development, and the relationship between government and industry to be clearer. The GBDe makes the following recommendations regarding "Culture of Security" as a part of the GBDe approach.

THREE ELEMENTS TO CONSIDER

1. Security & the Business Enterprise

Information Security is a crucial issue for business enterprises. Businesses need to protect information systems from external and internal attacks as key elements in their business operation; their activities are exposed to the risk of being damaged by possible attacks on critical social infrastructure, as the world becomes more and more dependent on broadband Internet access. These issues are important in terms of risk management, and directors and senior management need to be clearly informed about these issues.

Therefore, industry should encourage the creation of a "culture of security compliance" across all sectors. Most users are not aware of the extent of damage a single virus could cause both in economic terms and by harming infrastructure. Also, an employee acting without due diligence in his/her job could cause the same harm as if he/she had intentionally launched an attack against certain infrastructure. For these reasons, the GBDe recommends that industry develop online programmes with the task of educating users as well as workers on the importance of developing a Safe Network Environment. The more people that are educated on a culture of security compliance, identifying types of attacks or reporting illegal activities, the less the chances of their businesses being harmed by a cyber attack

2. Collaboration & Internet Protection

Business enterprises and governments are expected to collaborate both internationally and locally in order to protect the Internet from external attacks. Specific goals include the promotion of voluntary information sharing on cyber crimes and cyber attacks within industry, with the assistance of governments, and the close cooperation of industry with investigation authorities on various responses to cyber crimes.

At the same time, it is important to limit the burden on industry in cooperating with investigation authorities, as the GBDe stated in European Forum discussing the Convention of Cybercrime.

3. Poverty & Security

Attacks against information systems are one of the major obstacles hindering the development of electronic commerce and the Internet. These activities not only harm consumer confidence in the use of the networks as a new tool for business, but also impose an economic burden on the private sector and on the public bodies and consumers, which threatens to make information systems more costly and less affordable for users.

The issue of security is fundamental when seeking a good implementation of information society services in developing countries. Experience in developed countries has shown that consumers are reluctant to use electronic commerce if the network is not reliable enough to protect electronic transactions or the transfer of confidential information. Thus, a secured network is more reliable for users and consumers. Therefore, to achieve the rapid implementation and use of electronic commerce in developing

countries, it is necessary to take proper measures regarding the protection of personal data, secure electronic transactions and security of networks.

The GBDe recommends that developing countries and economies work towards the creation of regulatory measures that would ensure minimum standards of protection for confidential information, security of networks, and security of transactions.

2. RECOMMENDATIONS

1. Certification and security standard
In order to enhance the quality of information network security - standardization of response measures, risk assessment, and security management, enhanced by education and promotion - it is essential to focus on security measures themselves. Higher perception of information security by network providers, individual users or SMEs improves the quality of security throughout the network and makes it less susceptible to viruses and cyber attacks.

On the issue of standardization of security measures itself, the GBDe has recommended the promotion and required interoperability of digital signature and public key infrastructure, which are bases for global electronic commerce. There exist as many methods of security management and certification as providers of management and certifications. While they take different approaches, they are effective and successful insofar as they are recognized and accepted by customers depending on tastes. Therefore the GBDe has not endorsed or supported any specific model of security management and certification, but recommended that such management and certification should be operated and adopted by both governments and industries on global basis. The GBDe will continue to advocate the standardized security measures through ISO (International Organization for Standard), CERT/CC (Computer Emergency Response Team/ Coordination Center), ISAC (Information Sharing and Analysis Center), and other global conventions of both business and government. The GBDe recommends that such risk assessment and risk management should include forward-looking responses to emerging and potential threats to information systems and networks.

2. Information sharing/collaboration

The GBDe has addressed the importance of information sharing between private sectors and governmental sectors on cyber crimes since the Miami recommendations. Various international

fora have also discussed the importance of information sharing, and the US, for example, has entered the stage of real practice.

The GBDe seeks to ensure information sharing is discussed in the context of protection of information systems from the "attacks to critical infrastructure"[8] at its initiation. In the context of reacting against terrorism and other attacks and other business disruptions, governments have already started discussions regarding the critical infrastructure at the nation's base, and in many cases they have implemented best practices. The GBDe recommends that governments should be actively engaged in defending critical national infrastructure and cooperate with industry to ensure that measures do not cause unnecessary damage to normal business operations.

Other information sharing between public and private sectors on virus attacks or denial-of-service attacks should be discussed in a separate context from the attacks to critical infrastructures. In general, law enforcement agencies expect the owner of information systems under external attack to report any damage and request that the ISP or other private operators disclose the access logs or communication logs. Of course, such requests should be executed following due process, and special attention should be paid to avoid infringing fundamental human rights such as the protection of personal data.

The GBDe recommends that, with respect to information sharing on general cyber crimes and external attacks, both industry and governments create a reporting system that would collect all the cases found, and that industry undertake to report all the attacks. Also, each nation's due process should be respected and care taken to ensure that individual rights are not infringed unnecessarily.
CERT/CC, ISAC, and other international fora have discussed and practiced the framework of information sharing where some of them have been achieved under the initiatives of governments, and some others have been achieved through voluntary approaches by private sectors. The GBDe will address these activities through advocacy, and promote the discussion on issues such as international cooperation and jurisdiction.

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[8] While the definition of "critical infrastructures" may differ depending on the situation, the GBDe defines that they are infrastructures including information networks which are relevant to national security and safety or have a high financial value, such as banking, finance, transportation, electric power supply, telecommunication, governmental operations, and so on.

3. Corporate Governance

Today, information and network assets are as important as financial assets for companies. Enterprises depend on their network to reach and support customers and suppliers. When a network fails to perform, costs will increase, reputations will suffer and transactions will be lost. Privacy and integrity losses may create liabilities and create costs. Maintaining a continuous business in a global, networked society is critical.

In the wake of the attacks of September 11 and CEOs' responsibility for matters of corporate management, it is increasingly important for senior management to ensure that their networks can support business continuity and profitability objectives. A trend appears to have developed toward a new form of accountability and responsibility for owners and operators of enterprise networks. In such an environment, enterprises may choose to appoint a Chief Information Security Officer (CISO) or adopt alternative measures to ensure security. Not only CEOs but also senior management should be accountable for, and recognize security management, as indispensable for corporate management.

The GBDe recommends that enterprises develop business processes for security management and establish a security management system, operated and initiated by senior management. The following items should be indispensable for global corporations and their leaders.

- A Security Policy, which clearly states the position and basic understanding of the corporation regarding information security, for example, how to protect information and data inside its own information network and system, should be established. Security Program including business continuity in emergency situation would be also effective.

- A CISO, who is responsible for information security at board level, may be appointed. He/She should be responsible for ensuring policy consistency, clearly defining policies, identifying and consistently enforcing consequences for non-compliance, and instituting a governance framework to monitor and control the execution of processes and procedures.

- Security management systems and programs should be established and operated effectively. They should be based on risk assessment and should be dynamic, encompassing all levels of corporate

activity and all aspects of corporate operations, and be initiated under the leadership of the CEO. Information system and network security policies, practices, measures and procedures should be co-oriented and integrated by security management to create a coherent system of security.

- Systems, networks and policies of corporations need to be properly designed, implemented and co-ordinated to optimize cyber security. Cyber security should be a fundamental element of all products, services, systems and networks, and an integral part of system design and architecture. Corporations should respect and implement this principle not only as a provider of services and devices for information systems but also as an owner or operator of its own information systems and network.

4. Internet Protection

In recent years, the number of information systems damaged by hackers, viruses, and other cyber attacks has increased dramatically. To avoid and prevent damage, one possible solution for governments is to enact new laws or change existing laws. However, law enforcement can be burdensome for industries and impact on business development. Rather than place the burden on telecom corporations and ISPs to store and preserve great amounts of data and provide access to law enforcement, focusing on new or revised legislation enabling more effective education, awareness, and deterrence would be a better approach.

As mentioned above, business enterprises should recognize that cyber security is a fundamental and indispensable element of the Internet, consisting of products, services, systems and networks. From this viewpoint, their information assets are significant for management and that necessary security management should be established and enforced. The same should be true for networks of government, including local governments, and universities. For these stakeholders in cyber security, awareness should be emphasized and security policies should be created and operated by them.

The GBDe recommends that all participants and stakeholders of the Internet and e-commerce should be aware of the need for security of information systems and networks and what they can do to enhance security. Awareness of the risks and available safeguards is the first line of defense. Information systems and networks can

spread harm to others as a result of interconnectivity and interdependency. Corporations should consider such risk when establishing security policy and security management systems. All participants should also be aware of the configuration of, and available updates for, their system, its place within networks, good practices that can be implemented to enhance security, corporations should provide security information and updates to their users and consumers.

The GBDe also recommends that risk assessment of information systems and networks should be conducted and the results shared in global cases. Risk assessment identifies threats and vulnerabilities and should be sufficiently broad-based to include key internal and external factors, such as technology, physical and human factors, policies and third party services with security implications. Because of the growing interconnectivity of information systems and networks, risk assessment should include consideration of the potential harm that may originate from others or be caused to others. Industries, especially major corporations, should develop such risk assessment actively on a global basis in order to establish cyber security as an indispensable element of the Internet and global electronic commerce.

5. Electronic Authentications and Digital Signature

The GBDe Cyber Security Working Group has made recommendations on digital signatures, PKI and Certification Authority relating to the interoperability of global information infrastructure in the context of cyber security. As stated in Cyber Security recommendations of the Tokyo Conference of 2001, global and interoperable certificate infrastructures should be established and be available to all people and all nations in order to protect the security of electronic commerce globally. To develop such infrastructure, many organizations, on both a regional and global basis, both by governments and industry, have developed and promoted discussion of this matter.

The GBDe will continue to engage in dialogue with other organizations on these issues, such as EESSI (European Electronic Signature Standardization Initiative), PKI Forum, Asia PKI Forum and so on. In order to develop this issue further, the GBDe recommends that the following issues should be discussed and recommended in the near future:

- Detailed issues of technology, physical and human activities, and policies should be

discussed to achieve harmonization i.e., harmonized certification policies, harmonization of accreditation and licensing criteria, etc.

- In order to promote dialogue, the GBDe should also aim to ensure an integrated approach when discussing these work streams.

Global Business Dialogue on Electronic Commerce

Digital Bridges
Report & Recommendations
October 29, 2002

Leading Co-Chair (Asia/Oceania)	*Dr. Yong-Kyung Lee* President & CEO KT Corp
Co-Chair (Europe/Africa)	*Dr. Adel Danish* Chairman & CEO Masreya
Co-Chair (Americas)	*Carleton S. Fiorina* Chairman & CEO Hewlett-Packard

OVERVIEW

The report of the activities of the Digital Bridges Working Group is comprised of recommendations and a description of the group's advocacy activities.

I: DIGITAL BRIDGES ADVOCACY PAPERS

A.   Recommendation of Best Practices for Commercial Activities in Development Countries. Note that a study, commissioned by the GBDe, on which this Recommendation is based is available separately. This study, prepared by Dr Ernest Wilson of the University of Maryland, is also available on the GBDe web sites at http://digitalbridges.gbde.org/survey.pdf.

B.   Joint Statement by the GBDe, World Economic Forum and the Global Infrastructure Commission. This statement is to be confirmed at the GBDe Annual Conference, Brussels, October 2002 and will be available on the GBDe web site.

C.   GBDe Working Group policy recommendations to developing country governments.

II.   DESCRIPTION OF DIGITAL BRIDGES ADVOCACY ACTIVITIES 2003

Part 1.A.   RECOMMENDATION OF BEST PRACTICES FOR COMMERCIAL ACTIVITIES IN DEVELOPING COUNTRIES

Investment and other commercial activities by ICT companies should be central elements in any effort to foster economic growth and to alleviate poverty in developing countries. The significance of private investment is clear: foreign direct investment in developing countries significantly exceeds development aid. And commercial activities can be self-renewing: a sufficient commercial return will sustain an activity and drive the private sector to undertake more such activities.

Many of the member companies of the GBDe have been investing, engaging in business, fostering training schemes, and participating in philanthropic activities in developing countries for several years. A list of these activities was prepared for the G8 summit in Okinawa in 2000, which launched the DOT Force: they can be found at http://knowledgenetwork.gbde.org.

After the GBDe's annual conference in Miami in September 2000, the Digital Bridges Working Group launched a study of best practices, used by its members, when undertaking an ICT-

related investment or other commercial activity in a developing country. The GBDe called upon them to identify, based on their experience, the factors which they apply when deciding to approve a proposed commercial activity. The business decision process differs across our member companies but, by and large, a proposed substantial commercial activity is matched against a set of internal guidelines. The study has found that for an activity in a developing country, these guidelines may give a higher profile to some criteria but are largely geared to the core objective of the private sector: long-term return. Such an activity will ensure also economic growth in the target market and can help alleviate poverty. The study found that the leading practices adopted by GBDe member companies for commercial activities in developing countries are sustainability, appropriate technology and local content. Also important were scalability, local partners and training. Far less significant were a willingness to accept a lower return on investment and market development activities. The study, Building Digital Bridges; Best Practices for Commercial and Investment Activities in e-Commerce in Emerging Markets, prepared by Dr Ernest J. Wilson III, is available at http://digitalbridges.gbde.org/survey.pdf. It is based on the database developed for the G8 Okinawa Summit, questionnaires completed by our members, interviews and academic and other literature.

The study also reached conclusions on best practices by ICT companies in training and philanthropic activities.

Based upon this study, and on continuing work with states and regional associations over the past years, the GBDe makes these recommendations for industry and for public authorities:

RECOMMENDATIONS

1. Best practices

1.1 Best practices for an ICT-related investment or other commercial activity undertaken by a company in a developing country are those which, based on experience, will at the same time produce a commercial return and can meet development objectives. Best practices are intended as voluntary guidelines to be considered by a company when deciding on a commercial activity.

1.2 The GBDe has identified the following best practices:

a. *Sustainability*: the viability over time of a commercial activity, including the prospect of a long-term return internally generated by the activity;

b. *Appropriate technology*: the choice of an ICT technology adapted for the market within a developing country, that is suitable within geographic and environment constraints, targeted for skill-sets and objectives of users, to ensure take-up of the technology and commercial return;

c. *Local content*: software or other content, developed in the target country or region, to be included in the product or service offered, both as a tool to meet local market characteristics and also to bring local partners into its development.

1.3 While less key, other best practices are also important:

a. *Scalability*: the ability easily to increase the scope, geographic reach or target audience of an investment or other commercial activity, at the time, for example, the concept underlying the activity has been demonstrated;

b. *Local partners*: the involvement of entrepreneurs from the developing country or region for, among other reasons, their skill at development of content or other input, knowledge of the target market, marketing, sharing of commercial (and regulatory) risk and reward.

1.4 Other factors have been found to be less relevant: the acceptance by an ICT company of a lower return on investment and undertaking activities in a developing country for market positioning or with similar objectives not geared for long term commercial return.

2. Recommendations for public authorities

2.1 Public authorities should recognize that the leading contribution to economic development and to poverty alleviation by the private sector is by means of investment and commercial activities which lead to a commercial return. Public authorities in developing countries are encouraged to adopt laws reducing barriers to investment, ensuring a stable commercial environment, and meeting international treaty obligations. The members of the GBDe are ready to work, with governments and other stakeholders,

27

on the formulation of policy frameworks for ICT development.[*]

2.2   Public authorities should be aware of the business decision process undertaken and the criteria applied by a company when deciding on a commercial activity in a developing country.

2.3   Public authorities should also be aware that a commercial activity can achieve not only a commercial return for the company but also meet development objectives. In many cases, a commercial activity is the best method to achieve economic development and alleviation of poverty.

2.4   Public authorities are encouraged to take note of the list of best practices identified in these recommendations, which is the result, in part, of the long experience of leading companies in the ICT sector with activities in developing countries. (At the same time, a company, in respect of a particular commercial activity, may choose to apply different criteria to its investment.) In some cases, public authorities may be called upon to adopt a fresh approach in their own assessment of criteria used to encourage investment in information and communications technology.[**]

3. Recommendations for industry

3.1   A company is encouraged to use these best practices when considering whether to make, in a developing country an investment or to undertake other commercial activities in information and communications technology.

3.2   These best practices are intended as voluntary guidelines. A company may choose to weigh one or more practices differently or, based on its own experiences, apply other criteria to a commercial activity in a developing country.

3.3   Companies are encouraged to exchange information (among themselves and with other stakeholders) on their commercial activities addressing the digital divide in emerging economies, to develop together further the best practices they use for assessing such activities, and to measure the commercial and other

outcomes which such activities have on emerging economies.

4.   Recommendations on philanthropy and training to all stakeholders

4.1   Industry is encouraged to continue, in emerging economies, its philanthropic activities and training efforts as a complement to its commercial activities. Innovative approaches to philanthropy and training can build on the ICT expertise of industry to spur economic growth and to alleviate poverty. Non-governmental organizations are also urged to join in these activities. In concert with public authorities, these organisations and other stakeholders, industry should exchange information, develop best practices, and measure results of philanthropy and training.

4.2   Public authorities should recognize that the criteria applied by industry for philanthropy and training can differ significantly from those for its commercial activities. Indeed often the private sector will separately pursue commercial, philanthropic and training objectives with separate funding, staffing and criteria.

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[*] The GBDe has issued a number of Recommendations on the policy framework for e-commerce.   See www.gbde.org.   The GBDe and its members have already contributed to the development of policy frameworks for ICT development by states and by regional associations.

[**] For example, while ICT investment may result in greater long-term commercial activity, overall growth in prosperity and favourable social outcomes, the immediate impact on unemployment may be less clear.

Part 1.B.
BRIDGING THE DIGITAL DIVIDE

A Joint Statement of the
Global Business Dialogue on Electronic Commerce
Global Information Infrastructure Commission
Global Digital Divide Initiative of the World Economic Forum

I.   Cooperation to Bridge the Digital Divide

1.   The Global Business Dialogue on Electronic Commerce, the Global Information Infrastructure Commission, and the Global Digital Divide Initiative of the World Economic Forum join together here to reaffirm, clarify, and comment upon their individual and collective commitments to bridging the international digital divide.[9]

2.   Further, the GBDe, GIIC, and GDDI pledge here to collaborate in and coordinate their continued promotion of the expenditure of human, technological, and financial resources on projects that demonstrate in objective, measurable, and meaningful ways how the deployment of information and communications technology (ICT) capabilities can foster economic growth, social progress, and poverty alleviation.

3.   The parties to this statement join together to speak with a single clear voice for those business sectors that they represent and regard as being most closely aligned with the development, deployment, financing, operation, provisioning, and modernization of ICT products and services.

4.   It is the considered view of the parties to this statement that efforts undertaken in the last two years to remedy the international digital divide have produced an abundance

and wealth of proposed frameworks, policy plans, studies, and prognostications. Regrettably, this activity has been long on rhetoric and has not yet unleashed investment activity sufficient in scope to markedly shorten the chasm between the world's information have's and have-not's.

5.   Accordingly, the parties agree that now is the time for investment. Stated otherwise, now is the time to focus on performing the labor-intensive, technologically demanding, on-the-ground, and awesomely expensive work required to reach the un-reached of the world and bring the promises and potential of ICTs to all.

6.   The central contention of the GBDe, GIIC, and GDDI is that investment in ICTs and related commercial activities constitutes a core, critically vital factor – indeed, a central link – in modern day wealth-creation and economic-development paradigms. This is as important in emerging market nations as it is in advanced national economies.

7.   Among the already demonstrated benefits of ICT deployment in developing countries, in the view of the parties to this statement, are the: fostering of local entrepreneurship; building of human capacity; improving of government services; and upgrading of health care services. In addition, ICT-related commercial activities induce technology transfer, capital infusion, and job creation.

8.   Enumerated below are issues the GBDe, GIIC, and GDDI regard as being critical to facilitating, fostering, and speeding the diffusion of ICTs in LDCs and emerging market nations.

II.   Commercial Activities in ICTs

1.   The principal leaders and constituents of the GBDe, GIIC, and GDDI come almost

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[9] These voluntary organizations are comprised of chief executive officers and comparably senior-level principals of business firms that, among other things, are closely involved in the development, deployment, operation, direct use, or financing of information and communications technology capabilities. Further, the term digital divide refers generally to the disparity or gap that exists between individuals, households, businesses, and other types of organizations in different parts of the world with regard both to their opportunities to access information and communication technologies and to their ability to use the Internet.

exclusively from the private sector. On a daily basis, these are individuals who decide whether, how, and under what conditions to invest and allocate firm resources in projects involving the deployment and use of ICTs. Of importance in deliberations leading to these decisions are demonstrable expectations of investment returns for the enterprises involved, the owners thereof, and other stakeholders contemplating these commercial activities.

2. Bridging the digital divide, accordingly, is an area where commercial interests converge with responsible behavior. These investments today significantly exceed the giving from the developed world in the form of philanthropy, technical assistance development and other forms of aid. Through this statement, the private sector wishes to put investment in the forefront of movements to remedy the international digital divide.

3. In fact, according to the OECD, the total amount of direct investment from private capital from the 22 OECD countries that comprise the Development Assistance Committee amounted to 119.5 billion US dollars in 2000. At the same time, official development finance (including official development assistance and official aid) amounted to 65.5 billion US dollars in comparison.[10] A survey recently undertaken by the GIIC found the business leaders clearly regard foreign direct investment as the key to facilitating the world's evolution toward an information society (ranking 4.0 on a 5.0 scale), followed by national government funding (3.2), lending and assistance from multilateral institutions (3.0), foreign aid (2.8), and philanthropy (1.9).

4. If we are to move from analysis to action, how should we measure whether we have achieved our objectives? Our ultimate goals are economic development, social development, and poverty alleviation in developing countries. These are not

abstract notions and the metrics are available to quantify progress in economic activity[11] and citizen prosperity.[12] While our focus is primarily commercial, it is also important to monitor measurable social outcomes based on long established criteria developed by multilateral institutions.[13] Thus to track our investment our companies ask for measurable achievements: What is our return? What is the diffusion and take up of the ICTs we offer? Has there been growth in economic development and poverty alleviation? Is this matched by desirable social outcomes?

5. The criteria industry uses for investment or other commercial activity for ICTs in developing countries are varied. An industry study commissioned by the GBDe has found that the best practices used by a company when considering an investment include an assessment that the project or the activity it intends to invest in is sustainable and employs technology appropriate for the targeted market. Other best practices include a focus on the use of locally generated content, the ability to scale up a successful activity beyond its initial market, and identifying and working with local partners. The use of these criteria increases public awareness of ICTs and in many cases underpins the growth of local entrepreneurship.

III.   Policy Framework for Investments

A proper policy framework adopted by a developing country can induce the private sector to invest more resources in that country. Although different markets need different sets of policies, the right investment environment is critical in attracting international and domestic investors. Examples include telecommunications liberalization and other reforms, taxation policies to attract infrastructure and other investments, intellectual property rights for content makers, and e-government policies for all investors. The proper policy framework increases incentives for private sector investments, while bringing the benefits of ICT access and content to developing

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[10] See http://www.gmunccd.org/FIELD/Funds/Other/ODAFigures.htm. The amounts frequently cited by the World Bank are even more disproportionate. Development aid totaled about $54 billion in 2000; this was one-third as much as foreign direct investment in developing countries ($167 billion), which itself was only a fraction of total investment (nearly $1.5 trillion). World Bank, A Case for Aid: Building a Consensus for Development Assistance (World Bank 2002).

[11] Examples of measures of economic activity include trends in revenues, competitive access/costs of inputs, access to markets, availability/exploitation of market information and foreign direct investment.
[12] For example, GDP/per capita, disparity between income groups, urban/rural, savings rate, concentration in industry.
[13] For example, live birth rate, scolarity, incidence of disease, life expectation, availability of means of communication; integration of women, minorities into economic life and civil society.

countries. We affirm the need for developing country governments to engage in dialogue with global private sector initiatives, as well as civil society and other stakeholders, to create a policy framework for mutually beneficial investments.

IV. Philanthropy and Training

Although from the viewpoint of the private sector, the digital divide is primarily an issue of investment, our three organizations reaffirm the importance of philanthropy and training, which further serve to prime developing country markets for ICT diffusion. Philanthropy and training operations are especially relevant in areas where basic needs (like food, water, shelter, sanitation and safety) and more general needs (like healthcare, education, and livelihood) are not yet covered. In fact, many member companies of the three organizations have already made significant contributions through their respective philanthropic and training programs in developing countries. These contributions have been demonstrated by both the efforts of the GDDI in encouraging corporations to commit a certain percentage of their philanthropy budgets to reduce the global digital divide; and the clearinghouse of philanthropic and training activities of member companies created by the GBDe. This statement encourages the private sector to continue in innovation and leadership in the areas of philanthropy and training.

Our Continuing Commitment

In this Joint Statement we reconfirm our commitment to build digital bridges within developing states in order to help diffusion of information and communications technologies (ICT) and to achieve the goals of economic growth and alleviating poverty. Our organizations have done much already:

- GDDI is designed to link private-public sector and NGO partners together to advance enabling policy frameworks and implement and build-out digital divide related projects in developing regions of the world. In parallel, the GDDI also administers the CEO Charter for Digital Development, a mechanism for mobilizing resources for digital divide related programmes, initiated by Vivendi Universal. CEOs participating in the Charter pledge to use their best effort to allocate at least 20 percent of their philanthropic contributions to ICT development in developing countries and communities;

- The GIIC has actively promoted in Africa, in south and east Asia, and in Latin America,

the benefits of telecommunications sector liberalization and advocated the subscription by individual nations to the World Trade Organization Basic Telecommunications Agreement;

- The GBDe, through its Digital Bridges Working Group, provides advice to ASEAN and APEC economies on the policy framework needed for the development of e-commerce services and is completing, this year, a study on the best practices used by industry for commercial investment in ICTs in developing countries.

We have all participated in the work of the G8 states, through the Digital Opportunity Task Force, in identifying the role of government, industry and civil society in introducing ICTs to the developing world. We welcomed the G8's Okinawa Charter on the Global Information Society and welcome the conclusions on the work of the DOT Force of the Kananaskis G8 summit in June 2002. Our members are also active in the United Nations ICT Task Force and other international fora. (The activities of each of our organizations is further described in the annex.)

In this joint statement, our three organizations have united in order for the private sector to speak with a single voice and articulate to the global community on where we think that the global movement to bridge the digital divide should be heading. Past activity has produced a wealth of frameworks, policy plans, studies and the like. Now is the time for action which can bring the promise of ICTs and the digital services to the developing world.

Annex to the Joint Statement

Global Business Dialogue on Electronic Commerce

The Global Business Dialogue on Electronic Commerce (GBDe) is a CEO and board member led initiative to create a policy framework for global electronic commerce. In its four years of existence, the GBDe has unified the 60 digital economy firms from all over the world that form its membership in such diverse and important policy issues affecting e-commerce as consumer confidence, cyber security, intellectual property rights, and the digital divide. In addition, the GBDe has advocated these policy recommendations to, and exchanged high-level dialogue with, policy makers from places as diverse as Brazil, Egypt, the Philippines, and South Africa, as well as with the European Commission, Japan, and the United States.

Global Information Infrastructure Commission
The GIIC is a confederation of chief executive officers of firms that develop and deploy, operate, rely upon, and finance information and communications technology infrastructure facilities. Together as GIIC commissioners, these executives are dedicated to speeding the spread of information infrastructure throughout the world. The GIIC was established during a G7 meeting in Brussels in 1995 at which the political heads of the world's leading national economies formally and for the first time acknowledged the transforming forces of computer and telecommunications technologies and the emergence of an "information society". In doing so, the heads of state challenged business leaders to unite in the promotion of public policies and information technology applications likely to spur needed investment in communications infrastructure facilities. Thus was born the GIIC. Commissioners of the GIIC come from firms based in developed nations, as well as in developing and emerging market nations.

Global Digital Divide Initiative of the World Economic Forum
The Global Digital Divide Initiative of the World Economic Forum was launched at the Annual Meeting 2000 by top executives in the IT, telecommunications, media and entertainment sectors to develop creative public private sector initiatives to transform the global digital divide into an opportunity for growth. The Task Force pursues this through three workstreams focusing on policies and strategies, education and entrepreneurship. The Steering Committees for each workstream reflect the Task Force strategy for advancing this issue through public policy as well as the build-out of local projects. The Task Force is co-chaired by Jean Philippe Courtois, President, Microsoft EMEA, France; and Maureen O'Neil, President, International Research and Development Centre.

The World Economic Forum is an independent international organization committed to improving the state of the world. The Forum provides a collaborative framework for the world's leaders to address global issues, engaging particularly its corporate members in global citizenship.

Incorporated as a foundation, and based in Geneva, Switzerland, the World Economic Forum is impartial and not-for-profit; it is tied to no political, partisan or national interests. The Forum has NGO consultative status with the Economic and Social Council of the United Nations. (www.weforum.org)

Part 1.C. RECOMMENDATIONS TO DEVELOPING COUNTRY GOVERNMENTS

For the past four years, the GBDe has unified the leading digital economy firms and has advocated, with a single voice, to governments and other stakeholders on critical policy issues facing global electronic commerce. These policy recommendations reflect the views of the private sector on policies that would both stimulate the growth of electronic commerce and benefit the overall economy.

This year, recognizing the fact that economic and social issues faced by developing country governments could differ from those faced by advanced economies, two GBDe working groups have written policy recommendations specifically articulating how a proper policy framework can nurture economic growth and development, and therefore produce desired social output, in developing countries. The GBDe affirms that a proper policy framework in the fields of e-government and intellectual property rights, as well as in other topics, can help induce both foreign and domestic private sector investment and thus spur economic growth and development. In this paper, these recommendations are organized as follows:

- Annex 1: e-Government
- Annex 2: Intellectual Property Rights

Other annexes will be added as GBDe Working Groups complete their contribution to the Digital Bridges policy framework for developing countries.

Annex 1: GBDe Recommendations on e-Government to Emerging Market Governments

It is important for governments of developing countries to realise the role of, and to take advantage of, e-government for their future development. Applied aptly, new communication channels and interactive services contribute to the improvement of basic government services: from welfare, health and education to tax collection. Internally, the new information technologies (ICTs) serve to improve horizontal and vertical linkage within the government, creating better administrative efficiency at a lower cost and in less time. Externally, the ICTs catalyse the local IT industry and encourage foreign investment. Speaking in economic terms, governments need to create a favourable environment for their own economy if they want their countries to benefit fully from e-business and become/remain competitive in the global

marketplace. The developing countries have to take the best out of the ICTs in order to make globalisation work in their favour and not against them. On the international level, important decisions regarding the standards and the future of the digitalised world are being taken everyday by international bodies.

The GBDe recommends that governments of developing countries get involved and address the e-issues at this nascent stage. Otherwise, the risk of an even wider divide increases. The GBDe recommends comprehensive implementation of e-government solutions for developing countries. However, in the medium-run, the number of citizens in developing countries who will either own or be able to use ICTs directly will remain limited. That is why the members of the GBDe are gradually initiating and supporting projects that are aimed at providing a wider access to ICTs, and creating PC literacy. With such support, resources and consultancy provided, it is now upon the governments of developing countries to rightly determine the strategic focus and make the best fit between their system and the ICTs. Finally, the GBDe recommends that all levels of public officials become involved with the e-government issues to ensure its comprehensive implementation.

Annex 2: GBDe Recommendations on Intellectual Property Rights to Emerging Market Governments

The protection of intellectual property is important for the developing world as it is elsewhere. Strong IPR rules in the online environment can promote the growth of the creative community - artists, writers, producers, technical support - throughout emerging economies. Through the low cost distribution offered by the Internet, this community can now have far greater access to audiences throughout the world. But piracy can destroy the incentives for this creativity at its root.

PART 2. DIGITAL BRIDGES ADVOCACY ACTIVITIES

A. GBDe-led Activities

eASEAN – GBDe Bilateral Dialogue (Manila, Philippines, March 19, 2002)

Organized by the Chairman of Equitable Card Networks (ECN), Roberto R Romulo, a GBDe member based in the Philippines, the GBDe held a bilateral dialogue with eASEAN, the e-commerce arm of the Association for South East Asian Nations. This event further advanced GBDe's commitment to exchange dialogue with

policy makers of Southeast Asia. GBDe first made contact with eASEAN in the GBDe Annual Conference in Miami in September 2000, when the two parties signed a Statement of Cooperation. The Statement called for the GBDe to provide expertise in e-commerce policy upon request and to serve as a clearinghouse for digital bridges activities. In the following GBDe Annual Conference in Tokyo in September 2001, GBDe advocacy to this region reached the highest level of government, as the GBDe was honored to have Philippines President Gloria Arroyo deliver the dinner address.

This latest event in Manila featured GBDe policy recommendations in such topics as broadband (convergence), consumer confidence & privacy, cyber security, e-government and intellectual property rights. GBDe member companies that delivered these presentations include Alcatel, DaimlerChrysler, NTT Data, Indra, Hitachi and Vivendi Universal. From the eASEAN side, presentations included such topics as the state of e-commerce in Southeast Asia, e-government in Southeast Asia, an update on the activities of eASEAN, and the e-commerce activities of Malaysia and Singapore. In addition, there was a digital bridges session which featured presentations from special guests Ira Magaziner, former Chief Internet Advisor to the Clinton Administration, and a representative of the World Economic Forum.

São Paulo Advocacy Meeting (São Paulo, Brazil, June 18-19, 2002)
At the proposal and under the leadership of Telefónica S.A. as GBDe 2002 Global Co-Chair, the GBDe organized, in partnership with the Federação e Centro das Indústrias do Estado de São Paulo (FIESP/CIESP) and Telefônica Brasil, the "Meeting of Latin American Information Society Stakeholders and the GBDe", that took place in São Paulo on June 18-19. This meeting was aimed to be the first event of a continuing effort for the GBDe to exchange dialogue with Latin American policy makers and stakeholders. Sessions in which both the GBDe and the Latin American information stakeholders exchanged dialogue included consumer confidence (privacy, ADRs and Trustmarks, and Internet Payments), digital bridges, e-government, and intellectual property rights.

On the Digital Divide field, the GBDe took the opportunity to present Latin American stakeholders and policy makers its recommendations and activities since 2000, including the Knowledge Network and the GBDe Emerging Markets Survey. In this context the GBDe exposed its efforts to develop an emerging market investment framework that can be used as

a reference for governments and other organizations addressing the digital divide. On behalf of the Latin American stakeholders, Ms. Marilía Rocca, Endeavor Brazil Managing Director, explained the work that her company has been engaged in since 1997. In particular, Endeavor supports entrepreneurial partnerships in Brazil, Argentina, Chile, Mexico and Uruguay. The joint action between Endeavor and his entrepreneurial partners is focused on the common support to attract and gather resources; the sharing of specialised information; and the improved access to high value added contact networks. In addition, the General Co-ordinator of the Brazilian Program for Information Society, Mr. Eduardo Tadao Takahasi, stated that digital development will be the main issue until the UN World Summit on Information Society, to be held in Geneva next year. In the meantime, he stressed that e-commerce is already showing itself as a very important issue for the future, and appointed the GBDe as the main actor in the region and probably worldwide in two years.

As a result of the meeting, five potential Brazilian members of the GBD were identified. In addition, the GBDe has been invited to participate in the Latin American & Caribbean Network of the UN ICT Taskforce by appointing a member to its Steering Committee.

Digital Bridges Stakeholders Meeting (Washington DC, USA, July 10, 2002)
Organized by KT Corp. and Vivendi Universal, key actors of the global digital bridges movement gathered to exchange viewpoints and experiences. Participants included Richard Simpson from the Government of Canada (then-leader of the G8 Dotforce), Sergei Kambalov of the UN ICT Taskforce, Sam Carlson of Worldlinks on behalf of the World Economic Forum (WEF), Bob Rogers of the Global Information and Infrastructure Commission (GIIC), Dr. Ernest Wilson III from the University of Maryland, Richard Fuchs of IDRC, Bertrand Laurent of the Africa America Institute, and Jim Dempsey of the Global Internet Policy Initiative (GIPI).

The above participants, along with GBDe members KT Corp. and Vivendi Universal, provided brief presentations on their respective activities and viewpoints of bridging the global digital divide. This was followed by a discussion on critical challenges and best practices. Thus, such a stakeholders meeting by government, private sector groups, NGO's and academia, provided all the participants with updated information, fresh perspectives and new partners.

B.   GBDe Member-Participated Activities

GBDe Advocacy in the Middle East
Led by Dr. Adel Danish, Chairman and CEO of Masreya, an information technologies solutions provider and GBDe member based in Egypt, the GBDe has advocated its policy recommendations in various fora to government, business and NGO leaders in the Middle East. GBDe advocacy activities have taken place both in settings that facilitate cooperation between the Middles East and Europe in information technologies and settings that brought together prominent IT stakeholders in the Middle East. In 2001, Dr. Danish presented GBDe policy recommendations to the German-Arab Chamber of Commerce Summit, and in June 2002, Dr. Danish presented GBDe initiatives in e-government in a conference held by Madressa II, a project funded by the European Union to strengthen business cooperation between European IT providers and Egyptian users and intermediaries. And in order to further reach out to government and business leaders in the Middle East, Dr. Danish made presentations on GBDe policy recommendations in both the Second Conference on Arab IT and Telecommunications held on May 27-29, 2002, and the Second Sustainable Development Forum in December 27, 2001. In addition to making presentation in international conferences, Dr. Danish has also organized special seminars for business leaders and special discussion fora with the Egyptian Ministry of Communications and Information Technology.

A new law on IPR was passed in Egypt in June 2002, in which Dr. Danish was able to influence important aspects of this legislation by introducing relevant GBDe policy recommendations. At present, there is an e-signature bill that is final and ready for discussion by the Egyptian Parliament in the next session in which Dr Danish has also been influential through his position in the Ministry of Communications, Information and Technology Committee (MCIT). The MCIT has formed an e-government committee that is preparing the country's e-government plan and monitoring its implementation. Dr. Danish is an active member of this committee and building on a number of GBDe recommendations in supporting this committee. Egypt is committed to the ITA initiative which is an agreement to remove all customs on Telecom and IT products gradually in 4 years time.

Finally, the GBDe through Masreya has made significant contributions for the creation of the Arab Business Forum for Communications and Information Technology. Announced by Dr. Danish during Cairo Telecomp, a global IT and Telecommunications Conference held on January

14, 2002, the co-chairs of this CEO-led Forum include both Dr. Danish and Mr. Mohammed Omran, chairman of Thouraya based in the Emirates, while other executive committee members include chairs and leaders from Syria, Kuwait and Morocco. With one of its stated objectives being the dissemination of results from similar organizations, the GBDe was one of the organizations specifically cited for exchanging recommendations and feedback.

GBDe Advocacy in Europe
In the framework of the cooperation agreement between the GBDe and the Global Cities Dialogue (GCD), the GBDe was invited to present the GBDe activities on the Digital Divide at the 3rd e-Democracy Forum, which took place on April 11, 2002 in Issy (France). GCD member mayors were especially interested to hear about the enabling effect of the GDBe activities on the e-readiness of their cities.

In addition, a GBDe EU Expert level meeting was held on May 28, 2002 in the presence of EU officials and GBDe members. This was an occasion for the GBDe to have its first formal dialogue with the EU on the digital divide; representatives of both organizations agreed on the need to focus on cooperation on the ground, and to consider digital divide activities less as pure philanthropy, and rather as investments. The EU invited the GBDe to enter into a cooperation process concerning the new development aid programs.

GIIC Beijing Summit
Following an agreement by the GBDe and the Global Information and Infrastructure Commission (GIIC) to cooperate in the areas of broadband policy and the digital divide, Dr. Yong-Kyung Lee, CEO of KT Corp., a GBDe member based in Korea, made a presentation at the GIIC Annual Summit in Beijing, China on April 23, 2002. As his capacity as the Leading Co-Chair of the GBDe Digital Bridges Working Group, Dr. Lee presented findings from the GBDe Emerging Market survey on commercial and other activities in emerging markets, as well as a viewpoint of digital bridges from the perspective of a telecom service provider.

Word Telecommunications Development Conference (WTDC)
The GBDe has contributed to the World Telecommunications Development Conference (WTDC) with a document submitted by Telefónica S.A., as GBDe Global Co-Chair and a member of the International Telecommunications Union (ITU). This paper, containing GBDe's viewpoints and activities in the digital divide, has become an official document of the conference (81). The ITU

held the WTDC in Istanbul, Turkey on March 18-27, 2002.
(http://www.itu.int/ITU-D/conferences/wtdc/2002/)

C. GBDe-WEF Joint Advocacy

GBDe-WEF Joint Action Plan
Led by Vivendi Universal, the GBDe and the World Economic Forum (WEF) launched a Joint Action Plan on the Digital Divide in April 2002. Among many other initiatives, this plan calls for the creation of a joint GBDe/WEF committee, frequent meetings, cooperation in the fields of entrepreneurship and education, and a calendar of activities of multilateral institutions in which the two groups can coordinate their advocacy efforts in creating digital bridges.

Manila and Washington DC Meetings
Following up on the launching of the Joint Action Plan on the Digital Divide, Julianne Lee of the WEF has participated in the eASEAN-GBDe Bilateral Dialogue in Manila, Philippines. Ms. Lee provided an update of WEF initiatives and explained the contents of the WEF CEO Charter for Digital Development to the GBDe members (see below). In addition, Sam Carlson of Worldlinks has provided an update on the WEF Task Force on the Digital Divide during the GBDe-sponsored Digital Bridges Stakeholders Meeting in Washington D.C. in July 10, 2002.

CEO Charter for Digital Development
Vivendi Universal also challenged other GBDe CEO's to sign the "CEO Charter for Digital Development" - a charter which calls on CEO's to commit at least 20% of their philanthropy budget to bridging the digital divide. First announced at the Annual Meeting of the World Economic Forum held from January 31 to February 4, 2002, at present, the charter carries the signatures of seven GBDe CEOs in addition to the signatures of many others. In addition to Vivendi Universal, the charter includes the signatures of Stan Shih, Chairman & CEO, The Acer Group; Roberto Romulo, Chairman, Equitable CardNetwork; Tan Sri Dato' Dr Othman Yeop Abdullah, Executive Chairman, Multimedia Development Corporation; Carleton Fiorina, Chairman and CEO of Hewlett Packard; Dr. Adel Danish, Chairman and CEO of Masreya; Cobus Stofberg, CEO of MIH; and Cesar Alierta, Chief Executive Officer and Chairman of the Board, Telefónica.

Global Business Dialogue on Electronic Commerce

e-Government
Recommendations
October 29, 2002

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SECTION I

INTRODUCTION

Modern societies of today are experiencing fast and continuous change processes. This makes it imperative for governments to develop projects capable of making their full adaptation to these changes become a reality. This undoubtedly enhances the positive effects on both the citizens and business, given that, in today's information society, a country's competitiveness and its citizens' standard of living depend to a certain degree on the speed and efficiency of state services.

Building of citizen-oriented public services, development of commitments to quality, increasing policy maker and public administration employees' involvement in the change and modernization processes, e.g. making the most out of the opportunities provided by new information and communications technologies (ICT), is the main challenge that governments have to meet.

Electronic government, from the private companies' point of view, enables governments to provide public services with greater effectiveness, speed and quality. As a result of using ICT, new types of public service can be designed, contributing to an improved relationship between government and its citizens. Increased efficiency in the workflow leads to cost reduction and can be utilized for further improvement in operation.

It should also be recognized that those regions, countries, and local governments with non-advanced electronic government policies run the risk of attracting less private sector investment. By the same token, the implementation of electronic government, improves the efficiency of private companies and increases their use of e-commerce. Additionally, as private companies actively join e-government development projects, ICT-related industries should flourish and thereby contribute to the country's overall economic development.

The GBDe proposes the present document as a checklist for governments on their way to implementing e-government. Its content should be valuable to countries that are already developing e-government infrastructure as well as to those that are just starting to promote it.
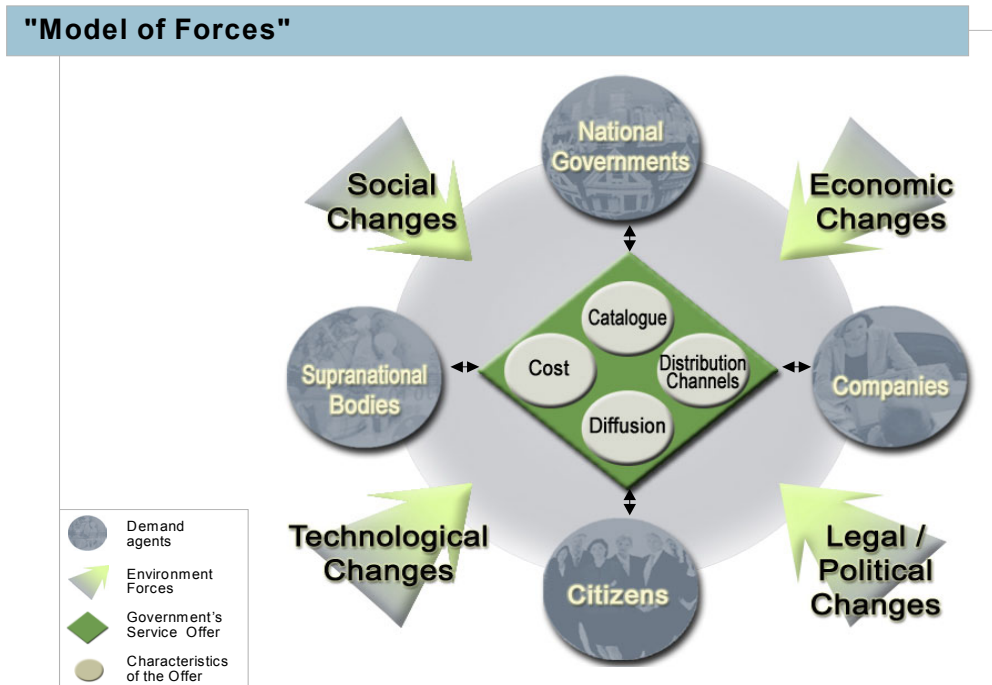
"Model of Forces"

Context Analysis

We can show by means of a graphic the general context of any government program in the world as a model of forces in the following manner:

Demand agents: Globalization and digitalization requiring relations with supranational bodies, a need for maximum integration and cohesion of the different levels of national government, a business community that requires better service performance and interaction with government to reinforce sustained growth, and citizens who are demanding more and more from their governments with regards to the services that the latter should render to them.

- **Environment Forces/Factors:** which demand quick adaptation from governments which include:
  - social change
  - economic change
  - political and legal, or regulation - related, change
  - technological change.

- **Government's Service Offer:** a continuously increasing catalogue of added-value services whose cost can be increasingly reduced, and whose rendering can be diversified through the greatest possible number of channels to become widely known, effective, and adopted.

Characteristics of the Offer: The pressure exerted by the environment factors and the demand agents on government, must be faced up

to, within this model of balanced forces, through the evolution of the service offer.

For government, the Internet is an environment force which alters the stability of the current administrative model, and which must be met in an appropriate manner, by introducing value-added services offered through the Internet channel, thus optimising the cost associated with providing public services and improving their quality.

SECTION II

METHODOLOGY

From the standpoint of the working methodology, in order to define the framework for the development of G2C (Government to Consumer) and G2B (Government to Business) programs, it is necessary to define first the GBDe´s vision of the optimal **relationship model** between G2C and G2B; in other words, the optimal e-government program. This model is based on the practical international experience gained by the set of companies that make up the e-Government Working Group of the GBDe. Moreover, the GBDe has also built a framework for the development of e-government programs to further help the governments to accelerate the establishment of the Internet as a new relationship channel between G2C and G2B.

MODEL

The relationship between government and citizen /government and business through the Internet channel should:

- Be unconditionally based on confidentiality and privacy for all personal data.
- Be based on guarantees of absolute security and reliability.
- Offer fully executable online services available anytime, anywhere.
- Reduce bureaucracy, minimize the number of Government departments to be visited/ consulted by the citizen to obtain a service.
- Allow easy integrated communication between different public administration systems (interoperability).
- Become effective and efficient, agile and simple.
- Allow access to all available services through multiple channels.
- Be socially inclusive, e.g. be able to reach all the citizens, and including those with special needs (handicapped and non-native speakers).
- Allow greater participation of the citizen in the democratic process (e-Democracy) and improve electoral processes.
- Be oriented towards the users and not towards the structure of Governments.
- Be personalized, so that a Government can be capable of offering services adapted to the characteristics of citizen needs.

Framework for the development of e-Government

The following scheme presents our proposed framework that we want to share with governments at all levels to help accelerate the development of e-government.
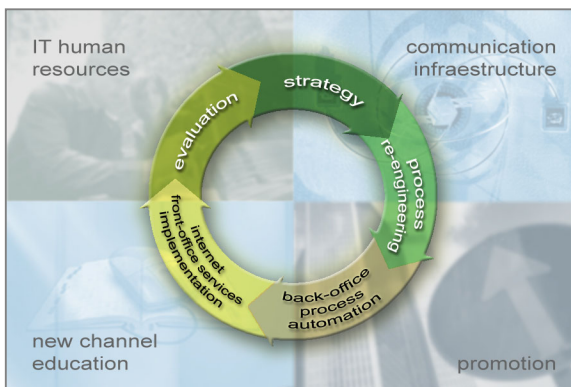
- **Strategy**
An appropriate segmentation and prioritization of the governments' service catalogue should be the first step of any initiative. This should be accompanied with a clear definition of its different implementation phases and plans on the way to comprehensive e-government.

- **Process re-engineering**
Administrative processes, rules and regulations should be re-engineered to reap the real benefits of ICT. Automation of bureaucratic processes simply transfers the bureaucracy to the new channel. The possibilities being provided by the channel to optimize the processes and the services to be offered are tremendous and must be identified and capitalized in such a way that process adaptation reaches the level of reliability required by the relationship model (There should be neither legal doubt, nor legal disputes concerning the transactions carried out through the Internet).

- **Back-office process Automation**
This step is imperative to allow efficient and effective rendering of services digitally. It is important to ensure that the automation solutions are interoperable and integrate any legacy system.

- **Internet front-office services implementation**
This involves defining easy to use, single points of access to provide multiple channel access to any service of the public administration by all citizens, including those with special needs.

- **Evaluation**
Establish measures and procedures to appropriately evaluate governments' digitization. Publicize the evaluation results. Draw conclusions to modify/improve the overall e-government strategy for the future.

- **Human resources in information technologies**
In order to manage the new e-government solutions and provide adequate service to citizens, governments need to have access to the best human resources in the field of IT. This can be achieved through service outsourcing from the private sector, to capitalize on their experience, recruiting of IT professionals and the training of current public administration employees on the new technologies. Establishment of help desks in different locations with professional assistance would further facilitate and encourage e-government adoption.

- **Communications infrastructure**
Planning and adaptation of communications infrastructure including broadband and network security as prerequisites is critical in order to provide citizens with fast, simple, reliable and accessible services.

- **New channel education**
While making the necessary mechanisms to access the channel available to citizens, digital

literacy should be developed in order to ensure the capability of taking advantage of the offered services by all citizens and thereby bridging the digital divide.

- **Promotion**

Society (citizens, including those with special needs, and the private sector) needs not only to be able to access and to know how to use the services provided by the administration. It also needs to know that they are available, and what their advantages are. The government system should be referred to as a model and major contributor for achieving a national information society.

SECTION III

PRIVATE SECTOR SUPORT FOR E-GOVERNMENT IMPLEMENTATION

In previous sections we have proposed the model of e-government and the development acceleration framework. However, the road to successful implementation of such a complex project as e-government is not an easy one. A series of potential barriers can be drawn from the framework that make the implementation of the e-government programs difficult.

Such barriers include:
- Lack of privacy, confidentiality and security.
- Lack of appropriate telecommunications infrastructures, lack of broadband access.
- Absence or insufficient automation of governments' back-office processes.
- Laws and regulations not being in line with the existence of the Internet channel and its peculiarities of use for the rendering of services.
- Lack of digital literacy.
- Low computer penetration in the homes.
- Electronic signature not being legally accepted.

In case such barriers exist, the private sector's know-how in the technical and managerial aspects of ICT implementation and usage can serve as a facilitator to overcome them. Therefore, the GBDe has identified a number of ideas on how the private sector can contribute to the implementation of e-government.

Private Sector can assist governments on their road to successful e-government implementation in the following ways:

1. **Provide technical solutions, such as:**
- Public Key Infrastructure (PKI), e.g. electronic certificates.
- Identification technologies (smart card, biometrics, etc.).
- Cyber centers and Internet-access kiosks promoted by the governments.
- Multi-channel technology to allow access through Interactive Digital Television (IDTV), handheld and mobile devices, etc.
- Broadband access and broadband content development.
- Application of Customer Relationship Management (CRM) technology regarding the citizen as a customer of government services.

2. **Facilitate desirable e-government features**

- Actively utilize the digitized services provided by government, as well as offer suggestions for improvements.
- Private companies' Business Process Re-engineering (BPR) method can be shared with governments.
- Cooperate on identifying interoperable platforms.
- Cooperate with the government in research and development.
- Present successful examples of ICT utilization in the private sector.
- Provide strategies for increasing user convenience and user satisfaction.
- Private companies may provide universally acceptable solutions for citizens. and governmental officials with various handicaps.
- Cooperate in ICT education of governmental officials (seminars, trainings etc.).
- Introduce effective methods of evaluation in private companies to evaluate government operations where appropriate.
- Provide consulting services during all stages of the project: development, implementation, evaluation and maintenance.
- Offer outsourcing services suitable to the public sector.

SECTION IV

RECOMMENDATIONS

The GBDe, led by its interest in supporting governments in the development of e-government programs, proposes the following recommendations for a successful e-government

implementation. The main concern underlying these recommendations is the improvement of the G2C and G2B relationship. The recommendations for both areas are presented separately followed by recommendations on globalization issues.

1. G2C - Government to Citizens

To increase overall added value of e-government for citizens, governments are recommended to:

- **Enable 100% of administrative procedures online, and achieve one-stop service provision.**
  Currently, users of administrative services often have to follow separate procedures with different agencies in order to complete one single transaction. e-Government should offer one-stop *seamless* services that allow users to complete these procedures (e.g. document submission and fee payments) at the same time via an integrated front office window. Partial digitization of current administrative services does not provide a big improvement in user relations with the administration. Additionally, the benefits of digitization for the private sector can be limited if business transactions with governments remain partially manual and offline.

- **Conduct administrative reforms and establish the favorable legal framework.**
  Operations within government agencies should be integrated and simplified. Mere digitization of current administrative services without business process re-engineering may not provide sufficient results in enhancing the effectiveness of public sector. Furthermore, laws and institutions should be adapted to make these reforms possible and insure interoperability across the government agencies. One of the most important issues here is the legal acceptance of the electronic signature. Corresponding regulations are required in order to make remote delivery of services to citizens possible.

- **Ensure privacy, confidentiality and reliability for services rendered to the citizens through the Internet.**
  The e-government system must be securely protected so that citizens can access, provide and exchange information (personal and transactional data) at ease. We suggest posting clear statements on security measures being taken by governments should be outlined on the web-sites in order to reassure the citizens of their privacy and give them confidence in e-government usage. This will also serve to the overall promotion of e-services.

- **Support the development of the telecommunications infrastructures.**
  In order to comply with the defined characteristics of the e-government model, the telecommunications infrastructure needs to be expanded and enhanced, in particular in the "first-mile" with broadband access, and broadband connectivity between government agencies. State-of-the art solutions should be tested, and broadband and network security, as a minimum, should be set as the overall target to encourage development of media rich content.

- **Sponsor the digital literacy of the citizens.**
  ICT, although a potentially valuable tool, can be turned into a divide between those who own it and use it, and those who do not. In order to make the benefits of e-government fully available to the citizens, governments have to familiarize their citizens with the Internet.

- **Support the establishment of Internet access points.**
  An increase in number of public Internet access points will contribute to a corresponding increase in number of potential service requesters ("customers") and lower the risk of the exclusion for the citizens who are not connected at home.

- **To create an environment to diversify the means to access services.**
  e-government services should be accessible not only from personal computers but also from other technological platforms, e.g. mobile terminals, digital TVs, etc. This is necessary in order to expand the merits of e-government. Additionally, countries have different situations in the prevalence of network access facilities. Therefore, e-government should be accessible via various types of user devices.

- **To apply new technologies in the participation and electoral processes to promote e-Democracy.**
  With the help of online participation citizens are able to express their views directly to government. For example, electronic voting facilitates such processes as elections and

referendums and thus makes it easier for citizens to exercise their democratic rights. It would also allow for great savings, both in time and in money.

- **To consider all the steps of the proposed framework.**
  All the steps need to be considered. This allows the effective implementation of e-government, and avoids negative reaction from the public. Governments must not frustrate citizen expectation and miss their requirements concerning public service delivery.

2. Government to Business - G2B

In order to facilitate the business community and thereby ensure the development of a favorable economic climate, governments are recommended to:

- **Establish an institutional system that permits private companies' needs to be considered for government digitization projects.**
  Important 'users' of e-government are not only citizens but also business. Therefore, it is important to establish an institutional framework that permit private companies' demands to be considered for e-government projects. An example of such an institutional framework could be an 'e-government committee' that includes representatives of the private sector as members.

- **Disclose and publicize e-governments' information systems.**
  Government systems should be referred to as a model or prototype by the rest of the society. Therefore, governments should disclose details of their information systems, as well as their development processes, except those that require limited disclosure (e.g. national security matters). By doing so, the rest of the society (i.e. private sectors and the citizens) can understand the ways in which information systems are developed and realize the merits of ICT utilization.

- **Express milestones and a roadmap for e-government implementation.**
  Governments should clearly state the objectives, substance and the roadmap of e-government. Governments should incorporate private sector's opinions when setting such milestones. By responding to the government's roadmap, private

companies could be able to make more effective ICT investments.

- **Establish evaluation criteria for government digitalization and publicize evaluation results. Let private companies join the process of evaluation.**
  Private companies, as tax-payers, have the right and the duty to join the evaluation process regarding the development and the effects of e-government.

- **Specify 'feedback merits' of digitization of procedures.**
  Governments should notify private companies about the merits they can receive from e-government. For instance, governments may quantify and publicize the data on 'time reduction for a transaction', or 'increase in service fees', that occurred as a result of digitization. By doing so, the private sector can clearly recognize the merits of e-government and ICT utilization.

- **Standardize operational forms of central and local governments. Enhance simultaneous digitization process in central and local governments.**
  Citizens and private companies engage in procedures and transactions with government at both central and local level. For this reason, it is more convenient for the users if operational forms of central and local governments are the same for equivalent procedures (e.g. identical application forms). If the speed of digitization differs in central and local governments, the private sector cannot enjoy the full merits of e-government. What is worse, such difference in formats or procedures in central and local government operations may cause confusion, errors or delay. Therefore, there should be a simultaneous process of digitization in central and local governments.

- **Foster a favorable environment for providing e-government services to small and medium-sized enterprises (SMEs).**
  SMEs often lack sufficient financial and human resources, which may hamper their reaction to governments' digitization. Thus when compared to larger enterprises, SMEs typically have smaller chances to fully enjoy the benefits of e-government. Therefore, governments should strive to create an environment in which SMEs can use e-government services more easily.

Such an environment can be achieved by an interoperable framework of software, infrastructure and systems. This framework may consist of three parts: SMEs paying service fees (that are set at low price), big vendors providing necessary products/ services cheaply to SMEs, and government providing subsidies to SMEs.

- **Disclose more information on government services. Speed up the process of information disclosure.**
Government information should be released on the Internet simultaneously with corresponding publishing and press releases. This is necessary because differences in media coverage, and the extent and timing of information disclosure may cause confusion or discrepancies among users. For instance, it may cause companies to need to refer to many different media to obtain information about one single matter.

- **Establish methods for timely resolution of conflicts in transactions between business and government.**
Methods for timely resolution of conflicts (e.g. alternative dispute resolution) are necessary to account for the real-time nature of e-commerce. This applies not only to company-to-company disputes in e-commerce but also to that of company-to-government disputes.

- **Facilitate easy-to-use information provision and its disclosure.**
Efficient information provision and disclosure with the help of the e-government is very important. To achieve this, a corresponding easy-to-use format that users can utilize in their system directly (or by applying a conversation tool) is necessary. For instance, it is more convenient to have government information released in code data format rather than graphical format such as bit map.

- **Establish a transparent system and further assure transparency in operation.**
There is a need to construct a transparent system and operate it impartially so that governments cannot utilize it in favor of certain stakeholders.

3. e-government in the Global Context

Taking into account the world globalization process and the international character of the Internet, each country's e-government program is highly advised to:

- **Adopt as many languages as possible.**
Providing government services in several languages may enhance business opportunities for companies in more countries and regions. At the same time, it will also expand opportunities for government to acquire products and services with better cost performance, by having access to a wider selection of products and services.

- **[Technical Standard] For access method and protocol, adopt specifications and technologies of internationally neutral standard.**
The ICT field is highly competitive. Relying on the existing fixed specifications may prevent further development of technologies. It may also hinder e-government usage by many different companies. As for the language used for Internet services, the use of XML is becoming widespread. Yet there are other areas in which specifications and technologies are used. For such areas, it is advisable to use common formats and to provide converting tools between them in order to facilitate interoperability.

- **[Management Standard] Promote adoption of international or global standards.**
Methods and specifications used in transactions and procedures should meet a certain international standard in order to facilitate free trade and globalization. For instance, meter-kilogram-second is adopted as a standard for International System of Units (SI units). Yet exemptions may be required for some areas of particular importance to a country's security (e.g. defence, diplomacy). Another possible solution would be to lay out certain conditions that must be met instead of prescribing a single format. Business and governments should consider and consult on the standardization of business methods.

- **Collaborate with foreign governments to strive for global digitization and international networking.**
Business is rapidly becoming more and more international. Secure international networks are necessary for prompt communication between different governments. Likewise, this will be useful for private companies communicating with

- **Publicize necessary qualifications and standards for bidding, as well as proper reasons for setting them.**
  It will become easier for companies to decide on whether or not to take a bid when the government's information on bidding qualification is transparent to them. This may facilitate international bidding as well as conventional domestic bidding.

- **Give high priority to digitization of government operations related to international e-commerce (e.g. trade/ import and export operations).**
  Administration of customs as well as regulating export and import involves a number of Ministries and government agencies. Therefore, the advantageous effects of using the Internet to simplify the processing in this area are significant.

- **Extending the application of alternative dispute resolution for e-commerce procedures to the international level.**
  There may be cases in which a company has a dispute with a foreign government in e-commerce transactions. In such cases, it is difficult for a single private company to resolve the dispute. There is a need for agreements between the governments for handling such disputes.

SECTION V

GLOBAL CASE STUDIES: E-GOVERNMENT DATABASE

As one of the outputs of e-Government Working Group, an e-Government Database has been created and is available at http://www.gbde.org/egovernment/. This database is comprised of reports of e-government projects in various countries all over the world. The aim of the database is to enable both the GBDe member companies, as well as different governments to follow the evolution of e-government projects throughout the world. It should serve as a platform for an international experience-sharing, thus fostering a faster development of comprehensive e-government programs.

A particular value of this database lies in the fact, that it provides a useful reference on e-government initiatives on three levels: central, regional and local. These functional areas are differentiated with respect to different governmental departments. The technological solutions used, as well as the scope of the solutions offered, are marked by classification. We believe that such a categorization of the e-government experiences is the key to providing value to governments. Additionally, the database contains direct links pointing to the implementation of the solutions.

foreign governments through their home governments.

Global Business Dialogue on Electronic Commerce

Intellectual Property Rights
Key Priorities Recommendations
October 29, 2002

Leading Co-Chair (Europe/Africa) *Gunter Thielen*
Chairman & CEO
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Key Priorities for Intellectual Property Rights

The advent of broadband, the switchover to digital broadcast with data web casting possibilities and wireless networks with high bandwidth promise ubiquitous access to consumer selected content in a manner previously not possible. New and better digital communications infrastructures not only allow for greater consumer choice in content but also stimulate consumer demand for the devices and services that enable access to that content. One necessary pre-condition to unleash this enormous e-commerce potential is to curb digital piracy and ensure robust protection of intellectual property in the digital environment. This should be achieved through a combination of legislated protection of intellectual property, the establishment of open and interoperable technological protection measures agreed by industry and government regulation to prohibit harmful circumvention related activities.

The GBDe calls upon governments, relevant national and regional authorities and all stakeholders worldwide to rapidly implement the following eight key principles on Intellectual Property Rights:

1. The 1996 World Intellectual Property Organization (WIPO) Treaties should be promptly, faithfully and completely implemented. In addition, governments should monitor the development of new technologies and business models and examine in close cooperation with industry as well as other interested parties when further adaptation of copyright laws is required.

2. As part of treaty implementation, appropriate legal frameworks for effective technological protection measures should be adopted and implemented. These legal frameworks should prohibit both the act of circumventing industry agreed technological protection measures and the manufacturing, offering or distribution of circumvention devices, services and products, while providing appropriate exceptions, such as those set forth in the U.S. Digital Millennium Copyright Act (DMCA) and the EU-Copyright Directive, that would maintain the overall balance between rightsholders, service providers and users.

3. All stakeholders should intensify their search for an inter-industry consensus on open, interoperable and globally harmonized technological content

protection standards for effective content protection within new digital infrastructures. Governments should facilitate the development of such standards taking into consideration diverse digital rights management systems (DRMs), key management, encoding formats, encryption algorithms, watermarks etc.

4. One of the clear benefits of standard technological protection measures is that, when effectively implemented, they can eliminate the need for, and the legitimacy of, copyright levies in those countries where such levies are imposed. The GBDe supports the rapid development and deployment of effective standard technological measures in order to avoid the proliferation of new copyright levies that could have a potentially negative impact on economic growth, business investments and global competitiveness and potentially undermine remunerative business models. In this respect, the GBDe supports flexible arrangements between collecting societies and their members to support the introduction of DRMs.

5. Governments should carefully consider any legislation that deals with the issue of liability and should strike a careful balance between the legitimate business interests of the different stakeholders involved, including content providers, service providers and end-users. The principle of "immediate offender pays" should guide liability in a general context. This means that the person/party who commits the illegal act in the digital environment is the immediate offender and therefore should be primarily held liable for it. In specific cases, however liability could be shared by more than one offender or even go beyond the immediate offender.

6. Governments should provide rightsholders with effective and convenient ways of pursuing copyright enforcement actions in each jurisdiction where infringement occurs. Governments' action is required to encourage the improvement of judicial proceedings, remedies, and workable liability rules for copyright infringement in all countries, in order to achieve effective enforcement and deter infringement. Precise recommendations on enforcement are further elaborated in the enforcement paper.

7. Industry should consider the voluntary adoption of the GBDe's 2000 model IPR-specific notice and takedown procedures where such procedures do not currently exist, subject to any adaptations needed to accommodate different national legal systems. The adoption of such procedures, however, are contingent upon the legislative adoption of liability regimes providing for a safe harbor provision which exempt service providers from liability and/or damage claims resulting from expeditiously taking down or blocking access to allegedly infringing material – subject to general threshold conditions. Governments should acknowledge the legitimacy of such a safe harbor within their national frameworks.

8. Governments should actively promote public awareness of copyright and the legal framework which underpins IPRs. Public disregard for intellectual property ultimately jeopardizes the opportunity for consumers to enjoy the benefits of content distributed via new digital infrastructures. It must be clear to everybody, as part of general knowledge and education, that illegally copying a sound recording, a software program or other creative material is as much theft as, for example, shop-lifting.

Global Business Dialogue on Electronic Commerce

Intellectual Property Rights
Enforcement Recommendations
October 29, 2002

Leading Co-Chair (Europe/Africa)

Gunter Thielen
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IPR ENFORCEMENT ONLINE

The GBDe IPR Working Group has now covered general principles of IPR protection (1999), IPR-specific notice and takedown procedures (2000) and technological protection measures (2001)[14]. The natural progression was for the Working Group to look at enforcement mechanisms taking as a starting point the Paris Recommendations (1999). This paper concentrates on online enforcement only because of the GBDe scope of activities; off-line piracy remains a crucial problem, but will not be addressed here.

The digital environment offers a wide range of possibilities to all stakeholders. In particular, technical development has moved the Internet increasingly from a centralized structure where users consume 'flat' content offered by web sites to one where more powerful devices, with cheaper connectivity and faster transmission speeds, offer consumers access to richer online content. The advent of broadband promises ubiquitous access to all types of intellectual property in a manner previously not possible. This permits not only a greater dissemination of such intellectual property but also stimulates consumer demand for the devices and services that enable access.

Piracy and counterfeiting of intellectual property, however, risk devastating the development of sustainable online content distribution worldwide. A legitimate market for intellectual property online and relevant access devices and services can only reach its full potential if piracy and counterfeiting are adequately addressed. In the absence of effective enforcement against such activities, legal business online in intellectual property will not thrive.

The following recommendations cover three areas of particular importance in this respect: (I) the enforcement against the immediate infringer, (II) the definition of online piracy and counterfeiting with respect to criminal law and (III) the prohibition of circumvention, including circumvention technologies and services, of technological measures protecting intellectual property.

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[14] None of the previous recommendations are modified by this recommendation.

I. Immediate infringer pays

One of the principles underlying the 1999 GBDe Liability Issue Group statement and the GBDe IPR specific notice and takedown recommendation of 2000 is that of immediate infringer pays. This principle should guide liability in a general context. This means that the party who commits the illegal act in the digital environment is the immediate offender and therefore should be primarily held liable for it. In specific cases, however, liability could be shared by more than one offender or even go beyond the immediate offender.

Along the same lines, both the US Digital Millennium Copyright Act and the European Electronic Commerce Directive provide for conditional safe harbours from monetary damages related to copyright infringement for intermediaries if certain, specific conditions are met, with the rightholder still able to pursue the immediate infringer. Both instruments require intermediaries to take down or block access to infringing content hosted on their systems or networks, when having actual knowledge or awareness of facts or circumstances from which infringement is apparent in order to qualify for the safe harbour from liability for monetary damages, and both instruments provide for the continued availability of injunctive relief.

The principle of "immediate infringer pays" is a vital element of the overall framework in which rightholders can pursue pirates and counterfeiters with the co-operation of intermediaries protected by these safe harbours.

The following recommendations aim to clarify what is required for effective online enforcement of intellectual property rights.

1. Access to available data

It is necessary to identify the alleged infringer in order for rightholders to take appropriate action to enforce their rights. Such information may be available from an intermediary, a third party such as a law enforcement authority or from publicly available databases such as the WHOIS database.

The GBDe member companies agree that reasonable access to data relating to primary infringers is a vital component of online enforcement. This includes data relating to online transactions retained by third parties such as online intermediaries and to data obtained by law enforcement agencies in the course of an investigation. It is equally imperative that robust and efficient procedures are in place for law

enforcement and civil parties to request the lawful disclosure of data required in evidence, together with immunity from liability for such disclosure and an appropriate mechanism for the reimbursement of additional costs incurred by intermediaries, such as service providers.

2. Data Retention and Preservation

Technical data such as IP addresses or the domain name are critical in the investigation of IPR infringements online. Matching information enabling the identification of the pirate or counterfeiter will usually be held by third parties, such as service providers or other intermediaries. If such data is unavailable, the perpetrator may not be identifiable and an investigation cannot progress.

The GBDe feels that data relating to the identification of infringers, where kept by online service providers or other intermediaries in the normal course of their business, or where preserved by them in response to a request by an authorized entity for the purposes of an infringement action or criminal investigation, should, be available for the purpose of enforcing rights, to the extent possible and in a way which is not unreasonably burdensome. Governments should seek equitable cost recovery mechanisms for intermediaries assisting in making such data available. The GBDe recognises that the availability of data stored and processed by intermediaries is subject to the limitations of data protection law in many jurisdictions.

3. Data Protection

Data Protection is an essential part of the legal framework for electronic commerce and vital to gain consumer confidence. Only if consumers feel confident in the digital environment will electronic commerce really flourish. Indeed, the GBDe has agreed on a number of important principles relating to data protection in business to consumer relationships.[15] This goal is compatible with protecting intellectual property on the Internet which should also promote consumer confidence and the flourishing of e-commerce. Data protection law permits derogations so that data can be disclosed for enforcement purposes, such as piracy investigations, while balancing the interests of data subjects.

The GBDe believes that data protection rules can and should be interpreted and applied to take account of the needs of IP enforcement including

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[15] GBDe Recommendations on Consumer Confidence.

appropriate data access and preservation.

II. Criminal Piracy and counterfeiting in a network environment[16]

Piracy and counterfeiting are major problems for the IPR industries. Each year, IPR industries lose billions of dollars as a result of such criminal activities. Independent sources estimate that 350,000 movies are downloaded each day.[17] It is estimated that in May 2002 there were approximately three million users and 500 million files available for copying at any one time on all of the peer-to-pear services worldwide.[18] The problem is even more acute because of the speed of transmission, the quality of the content transmitted and the global nature of the Internet. Pirates and counterfeiters can reach a global public at minimal cost and lower risk of detection. With the advent of broadband, this phenomenon could further escalate.

The changing character of content distribution may require a clarification of what constitutes criminal infringement or counterfeiting. While both activities have limitations in the analogue world, more substantial harm can be done in the digital world by the unlawful reproduction and distribution of intellectual property belonging to others.

Traditional definitions in criminal law of piracy and counterfeiting sometimes include the requirement that it is done "for profit" or "on a commercial scale" in the sense that the motivation of the perpetrator is economic gain. This standard has already reached its limits in the analogue world, and the problem is more significant in the digital world. Today's technology allows anybody to act as a distributor of digital content without prohibitive costs. It is therefore more

common for online pirates and counterfeiters to be individuals rather than commercial entities.

The solution to this problem lies in a clarification of what constitutes piracy or counterfeiting.

The GBDe members agree that the primary point of orientation for a definition of piracy or counterfeiting in criminal law should be the wilful or intentional violation of the underlying intellectual property rights. The subjective motivation of the infringer, whether to make a direct or indirect commercial profit or simply to cause mischief, should not be determinative. TRIPS Members should provide for criminal liability where significant harm is caused to rightholders by wilful infringement of intellectual property rights.

III. Development and protection of technological protection measures

The deployment of standard and interoperable technological protection measures agreed by industry will also be a critical element in the fight against online piracy. The need to promote development of such measures, their scope of application and requirements as well as their appropriate protection are an essential element of the GBDe 1999 and 2001 Recommendations to which reference is made.

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[16] The GBDe is not proposing any change to the scope of IP rights and exceptions under national law and international treaties. Only conduct that does not fall within such exceptions can constitute infringement.
[17] VIANT (Boston-based consultancy)
[18] IFPI Privacy Report 2002

Global Business Dialogue on Electronic Commerce

Taxation
Recommendations
October 29, 2002

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INTRODUCTION

Tax policy will greatly impact the potential growth of the emerging networked economy. To ensure this growth, government and industry must work together to create a tax system that stimulates this digital marketplace. The GBDe recognizes that tax policy must address governments' legitimate need to collect tax revenues to fund public services and eliminate competitive distortions faced by local industries. To find tax solutions that balance these national interests with global realities, the GBDe is committed to participating in government / industry dialogues on this critically important issue on an international, regional and national basis.

BASIC TAX PRINCIPLES

The GBDe recommends that governments rely on the following basic principles as they develop tax policies for the networked economy:

1.   Neutrality: Tax policy must not penalize businesses and consumers who choose to conduct transactions electronically rather than through traditional channels of commerce. Goods or services should receive the same tax treatment regardless of delivery method, and compliance burdens and costs should not be heavier for businesses and consumers who conduct business electronically than for those who engage in traditional commerce. Double taxation, double non-taxation (e.g.

instances where consumption taxes applied to a set of transactions where the supply rules inadvertently result in no country having jurisdiction to tax) and other competitive distortions should be avoided.

2.   Simplicity: The rules for taxing all forms of commerce, including Internet-enabled transactions, should be simple, clear and easy to apply. Governments must dramatically simplify their tax systems, and ensure that compliance burdens do not discriminate against businesses and consumers who conduct transactions electronically whether within a country or outside of a country. Tax authorities should also take advantage of new technology to reduce the costs of complying with tax rules.

3.   Fairness: No single category of e-commerce operators should be penalized by the allocation of tax burdens. The liability for collecting taxes on virtually traded goods should not be forced upon financial intermediaries, providers of electronic infrastructure or other parties who are not liable for taxes on similar conventional transactions. Research should be undertaken to investigate the technical possibilities of developing automated tax systems that would efficiently distribute compliance burdens.

4.   Enforceability & Technological Efficiency: The emerging networked marketplace creates difficult enforcement challenges for today's tax systems. The GBDe recognizes the competitive issues that may result and believes that government and industry must take care to develop credible and low cost compliance models to secure effective tax collection. Such models should be reasonable, technologically feasible, and free of undue burdens or economic distortion. The GBDe endorses the ongoing work of the Organization for Economic Cooperation and Development (OECD) to address this issue in a systematic and global fashion.

5.   International coordination & consistency: Tax policy worldwide must be coordinated and consistent with a model that can be implemented on a global basis. Again, the GBDe endorses the OECD as an appropriate venue for this coordination to occur. Unilateral action on the part of individual governments should be consistent with OECD guidelines and Model Tax Conventions.

6.   A tax framework adapted to the networked economy: Governments should understand the impact of taxation policies on the growth of the networked economy. For instance, one of the most important tools companies have

is the manner in which they compensate employees. Employee participation in companies' profits and value-creation is today indispensable, and equity compensation such as stock options is used by a large number of global enterprises. In this respect, the tax treatment of equity compensation in many countries is a serious concern for companies with global activities. Furthermore, governments should not hinder companies from educating and preparing their employees for the revolutionary changes of the information society.

GLOBAL INDIRECT TAXATION

The GBDe recognizes governments' legitimate right to enforce consumption taxes on transactions involving customers within their borders. In Asia, Latin America, and Europe, most nations currently have some form of national consumption tax that is applied to both online and offline sales. For most electronic commerce transactions, consumption taxes can easily be levied on goods ordered online but physically delivered to consumers. For business-to-business sales there similarly are no substantial compliance concerns. However, when sales occur directly between an online vendor of digital goods (music, video, software, books etc.) in one country and individual consumers in another country, governments will be challenged to collect consumption taxes on these sales and will understandably seek to prevent competitive distortions, ensure a tax-neutral market environment and protect existing revenues.

The GBDe urges the EU, the US and other governments to move forward to create a system that is enforceable, easy to adopt and administer, fair and commercially viable on a global basis. We endorse the ongoing work of the OECD to assist governments in applying globally accepted e-commerce taxation principles to national tax systems and avoiding a patchwork of inconsistent national tax laws or compliance requirements that are not technologically satisfiable today.

AMERICAS

Canada

The Canada Customs and Revenue Agency ("CCRA") has released a discussion paper on the application of its value added tax ("GST") to electronic commerce. The principles are likely to be equally applicable to the sub-national VAT's but not the non-VAT sales taxes.

It is primarily based on OECD principles but has a number of departures, primarily related to the

characterization of items as services versus intangible personal property. A characterization as intangible personal property makes international e-commerce much more difficult. The report was developed with mixed private sector/public sector technical advisory groups. There were a number of non-consensus positions, particularly in this area. The government position appears to lean to a characterization as intangible personal property which would not advance e-commerce.

The report has developed one concept that appears unique to Canada. For the purpose of establishing whether an e-commerce party is carrying on business in Canada, it recommends a "place of operations" test. This requires a facts and circumstances review of a number of factors. While attractive in theory, its application would be difficult and inconsistent with the principle of simplicity. The test includes considering at least ten factors which are not weighted in the report.

The report acknowledges difficulties in meeting OECD standards under current legislation but, surprisingly, makes no recommendations for legislative action.

Those sub-national sales taxes that are not VAT based tax a fairly limited range of services. One area they do often deal with is computer services. This area is particularly difficult. The largest jurisdiction imposing such a tax has commenced a review of its law in this area.

United States of America

In the United States, the policy focus has been on whether remote vendors (i.e., vendors that do not have a physical presence in a particular state) should be obligated to collect and remit sales and use taxes for the benefit of states in which they sell goods to consumers but otherwise have no physical presence. A vendor currently is only obligated to collect and remit sales taxes on sales to customers in states in which the vendor has a physical presence because of a U.S. Supreme Court decision that said such an obligation would pose an unconstitutional burden on interstate commerce, due in part to the complexity created by differing state and local sales tax laws.

State governments, concerned about the potential loss of revenue from remote sales, have urged the United States Congress to require that remote vendors, including those doing business via the Internet, collect and remit sales and use taxes in all states. To date, the U.S. government has taken a wait-and-see approach to this issue - it appointed an advisory commission which was unable to achieve sufficient support for any formal recommendations, and therefore passed a moratorium on the imposition of new or discriminatory taxation of electronic commerce. This moratorium does not address or change current rules governing sales tax collection. The October 2001 deadline for the moratorium's expiration, however, is creating momentum for numerous competing proposals in the U.S. Congress to extend the moratorium and reform state sales and use taxation. The US moratorium on new taxes on Internet access has been continued until November 1, 2003.

The pressure of impending Congressional action has spurred a voluntary state tax reform effort involving over half of the states (the "Streamlined Sales Tax Project" or "SSTP"), which are considering model legislation to simplify and modernize sales and use tax administration.

US sub-national units cannot levy sales and use tax without a substantial nexus because the US Supreme Court has held this to be an unacceptable clog on interstate commerce. These units are very much concerned about the loss of revenue and the competitive imbalance for their home vendors, not only because of the new forms of commerce but also because of older mail order operations (which have enhanced their operations electronically)

In order to either meet the US Supreme Court test or to persuade the US Congress to pass an authorizing law, a number of states have supported the Streamlined Sales Tax Project. This is intended to develop, among other things, a common dictionary of terms and an easier method of determining and collecting tax. Approximately thirty-eight states are involved.

While progress has been made, there remain substantial obstacles to achieving a truly uniform system. It appears to be the hope that a sufficient degree of uniformity can be achieved to allow a technology solution to be implemented.

A small technology project has now been running for over a year.

The objective is to have a system in place by December 31, 2005.

Latin America

The tax environment in Latin America is not generally favourable for facilitating e-commerce.

Latin America is generally characterized by a fluid tax environment with less developed tax infrastructures. Only Mexico is a member of the OECD and generally, the tax treaty network is

limited. These countries rely substantially on withholding taxes to protect their fiscal territory. There are numerous sales taxes, both VAT and non-VAT, including a large number imposed at a sub-national level.

GBDe Comments on Developments in the Americas

Both Canada and the United States' subnational transaction/consumption tax systems illustrate the difficulties inherent in imposing cross-border tax collection obligations in the context of remote sales. The issues faced by these two countries highlight the importance of ensuring that any global consumption tax collection regime be able to address variations in the consumption or transaction tax systems of countries at both the federal level and subnational levels and the need for a technologically feasible, commercially viable tax collection regime.

The GBDe endorses an extension of the current U.S. moratorium on new and discriminatory taxes on the Internet. Such a moratorium is not intended to avoid tax responsibilities or the collection of consumption taxes legitimately owed, but would allow for a thoughtful and global response to Internet taxation and give states and localities time to dramatically simplify their sales tax systems. GBDe supports substantial simplification of state sales tax systems, as well as clear jurisdictional standards. GBDe also endorses efforts to eliminate taxes on Internet access.

Europe/Africa

According to the former intra-community VAT rules, businesses established within the EU had to charge VAT on downloadable products delivered to businesses or end-users, regardless of whether they are located inside or outside the EU. On the other hand, non-EU businesses did not have to charge VAT on downloadable products delivered to end-users established within the EU. This situation concerned European governments and businesses for two reasons: 1) the potential loss of revenue, which is now widely acknowledged to be quite small (regardless of the importance of the underlying turnovers for the respective company); and 2) the creation of a non-neutral environment. For example, a German provider would be obligated to charge consumption taxes on a sale of software downloaded to a German consumer. However, a United States vendor of a similar product would have no obligation to collect the VAT. Hence, there is a competitive distortion based on tax treatment.

On May 7, 2002, the European Council published a Directive regarding the value added tax arrangements applicable to radio and television broadcasting services and certain electronically supplied services[19]; in the same context and on the same day a Council Regulation for the administrative cooperation in the field of indirect taxation (VAT) as regards additional measures regarding electronic commerce was published[20].

The Directive consists of two basic parts:

- Place of Supply Rule for Electronically Supplied Services: In case of a service performed for a "non-taxable person" (i.e. basically business to consumer) by a "non-established taxable person" (i.e. basically suppliers from outside the European Community) the place of electronically supplied services shall be where the non-taxable person is established, has his permanent address or usually resides. According to an Annex electronically supplied services can be – inter alia – web-hosting, supply of software, information, music, films and games.
- Special Scheme for Non-Established Taxable Persons Supplying Electronic Services to Non-Taxable Persons.

The European Union, through its controversial proposed Amendment to the Sixth VAT Directive, is the first government to attempt to address this issue legislatively. The EU directive would require online sellers of digitized goods and services to register for VAT collection purposes in a single EU member country. The non-EU vendor would be obligated to collect and remit VAT to the country in which it registered for all sales to EU consumers.

GBDe Comments on Development in Europe/Africa

The GBDe appreciates and understands the EU's rationale for amending the Sixth VAT Directive in order to collect taxes that are legitimately owed. However, the Directive leaves some critical issues unresolved, including liability issues for companies making good faith efforts to collect taxes given the limited technological capabilities in existence today, the enforceability of an essentially voluntary system and the continued presence of competitive distortions for some stakeholders.

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[19] Council Directive 2002/38/EC of 7 May 2002, OJ L 128, p. 41.
[20] Council Regulation (EC) No 792/2002 of 7 May 2002, OJ L 128, p. 1.

In all regions, a number of firms are actually engaged in the production of digital products. Many of these firms are small and medium size enterprises (with less than 100K European sales) for whom compliance with the EU VAT directive will be particularly problem and costly.

The GBDe remains concerned that the proposed taxation of digital information is inconsistent with the principle of neutrality in that online and offline versions of similar products will be treated differently for tax purposes even though consumers would purchase the products for the same purpose. For this reason, the GBDe urges the EU to review the so-called Annex H of the Sixth VAT Directive, so as to ensure fair and non-discriminatory VAT treatment of goods and services ordered online whenever off-line substitutes are subject to a lower VAT rate for various policy reasons.

The GBDe urges the EU Commission and the Member State governments to address the real "doing business" issues to make complying with the EU VAT system easy, commercially viable and technologically feasible. Companies should only held liable under these preconditions.

As the issue of majority voting on taxation issues regrettably was left undecided by the Nice Treaty we also urge the Member States to tackle this issue at the forthcoming Intergovernmental Conference in 2004, with the objective of harmonizing VAT rates in Europe, or alternatively to use the procedures of enhanced cooperation to achieve this purpose within a first group of Member States. The GBDe also invites the EU to identify potential ways to eliminate or reduce any competitive distortions, such as applying a single rate for all digitized sales into the EU by all vendors. From a broader perspective, the GBDe supports the EU's goals of achieving simplification and easing the burden of compliance, but remains concerned that the current Directive will discourage tax authorities from efforts to develop a global solution to these issues, and will create an unfortunate precedent for other jurisdictions.

The GBDe recognizes that recent proposed amendments have been a first step in a long process, and that a great deal of continued dialogue will be necessary to adequately resolve the range of concerns. In this context, the GBDe would welcome the opportunity to enter into a direct dialogue with the EU and separately with any other governments around the world to discuss the kind of tax regime for e-commerce that would benefit all stakeholders.

ASIA/OCEANIA

The GBDe conducted a survey of VAT in each country of Asia/Oceania Region (see p. …). It has turned out that compared with ones in the EU member states, the rate of VAT is relatively low in the Region except for China (17%) and New Zealand (12.5%). In some countries such as Malaysia and India, the VAT legislation itself has not yet been installed. Therefore, the issue of VAT to be levied on online digital product has been paid a very low attention in this region.

China

In China, VAT (Value Added Tax) is separated from Consumption Tax. Which of VAT and Consumption Tax will be levied is determined, depending on the nature of goods and transactions. However, it is very rare that both of VAT and Consumption Tax are levied at the same time.

China recently announced its intent to ensure its consumption tax system is applied to online sales. Regulations are currently being developed toward this end.

India

In India, at present in respect of e-commerce transactions, where transaction is concluded online and goods are delivered physically, in case of domestic sales, either central sales tax, state sales tax, as may be applicable, is levied, whereas, in case of international sales, custom duties shall be applied. The rate of duty applicable shall depend upon the commodity sold and the tax specified in respect of that commodity under the relevant act. In respect of sale of digital goods, where the goods are transferred online, at present there are no specific provisions in respect of taxation of such transactions.

a) Sales tax: In India sales tax is levied by the respective states under the state sales tax laws, and also by the centre under the Central sales tax act. State levies sales tax on the sales taking place inside the state and the sales taking place in course of inter state trade & commerce are taxed by the centre under the central sales tax act.

Where sales take place in course of import/export, no tax is levied under the central/state sales tax acct.

b) Custom duties: are levied on imports into India at the rates specified in the custom tariff act in respect of the commodity imported.

c) Concept of VAT: VAT is a form of sales tax only. This concept is in the process of being conceived and at the movement, and it is endeavor of government to switch over to VAT from April 2003 onwards.

Japan

The Government of Japan (GOJ) officially agreed to the recommendations of the OECD Working Party 9 on Consumption Taxes and OECD Consumption Tax Technical Advisory Group (TAG), namely, a simplified registration-based collection system for the business to consumer transactions. Japan, as one of the major consumption tax system countries, shares European concerns , which are the potential for (i) distortion of competition, and (ii) significant present or future revenue loss. However, even when the GOJ decides to implement national legislation to adopt the OECD-recommended simplified registration system, it will find it difficult given the conditions set out by the OECD for establishment of such a system. These conditions are (i) minimization of compliance burdens, (ii) application of registration thresholds, and (iii) control and enforcement measures to ensure compliance. Given the current situation where a simplified registration system will be hard to implement in practice, it would be worthwhile to undertake a study of technology-based options for medium-term tax collection systems, as the OECD recommended. Otherwise, other stakeholders in countries without consumption tax systems will press for a permanent standstill (i.e., no indirect taxation of digital goods on a cross-border business to consumer basis).

The Ministry of Economy, Trade and Industry of Japan (METI) recently submitted a proposal for such technology-based options to the OECD, in response to the OECD's request for public comments on the Working Party 9 and Consumption Tax TAG reports. The Japanese proposal focuses on reducing burdens for tax collection for business and consumers, and also aims at minimizing complex national sovereignty problems. In its proposed "Multinational Hybrid" concept, a vendor who transacts with a consumer submits a transaction report to a newly established "Global Vendor Registration Body" based on multinational agreements as an alternative to the usual national registration model.

The "Global Vendor Registration Body" then forwards the notices with the transaction report to both the taxation authorities of the countries of the vendor and consumer, and to the consumer in the consumption country. The Trusted Third Party (TTP) in the consumption country collects the consumption tax from the consumer and remits it to the taxation authority in the consumption country. The taxation authority then matches the amount remitted with the transaction report received from the Global Vendor Registration Body. In this proposed system - in contrast to those called for under the EU Sixth VAT Directive or the simplified registration system as recommended by the OECD - the vendor does not necessarily have to register in each taxation authority in the more than 100 VAT countries (thereby reducing compliance burdens on business). Moreover, the vendor is not subject to the direct enforcement powers of the taxation authority of the consumption country, thereby minimizing sovereignty problems.

Korea

In Korea, the Ministry of Finance and Economy announced in 2001 that it would levy a 10% VAT on online digital product, but the discussion was shelved.

Philippines

In the Philippines, VAT on physical product has already been introduced. The Taxation Office has eagerly discussed the electronic commerce taxation legislation since last year so that VAT could be levied on online digital product as soon as possible. It is expected that VAT on online digital product will be introduced soon.

Taiwan

In Taiwan, no explicit legislation has yet been introduced for VAT to be levied on online digital product. However, on a customary basis, the domestic vendor of online digital product would collect 5% of VAT from the customer and pay to the taxation office. As for the cross border transaction of online digital product, the vendor is expected to report the case to the local taxation office and to follow their instructions.

GBDe Comments on Development in Asia/Oceania

The GBDe appreciates and understands the concerns of Asian countries with a VAT system (e.g. China, Japan) regarding the distortion of competition and possible revenue losses. The GBDe is committed to working with all governments in Asia (and around the world) to develop the tax regime that advances and promotes e-commerce while at the same time addressing governmental concerns.

Regarding Japan the GBDe seeks to continue work with the OECD in its examination of the mid-term technology-based options (including METI's proposal), in order to move beyond the current de-facto moratorium as soon as possible.

OECD

International consensus is critical to ensure that e-commerce taxation is neutral, enforceable and easily administered. If each of the 100+ VAT jurisdictions (*e.g.,* Japan, Australia, Canada) impose different collection systems, businesses would face a high level of complexity and the potential for double or discriminatory taxation. This would discourage the kind of cross-border transactions that e-commerce enables which benefit both consumers and businesses alike.

To prevent this outcome, government and industry must continue to work toward long-term solutions for indirect taxes. For example, the OECD Technology TAG has identified four collection model options, including self-assessment, tax at source and transfer, registration of non-resident vendors, and the use of third party intermediaries. The TAG has recommended the tax-at-source option for business-to-consumer transactions combined with a trusted third party clearinghouse system. It observed that registration of nonresident vendors raises significant problems with regard to verifying the location of consumers. These recommendations require and merit further study by all stakeholders in industry and government.

The OECD Working Party 9 on Consumption Taxes and the OECD Consumption Tax TAG have issued similar reports calling for a clearer definition of taxation in the place of consumption, and recognizing the practical difficulties inherent in the application of traditional consumption tax principles to the delivery of services in electronic commerce, and in the registration and collection process. For business to business transactions, the reports support jurisdiction to tax based on the location of the recipient's location, with a reverse charge or self-assessment collection system. For business to consumer transactions, they recommend jurisdiction based on the recipient's usual residence, and a simplified registration-based collection system, but recognize the difficulties in identifying an online customer's jurisdiction. The reports suggest the interim use of technology-based collection mechanisms, such as trusted third parties or digital certificates, but recognize the lack of effective technological tools at this time.

The GBDe supports the conclusions of both reports that further efforts are required to define the place of consumption, particularly regarding businesses with multiple locations and the definition of "usual place of residence" for consumers. We urge tax authorities to cooperate on such definitions and any anti-avoidance measures to limit the possibility of double taxation. We urge the adoption of safe harbor provisions that protect businesses from liability once they have taken reasonable steps to identify customers and jurisdiction. The GBDe cautions that international cooperation is needed to ensure that the obligations placed on multinational businesses are consistent with the principles and goals of other international organizations. We strongly believe that evolutionary changes in the tax system should not force businesses to make frequent and costly business changes or technological investments for tax reasons alone. Consequently, short-term solutions to difficult issues such as verification of residence must be balanced with the burdens and costs imposed by compliance methodologies. We urge a renewed focus on simplification as a vital means of achieving widespread compliance. Finally, the GBDe applauds the recommendation in both reports that the business community plays an active and important role in the ongoing work in developing consumption tax standards for the networked economy.

The GBDe urges the OECD to discuss bi- or multilateral treaties to avoid double taxation under VAT regimes. If a global legislation standard is not possible these treaties and a commentary with common interpretation could solve many problems caused by competing VAT legislation.

GLOBAL DIRECT TAXATION

Direct (e.g. income) tax rules governing traditional commerce typically required some degree of physical presence before taxation can occur. The Internet allows enterprises to conduct business in remote jurisdictions, causing authorities to re-examine these rules and their application in an online environment. Areas under scrutiny include permanent establishment, how to characterize income earned online, and transfer pricing.

Americas

Canada

Canadian authorities have accepted the recent work of the OECD in regard to eCommerce. However, as no treaty or legislation has been changed, it remains to be seen if the courts will accept these positions.

Canada has removed its observation to the Commentary on Article 12 of the OECD Model Tax Convention on Income and Capital (April 29, 2000 condensed version) concerning the taxation of royalties to bring Canada closer to the international standard in regard to withholding on computer software. It has also expanded the countries for which no withholding is required through treaty negotiation although the list remains short.

Canada has become increasingly vigorous on its requirement for withholding (on an installment rather than final tax basis) for services performed in Canada. It applies, subject to certain very limited administrative relief, even where no permanent establishment exists. The recent OECD positions may expand the impact of this requirement.

United States of America

International treaties do not bind United States sub-national units. They are generally suffering a revenue shortfall and have tried to extend their taxing jurisdiction over activities where the connection is relatively slight. While the results have been mixed, they have not been without success.

A new area of concern in the area of electronic business is the potential double taxation of telecommuting employees. New York in particular has been successful in taxing employees resident and operating outside the jurisdiction where their connection with the New York office is substantial.

Asia/Oceania

India

The Indian Income tax department has identified the electronic transactions carried on by MNC's, viz. credit card companies, and airline reservation companies (CRS) as a major source of revenue. In such transactions the CRS companies facilitate the global reservation of air tickets by the agents world over, for which they use a CRS HOST SYSTEM which is located in a country outside India, which may or may not be residence of the CRS company, and the information can be accessed to by the travel agents through a router located in the India. The tax authorities, have sought to tax the booking fee, which originated in India as incomes of CRS companies, and it has been justified on the ground that the presence of router of CRS Company in India, constitutes its PE (permanent establishment). This position adopted by the tax authorities can be countered on the ground that, mere presence of router cannot constitute PE. As per the definition of the PE also, mere presence of equipment cannot constitute PE unless some business activity is carried through PE. Additionally routers do not form a significant part of equipment, used for conducting business, and the activity carried through routers is auxiliary in nature and may not constitute a PE. Therefore CRS companies have tightened their belts for a long legal battle, and some are also invoking the mutual agreement procedure under DTA,

A high powered committee has been set up by the Central Board of Direct Taxes to study and recommend the mythology for taxation of e-commerce transaction. Such a committee has submitted its report in September 2001, which is now under consideration.

OECD

Permanent Establishment

A company must have a minimum threshold of activity and presence to be liable for income taxes in a tax jurisdiction. In the international tax arena, this threshold is known as permanent establishment (PE) and is governed by international treaties and domestic law. PE typically includes a fixed place of business (*e.g.,* factory, office, workshop) used by a foreign enterprise for more than some minimal period of time. However, an enterprise can also establish PE if it uses agents to conclude contracts on its behalf in a jurisdiction where it otherwise has no physical presence. For example, if a vendor hires a contractor to close sales in a foreign country, that vendor can have PE. Activities that are preparatory or auxiliary in nature to an enterprise's core function are generally excluded from any determination of PE.

Electronic commerce does not require fundamental changes to PE rules. Abandoning existing tax principles could lead to discriminatory tax treatment of Internet-related activities.

Interpreting PE rules is already a complex endeavor, even in traditional commerce (*i.e.*, the definition of a "fixed place of business" or "preparatory or auxiliary" activities). The ability of enterprises to reach new markets using the Internet, without the large-scale infrastructure investments common to traditional commerce, raises even more questions regarding PE rules.

The Committee on Fiscal Affairs of the OECD, on recommendation of Working Party 1, has adopted changes to the commentary language on Article 5 of the OECD Model Treaty regarding permanent establishment. The GBDe is encouraged by the

language indicating that Internet service providers do not constitute dependent agents or PEs for enterprises that carry on business through a hosted web site. The GBDe is also encouraged by the conclusion that the mere presence of a web site alone will not create PE for its owner. However, the GBDe is disappointed that the CFA has taken the aggressive and unprecedented position that the mere presence of "machinery or equipment", such as a server, may constitute a PE when it performs an essential or core part of the taxpayer's business activity, terms which remain undefined. This controversial proposal deserves further examination with input from the business community and the Business Profits TAG.

Moreover, this conclusion that a server can constitute a PE is a threshold to further complex issues for the Working Party as to how income is to be allocated to a server which has been determined to be a PE. In conjunction with its work on permanent establishment, the Business Profits TAG has issued a discussion draft noting that the CFA is considering changes to the Model Treaty commentary urging the application of the arm's-length principle in a manner that reflects economic reality, although it notes the lack of consensus as to how much and which profits can be attributed to a PE, and the many difficult practical questions yet to be addressed in applying the arm´s-length principle.

The GBDe notes with interest and concern the adoption by the Committee on Fiscal Affairs of the OECD of recommendations by Working Party 1 to supplement the commentary on article 5 of the OECD Model for Tax Conventions relating to the definition of permanent establishment in the context of electronic commerce. Their conclusions raise several issues that may have dramatic consequences for businesses.

As in the transfer pricing area, the GBDe believes that the governing principle should continue to be the elimination of double taxation in a manner which minimizes compliance burdens. The GBDe urges the Business Profits TAG to work closely with the business community as it considers these difficult issues.

Characterization of Income

Many types of products can be digitized and transferred electronically, including computer programs, books, music and other types of images (*e.g*., motion pictures, videotapes, etc.). These types of transactions have occurred for many years in more traditional formats and going forward will increasingly continue to occur in electronic and non-electronic form. Accordingly,

any changes to be effected in the tax rules involving these data transfers must accord neutrality of treatment to non-electronic transactions as well as to their electronic counterparts.

Rules governing income characterization should treat similar products and services neutrally. The GBDe does not believe that new rules to govern the classification of income are necessary. Instead, a facts and circumstances approach would ensure equal treatment of business activities, and would decrease the likelihood of double taxation of e-commerce generated income. The GBDe endorses the clarification work of the OECD Income Characterization TAG as it identified the range of e-commerce transactions and worked to reach consensus on how each should be classified for income tax purposes.

The GBDe remains concerned, however, with unilateral efforts to sweep the full range of digital products into one particular category, as doing so can lead to non-neutral tax treatment of these products. The GBDe prefers the facts and circumstances approach being utilized by the Income Characterization TAG as a more thoughtful means to classifying Internet-related activities, and cautions that uniform characterization principles are essential to avoid double taxation.

Transfer Pricing

The Business Profits TAG has reported that it will continue its ongoing work regarding transfer pricing issues relating to the allocation of income between affiliated companies engaged in electronic commerce. The TAG has yet to publish proposals in this area, which in any event we presume will be substantially shaped by the existing OECD guidelines and the ongoing efforts of Working Party 6. The TAG has stated that its work will be informed by feedback from the business community as to the priority issues.

The GBDe believes that the existing arms-length principles continue to be relevant in the networked economy, that the focus should continue to be the elimination of double taxation, and that efficient dispute resolution and compliance burdens continue to be key issues in the transfer pricing area.

GLOBAL TAXPAYER SERVICE

Several governments and government organizations are attempting to make use of available technology in the administration of their

tax systems in order to improve taxpayer services and collections. The OECD´s Forum on Strategic Management has issued a report: "Tax Administration Aspects of Electronic Commerce, Responding to the Challenges and Opportunities" in February 2001, which deals with:

- taxpayer service,
- tax administration, identification & information needs; and
- tax collection and control; as elements of tax administration.

As implementation options with respect to taxpayer services, the FSM identifies:

- developing Internet web sites where information, such as tax legislation, rulings, case law, revenue statistics and forms can be viewed and down loaded.
- interactive telephone answering systems for many standard inquiries.
- a single e-mail access point for highly mobile taxpayers.
- receiving and responding to taxpayers' service enquiries by e-mail.
- direct deposit programs for tax payments and refunds.
- accepting tax return data and other information by use of the new technologies.
- automated payments of social security, payroll taxes and other similar deductions.

Similar approaches are being discussed globally by national tax authorities.

The GBDe supports current work on taxpayer service models as an important complement to existing discussions on national income and consumption tax regimes. The GBDe urges government to prepare a roadmap from which unilateral national taxpayer services can be multilateralized on the basis of globally agreed standards. The GBDe is prepared to start work on these models with governments and government organizations and to contribute to the technical possibilities for making such taxpayer services systems a reality.

CONCLUSIONS

The GBDe encourages governments to work with industry to craft a long-term tax system that eliminates competitive distortions and adheres to the principles of simplicity, neutrality and global viability. We strongly recommend extensive government-to-government discussions, which will minimize the likelihood of potentially conflicting national approaches. By fostering the continued growth of our networked economy,

such international dialogue will benefit governments, merchants and consumers alike.

Global Business Dialogue on Electronic Commerce

Trade/WTO
Advocacy Report
October 29, 2002

Leading Co-Chair (Americas)	*Dean R. O'Hare* Chairman & CEO The Chubb Corporation
Co-Chair (Asia/Oceania)	*Yukio Shotoku* Managing Director Matsushita Electric Industrial Co., Ltd.
Co-Chair (Europe/Africa)	*Gina Nieri* Executive Director & Member of the Board Mediaset S.p.A

INTRODUCTION

The Trade/WTO Working Group's primary task during 2002 was to advocate the principles and recommendations arrived at the annual conference in Tokyo 2001. The Working Group did so in many private and public ways, within other business coalitions and with government officials and trade negotiators. Highlights include:

- Trade Facilitation Letter – Following the fall 2001 publication of the final text on "Services and Electronic Commerce" of the WTO Ministerial Declaration, of the new round of global trade negotiations, the Group helped prepare a letter sent by the GBDe to the trade ministers of over 100 countries. It urged attention to the importance of e-commerce to today's trade community and to economic growth, stressed the importance of existing trade agreement disciplines applying to e-commerce and called for governments not to create new and discriminatory barriers to e-commerce. Trade Commissioner Pascal Lamy, Europe's chief trade negotiator, and US Secretary of Commerce Donald Evans were among those that responded with thoughtful support for GBDe e-trade principles and recommendations.

- Berlin (November 2001) and Manila (March 2002) Sherpa Meetings – Private dialogue with government officials of Europe, Asia, and the Americas.

- Tokyo (January 2002) – Discussions with the Trade Policy Bureau, Multilateral Trade System Department of the Ministry of Economy, Trade and Industry (METI) regarding electronic commerce in the coming WTO service negotiations.

- GBDe – EU Expert-level Meeting European Parliament – At the end of May 2002, a delegation of the Trade Working Group, led by Mediaset, spoke at an "expert-level" meeting between GBDe and members of European Parliament and the Trade and Information Society DGs of the European Commission. Speaking on "Electronic Delivery of Digitized Products", Mediaset's representative stated that; "The current classification of goods for international trade purposes falls short in its ability to ensure non-discriminatory treatment of electronically tradable, digitized products" and the ambiguity creates business uncertainty for e-content providers. In the case of software, for example, it was stressed "that the existing classification system has to be revised in order

to ensure adequate and non-discriminatory treatment of tradable, non physical data for electronic distribution purposes." Further the GBDe urges governments to refrain from extending arbitrarily the scope of the audio-visual services sub-sector to new services. Extending audio-visual regulations to non-audio-visual works might seriously impede trade in digital content.

> In the ensuing dialogue the EU officials expressed the wish for more guidance from the GBDe on the classification issue, but in recognising the political dimensions of the discussion, they challenged the group to identify specific country trade barriers to e-commerce to help guide negotiators in the WTO.

- DC Sherpa Meeting (July 2002) – A similar trade presentation was given by a representative of The Chubb Corporation on behalf of GBDe's Trade WG before officials of the US, Japanese and European governments, who were in Washington DC for government-to-government trade discussions.

STATUS OF WORK PLAN AGENDA

- **Classification**

The Working Group made a commitment at a GBDe meeting in Manila during March 2002 to try to deal with the ambiguity and uncertainty surrounding the classification issue, particularly the classification of digital goods such as software. It was discovered that "classification" depends on typology and that a case-by-case approach, as desired by government officials, does not provide predictable rules. There are advantages and disadvantages to categorising digital products one way or another in trade – in terms of GATT or GATS treatment and with implications for tariff and tax assessments in each country GBDe members favour different approaches depending on how their businesses might be effected by policy choices. Of particular concern, is the implication of classifying some software as audio-visual services, which potentially leads one down a path of new barriers, which many would want to avoid.

Leaving the details to the negotiators and the bargaining that is part of any trade negotiation, the GBDe reminds negotiators of the power of e-commerce in global trade terms and its potential for stimulating growth particularly in disadvantaged societies. Reiterating its support for the principles and recommendations articulated in Tokyo, the GBDe continues to believe that domestic regulations and trade regimes negotiated should be

"least trade restrictive, non-discriminatory, transparent and promote an open market environment".

- **Trade Barriers**

As a result of requests by various government officials, the Trade/WTO Working Group undertook to examine particular "trade barriers" to e-commerce. The GBDe has sampled several countries to see if helpful patterns emerged to guide its research for the remainder of the 2003 work program. The GBDe has left aside comments on barriers to foreign direct investment in basic telecommunications sectors and cultural content restrictions except to say that these are well-known public-policy issues that will be dealt with in due course by trade negotiators and governments. Most of the categories highlighted below do not relate to e-commerce *per se*, but rather to barriers that present particular problems or dilemmas for e-providers or become potential barriers if extended to new media. The information was drawn from more detailed country studies undertaken by GBDe members, government reports and from associated business groups such as the US Coalition of Service Industries. Few patterns or "ideal types" have emerged from the GBDe's limited study. However, here are a number of preliminary conclusions and observations:

1. **Unique Customs Valuation**
The GBDe urges governments to maintain the moratorium on applying customs duties to e-commerce. Imposing such duties amounts to a trade barrier, potentially slowing e-commerce development, trimming margins and disadvantaging some providers. If duties were to be applied at some future date, another troubling issue, which would likely emerge, would be customs valuation procedures which vary from country to country (from valuing "transaction value" to "value of media" to mixed system methodologies being used). The inconsistency would be discriminatory and all countries should instead adopt the approach consistent with GATT Administrative Decision 4.1. to make customs valuation determinations for all digital products on the basis of the value of the carrier medium and not on the basis of projected revenues or royalties for the digital content.

2. **Advertising**
The GBDe notes no unique rules applying to advertising on the Internet, but local advertising laws may present Internet advertisers unusual hurdles and uncertainty, particularly if some are extended explicitly to the Internet. For example, Brazil limits foreign participation in the advertising production and requires that Portuguese be spoken in the ad film. Does this mean that Brazilians must be "screened-out" from viewing e-ads if the ads

don't meet the criteria? Other examples: Canada discourages advertising placed in foreign print and broadcast media through tax advantages. France restricts media properties from advertising web sites on TV. Ideally, the GBDe would urge "no restrictions" on advertising on the Internet as is the case with the majority of countries studied.

3. Distribution

Distribution regulations such as commercial presence and capital requirements, form and rate rules or foreign investment restrictions can present unique problems for certain sectors such as financial service providers who are seeking to use the Internet to lower costs to consumers and achieve economies of scale. Regulation may be necessary for public policy reasons, but mutual recognition and reciprocity agreements could overcome these barriers. For some sectors such as software distribution, there appear to be no restrictions. Other sectors have unique problems as described in the audio-visual section below. Ideally, the GBDe would urge that all restrictions be eliminated or significantly limited and governed by mutual recognition and reciprocity.

4. IPR

The GBDe urges governments to implement and enforce TRIPS and WIPO agreements. As for specific country issues, the US permits "business method" patents, which theoretically could impact e-solution providers, should the method involve the Internet. While many differences still exist in copyright and patent related areas between countries, no others appear to present barriers to e-commerce.

5. Audio-Visual

AV content providers over the Internet are uncertain as to whether local broadcasting laws apply, to what could be considered "broadcasts" of a different transmission form. There are numerous examples from the countries studied, but rather than single out any one, the GBDe highlights the EU and Canada as having dealt with the issue explicitly. The EU's 1998 "TV without Frontier Directive" excludes a whole range of Information Society Services, i.e. on line services are excluded from broadcasting regulations. The Canadian "New Media" regulation affirmatively says that the Broadcasting Act does not extend to alphanumeric (e.g. text) services on the Internet nor to audio or video services where users "have an individual, or one-on-one experience, and where they create their uniquely tailored content". The Act did extend to some new media such as streaming audio and audiovisual signals, however it declined to regulate them, issuing an order exempting new media broadcasting undertakings ("delivered or accessed over the Internet"), from licensing or other regulatory requirements. One can take from these decisions, the objective of encouraging innovation through reducing or eliminating the uncertainty for providers, by dealing with the issue in law or regulation affirmatively, as well as the impracticality of regulating Internet "broadcasts".

6. VAT and other direct and indirect tax barriers

This is a complex topic dealt with elsewhere in GBDe papers and recommendations. VAT harmonization is important for example. As a general principle, delivery of goods and services through or over the Internet would benefit from reduced tax rates and harmonized tax collection regimes.

7. Standards, Labeling, Licensing, Certification

Generally it can be said that each jurisdiction has a complex set of technical product or service regulations and professional licensing requirements, which can be artificial, arbitrary and discriminatory barriers to entry for Internet and non-Internet providers alike. The lists are exhaustive. Ideally, the GBDe wants to see countries commit to implementing legislation and regulation using "internationally accepted" standards and participating in their creation. In addition, mutual recognition and reciprocity would also help bring down barriers.

8. Infrastructure development

Many of the barriers discussed above inhibit the development of the infrastructure necessary to support e-businesses. One could add "movement of temporary persons" restrictions and other sensitive but well-known limitations to the list. Some countries more than others are particularly hard hit because e-commerce is a "leveler" of sorts, not requiring huge capital outlays. When infrastructure development is frustrated by barriers to entry, e.g. capital goods, intellectual capital, then some countries tend to suffer disproportionately because home markets may not support the e-businesses. The magic of e-business is the ready access to wider markets, which makes businesses viable.