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Tokyo Recommendations

Global Business Dialogue on Electronic Commerce

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September 14, 2001

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September 14, 2001

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INTRODUCTION

The growth of electronic commerce has heightened concerns over the collection and use of personal data by companies. The GBDe recognizes that addressing these concerns is crucial to building confidence in the online medium whether fixed or mobile.

The wide variety of legal norms and cultural expectations regarding privacy make it difficult to develop a single set of rules to govern global information practices, and the diversity of online services and business models complicates the task. Greater consistency among privacy policies, however, would yield important benefits. If merchants agree to observe certain guidelines for privacy protection no matter where they do business, consumers will have an easier time understanding what to expect when they disclose personal data online. For companies, a global consensus for privacy guidelines would encourage more uniform legal approaches as well as improving the prospects for winning and retaining customers by using the Internet.

For these reasons, the GBDe has prepared "GBDe Personal Data Privacy Protection Guidelines", as set out below. This document contains guidelines, which have been developed by the GBDe for voluntary application by Internet merchants, by trustmark providers, and by any other businesses for whom they may be of relevance. The GBDe encourages all its members, and all other businesses to utilize these guidelines in the worldwide application of privacy data protection, (applied in parallel and with due respect to applicable law). These guidelines are developed from the 1980 OECD data protection guidelines and reflect two decades of technological and consumer

protection policy developments. At the same time, they are guidelines developed by and for businesses that operate across global borders in a dynamic business and technological environment. These GBDE "Personal Data Privacy Protection Guidelines" provide sufficient detail to be meaningful, while avoiding specifying details, in order to allow companies the necessary flexibility to adapt their privacy practices to specific legal, industry sector or cultural circumstances. For example, some consumer advocates have observed that even as a greater proportion of web sites have posted privacy policies, these policies are often encumbered with so many disclaimers and so much "fine print" that consumers are unlikely to read them. To avoid this problem, the guidelines provide that companies should disclose whatever information is necessary to make a proposed collection and use of information fair. An illustrative list of categories of information that may be appropriate to disclose is provided, but the guidelines recognize that the kinds of information that will be helpful or relevant to consumers depends on the specific situation.

The GBDe calls for companies to set company policies that respect and use these guidelines whether or not they are required by applicable law. The guidelines are not intended to be a substitute for applicable law, but rather are intended to promote certain widely recognized basic principles for the protection of consumer privacy in the context of electronic commerce. While some aspects of the guidelines are more flexible than substantive data privacy protection law in some countries, they are designed so that consumers can be confident that companies adhering to the guidelines will provide a fundamental level of protection for personal data that applies no matter where the consumer, company, or data is located. Other applicable legal standards will of course continue to provide added protection.

GBDE PERSONAL DATA PRIVACY PROTECTION GUIDELINES

1. DEFINITIONS

For the purpose of these Guidelines;

1.1 "Company" means any company which is to use these Guidelines or to which these Guidelines are recommended.

1.2 "Consumer" is any natural person who acts in his or her individual capacity for purposes outside his or her trade, business or profession and who is a customer or potential customer of a Company's business.

1.3 "Personal Data" of any Consumer means any data collected online by the Company which can identify the Consumer or which, when easily combined with other available data, can identify the Consumer.

1.4 "Contact Point" means an organization, a department or employee of Company who is responsible for communications relating to the Consumer's Personal Data.

2. GENERAL: FAIR COLLECTION AND USE

Protection and security of Personal Data are important. Personal Data supplied online by any Consumer needs to be collected, secured, processed and used fairly.

3. OTHER INFORMATION

A Company may gather and analyze certain data through a website (such as the Internet browser and operating system used, the domain name of an originating website, the number of visits, average time of visit, and accessed websites) which do not identify any specific Consumer and therefore are not Personal Data. The Company and its affiliates may use this data for purposes such as measuring the use of web sites or

improving the performance or contents of their online services. However, if this type of information is combined with other data in a way that ties the information to a specific Consumer, and otherwise falls within the definition of Personal Data, the Company will treat it in accordance with these Guidelines.

4. PURPOSE SPECIFICATION AND OPENNESS

Notice to Consumers

4.1 When collecting any Personal Data from a Consumer online, a Company will provide the Consumer with a reasonable notice of the purposes for collecting and using the Personal Data. The notice should be posted clearly and conspicuously (for example, on or linked from the home page), easy to find and understand, and available to the Consumer prior to or at the time when the Personal Data is collected.

4.2 A Company should provide enough information to allow Consumers to make informed decisions concerning the collection and the use of their Personal Data. At the same time, a Company should attempt to avoid providing unnecessarily lengthy disclosures that may cause confusion and discourage Consumers from expending the time and effort necessary to understand their choices. To that end, a Company should provide information needed to ensure that the collection and use of the Personal Data is fair. It should be the obligation of the Company to include the necessary information that Consumers may need in order to feel confident that their information will not be used in inappropriate or undesirable ways. Depending on the context and circumstances, the notice should include:

(i) The identity of the Company that determines and controls the purposes and the ways in which the processing of personal data is undertaken;

(ii) The type of Personal Data that is collected;

(iii) The purposes for which the Personal Data collected may be used;

(iv) The types of third parties - if any - to which the Company discloses Personal Data;

(v) The choices and means the Company offers Consumers for limiting use and disclosure of Personal Data;

(vi) Whether the Consumer has the option of not providing the requested Personal Data and the consequences of not providing it;

(vii) Whether the collection of Personal Data is optional or required (e.g., for purposes of performing the transaction or for enabling the fulfillment of a service offered by a particular website);

(viii) What kinds of technologies or information-gathering techniques, such as cookies, are used;

(ix) What to do if the Consumer wants to correct or review the Personal Data collected;

(x) The procedure for communicating with the company, including a physical and electronic mailing address to which the Consumer can direct questions, express preferences concerning the handling of Personal Data, or lodge complaints.

4.3 A company should have an easily-accessible system in place to handle any Personal Data complaints that a Consumer may address to the company.

(i) As a first and preferred remedy in any dispute over use of Personal Data,

Consumers should be offered access to an internal complaints handling process.

(ii) A Company should also consider the use of third party alternative dispute resolution systems (ADR) when a Personal Data complaint cannot be resolved in direct negotiations between the Company and the Consumer.

5. PURPOSE LIMITATION AND USE OF PERSONAL DATA

5.1 A Company will collect, use or disclose Personal Data supplied by a Consumer online only for the purposes disclosed to the Consumer, unless the disclosure:

(i) is a use of the Personal Data for any additional purpose that is directly related to the original purpose for which the data was collected,

(ii) is necessary for the performance of a contract to which the Consumer is a party or in order to take steps at the request of the Consumer prior to entering into a contract;

(iii) is required by law, including cases where the life or health of the consumer is being threatened;

(iv) is necessary to establish or preserve a legal claim or defense;

(v) is necessary to prevent fraud or other illegal activities, such as willful attacks on security systems of the Company.

5.2 Obtaining Consent

A Company that plans to use a Consumer's Personal Data for another purpose not disclosed at the time of its collection should provide the Consumer with a reasonable and timely notice and a clear and conspicuous opportunity to opt out of the new use and any related disclosure prior to the time of such use or disclosure.

6. SPECIAL CATEGORIES OF SENSITIVE DATA

6.1 Sensitive data

If a Company wishes to collect or use sensitive Personal Data of a Consumer, such as medical records, racial or ethnic origin, political views, religious beliefs, sexual orientation or other matters of a highly personal nature, it is expected for the Company to provide the Consumer with a reasonable notice and to obtain the Consumer's unambiguous consent to the proposed collection or use. In deciding what Personal Data should be treated as sensitive, the Company should take into account applicable law as well as national and regional concerns about particular kinds of Personal Data.

6.2 Children

A Company will not knowingly collect Personal Data from children without insisting that they seek prior parental consent. In addition to other provisions set out in these Guidelines, the use or disclosure of Personal Data collected from children shall be subject to the opportunity for the child's parent or guardian to opt out from such use or disclosure at any time prior to the first disclosure; except that Personal Data about the child may be used or disclosed for the purposes of seeking parental consent pursuant to local laws or regulations, to protect the safety of a child, or to respond to a request from law enforcement.

The Company's definition of "child" for purposes of this paragraph should take into account applicable law as well as national and regional cultural norms.

7. DISCLOSURE OF PERSONAL DATA

Transfer of Personal Data to agents, affiliates and third parties

7.1 Mere processing

When transferring Personal Data to a third party for the sole purpose of processing – that is, for the collecting Company's benefit and not for the further use of the party performing the processing function (processing on behalf of the collecting Company), the Company should ensure that the processing party handles the Personal Data in a manner consistent with the terms of the collecting Company's data privacy protection notice made available to the Consumer.

7.2 Third Parties

If the Company intends to disclose Personal Data to third parties (including new third parties created by any divestiture of the company) who want to offer other services or products to the Consumer, or for other direct marketing purposes, the Company should provide the Consumer with an opportunity to opt out from such disclosure at the time of the collection of the Personal Data or no later than at the time of the first disclosure.

7.3 Affiliates

In case of transfer or disclosure of personal data to corporate affiliates, the collecting Company should ensure that the affiliate handles Personal Data in conformity with Section 5 above and in a manner consistent with the Company's data privacy protection notice made available to Consumers.

7.4 Acquisitions

In case the collecting Company is acquired by a third party, the Company should ensure that the acquiring Company grants the Consumers of the acquired Company at least the same level of Data Protection offered by the acquired Company at the time of the acquisition, except where the acquiring and/or acquired Company provides the Consumer with an opportunity to opt out from new uses of that data not disclosed by the acquired Company (as described in Section 5.2).

8. SECURITY SAFEGUARDS

A Company should take reasonable measures to protect Personal Data collected from a consumer online against loss, manipulation, falsification, unauthorized access or unauthorized disclosure by any party inside or outside the Company.

9. ENSURING THE QUALITY AND INTEGRITY OF PERSONAL DATA

When a Company collects and retains Personal Data from a Consumer online, the Company should respond to reasonable Consumer requests to review that information and correct, amend or delete any inaccuracies.

10. INDIVIDUAL PARTICIPATION

A Company should observe procedures designed to respond to Consumers' requests. Should a Company be unable to respond to requests, either because the information is not maintained in retrievable form, or retrieval is not reasonably cost-effective, the Company should provide:

(i) an explanation of why retrieval cannot be effectuated; and

(ii) a Contact Point for further information.

11. LINKS TO OTHER WEBSITES

A Company's web sites or other interactive services may contain links to information provided by third parties. The company should disclose to Consumers that it is not responsible for the Personal Data protection policies or practices of linked sites.

12. ACCOUNTABILITY

The Company will establish and maintain policies concerning the collection, use and disclosure of Personal Data together with a system to implement these policies within the company.

Global Business Dialogue on Electronic Commerce

Consumer Confidence
Alternative Dispute Resolution

September 14, 2001

Issue Chair	*Carleton S. Fiorina* Chairman & CEO Hewlett-Packard
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INTRODUCTION

Electronic commerce, especially between consumers in one country buying goods or services from businesses based in other countries, will grow unabatedly only if consumers feel confident that their interests are sufficiently protected in the case of disputes. At the same time, there is also the concern that merchants - especially small and medium sized enterprises (SMEs) - might be faced with unmanageable problems due to difficulties related to consumer disputes resulting from Internet transactions.

Recourse to courts in disputes resulting from international Internet transactions is often complicated by the difficult questions of which law applies, and which authorities have jurisdiction over such disputes. Furthermore, international court proceedings can be expensive, often exceeding the value of the goods or services in dispute. If this were the only means to settle disputes, it would certainly not enhance consumer confidence in international electronic commerce and would strongly induce merchants to restrict the geographic scope of their offers. This, in turn, would limit competition and consumer choice.

Complete international harmonization of applicable laws and international agreements on competent jurisdictions might be the ideal solution in theory, but it is an illusion to believe that this can be achieved in practice.

There are widely differing views held among governments on the right type and level of consumer protection, even at the regional level of the European Union or the U. S., for example. In fact, recent legislation seems to be primarily

geared at shielding these various and often conflicting national or regional systems of consumer protection against growing international competition created by the Internet.

The situation is at least as difficult with regard to the issue of the competent forum. Business acknowledges that the application of the "country of origin" principle alone may not be sufficient to boost trust in online transactions, since consumers are unlikely to resort to the courts of other countries where merchants are resident. Conversely, the application of the "country of destination" principle (the residence country of the customer) is not the right answer either, since merchants will be unenthusiastic about international transactions that could subject them to a variety of differing country laws, processes and legal reach of every country in which their online customers may live. Moreover, for consumers this principle may only provide illusory protection, as in many cases the cost and complexity of cross-border enforcement stands in the way of effective redress.

Probably the best way out of this dilemma and an important catalyst for consumer confidence in electronic commerce is that Internet merchants offer their customers attractive extra-judicial procedures for settling disputes as an alternative to the cumbersome and expensive resort to courts.

In the offline world such alternative dispute resolution (ADR) systems are being used quite successfully as an effective, quick and efficient method for addressing consumer complaints that are not resolved through a simple contact with the company (in the framework of customer satisfaction systems) and there is already - at least in some parts of this world - some limited but positive experience with ADR related to business-to-consumer Internet transactions.

Through ADR, consumers' concerns can be addressed fairly and in a timely manner. ADR allows both parties to avoid the delays and the costs of appealing to either a government administrative agency or the courts. In addition, the use of ADR avoids overburdening both administrative and judicial systems (even when small claims courts exist), while at the same time, in general, preserving the consumers' right to seek legal redress should they be dissatisfied with the results of the ADR process. Finally, ADR can be more flexible and creative in finding solutions that satisfy both parties, while consumer protection agencies and/or courts may offer only limited remedies in resolving disputes, particularly where those remedies are prescribed by law or regulations.

This GBDe paper has been written based on the practical experience of a vast number of companies and business associations, including private sector organizations offering online ADR systems, from all parts of the globe. Its content has been discussed and developed with contributions from governments and representatives of consumer organizations as well.

This paper makes recommendations to Internet merchants, ADR service providers and governments. Guidance is given for the use and development of ADR systems, and recommendations are put forward for government policy actions geared at meeting the requirements of business for effective ADR and creating high levels of consumer confidence in e-commerce.

DEFINITIONS

The term "Alternative Dispute Resolution (ADR)" in these recommendations covers all methods of resolving disputes related to obligations resulting from contracts concluded "electronically" (primarily over the Internet) between professional sellers of goods or providers of services and final consumers (B2C), operated by impartial bodies other than courts of law.

More specific distinctions within the ADR concept, such as "arbitration", "mediation" and "conciliation/negotiation", are often used interchangeably and without much precision. Such distinctions may, however, be of relevance

with regard to the role of the dispute settlement officer(s) in the process and the enforceability of the results.

"Arbitration" usually is a process whereby one or several independent arbiters invite the parties to submit the facts and their arguments (oral and/or written procedure) and finally decide on the basis of equity or law. Arbitration, by definition, is normally final and binding, and thus may not - in most cases - lend itself easily to the non-jurisdictional world of trans-border business-to-consumer transactions.

"Mediation" normally is a process whereby a mediator simply passes the proposal of settlement to the other party and the counterproposal back to the first party until the two have reached agreement. The mediator does not intervene in the negotiations but registers only the final agreement. When agreed to by both parties, the successful results of mediation are legally a contract and are enforceable in this capacity.

"Conciliation/negotiation" normally is a process whereby an independent conciliator actively guides the parties towards a fair compromise. This process does not develop in a legal vacuum, but need not investigate in detail the applicable law. The parties' understanding of the legal rights and obligations (which may be conflicting) certainly plays a role, but equity might be the deciding factor. If the (final) conciliation proposal meets the agreement of both parties it becomes a contract and is enforceable in this capacity. If the parties do not agree on any compromise, they are free to go to court.

Purely internal dispute settlement services that are offered by merchants as an after-sale service rooted in good commercial sense, rather than as an alternative to court procedures, may not provide sufficient guarantees of impartiality to assure consumers that they will be able to obtain redress in the event of a disagreement over a transaction. Of course, wherever possible, direct business/consumer resolution is and will be the preferred instruments for solving customer complaints in B2C Internet transactions. These services are referred to here as "customer satisfaction systems," and they may become a step in the chain of redress, e.g. if customers wish to make use of ADR offered by the merchant, they may be invited to submit their complaint first to such a service (call centers, complaint services, etc.) before filing it with the ADR officer.

SCOPE

These recommendations deal exclusively with business-to-consumer (B2C) disputes in electronic commerce, where ADR is still relatively little known and practiced. Settlements of disputes resulting from business-to-business (B2B) transactions, both offline and online, will follow their own rules with a very high degree of party autonomy, mostly in the form of binding arbitration. The issues of consumer protection and consumer confidence are of no relevance in this context. Hence, there is neither a need to develop new recommendations for B2B ADR, nor would it be appropriate to address any issues related to B2B under the same parameters as B2C dispute settlements.

A survey of ADR systems for B2C Internet transactions already functioning or in the process of being established shows that most of them are established upon the initiative of groups of business companies (including auditing firms, banks, insurance companies, law firms), business associations, institutes (including universities), or consumer organizations, often as independent businesses. They cover their costs by sponsor and user fees, sponsors being normally those merchants that offer the services of this specific ADR system to their customers. In some instances they are also offered government funds, notably to function as pilot projects. Although only theoretical today, one should not preclude ADR systems being established by individual merchants, if a sufficient degree of impartiality is guaranteed.

The recommendations to business contained in this paper are addressed both to Internet merchants who signal to their customers that

they recommend submitting disputes to ADR, and to organizations that provide ADR as a service.

RECOMMENDATIONS TO INTERNET MERCHANTS

Encourage the use of in-house customer satisfaction programs

As a first and preferred remedy in any dispute, Internet customers should be offered access to in-house customer satisfaction systems. Depending on the type of transaction and the nature of the system, such approaches may serve as a valid alternative to ADR. For example, a merchant involved in the sale of low-priced merchandise might choose to offer an unconditional money-back guarantee to all customers rather than establishing an ADR system. In any event, it appears advisable to request that customers direct any complaint first to an in-house customer satisfaction system prior to taking advantage of any ADR mechanism.

Propose the possibility of ADR

Unless full customer satisfaction is guaranteed by in-house systems, customers of merchant websites used for B2C transactions should be notified that the merchant is ready to submit disputes resulting from online transactions to one or more specified ADR systems. Information about dispute resolution via ADR should be provided as a part of the overall information, perhaps in the framework of a reference to a code of conduct (Trustmark) or as a part of the general sales conditions.

Inform about conditions of ADR

Potential customers should be informed about the conditions of access (online or other), the cost (free of charge, nominal fee, cost borne by the merchant, etc.), the legal nature of the ADR (arbitration, mediation, conciliation, negotiation, etc.) and of its outcome (binding/not binding/binding for the merchant; enforceable), and recourse to other instances, notably to law courts.

RECOMMENDATIONS TO ADR SERVICE PROVIDERS

Impartiality

The ADR personnel must be impartial, in order to guarantee that decisions are recognized as being made independently, thus strengthening the reputation and credibility of the organization providing ADR. Impartiality must be guaranteed by adequate arrangements, which may include measures such as the establishment of appropriately composed supervisory bodies or the appointment of dispute resolution officers according to specific criteria. Dispute resolution personnel must be insulated from pressure to favor merchants or consumers in resolving disputes. When the amount in dispute is important and/or when ADR is finally binding for both parties, even higher standards of transparency should be respected, including e.g. that the names of dispute resolution officers are made known to the parties, who should have the right to challenge them for cause.

Qualification of ADR officers

Dispute resolution officers should have sufficient skills and training to fulfill the function in a satisfactory manner. Formal lawyer qualification and license should not be required.

Accessibility and Convenience

ADR systems must be easily accessible from each possible country. Online access might be the preferred choice. Requirements about the form of the submission of a case should be kept to the necessary minimum. Customers should receive maximum guidance in filling in and filing submissions. Appropriate solutions must also be found for any problems that may result from different languages used by the merchant, the ADR service provider and the customer.

Speed

To be effective, ADR systems must resolve disputes quickly if they are to meet the needs of both consumers and businesses. In any case, they must be speedier than courts in providing satisfactory results.

Low cost for the consumer

The ADR service should be provided to the consumer at no or only moderate cost, while taking into account the need to avoid frivolous claims. An impartial screening process provided by the ADR system could do this. Prior submission of a complaint to a customer satisfaction program will also permit an early assessment of the real nature of the claim.

In fact, the cost of ADR will be significantly lower for both consumers and businesses than formal administrative or legal actions. This is particularly true when costs are calculated in terms of both time and money and where formal actions involve time-consuming depositions, hearings, legal representation, and personal appearances requiring international travel.

Transparency

ADR systems should function according to published rules of procedure that describe unambiguously all relevant elements necessary to enable customers seeking redress to take fully informed decisions on whether they wish to use the ADR offered or address themselves to a court of law.

To ensure credibility and acceptance of an ADR system, information should include:

- the types of dispute which may be referred to the body concerned, as well as any existing restrictions in regard to territorial coverage and the value of the dispute;
- the rules governing the referral of the matter to the body, including any preliminary requirements that the consumer may have to meet (e.g. to attempt first to get redress through a customer satisfaction system offered by the merchant), as well as other procedural rules, notably those concerning the written or oral nature of the procedure, whether it is conducted exclusively or partly online, whether oral hearings are possible or required (separate of either party or jointly), attendance in person or possibilities of representation, and the languages of the procedure;
- the decision-making arrangements within the body and its governing structure
  public listing of its personnel, the selection process of dispute resolution officers for individual cases and the possibilities of challenging them by the parties;
- the possible cost of the procedure for the parties, including rules on the award of costs at the end of the procedure;
- the type of rules serving as the basis for the body's decisions (legal provisions, considerations of equity, codes of conduct, etc.);
- the manner of proceeding, whether decisions are made public, confidentiality of the handling of submissions and of proceedings;
- enforceability of agreed upon resolutions and any other possibilities of recourse.

The ADR provider should publish an annual report enabling a meaningful evaluation of decisions taken, while respecting the confidential nature of specific case information and data.

Principle of representation

The ADR procedure should not deprive the parties of the right to be represented or assisted by a third party at all stages of the procedure.

Applicable Rules

One of the principal reasons why business, consumers and governments consider the development of ADR systems to be of such strategic importance for the enhancement of consumer trust in electronic commerce is that such systems can settle disputes in an adequate fashion without necessarily engaging in cumbersome, costly, and difficult research on the

detailed legal rules that would have to be applied in an official court procedure. Governments in particular, must be confident that the rights of both consumers and businesses are protected, while at the same time avoiding actions that could adversely impact the growth of global electronic commerce.

ADR dispute resolution officers may decide in equity and/or on the basis of codes of conduct. This flexibility as regards the grounds for ADR decisions provides an opportunity for the development of high standards of consumer protection worldwide.

Consumer Awareness

Except in special cases where both consumers and merchants find special circumstances to agree to arbitration (see below), consumers will not alienate their right to go to court by electing to use an ADR mechanism.

An arbitration decision taken by the dispute resolution officer(s) may be binding on the parties only if they were informed of its binding nature in advance and accepted this. Equally, the merchant shall not seek a commitment from the consumer to use binding arbitration prior to the materialization of the dispute, where such commitment would have the effect of depriving the consumer of the right to bring an action before the courts.

RECOMMENDATIONS TO GOVERNMENTS

Studies on the legal frameworks for ADR have demonstrated that they are fragmented between international conventions and legal instruments at several levels (federal/state, community/national, etc.). As a consequence, ADR systems conceived for worldwide application must respect a number of – not always compatible – conditions. Several of these elements can be easily accommodated, like the requirement that a valid agreement to submit a dispute to ADR would have to be entered into only after the dispute has arisen. Other elements are more problematic to accommodate, e.g. that certain national laws on encryption or authentication inhibit the proper level of confidentiality and security in online proceedings, or that some national laws do not permit the conclusion of contracts online.

On the other hand, many governments are on record that they share the GBDe position that ADR is an essential element for the proper functioning of e-commerce and for the enhancement of consumer confidence in this medium. Hence, the GBDe expects governments to adopt policy stances in line with this goal.

International rules on competent forum and applicable law

Although ADR can provide appropriate solutions for many disputes, it must be recognized that even in the most ideal of worlds a certain number of disputes will still end up in court. Therefore, and also because these questions may still be posed in some ADR systems, the GBDe wishes to state clearly that questions of jurisdiction and applicable law in electronic commerce still need to be dealt with urgently and in a manner that encourages both business investment and consumer trust in electronic commerce. The GBDe position on this was expressed in the "Paris Recommendations" of the "Jurisdiction" Working Group in 1999.

Encourage the use of customer satisfaction systems and of ADR

Actively promote public awareness of ADR systems and their role in resolving business-to-consumer commercial disputes. Acknowledge the continuous efforts by companies to set up customer satisfaction systems, which should be used first before starting either ADR or court proceedings against a merchant. Likewise, policies should encourage consumers to use available ADR systems instead of or before seeking recourse to courts.

Education and Training

Support and promote educational activities of ADR officers by ADR system providers.

No discrimination between different ADR systems

Permit and promote the development of ADR systems by the private sector, without giving preference to public systems or discriminating between those offered by a third party, including consumer organizations, or by merchants or organizations of merchants directly. Achieving a sustainable level of competition among ADR providers and achieving reciprocal agreements among these should be a priority.

No mandatory criteria or accreditation systems

Refrain from imposing mandatory national or regional accreditation systems, or criteria for self regulation, or guidelines, which distort competition between national and international ADR systems. Consider requiring annual assessments of ADR programs operating in host countries. Promote the development of international self-regulatory principles and rules that could be the basis for merchants' and ADR providers' declarations of compliance.

ADR on the basis of equity or codes of conduct

Allow ADR systems to function on the basis of equity, or codes of conduct. It should not be required that dispute resolution officers necessarily have formal lawyer qualification and license. In some countries, mediation/arbitration processes are legally regulated to be conducted solely by licensed lawyers, but deregulation and an appropriate legal framework should be aimed for.

Global access to and application of ADR

Promote the development of globally applicable ADR systems, and take an international perspective on ADR by working with other governments and international organizations.

Application of modern technologies in ADR

Refrain from creating obstacles for the innovative use of technology to settle consumer disputes and eliminate obstacles, resulting primarily from legislation on authentication and security, to the application of an appropriate level of confidentiality and security in online ADR.

Binding arbitration in business-to-consumer disputes should be possible in limited cases

Make it possible - in special circumstances - for consumers to subscribe, voluntarily, to binding arbitration excluding recourse to courts. This should not be the preferred standard clause in ADR agreements, but could be of interest to both consumers and merchants in certain cases of high-value and/or complex transactions.

Procedural and form requirements for ADR should be kept to a minimum

Eliminate requirements in some legislation that ADR must follow nearly the same procedural requirements, as the court system. The same applies to certain form requirements that may impede the use of ADR in the online context. The parties to an ADR case should be free to structure the proceedings, as they desire, as long as there is full transparency and information about the consequences.

Adjust offline ADR requirements to the online context

Remove inhibitions in national legislation or international conventions to conclude contracts - including dispute resolution clauses - online and adjust existing legal and political frameworks for offline ADR to online requirements.

Policy cooperation between public and private sector

Ensure close cooperation between the public and private sector to maintain a balance in achieving a satisfactory variety of ADR systems, which reflect consumer and business needs and are easily understood by the customer.

Global Business Dialogue on Electronic Commerce

Consumer Confidence
Trustmarks

September 14, 2001

Issue Chair	*Carleton S. Fiorina* Chairman & CEO Hewlett-Packard
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INTRODUCTION

The GBDe endorses the use of Trustmark programs in order to encourage good online business practices by merchants and to assist consumers in identifying merchants they can trust. To help avoid confusion for consumers among different trustmark programs offering different levels of protection, the GBDe has thus developed guidelines, to help ensure greater transparency, minimum voluntary standards and comparable levels of protection among competing trustmark programs. These guidelines have been developed based on initial consultations with all stakeholders. They will be developed further in response to comments received from business and consumer groups.

The GBDe believes that trustmark programs should be developed and operate in accordance with some minimum, voluntary guidelines. In particular, they must:

- be affordable, in particular to SMEs;
- be enforced rigorously, by providing clear monitoring and reporting mechanisms and guaranteeing neutrality of their enforcement decisions;
- be easily accessible to consumers when entering the merchants' web site and broadly disseminated;
- be developed in consultation with all stakeholders;
- use appropriate security measures to prevent misuse of the trustmark;
- offer a mechanism for consumer redress along the lines of the GBDe ADR recommendations;
- require minimum standards of behavior by merchants in the areas of online business practices, privacy protection and complaints handling, in line with GBDe recommendations.

RECOMMENDATIONS

Business should support and participate in such programs to ensure greater transparency and to encourage comparable levels of protection for consumers across national boundaries. Further, companies and organizations developing trustmark programs are encouraged to develop mutual recognition or other arrangements with programs in other countries or regions that meet the GBDe guidelines, to assist consumers in identifying foreign trustmark programs that offer equivalent protections.

These Guidelines are divided into two sections. The first sets out general guidelines for companies or organizations that develop trustmark programs. The second sets out general guidelines for merchants that establish best business practices governing commercial relations between merchants and consumers that should be required by trustmark programs. The paper also includes Recommendations to governments relating to the development and promotion of such programs.

DEFINITIONS

In order to ascertain the scope of these Guidelines and Recommendations, the GBDe has agreed to use the following working definitions:

- "trustmark": "a label indicating that a merchant commits to complying with a number of best business practices, including redress mechanisms".

- "certifier": "company/organization that develops, manages the trustmark program and attributes the trustmark".

- "commercial relations": "any transaction or agreement relating to the provision of a good or service, including commercial communications, between a merchant and a consumer conducted online, including through the Internet".

- "consumer": "any natural person acting for purposes which are outside his or her trade, business or profession".

- "merchant": "company/organization offering a good or service to consumers and accepting orders directly from consumers that receives, uses the trustmark and commits to complying with the trustmark specifications".

- "personal data": "of a consumer means data that identifies the consumer or that can easily be combined with other available data to identify the consumer".

GUIDELINES FOR CERTIFIERS

1. Accessibility

1.1 Trustmark programs should accommodate different business models and regulatory regimes to ensure that trustmarks do not erect barriers to competition.

1.2 Participation in a trustmark program should be open to any organization that agrees to abide by the entry conditions, consistent with the legitimate business objectives of the certifier. The criteria for participation in a trustmark program should be transparent to applicants and to consumers.

1.3 Subscription fees should not constitute an insurmountable obstacle to join a trustmark program. This should not discourage the setting up of additional fees for specific value-added services.

1.4 Certifiers are encouraged to offer specific conditions for SMEs in order to facilitate the participation of SMEs in a trustmark program.

2. Enforcement Mechanisms

2.1 The certifier should put in place effective mechanisms to establish and monitor compliance by the merchant of the trustmark program specifications. These may include random checks by the certifier, independent verification, and/or regular reporting requirements by the merchant.

2.2 The certifier should clearly include in the contract with the merchant the type of actions that will be undertaken if the merchant does not comply with the program requirements.

2.3 The type of actions that the certifier can undertake could include:

- withdrawal of the trustmark;
- public warning about misuse of the trustmark;
- referral to governmental authorities;
- legal action against a merchant in breach of the program's requirements, but who displays the trustmark.

2.4 The certifier should disclose publicly and prominently the type of actions that it will undertake in order to ensure compliance with the program.

2.5 The certifier should take all measures to seek impartiality and objective enforcement. This may include appointing independent persons or balanced business and consumer representation to the respective accreditation and enforcement bodies.

3. Visibility

3.1 The certifier should advise the merchant about suitable locations for the trustmark.

3.2 The trustmark should be prominently visible to the consumer in any of the following locations:

- on the welcome page of the merchant's web site;
- in case of privacy trustmarks, at a stage in the transaction prior to the collection of personal data from consumers;
- on the page where vendors or consumers initiate a transaction by making a clear offer.

3.2 Certifiers should ensure that it is clear to consumers what the trustmark certifies (for example, by using a "pop up" screen that briefly describes the program) and that the code of conduct, principles, or best business practices which are the basis of the granting of the trustmark seal are accessible to the consumer, preferably by clicking on the trustmark seal.

4. Stakeholders Participation

4.1 Consumer, industry or professional organizations should ensure that they consult each other when developing trustmark programs.

4.2 The most important elements in which dialogue among the different stakeholders is essential are the content of codes of conduct, enforcement mechanisms and redress measures.

5. Security

5.1 The certifier should take appropriate measures to ensure that consumers can easily distinguish between real and counterfeit trustmarks. This may include technology to guarantee that unauthorized parties cannot copy the trustmark, secure links to a database accessible on the merchant's website, or technology to monitor web pages that are displaying the trustmark.

5.2 The certifier should take appropriate measures to maintain confidentiality of commercially sensitive information exchanged with the merchants it certifies.

6. Redress

6.1 Access to the certifier must be readily available to consumers and others to accept complaints and to act on them.

6.2 The certifier should ensure that the merchant has in place an internal complaint resolution system to which the consumer can have on-line access.

6.3 The certifier should offer or, under certain circumstances, as determined in the contract between the certifier and the merchant, require the merchant to offer an alternative dispute resolution (ADR) procedure. ADR systems may be offered by the certifier, the merchant itself or may be outsourced by the merchant.

6.4 In any case, the certifier should respond to consumers' complaints either by directing consumers to the appropriate mechanism or by contacting the merchant.

6.5 Certifiers should follow the GBDe Recommendations on ADR.

7. Flexibility and Mutual Recognition

7.1 The certifier should include an on-line mechanism to allow interested parties to give input on the performance of the system or any other related element of the trustmark program. The certifier should undertake continuous monitoring on consumers' satisfaction with the use of the trustmark program by merchants and should take due notice of the surveys' results.

7.2 The certifier should have all the necessary information about the requirements to join the program available on-line or in an electronic version. This information should be provided in a simple manner to ensure easy comprehension of the terms of participation.

7.3 The certifier should take all reasonable steps to ensure a speedy decision on participation in the program by the applicant organization. It is desirable that all steps to join a trustmark program can be conducted on-line. This does not preclude the necessity to undertake physical checks (e.g. about the real existence of the organization).

7.4 The certifier should put in place all appropriate mechanisms to ensure public dissemination of the trustmark program (e.g. links with Internet portals, consumers' organizations, etc). The certifier must include a list of all certified merchants that must be prominently shown in the trustmark program web page.

7.5 The certifier should consider developing mutual recognition or similar arrangements with trustmark programs in other countries or regions, such that merchants certified under one program that complies with these guidelines can be identified by consumers in other jurisdictions as offering equivalent protection.

GUIDELINES FOR MERCHANTS

The trustmark programs certified by the Certifier must ensure minimum standards of behavior by merchants in accordance with the following Guidelines, which apply to commercial relations between certified merchants and consumers. These Guidelines would not alter or replace other obligations that a merchant may have as a result of consumer protection, privacy or other laws and regulation or any other voluntary codes of conduct to which a merchant may subscribe.

1. Accuracy and Accessibility of Information

1.1 All information required to be disclosed by the merchant shall be clear, accurate, and easily accessible online. The information shall either be posted on or accessible through a hyperlink from the merchant's homepage or entry point of the online site or at a place where the transaction is offered.

1.2 Merchants shall not make any representation or omission or engage in any practice that is likely to be deceptive, misleading, fraudulent or unfair to consumers.

2. Marketing Practices

2.1 Merchants should take the necessary steps to ensure that any representation about a good or service is current, accurate, and not deceptive or misleading to consumers and that the truthfulness of objective claims be substantiated.

2.2 If marketing or other online activities are directed at children, or where the website knows the visitor is a child, merchants shall take special care to protect children by recognizing their vulnerabilities. In particular, a merchant shall seek to ensure parental permission is obtained before collecting, using or disclosing the child's personal data or completing a transaction.

3. Information About the Merchant

3.1 Merchants should provide, at a minimum, the following contact information online:

- legal name;
- the name(s) under which it conducts business;
- the principal physical address, addresses of representative offices in other countries or other information sufficient to ensure the customer can locate the business offline;
- an online method of contact such as e-mail;
- a point of contact within the organization that is responsible for customer inquires; and
- a telephone number, unless to do so would be disruptive to the operation of the business given its size and resources and then the merchant should maintain a working listed phone number, the time zone in which it operates, and the hours when contact may be made.

4. Information About the Goods and Services

4.1 Merchants shall provide enough information about the goods or services available online so that consumers can make an informed choice about whether to engage in a transaction online.

5. Information About the Transaction

5.1 Material information about the transaction shall be provided in the same language in which the good or service is offered. The use of automatic language programs for translation purposes should be encouraged. As set out below, merchants shall:

- make available to consumers all relevant information relating to the terms and conditions, costs, shipping and charging and cancellation/ return/refund policies applicable to a transaction before it is entered into;
- provide consumers with an opportunity to review the transaction before it is completed and becomes a binding obligation; and
- maintain a record of the transaction after it has been completed.

5.2 Merchants shall make available to consumers the terms and conditions applicable to the transaction. Such information should include:

- any restrictions or limitations (for example, time or geographic) they impose on the commercial offer and/ or the sale of the goods or services;
- easy-to-use payment mechanisms and in the case of credit or debit cards, the expected time when the card will be charged;
- for goods, any warrantees, guarantees, escrow programs or other offered terms, including limitations, conditions;
- for services, any standards, schedules, fees, or other offered terms, including limitation and conditions; and

- information about any self-regulatory programs to which the merchant adheres, and how to access those rules, and notice on the law applicable to the commercial relation.

For ongoing transactions or subscriptions:

- information about how the transaction will appear on the bill so that the customer will be able determine to which transaction and which company the bill relates;
- minimum duration of the contract and easy-to-understand cancellation information, an easy to use means to cancel an ongoing subscription, and timely confirmation of such cancellation.

5.3 Merchants shall disclose the entire price of the goods and services and any other charges to be collected by the merchant. Such information should be provided in a specified currency and should include:

- price or license fee to be charged, including all taxes, or in the case of a barter trade, the items that will be exchanged for goods or services purchased or licensed;
- shipping and handling charges.

Merchants shall honor the amount authorized by the customer in any subsequent bills to the customer.

5.3 Merchants shall disclose to consumers when they will be able to ship the goods or provide services, and the expected time when a consumer's credit card will be charged for a transaction. A consumer shall not be charged for a product or service unless shipment of such product or service is expected within a reasonable period of time. In particular, merchants should:

- state which products or services are temporarily unavailable and if an expected availability date is provided, have a reasonable basis for such date;
- have a reasonable basis for, and provide consumers with, estimated shipping times (or in the case of online delivery, delivery times);
- have a reasonable basis for stated delivery claims when made; and
- disclose any shipping, performance, or delivery limitations they impose (age, geographic).

If a material delay in shipping or performance occurs, the merchant shall provide the consumer with information about the delay and the opportunity to cancel the transaction.

5.5 Merchants shall provide consumers with an opportunity to review the transaction and to confirm their intent to enter into the transaction and shall disclose to consumers at what point the transaction will be final and become a binding obligation. Prior to a transaction becoming a binding obligation, merchants should provide consumers with a summary that includes:

- the terms and conditions of the transaction;
- the selected payment method; and
- the option to cancel or affirmatively complete the transaction.

5.6 Merchants shall maintain, and make it possible for consumers to access, an appropriate record of information about a transaction for a reasonable period of time after it has been completed. Such information should include:

- a statement of what was ordered, the price, and any other known charges such as shipping/handling and taxes;
- sufficient contact information to enable purchasers to obtain order status updates; and
- the anticipated date of shipment.

6. Cancellation/Return/Refund Policies

6.1 Merchants shall provide information to consumers about their cancellation, return,

and refund policies, including: the length of time after entering into a binding obligation which an available cancellation, return, or refund may be made; the process that should be followed; and any costs that may be incurred. If there is no cancellation, return or refund right, this should be stated.

7. Security

7.1 For information that is transferred from a consumer to a merchant, merchants shall take reasonable steps ensure the security of a consumer's confidential commercial and personal information. These security efforts shall be consistent with best industry practices and shall be appropriate for the type of information collected, maintained or transferred to third parties. In particular, merchants should:

- have in place encryption measures that reflect best industry practices for the transfer or receipt of sensitive information, such as personal financial information or health care records;
- have in place appropriate levels of security to protect data being maintained by computers;
- take reasonable steps to require third parties involved in fulfilling a customer transaction to also maintain appropriate levels of security; and
- not retain any information from which a consumer may be identified if the consumer does not complete a transaction, without the consumer's consent.

8. Customer Service and/or Support

8.1 Merchants shall comply with all commitments, representations, and other promises made to consumers. They shall disclose to consumers information regarding customer service and/or support of the goods and services that consumers purchase online. Such information should include the length of time the customer service and/or support is available, the costs associated with obtaining the customer service and/or support, and how customers can successfully and meaningfully contact the business to get answers to their questions.

8.2 If no customer service and/or support are available from the merchant, this should be stated.

9. Warranty

9.1 Merchants shall disclose to consumers applicable warranties or limited warranties that they offer regarding the goods or services sold or made available to consumers. Such information should include the scope, duration, and means of exercising rights made available in the warranty or limited warranty.

10. Privacy

10.1 Merchants shall post and adhere to a privacy policy that is open, transparent, and consistent with the following personal data protection practices:

- Notice /Awareness: Merchants that collect personal data shall reasonably explain what personal data they collect, use, and disclose to third parties, and for what purposes;
- Choice/Consent: Merchants that collect personal data shall reasonably explain what choices they provide consumers about the collection, use and disclosure of such information. At a minimum, Merchants should provide consumers with the choice to opt out of having their personal data used or disclosed for any new purpose not explained at the time the personal data was collected and should obtain the consumer's unambiguous consent to the collection or use of sensitive personal information, such as medical records.
- Accuracy: Merchants that collect personal data shall reasonably explain the methods by which the consumer can correct or update personal data and shall adopt procedures to respond to

reasonable consumers' requests for such corrections or updates.

- Integrity/Security: Merchants that collect personal data shall reasonably explain the steps taken to protect the quality and integrity of the personal data collected as well as the confidentiality of that personal data from unauthorized access.
- Redress/Internal Rules: Merchants shall reasonably explain the means of communicating with the merchant's contact point to which the consumer can direct questions, express preferences concerning the handling of personal data or lodge complaints. Merchants shall establish and maintain a system to implement the provisions of these guidelines within the company.

10.2 When transferring personal data to a third party for processing on its behalf, a merchant should ascertain the adequacy of the personal data practices of the third party.

11. Unsolicited E-mail

11.1 Merchants shall accurately describe their business practices with regard to their use of unsolicited e-mail to consumers.

11.2 Merchants that engage in unsolicited email marketing should adhere to a policy that, at a minimum, enables those consumers who do not wish to be contacted online to "opt out" online from future solicitations. This policy should be available both on the web site and in any e-mails, other than those relating to a particular order.

11.3 Merchants that engage in unsolicited e-mail marketing should also subscribe to a bona-fide e-mail suppression list.

12. Dispute Resolution

12.1 Merchants shall provide consumers with fair, timely, and affordable means to settle disputes and obtain redress.

12.2 Merchants should provide an easy-to-find and understandable notice on how a consumer can successfully and meaningfully contact the merchant to solve problems related to a transaction. They should have effective "customer satisfaction systems", encourage consumers to take advantage of such internal mechanisms and make a good faith effort to resolve any disputes relating to a transaction in a fair and equitable manner, for example, by providing money-back satisfaction guarantees or exchange policies. Complaints should be directed in the first instance to the merchant.

12.3 Unless full customer satisfaction is guaranteed by an internal customer satisfaction system, merchants should notify consumers that they are ready to submit disputes resulting from a transaction to one or more specified ADR systems. Information about the ADR offered should be provided as a part of the notice on how consumers can contact the merchant to resolve problems related to a transaction and access to an ADR system normally should be available only after a consumer has sought redress through a merchant's internal complaints mechanism.

12.4 Such ADR systems would not affect the consumer's right to seek remedies through the court system. However, the consumer and the merchant could agree that prior to proceeding in the court of any local jurisdiction, the consumer would submit a claim to an ADR system. ADR systems should function according to published rules of procedure that describe unambiguously all relevant elements necessary to enable consumers seeking

redress to take fully informed decisions on whether they wish to use the ADR offered or to address themselves to a court of law.

12.5 ADR systems should provide for impartial, accessible, transparent, and timely conciliation/negotiation, mediation and/or arbitration at no or only moderate cost for the consumer.

12.6 Consumers should be informed about the conditions of access (online or other), the cost, the legal nature of the ADR (arbitration, mediation, conciliation/negotiation, etc.) and of its outcome (binding/not binding/binding for the merchant; enforceable), and recourse to other instances, notably to law courts.

RECOMMENDATIONS TO GOVERNMENTS

Background

Trustmark programs are initiatives developed privately by consumer organizations, major accountancy organizations, professional organizations such as Chambers of Commerce and companies. All of them have emerged to respond to consumers' concerns on trust and confidence on electronic commerce in different areas such as privacy, children's' advertising, security, product delivery, etc.

Some governments are tempted to regulate this new way of providing consumer trust for fear that consumers will be confused by different programs offering different levels of protection. To avoid possible confusion, the GBDe has developed these guidelines to help ensure greater transparency, minimum voluntary standards and comparable levels of protection for consumers among competing trustmark programs.

RECOMMENDATIONS

1. Further trustmark development by market participants and promotion by stakeholders

   1.1 At present, only a few trustmarks programs are being used and are widely known. It is essential that trustmark programs are further developed and broadly disseminated to enhance global consumer trust in e-commerce.

   1.2 Governments should play an active in promoting and disseminating trustmarks programs.

2. Government intervention is premature

   2.1 For trustmarks to enhance consumer trust, they should remain a private-based initiative.

   2.2 Harmonization of trustmarks by means of government recommendations or compulsory government accreditation is a disincentive for innovation and competition to the detriment of consumer confidence and choice.

   2.3 The existence of different levels of trust (e.g. by sector/issue specific programs) or regional/local initiatives should be acknowledged and encouraged.

3. Active stakeholders dialogue

   All stakeholders should seek to co-ordinate actions in order to contribute to trustmarks development and encourage competitiveness between programs.

Global Business Dialogue on Electronic Commerce

Convergence

September 14, 2001

Issue Chair	*Fernando Abril-Martorell* CEO Telefónica S.A
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SCOPE OF CONVERGENCE CONCEPT

The Convergence phenomenon is illustrated by the progressive blurring of frontiers between various traditional markets, products and services, as well as the creation of newly integrated ones. The telecommunications, audio-visual and information technologies sectors are the driving forces behind this trend, which is enabled by digitalisation and responsive to technology, content and consumer demands.

Digital convergence will allow content and service providers to deliver their products and services through multiple delivery channels, and will allow consumers to receive them using various kinds of multimedia terminals, as well as different content and services on the same terminal. In this innovative environment, digital applications will flourish based upon their ability to reach consumers across formerly rigid lines, which have separated communication services.

For the GBDe, the main challenge currently consists of identifying the barriers to this phenomenon, in order to eliminate or reduce them. This will help to promote diversified products and services, which are supported by the same or different types of networks and stimulated by competition. It will also be important to address consumers' potential concerns (i.e., confidence, trust, etc.). The final objective is to create a broader, seamless market based on innovation and competition.

Internet-based applications, which can be accessed using different means, will drive the convergence process and will be the main enabler of electronic commerce.

In fact, e-commerce will reap and deliver the largest benefits from "convergence".

CONCLUSIONS

I. REGULATORY ISSUES

Most existing regulatory frameworks were developed at a time when each communications technology or infrastructure platform was designed to provide a distinct set of services. Technological breakthroughs have now altered the division of communications services, and each medium or platform is now capable of delivering a wide range of services. In many cases, this process has injected competition (or the potential for competition) into the market for services previously thought to be "natural monopolies". In addressing convergence, the central public policy challenge lies in modifying or abandoning laws and rules that no longer serve the public interest in the context of these changes.

- **Conventional regulatory structures** seem to be increasingly incapable of coping with the challenges of converging products and services. To encourage their development, traditional regulations should be kept to the minimum necessary to ensure a fair and competitive environment, giving priority wherever possible to self-regulation and policy co-operation instead of government regulation. It is a question of vision and of the markets' dynamism and speed to produce the optimal results from the convergence process.

- **Domestic compatibility and global harmonization:** Within and among jurisdictions, regulations regarding content, service provision and transport channels should be compatible in order to promote convergence. In addition, these regulatory structures should be harmonized globally, in order to foster a level-playing field for all parties operating in the emerging markets and in this way to allow the widest fulfillment of the benefits of convergence.

- **Technological neutrality:** All regulatory structures should be neutral in regard to specific technologies, thus allowing the competitive marketplace and consumer preference to drive innovation and growth. This principle of technological neutrality should not, however, be used to justify regulation of products and services that have not been regulated in the past and that remain competitive. Technological neutrality is a key to creating a flexible framework that promotes investment and innovation and removes unnecessary impediments to the development of electronic commerce.

- **Separation of content and infrastructures regulations:** Governments should ensure that content regulation is carefully tailored in accordance with the specific characteristics of a given content product or service, and that it is proportional and no more restrictive than necessary to achieve the public policy objectives associated with such products and services. Those particularities require separate content and infrastructures regulations, despite recognition of the links between them.

- **Encouraging usage by consumers:** The full potential of the Internet cannot be achieved until consumers are free to use it unencumbered by pricing regimes which increase charges based on units of time spent online. Governments should not implement policies that discourage usage or penalise users from fully exploring the potential of the Internet and should encourage a competitive telecommunications marketplace. Competitive and flexible pricing policies that facilitate access to the Internet should be encouraged.

- **Competition:** If they may benefit end users, mergers in these converging sectors and bundling of services must be in a position to be developed, provided that they do not

constitute an abuse of dominant position or distort free and fair competition.

II. DISCRIMINATORY POLICIES

- **Discrimination between players:** Under a convergent approach, offerings to consumers from traditionally differing sectors will probably become substitutable. Therefore, existing regulatory structures should be harmonised in order to avoid market distortions that will harm competition. As an example, to the extent that telecommunications operators and broadcasters offer services deemed substitutable by the public, then the method of paying for spectrum should be comparable. In addition, one impediment to convergence is the extension in some specific markets of discriminatory taxes levied on telecom infrastructures, data flow or certain terminals. The GBDe opposes any kind of discriminatory taxes imposed on the telecommunications industry such as "bit tax".

- **Frequency spectrum policies:** The non-discrimination principle should also be applied to the frequency spectrum policies, when deciding on its availability, utilisation and prices. Spectrum policies should encourage its globally harmonised usage, in order to allow traditional content and service providers and telecommunication companies to compete or merge and to provide similar content and services, whilst seeking to improve overall efficiency and service availability. The GBDe welcomes initiatives aimed at transparency and co-ordination for radio spectrum allocation, which will enhance co-operation at multilateral level for preparation of international negotiations on radio spectrum (e.g. ITU and WRC). Furthermore, in this case, public authorities' policies that transform public debt into private sector debt have a very negative effect on innovation and market growth, while reducing the scope for competition by obliging extensive market concentration.

- **Conditional Access Systems:** Consumers are primarily interested in the content and applications that they can access, not the specific technological means that are used to achieve that access. Therefore, Conditional Access Systems should not represent a discriminatory gateway. Distribution platforms and operating systems should not unduly restrict access to content and services available to consumers. Interconnection among standardised communication platforms, in a manner that maintains the integrity, privacy and security of these platforms, enhances consumers' choices and helps them obtain the communications, information and entertainment they desire.

- **Maintain Competitive Networks:** Operators of distribution platforms and operating systems should generally adhere to the principle of openness towards unaffiliated third-party content and service providers to promote the development of a competitive electronic marketplace.

III. OTHER KEYS TO THE CONVERGENCE PROCESS

- **Intellectual Property Rights:** Technological measures developed and implemented to identify, protect and manage intellectual property rights in the digital environment should be made widely available on fair, reasonable and non-discriminatory terms. Furthermore, adequate and effective levels of intellectual property rights protection and enforcement should be globally harmonised through the ratification and implementation of the WIPO Treaties and the TRIPs Agreement. Regarding levies which compensate for some copyright exceptions in the digital environment, the GBDe recommends that the use of effective and widely agreed industry standardised technological copyright protection measures based on exclusive rights management

schemes should be encouraged to eliminate the need for such levies.[1]

- **Breadth of Content:** Enhanced co-operation between governments and the industry, and the proliferation of online offerings brought on by convergence, will help bring contents closer to the citizens' social sensibilities and interests. Governments may have a role in this regard by increasing access to public services, promoting cultural diversity and enhancing all the world's languages on the Internet, thus limiting the digital divide.

- **Promoting Device Connectivity:** Moreover, policy makers should also promote the quick development of Internet Protocol version 6, in order to give more address space for new products, services and markets. This will further enable innovation and the development of these new devices, products, services and means of content distribution. Again this will contribute to the ubiquity of networks and consequently to digital bridging.

- **Consumers' Rights:** Industry has an unquestionable need and interest in promoting and protecting consumers' rights, such as empowering them to lawfully access information and content, and freely to express their ideas and creativity. Interdependencies exist between tariffs, competition and technological potential that, when used efficiently, lead the market to provide services at competitive prices.

The benefits and advancement which the converging technological environment promises will have a meaningful impact on the lives of consumers, on business and on the economies of those countries which foster its growth. The GBDe believes that this will occur through a collaborative approach with governments to create the appropriate policy framework. These principles and recommendations presented by the GBDe recognise that we are merely at the beginning of revolutionary developments. We therefore recommend that governments evaluate their domestic regulatory structures against these basic principles and embrace the type of global vision, which will be necessary to ensure that the benefits of convergence are widespread and not encumbered by traditional barriers and borders.

[1] Issues relating to intellectual property rights and technological protection measures are addressed in greater detail in the GBDe IPR Policy Paper.

Global Business Dialogue on Electronic Commerce

Cultural Diversity Task Force

September 14, 2001

Task Force Chair — *Jean-Marie Messier*
Chairman & CEO
Vivendi Universal

This paper poses the question whether globalization of communication groups, which has been considerably boosted by the advent of the Internet, is promoting standardized content and homogenization of cultures; or on the contrary, whether the Internet could be a tool to define individual identities and promote and respect all local cultures.

The GBDe believes the Internet will in fact be a means to foster creation and distribution of local culture on a scale not before possible. Creating and distributing content on the Web will be cheaper and easier than any existing media, and this will allow people to find "virtual communities" of their local culture and language regardless of their physical location in the world.

1. The growth of the Web will lead to new opportunities for Internet stakeholders

Growth of the Web around the world will lead to new opportunities for Internet stakeholders, and the most successful will be those who understand and meet the user's local preferences. In fact in terms of commercial habits, electronic commerce is facilitating the switch from a mass-marketing, "one-to-many" approach to a personalized, "one-to-one" marketing approach, which some call "mass customization" and includes language, culture, style, color, tone, taste, etc.

In order to allow and fully take advantage of the development of their digital economies and local Internet resources, all nations should advocate the right regulatory environment enabling infrastructure investments and content creation, and solve the problem of too high local access tariffs that keep users off the net and watching the clock.

2. Internet as a means to foster creation and cultural diversity

The preservation of the rich cultural heritage can and should be achieved by fostering the creation and development of national and local content, thus providing consumers with the opportunity to find the content they desire. Indeed, the demand for local production is currently increasing everywhere in the world and is especially true in the area of music, information and fiction.

In terms of creativity, the Internet will make it possible to create and broadcast works on a worldwide scale which would otherwise never have crossed local or regional borders.

Moreover, local cultures are capable of mutually enriching each other, thereby creating success stories or legends that are universal. Individual works, created at an individual location, can travel around the world.

Government financial support for specific cultural and linguistic programs - whether through direct subsidies or tax incentives - can help to fill specific gaps which cannot be bridged in a market-led process, and can also promote cultural diversity by making content available on-line.

These subsidies or incentives should be funded strictly from public sources and be limited to supporting initiatives that would not be commercially viable if left solely to private sector financing. Any such programs should operate under conditions of transparency and non-discrimination and should be implemented in a manner that does not distort competition.

3. Cultural diversity and trade agreements[2]

Looking at the Internet's function as a tool for linguistic and cultural diversity is also something that we should keep in mind when considering the current round of GATS negotiations. The GBDe agrees that the notion of quotas has become outdated and not needed to protect and to develop local content. The GBDe also urges WTO member states to carefully address the classification issue for trade purposes separately from the negotiation of liberalization commitment.

4. Cultural diversity and digital bridges

The issue of encouraging local content production and distribution all around the world, especially in emerging and developing countries needs to be tackled in parallel with digital bridges issues. Cultural industries, particularly in developing countries, may have difficulties in facing the challenge of international competition.

Basically, the guiding principles that can guarantee fair commercial development for any product are open access to markets, diversity of choice and competitiveness. The lack of appropriate policies therefore hinders the development of cultural products in a large number of developing countries.

Furthermore, the competitiveness of a country's domestic cultural industries may be hindered by various factors such as:

- Disadvantaged conditions for creation: The industry and creators lack capital, training and incentives;
- The structure of domestic markets: It is more expensive to produce, promote and distribute cultural works in developing

[2] This paragraph should be read with reference to the GBDe Trade Policy Paper 2001 as regards the recommendation to WTO.

countries (cost of materials and services, availability of financial resources);
- Legal obstacles: Local legal frameworks do not always provide for fiscal incentives and an adequate protection of intellectual property.

Trade agreements would have little value for developing countries if there were no goods or services to be consumed domestically or to be exported. Therefore it is necessary to reinforce the cultural industry infrastructure in countries that are still heavily dependent on imported cultural goods and services to meet their citizens' educational and cultural needs. The vitality and international presence of their cultures depend on it.

With a view to bridging the digital divide, governments of developing and emerging countries should be able to create policies which help local creation via various kinds of government funding. Such government funding, of course, should be limited to supporting initiatives that would not be commercially viable in the short term if left solely to private sector financing and should be balanced by the commitment of governments to actively implement and enforce copyright regulation, to combat piracy and content counterfeiting and to refrain from the introduction of any protectionist measures regarding market access.

Global Business Dialogue on Electronic Commerce

Cyber Ethics Task Force

September 14, 2001

Task Force Chair — *Thomas Middelhoff*
Chairman & CEO
Bertelsmann AG

STATEMENT OF PRINCIPLES ON CYBER ETHICS

The GBDe - bringing together the leading companies active in electronic commerce - seeks to demonstrate a responsible approach to the Internet.

A core principle that guides the GBDe is the belief that business plays a leadership role in helping to shape the development and the growth of the Internet to be a positive influence on the lives of people everywhere, and in pursuing a medium of which we can all be proud. The GBDe also believes that consumers' trust in the Internet is of crucial importance for the development of the Information Society.

The World Wide Web has become a vital medium for education, communication, entertainment commerce and new employment opportunities; it has revolutionised the means of human interaction and has developed into an essential tool for the global realization of freedom of speech and the individual's right to receive and impart information. It may even be considered as a late fulfilment of the aspirations embodied in the Universal Declaration of Human Rights offering everybody the means to seek, receive and impart information and ideas regardless of frontiers.

Unfortunately, the qualities of the Internet which make it capable of advancing positive social and commercial objectives also make it susceptible to abuse and the perpetuation of unethical and/or illegal ends through the dissemination of unethical material such as child pornography, anti-Semitic, racist or xenophobic content.

Pursuing effective solutions proves extremely challenging in the traditional legal and regulatory setting because the Internet spans existing borders, jurisdictions and applicable laws. In addition, cultural diversities and divergent national standards and legal traditions render it very difficult to assert globally accepted and authoritative standards for criminal or illegal material.

The GBDe believes, therefore, that market-oriented transnational solutions should be developed and promoted to protect against the spread of 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.

The GBDe welcomes the efforts of the United Nations and other global and regional organisations to raise awareness of the problem, including by proclaiming 2001 the international year of mobilization against racism, racial discrimination, xenophobia and related intolerance.

In seeking to take an active stance against the spread of unethical material on the Internet through voluntary cross-border industry self-regulation, making available filtering and labelling tools for users, and through awareness efforts in cooperation with competent authorities and other organizations, while fully protecting rights to free speech and expression as well as artistic and journalistic freedom, the GBDe agrees upon the following principles:

GBDE PRINCIPLES RELATING TO MEMBER COMPANIES' OWN SERVICES, MATERIAL AND OFFERS

1. GBDe members shall take steps to ensure that their services, materials and offers do not promote unethical material as described above. While taking such steps in appropriate circumstances, GBDe members shall not compromise their longstanding and fundamental commitment to artistic and journalistic freedom and the essential principles of free speech and expression.

GBDE PRINCIPLES RELATING TO USERS

2. In order for 'Cyber Ethics' to become a widely understood and respected part of the Internet discourse, where appropriate, GBDe members shall support the establishment of outreach programs designed to impart media competence and principles of cyber ethics among current users and in the next generation of cyber citizens.

   They shall inform users, where appropriate, about ethical practices for the Internet and about the availability and use of labelling and filtering tools.

   They shall support filtering and labelling tools such as the Platform for Internet Content Selection (PICS), the Internet Content Rating Association (ICRA) or other user based tools, and shall seek to provide technical assistance in the use of these tools to permit Internet users to allow or deny access to a given site and to preserve the performance of their Internet applications.

GBDE PRINCIPLES RELATING TO BUSINESS PARTNERS

3. Where GBDe members are directly involved in the creation or distribution of content via the Internet, these members shall encourage their business partners with whom they collaborate in the creation or distribution of content via the Internet to comply, through terms of services, with acceptable use policies that respect the spirit of the present Statement of Principles and companies' own ethical policies**.**

GBDE PRINCIPLES RELATING TO PUBLIC AUTHORITIES

4. The GBDe believes that industry should enter into a constructive dialogue with international and regional organisations in order to coordinate public and private efforts to

prevent the spread of unethical material on the Internet while preserving free speech and expression on a global level.

Industry will, in accordance with national law and practice and in due recognition of fundamental rights, and in particular the right to free speech, continue to co-operate expeditiously with law enforcement authorities for the investigation of criminal or illegal material on the Internet.

Global Business Dialogue on Electronic Commerce

Cyber Security
MRA Issue, Digital Signature & Cross Certification

September 14, 2001

Issue Chair	*Dr. Taher Elgamal* President & CEO Securify
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INTRODUCTION

It is one of the most important issues of cyber security combating all kinds of threats and crimes in cyber space to protect end user confidence of electronic commerce. Legal frameworks related to digital signatures and corresponding certificate infrastructures, including certificate management, are already in place or being developed in many countries. The GBDe recognizes that such certificate infrastructures should be established and be available to all people and all nations in order to protect the security of electronic commerce globally. The generic security of networks and information systems can be considered to consist of authentication, non-repudiation, integrity, and confidentiality, all of which can be realized through certificate infrastructures.

There have many international discussions and recommendations on certification issues in the context of cyber-security. In the GBDe, the Authentication and Security Working Group has published a recommendation at the Paris Conference in 1999, and the Cyber Security Working Group has given recommendations at the Miami Conference in 2000. This paper builds upon these recommendations and covers specifically the topic of mutual recognition of certification authorities (CAs), the actors establishing certification policies.

Accompanied with innovation of information technology, many governments have enacted and enforced Digital Signature and Digital Certification Acts in order to make certification services available for many users, and to establish a framework of legal recognition of digital signatures. Certification services, for which public

key infrastructure (PKI) technology is used in many cases, are provided in two styles:

- Provided by governments: A public entity, sometimes a government itself, provides Certification Services as one of its administrative services, for example for tax payments and patent applications. It constitutes one of the major elements of e-Government. Examples are the United States' Federal PKI, and the Japanese Government PKI.

- Provided by business entities: A business entity provides Certification Services in accordance with certification policies that depend on the context of usage. The policy might differ between the Certification Service Providers (CSPs) [3] depending on types of industry and the context of the applications.

As electronic commerce develops rapidly, many kinds of CSPs have been established. Such a variety of CSPs means that consumers, end users of Certification Services, might have to deal with too many kinds of Certificates, which can bring operational difficulties into the market. The GBDe considers that there is a potential threat to hamper e-commerce if companies and consumers have to face too many certificates.

To prevent this inconvenience for consumers, CSPs can mutually recognize other CAs through Mutual Recognition Agreements. CSPs can implement Mutual Recognition by establishing Cross Certification with each other. Alternatively, it is also possible to declare the Root Certificate of another domain as "trusted" without issuing an actual certificate.

Such Mutual Recognitions and Cross Certifications are put into practice both globally and domestically.
- Between governments
- Government with business entities
- Between business entities

[3] There exist different kinds of actors as CSP, for example, Certification Authority, Registration Authority, and Certification Operator.

RECOMMENDATIONS

Mutual recognition and cross certification enables consumers to enjoy the benefit of certification services without using too many certificates. Therefore, the GBDe recommends that CSPs mutually recognize CAs through Mutual Recognition Agreements (MRAs) wherever their policies permit.

1. Models of Cross Certification

The GBDe understands that there exist two major models of Cross Certification. Though there would exist many definitions for cross certification[4], we define "cross certification" as just "reciprocal certification process of two CAs."[5]

a. CSPs recognize another CA by mutually issuing Cross Certificates. Providers confirm that each security policy has a similar level of security.

b. CSPs submit to a common Trusted Third Party acting as root CA, and they authenticate each other through such TTP. Alternatively, CAs may cross-certify each with a trusted Bridge CA or any other similar system. In contrast to the hierarchical model described above, a Bridge CA does not have any authority over the policies and operations of the participating CAs.

[4] This recommendtion is drafted basically in accordance with "Cross Certification Guidelines (alpha version)" by Electronic Commerce promotion Council of Japan (ECOM) in June 1998. http://www.ecom.or.jp/ecom_e/report/full/ccg.pdf. On the other hand, in March 2001, PKI Forum has released a White Paper titled, "CA-CA Interoperability", which suggests seven styles of CA-CA interoperability; cross certification, bridge CA, cross-recognition, certificate trust lists, accreditation certificate, strict hierarchy, and delegated path discovery and validation. http://www.pkiforum.org/pdfs/ca-ca_interop.pdf

[5] "Cross Certification Guideline (alpha version)", ECOM, June 1998.

The GBDe recognizes that many business associations and governmental organizations have started discussions and trials for the implementation of cross certification, domestically and internationally, and that each model of MRA would be effective as far as it would bring the development of electronic commerce and the global user convenience.

Each CSP has its own certificate policy, which shows level of security provided by the CSP. The certificate policy is defined as a set of rules that indicates the applicability of a certificate to a particular community and/or class of application with common security requirements.[6] In executing MRA, CSPs should agree through private agreements not only a format of each certificate but also on similar certificate policies. If cross certification would lower the level of security, CSPs should limit, even reject, such a Cross Certification. As written above, the scope of MRA should be related to certificate policy and it would be necessary to establish an appropriate agreements as to risk-management practices and business terms and conditions between cross certification organizations.

Not only operational issues but also technical ones should be considered. Especially technical interoperability is necessary to make cross certification work. So the GBDe recommends that governments and industries should cooperate with each other to promote standardized solutions to achieve interoperability in terms of cross certification and to realize technological interoperability between PKI-based applications, for example secure e-mail.

Another standard issue is related to the ITU standard X.509 v3. First of all, while it gives the flexibility to support a wide variety of different extensions, it may be necessary to define a set of common policies if users registered under different CAs are to successfully communicate with each other. Secondly, efficient validation of the certification chain should be clearly identified.

1-a. Mesh Model

For executing MRA, CSPs should confirm the similarity of both technical and operational policies of each other's certificates, for example, certificate formats, certificate validity, renewal and revocation of certificates, responsibilities of authorities. The GBDe recommends that CSPs should publish such cross-certification policies to end-users. Especially the level of trust is crucial for its subscribing end-users so that it should be stated clearly and publicly.

1-b. Centralized Model

Bridge CAs are regarded in many cases as the simplest way to achieve MRA in a group of CAs. A bridge-CA architecture has a much lower complexity than a model where each pair of CAs enters a separate MRA, while not requiring the CAs to submit to a common root CA. Bridge CAs have to carefully check the policies and technical interoperability of the participating PKIs, such that all parties can be certain that only similar policies are mapped onto each other, and that the system remains interoperable.

2. Liability of Certification Authority – legal issue

In PKIs with cross certification, end-users can experience damages and losses by unauthorized use of certificates and leak of private data because of unauthorized access and decryption. The GBDe recommends that CSPs should clarify the liability issues when entering into cross certification. If this issue is discussed internationally, the legal systems of each region, for example, license systems of CAs, Digital Signature Acts, regulations of encryption, and customs of commercial transaction should be considered. On the other hand, private commercial agreements between the parties should be allowed to define the liability of each one of them in case of a damage or loss by the end user.

[6] Information Technology – Open System Interconnection – The Directory: Authentication Framework, Joint Recommendation | Standard ITU-T X.509 and ISO/IEC 9594-8, 2000.

3. No legal barriers to MRA

Large-scale, international MRAs are a complex issue, the details of which are not yet entirely clarified. While Digital Signature Acts should be open to the recognition of foreign signatures, legislators should closely observe the ongoing cross certification projects and consult with the participants before details of mutual legal recognition are being defined. In order to simplify such mutual legal recognition, the GBDe recommends not defining national schemes that are likely to be not interoperable with international PKIs and recommends that a CSP accredited in one country should be able to cross-recognize a CSP of another country without administrative constraint.

4. Government Regulation

The GBDe recommends to the Government Regulators to eliminate constraints in the deployment of PKI based solutions by clarifying the regulatory and legal framework[7].

5. User Education

When signing documents or relying on electronic signatures, users should have guidance on what to observe in order to get secure results. Especially with respect to an underlying combination of different PKIs, users should understand whom they trust and be able to make educated decisions. To achieve this goal, the GBDe recommends that providers of PKI services should provide users with easily understandable information about the trust relationships and the secure handling of the relevant functions.

6. Public/private cooperation and future developments

PKIs emerge both in the public and the private area. For truly global and cross-sector interoperability of PKIs, and as an important ingredient to e-government, the GBDe recommends that governments and industries should cooperate in mutual recognition of certification services, especially by promoting cross certification between government CAs and business CAs.

Market development will not be possible without strong cooperation between governmental and private initiatives. As customer relationships and legal/financial liability are key in electronic signature and related PKI processes, the GBDe considers a few key actors like banks, insurances and operators (fix, mobile, cable/satellite TV) will play a significant role and encourages international discussions between them and governments through dedicated fora mirrored at national level. In particular cross certification should be studied at projects' start or first implementations (e-government, banking, m-commerce,) and should consider any type of terminal (PC, mobile phones and TV sets).

[7] For example,
1.Impulse the adoption of global standards in order to allow the cross certification among the different Certification Authorities.
2.Promote the deployment of PKI based solutions by providing the appropriate legal structure and coverage framework in the transactions performed with digital certificates.

Global Business Dialogue on Electronic Commerce

Digital Bridges

September 14, 2001

Issue Chair	*Roberto R. Romulo* Chairman Equitable CardNetwork Inc.
Contact Point (Americas)	*Joe Forehand* Chairman & CEO Accenture
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INTRODUCTION

One of the goals of the GBDe is to help promote the benefits of e-commerce to all sectors of society globally. The GBDe, however, recognizes that there are differences in the ability and capacity of each sector within societies as well as between societies to have access to information and communications technologies including the Internet. This so-called digital divide arises from the disparity in the availability of and access to adequate infrastructure and human resource skills.

While individual members of the GBDe have been engaged in the effort to bridge the digital divide, the GBDe's involvement as an organization in this effort had its origin in the lead-up to the July 2000 G8 Okinawa Summit where the G8 leaders agreed upon a comprehensive and forward-looking Charter on the Global Information Society. The Charter outlined in detail measures that developed and developing country governments, the business sector and international organizations could work together to promote the growth and diffusion of the Internet. Importantly, it institutionalized this effort and created a vehicle for all interested stakeholders to work together by establishing the Digital Opportunities Task Force (DOT Force).

The GBDe made important contributions to the shaping of the Charter and was named as one of the leading private sector groups that will participate directly in the work of the DOT Force. The GBDe created a Digital Bridge Task Force, which has since evolved into a full-fledged Working Group. The GBDe has offered itself as an active and ongoing source of expertise and input for policy makers in developing countries who have assessed their e-readiness and who seek guidance. The GBDe can be a key element of a resource network for interested governments to draw upon as they

seek to develop and implement strategies for bridging the digital divide in their countries. Common to GBDe involvement in this effort is the emphasis on the importance of governments providing a sound, consistent policy and regulatory framework that would be conducive to private sector initiatives.

OBJECTIVES FOR 2001

Building on the initiatives began in 2000, the GBDe set forth the following objectives for 2001:

- To assure that the GBDe and its members can contribute their expertise to global initiatives that address the digital divide, in part through the GBDe's positioning as a key private sector reference point representative of the full e-commerce value-chain for those initiatives.

- To make substantive contributions to the development of suitable e-commerce policy framework in emerging economies.

- To facilitate awareness and access to the digital divide projects of GBDe members and develop a methodology of best practices of these projects as a reference for designing future projects.

- To identify and work to form consensus views on policy elements of particular interest to emerging economies.

ACCOMPLISHMENTS

Contribution to Global Digital Divide Initiatives

G8 DOT Force

GBDe members have participated in the work of the DOT Force in the course of the year. In addition to its contribution as part of the DOT Force consultation process, the GBDe sent a message to the G8 leaders meeting in Genoa calling on them to:

- Support the launch of a new round of WTO trade negotiations with a major new focus on innovation and capacity building through digital trade.

- Urge the adoption of global, regional and country-specific programs that build upon the Okinawa Charter on Global Information Society and to chart the progress they have made in implementing the policy/regulatory recommendations of the IT charter so that they can lead by example.

- Request that those organizations – public and private sector – represented on the DOT Force develop their own initiatives based on the Okinawa Charter. Possible activities include: i) a new World Intellectual Property Organization initiative (developing and protecting local content through intellectual property protection); ii) a new International Telecommunications Union initiative (telecom cost and access issues); iii) a new World Health Organization initiative (using the Internet to better distribute information and medical developments); iv) work by the international financial institutions to provide insight on improving investment climates and providing necessary capital; v) a new WTO work program on e-commerce that examines the role of trade in advancing the development of e-commerce, and; vi) a new OECD initiative that evaluates and presents combined policy/regulatory expertise.

World Economic Forum (WEF)

The GBDe has also been a strong contributor to the efforts of the World Economic Forum (WEF) and, indeed, GBDe Regional Co-Chair, Jean-Marie Messier leads its Digital Divide Task Force. The GBDe's participation in the work of the WEF includes those relating to policy development, entrepreneurship and education. In addition, the GBDe is working in concert with WEF in the post-Genoa process.

Contribution to Electronic Commerce Policy Framework Formulation in Emerging Economies

eASEAN

One of the signature events at the GBDe Miami meeting in September 2000 was the signing of a Statement of Cooperation between the GBDe and the eASEAN Task Force. The Task Force was mandated by ASEAN Leaders to draw up recommendations on how to facilitate ICT and e-commerce development in the region. The Cooperation Agreement calls for the GBDe to provide, at the request of the Task Force, their expertise in support of policy framework development for e-commerce by ASEAN governments and to serve as a clearinghouse for digital divide projects. Subsequently, the ASEAN countries signed a Framework Agreement on e-commerce development in the region. It provided for concerted action to develop regional network infrastructure, create the necessary policy and legal environment for secure e-commerce, and liberalize trade and investment restrictions on e-commerce related goods and services.

Currently, GBDe members are working with eASEAN on cross-border certification, convergence, e-commerce readiness assessment, and distance learning.

APEC Business Advisory Council (ABAC)

A similar Statement of Cooperation was signed in February 2001 between the GBDe and ABAC. ABAC is the private sector group that advises the Leaders of the twenty-one member economies of the Asia Pacific Economic Cooperation (APEC) on business sector views on furthering economic integration in the region. The Cooperation agreement has enabled ABAC to draw on the GBDe's expertise in developing its recommendations. ABAC's Technology Task Force and the GBDe have worked together this year to advance government online.

The GBDe Working Group on e-Government has conducted a survey to document overall e-government initiatives in the region that provide a comprehensive framework for progress. On the basis of these findings, it has developed recommendations identifying appropriate roles for private sector and government, providing a model for enhanced social system. ABAC has recommended that APEC governments follow these leads in articulating a vision and implementation plan for their own economies.

Elements of such a plan would require that government online or e-government should be one-stop and seamless so that business can avoid duplicate applications for different agencies. It further recommends that methods of speedy resolution of conflicts, such as alternative dispute resolution (ADR) mechanisms, should be adopted to ensure that government and business retain the time efficiencies gained from e-commerce.

GBDe members are also involved in the Asia Pacific e-Learning Alliance, a consortium of companies that are collaborating on a project to examine the policies and practices that can enable APEC economies to maximize education resources, employ public and private partnerships, and reduce the digital divide.

South African e-commerce Regulatory Process

The GBDe has continued its participation in the development of the South African e-commerce regulatory environment through contacts with Members of the South African Parliament, which began on 2000 with the launching of the Green Paper. GBDe members have presented recommendations in the areas of IPR, electronic signatures, consumer confidence - particularly privacy issues - and taxation.

GBDe Members' Digital Bridge Initiatives

Knowledge Network

In Miami, the Digital Bridges Working Group presented an updated version of the GBDe's "clearinghouse", a compendium of existing digital bridges programs and initiatives of GBDe members, building on the preliminary lists delivered to the meeting of G8 Leaders in

Okinawa. At the November 2000 meeting of APEC Leaders in Brunei, the GBDe announced an Internet-based "Knowledge Network" that will allow government officials, non-profit groups, academics, and others to obtain updated information on digital divide projects around the world. The Knowledge Network builds on the compendium which has been reformatted for greater ease of use and is now accessible via a website (http://knowledgenetwork.gbde.org). The site includes links with GBDe members' sites as well as other institutions involved in digital divide projects. By posting information on the web, information and projects can be made more accessible and interactive.

Best Practices

The Digital Bridges Working Group is developing a methodology to identify best practices for the choice and implementation of commercial and non-commercial activities that contribute to enhancing digital opportunities. The methodology involves a three-part questionnaire designed to help draw conclusions from GBDe members' activities in three areas: 1) commercial activities; 2) non-commercial activities including philanthropic; and, 3) educational activities.

The goals of the project are: 1) to identify success factors in the GBDe's commercial and other activities that contribute to creating digital opportunities; 2) to demonstrate the positive contributions of GBDe members to global digital divide efforts; 3) to assist governments to learn to work more effectively with the private sector; and, 4) to demonstrate that commercial and development goals are mutually supportive.

Policy Elements of Relevance to Emerging Economies

The Working Group has also identified policy elements that may be of particular significance or relevance to emerging economies and have participated in developing consensus views in the relevant GBDe working groups. Some of these policy elements include those in e-government, taxation, trade/WTO, convergence, cyber security and cultural diversity.

NEXT STEPS: DIGITAL BRIDGES WORKING GROUP 2002

For 2002, the Digital Bridges Working Group will continue to reinforce the GBDe's role as a key private sector reference point in global digital divide initiatives and a substantive contributor to the development of e-commerce policy framework in emerging economies.

- It will follow through on existing commitments to ASEAN by institutionalizing the dialogue process and undertaking activities that promote GBDe principles and recommendations.

- It will build on the success of its interaction with APEC including the Knowledge Network, e-Government, Education Alliance and the Shanghai connectivity event, with new initiatives relating to entrepreneurial development and SMEs.

- It will complete the best practices project and look to link it with similar efforts in the World Economic Forum.

- It will follow on the next steps of the G8 task force including consideration to take up a specific DOT Force project.

- It will identify opportunities for interaction with other emerging economies similar to the South African Green Paper process.

Global Business Dialogue on Electronic Commerce

e-Government

September 14, 2001

Issue Chair	*Yasuhiro Moriuchi* COO, System Solution Group Hitachi Ltd.
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SECTION I

PRIVATE SECTOR RECOMMENDATIONS TO GOVERNMENT ON REALIZATION OF E-GOVERNMENT

Expanding Digital Opportunities for Government and Private Companies

INTRODUCTION

The players/stakeholders in e-commerce today are not only Business (B) and Consumers (C) but also the Government (G). The government not only executes laws and operates administrative systems, but also conducts activities related to business, such as procurement of products and services, regulatory disclosure and notification, and the imposition and collection of taxes. Hereafter, B stands for Business, C stands for Citizens or Consumers, and G stands for Government.

Companies' successful investments in IT depend on the extent to which government administrative functions are also digitized. For private corporations, the government is very important to and deeply involved in our businesses. If governments do not proceed with utilizing IT, digitization and online operations, government-related processes will continue to be performed manually. For instance, we may have to continue submitting paper documents to governments. Even if private corporations put effort into utilizing IT and putting business processes online, their effect (e.g. increased efficiency and productivity) will be quite limited in such case.

Thus the GBDe, an assembly of private companies, proposes requirements of e-Government from the point-of-view of business partners of the

government. Moreover, assigning appropriate roles to government and the private sector should contribute to efficient realization of e-Government. Furthermore, this new role assignment will be a model for a new social system. These proposals should be valuable to countries that are already developing e-Government infrastructure and those that are just starting to promote it.

The realization of e-Government should improve the efficiency of private companies, increase their utilization of e-commerce, and thereby contribute to the further development of e-commerce in society as a whole. By the same token, it should be recognized that those regions, countries or local governments with non-advanced e-Government policies hold a risk of less private company attraction. We hope that this deliverable will function as a checklist of e-Government realization for both countries that have already begun e-Government establishment and those who have not yet started it.

I. In Section I, we will propose basic requirements for governments in establishing e-Government to facilitate G-to-B transactions.

II. In Section II, we will present ideas of how private sector can support in e-Government establishment and operation (see Section II).

III. In the last section, we will present a compilation of the status of e-Government in different countries (see Section III).

1. DEFINITION OF 'E-GOVERNMENT'

Electronic government (hereafter e-Government) refers to a situation in which administrative, legislative and judicial agencies (including both central and local governments) digitize their internal and external operations and utilize networked systems efficiently to realize better quality in the provision of public services.

2. ROLE OF GOVERNMENT FROM PRIVATE COMPANIES' POINT-OF-VIEW

We consider that a government fulfills the following six roles:

(1) *Provider* of public services (the 'vendor' in business sense).
(2) *Purchaser* of materials needed for its operations (the 'buyer' in business sense).
(3) *Supervisor* of law and institution (i.e. 'enabler' for IT society).
(4) *Collector of taxes, duties and tariffs* needed for operation of government services.
(5) *Facilitator of transparency* in G-to-B processes.
(6) *Content holder* of large information including valuable statistical information.

3. MEANING OF E-GOVERNMENT REALIZATION FROM PRIVATE COMPANIES' POINT-OF-VIEW

(1) Governments provide public services with higher effectiveness, speed and quality.

Examples:

- New types of public services may be provided as a result of IT utilization.
- Increased efficiency in a current operation may lead to cost reduction, which may create a surplus over the original budget (tax revenue), which may be utilized for further improvements in operation.
- More efficient, responsive, and timely communication between the government and a company may be achieved.

(2) e-Government as a showcase of good IT utilization.

Private companies can deepen their understanding of advantages of IT utilization by looking at the successful use of IT in the government. e-Government can function as a showcase of IT utilization that private companies can refer to.

(3) Governments promote measures to overcome obstacles to IT society.

Through the process of e-Government implementation, governments will become more aware of problems and barriers that need to be

solved for successful IT utilization. Hence governments will set out effective measures to solve such problems.

Examples of possible measures:

- Create appropriate legal and institutional environments.
- Provide secure and efficient infrastructure.

(4) e-Government may facilitate IT utilization in the private sector.

When the government is digitized, private companies may also promote further investment to and utilization of IT in order to enjoy the benefits of e-Government.

(5) e-Government implementation may nurture IT-related industries and lead R&D.

Since private companies actively join the e-Government development project, IT-related industries should flourish.

4. PROPOSALS TO GOVERNMENTS FOR REALIZATION OF E-GOVERNMENT REQUIREMENTS

The GBDe proposes the following 23 points as the proposals to governments on e-Government desirable requirements. All aim to achieve the meaning of e-Government and to fulfill the roles of government mentioned above.

Additionally, the GBDe focuses on items that contribute to expanding G-to-B transactions. Although G-to-C area is a highly important field, we will not focus on it this time. The Digital Bridges Working Group deals with the digital divide component of G-to-C e-Government. Additionally, the Cyber Security Working Group deals with security matter related to e-Government. By the same token, the Taxation Working Group and the Trade/WTO Working Group discuss tax-related and trade-related matters in e-Government respectively.

4.1 Propulsion framework and the ways to proceed e-Government projects

(1) Establish institutional system that permits private companies' requests 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 institutional systems that permit private companies' requests to be considered for e-Government projects. An example of such institution may be an 'e-Government committee' that includes representatives of private sector as its members.

(2) Disclose and publicize e-Governments' information systems.

The reason for this proposal is that a government system can be referred to as a model or prototype by the rest of the society. 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 to develop information systems and realize the merits of IT utilization.

(3) 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 may be able to make effective IT investments.

(4) Establish measures and structure to appropriately evaluate governments' digitization. Publicize the evaluation results. Let private companies join the process of evaluation.

Private companies, as tax-payers, have the rights and the duty to join the process of evaluating policies and the effects of e-Government.

(5) Specify 'feedback merits' of digitization of procedures.

Governments should notify what kind of merits private companies can receive from e-Government. For instance, governments may quantify and publicize 'reduction in time required for a transaction', or 'lowering of service fee', that occurred as a result of digitization. By doing so, the private sector can clearly recognize the merits of e-Government and IT utilization.

(6) Utilize private outsourcing.

Technology changes rapidly everyday, as does the costs of using the technology. Private companies possess knowledge of managing customer relations through their business. Thus private outsourcing may contribute to prompt response, while maintaining relatively low development costs. Moreover, private outsourcing may function as a means to nurture the country's IT industry and market.

4.2 Desirable e-Government features

(1) Enable 100% of administrative procedures online, and achieve one-stop service provision, with the favorable law establishment.

Currently, users of administrative services often have to take separate manual procedures with different agencies in order to complete one single issue. e-Government should offer one-stop services that allow users to complete these procedures (e.g. document submission and fee payments) at the same time in a single online window. Related laws should be amended to enable such service. The basis for this idea is that partial digitization of current administrative services may not provide a big improvement in users' efficiency, since they still have to make many procedures separately. Additionally, the effect of digitization on the private sector may be limited if business transactions with governments remain partially manual and non-online. Business consumers of government services need *seamless* services that users don't necessarily feel the boundaries of government agencies.

(2) Conduct administrative reforms and establish the favorable law institutions.

Operations within government agencies should be integrated and simplified. Again, the reason for this request is that mere digitization of current administrative services without BPR may not provide sufficient results in enhancing the effectiveness of public sector. What is more, laws and institutions should be modified to make these reforms possible.

(3) Standardize operational forms of central and local governments. Enhance simultaneous digitization process in central and local governments.

Private companies engage in procedures and transactions with all central and local governments. In doing so, it is more convenient for the users if operational forms of central and local governments are the same for equivalent procedures. For instance, the format of an application form should be identical between central and local governments. 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. Therefore, we propose that there should be a simultaneous process of digitization in central and local governments.

(4) Ensure secure environment.

The e-Government system must be securely protected so that private companies can access, provide and exchange various information (e.g. transaction information or company performance report) at ease.

(5) Carry out measures to facilitate SMEs' utilization of e-Government services.

Small and medium-sized enterprises (hereafter SMEs) often lack sufficient financial and human resources, which may cause delays in responding 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 easier.

(6) Disclose more information on government services. Speed up the process of information disclosure.

Government information should be released on the Internet simultaneously with conventional publishing and press releases. It is necessary because differences among media in the extent and timing of information disclosure may cause confusion for the users. For instance, it may cause companies the need to refer to many different media to obtain information about one single matter.

(7) Create an environment to diversify the means to utilize services.

e-Government services should be accessible not only from personal computers but also from mobile instruments and digital TVs. This is necessary in order to expand the merits of e-Government more broadly. Additionally, countries have different situations in the prevalence of network access facilities. Therefore, e-Government should be able to correspond to various means for the access.

(8) Establish methods of timely resolution of conflicts in transactions between business and government.

Methods of timely resolution of conflicts (e.g. ADR) are necessary to retain promptness of e-Commerce. This applies not only to company-to-company disputes in e-commerce but also to that of company-to-government disputes.

(9) Help provide and disclose information that private companies need in formats that are easy for them to use.

Providing and disclosing some of the vast information that Government holds is highly important. Yet it will not have a sufficient effect if it is not in a format that users can use in their system directly or by applying a conversion tool. For instance, it is better to have government information released in code data format rather than graphical format such as bit map.

(10) Establish a transparent system, and assure transparency in operation as well.

There is a need to construct a transparent system and operate it impartially so that the Government cannot utilize it in favor of certain stakeholders.

4.3 Internationalization/Globalization issues

(1) Correspond to 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.

(2) [Technical Standard] As for access method and protocol, adopt specifications and technologies of internationally neutral standard.

The IT field is highly competitive. Relying on the existing fixed specifications may prevent further development of technologies. It may also prevent use 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 several specifications and technologies are used. For such areas it is advisable to use some main formats, and provide converting tools between them.

(3) [Management Standard] Promote adoption of international or global standard.

Methods and specifications used in transactions and procedures should meet a certain international standard. For instance, meter-kilogram-second is adopted as a standard for International System of Units (SI units). Having useful standards is

important for facilitating free trade and globalization. Yet some exemptions may be required for situations in which a country seeks to develop its immature industries, or peculiar defense or diplomatic situations. Another possible solution is not to prescribe a single format, but to lay out certain conditions that must be met. B and G should consult on and consider the standardization of methods of business.

(4) 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 foreign governments through their home governments.

(5) Notify 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 the bid when the Government's information on bidding qualification is transparent to them. This may facilitate international bidding as well as conventional domestic bidding.

(6) Government operations related to international e-Commerce must go on-line with high priority (e.g. trade / import and export operations).

This is an area that advantageous effects of Internet utilization are significant. There are many different Ministries and Agencies involved in the administration of customs and export and import regulations, so the potential impact is especially strong.

(7) Arrive at an agreement for dispute resolution in international e-Commerce transaction.

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.

FINAL REMARK

The GBDe addressed the issues of G-to-B area of e-Government extensively. The importance of G-to-B e-Government was stressed, and comprehensive recommendation on what should be done for its realization has been presented. The significance of the G-to-C area, however, must be recognized as well. For any government, providing services to its citizens is ultimately the most important task. Accordingly, it is also important for the private sector to discuss and recommend desirable features of G-to-C e-Government. Investigation into the G-to-C area may in turn elicit our recognition of new issues for G-to-B e-Government area. Moreover, private companies possess methodologies and knowledge for customer satisfaction using the networks, which may contribute to increasing satisfaction among citizens using e-Government. Therefore, we would like to take up G-to-C area in the future.

SECTION II

PRIVATE SECTOR SUPPORT ON e-GOVERNMENT IMPLEMENTATION

INTRODUCTION

As mentioned above, the government not only executes laws and operates administrative systems, but also conducts activities related to business, such as procurement of products and services, regulatory disclosure and notification, and the imposition and collection of taxes. Therefore, the players in e-Commerce today are not only Business (B) and Consumers (C) but also Government.

In Section I, we have proposed the deliverable addressing requirements that government should consider when implementing e-Government. Now, we propose some ideas of how private sector can contribute to the e-Government implementation.

Before beginning the discussion, roles of private sector for governments can be stated as follows:

(1) Vendor of products / services to governments

(2) User of government services

(3) Taxpayers.

Additionally, we consider five main phases of e-Government implementation cycle:
(1) Plan (2) Development (3) Operation/Utilization (4) Evaluation (5) Modification.

WHAT THE PRIVATE SECTOR CAN CONTRIBUTE FOR E-GOVERNMENT IMPLEMENTATION

1. E-Government propulsion framework and the ways to proceed e-Government project.

(1) Private sector can provide with experts in needed areas of e-Government project.
(2) Private sector can offer outsourcing services suited to public sector.
Examples:
- services with high security services
- services that can be universally provided with low service charge.

2. Facilitating desirable e-Government features.

(1) Private sector can actively utilize the digitized services provided by government, as well as offering suggestions for improvements.
(2) Private companies' BPR (business process re-engineering) method may be introduced to government.
(3) Private sector may provide with strategies for increasing customer convenience and customer satisfaction.
(4) Successful examples of IT utilization in private companies can be presented.
(5) Private sector can provide information on the most recent technologies.
(6) Small- and medium-sized enterprises (SMEs) should create an environment in which they can receive e-Government services cheaply. Such environment can be achieved by interoperable framework of needed software, infrastructure and systems. This framework may consist of three sectors; 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.
(7) Effective methods of evaluation in private companies can be introduced to evaluating government operations.
(8) Private sector may cooperate in IT education of governmental officials.
(9) Private companies may provide universally acceptable equipment easy to use for governmental officials with various handicaps.

3. Contribution to internationalization issues.

(1) Private sector can provide with information on international movement on technologies and standardization issues.
(2) International companies can disclose problems that they have experienced in using IT internationally, as well as the countermeasures.

SECTION III

E-GOVERNMENT DATABASE

As one of the outputs of e-Government Working Group this year, we have created an e-Government database, and published it on e-Government section of the GBDe web site (http://www.gbde.org). This Database comprises reports of e-Government projects in many different countries all over the world. Due to lack of space, we cannot list all the reports here. Thus we list the names of countries or regions in the database in the following page. Additionally, a sample report from Japan is

attached. Please refer to the web site for actual reports.

The objective of this database is to provide useful reference when central government, local government and private sector are working to realize e-Government. One of the useful reference points should be the list of URLs related to e-Government in different countries. Additionally, there are useful links to excellent e-Government studies done by GBDe member companies and other organizations.

The reports are the contributions from GBDe member companies, ABAC members, government officials who attended GBDe Conferences, and many other people we asked for cooperation. We hereby express our sincere appreciation to all of them. The cooperators filled in the Research Form we sent for their own countries. As these reports were created on a voluntary basis, they exhibit wide variety in expression, and they do not assure uniformity or strict accuracy. We will continue striving for increase the number of countries reported and further improvement of contents of the reports.

LIST OF COUNTRIES AND REGIONS IN THE E-GOVERNMENT DATABASE
(as of September 4, 2001)

Asia / Oceania	1	Australia
	2	Hong Kong
	3	Japan
	4	South Korea
	5	Philippines
	6	Singapore
	7	Taiwan
	8	Thailand
	9	Vietnam
Europe / Africa	10	Belgium
	11	Czech Republic
	12	Egypt
	13	Finland
	14	France
	15	Greece
	16	Italy
	17	Netherlands
	18	Slovenia
	19	Spain
The Americas	20	Canada
	21	Chile
	22	United States

E-Government Report: a Japanese Sample

Reporter: Hitachi, Ltd. Name: Akihiko Ichikawa Report Date: 13, April, 2001

Country	**Japan**
Project name	**Millennium Project** **e-Japan Strategy (e-Japan Priority Policy Program)**
Project start year / completion year	**Millennium Project: 1999-2003** **e-Japan Strategy: 2001-2005(overall timeframe)** **2001-2003(as for e-Government)**
Person in charge of the project	**Director General of IT Strategic Headquarters** **(Prime Minister holds the post)**
Organization in charge of project	**IT Strategic Headquarters**
URL of homepages related to the project	**English page:** http://www.kantei.go.jp/foreign/moritoku_e/2001/03/29e_japan/ **Japanese page:** http://www.kantei.go.jp/jp/it/network/dai3/jyuten/index.html
Project summary **(1) Catchphrase** **(2) Policies for Realizing objectives of the project** **(3) Private agencies / organizations that are related to the project** **(4) Prediction estimation of e-Government budge**	**Catchphrase:** • Millennium Project: "Realizing e-Government of the world's best standard" • e-Japan Strategy: (Overall) "World's most advanced IT nation within 5 years" (e-Government) "Realize e-Government by 2003"
	Policies for realizing objectives of the project: 1. Formation of the world's most advanced information & telecommunications networks 2. Promotion of education and development of human resources 3. Facilitation of e-commerce 4. Digitization of administration and application of IT in other public areas (e-Government policies) 4.1 Digitization of administration (1) Provision of administrative information via Internet (2) Online application reporting (3) Digitization of public procurement processes (4) Digitization of local government administration (5) Digitization of government internal works 4.2 Application of IT in other public areas (1) Expansion of super SINET (2) Online provision of cultural assets and arts information (3) Digitization of health (4) Introduction of 'Vehicle Information and Communication System' 5. Ensuring of security and reliability on advanced information and telecom networks
	Private agencies / organizations related to the project: • Keidanren (Japan Federation of Economic Organizations) English: http://www.keidanren.or.jp/ Japanese: http://www.keidanren.or.jp/indexj.html • ECOM English: http://www.ecom.or.jp/ecom_e/index.html Japanese: http://www.keidanren.or.jp/indexj.html • e-Japan Forum Japanese: http://www.ejf.gr.jp/ • Asia PKI Forum Japanese: http://www.apki-j.gr.jp/
	Prediction / estimation of e-Government budget: 1.302 trillion yen/2001 financial year (Approx US$10.5 billion)

Global Business Dialogue on Electronic Commerce

Intellectual Property Rights
Technological Protection Measures

September 14, 2001

Issue Chair	*Michael Eisner* Chairman & CEO The Walt Disney Company
Contact Point (Europe/Africa)	*Thomas Middelhoff* Chairman & CEO Bertelsmann AG
Contact Point (Asia/Oceania)	Dr. *Shigehiko Suzuki* Senior Vice President & Member of the Board NTT Corporation

INTRODUCTION

This year's GBDe IPR Working Group has agreed to establish some high level general principles applicable to technological measures used to identify, protect and manage copyright works in the digital environment.[8] New business models and technological innovations are rapidly transforming the way in which content providers create and distribute their works and offer consumers new and exciting means of receiving and enjoying these works. In addition, particular legal, business and technical challenges are presented by the increasing use of peer-to-peer technologies, which - because of their complex nature - are dealt with in an Annex to this paper under the auspices of digital rights management.

The GBDe is guided by its knowledge of the value of lawful use of protected works in stimulating the creative process and supports a balanced approach that protects both the rights of content providers and the interests of various other parties. This approach must reflect the fact that technological advances pose a challenge to those who create and/or distribute their works digitally and who are seeking to protect their works from unlawful reproduction and distribution. Widespread digital piracy of copyright works threatens to undermine the development of legitimate online content distribution.

The GBDe embraces the technological innovations and commercial applications that are

[8] For the purposes of this paper, the term "copyright works" shall also refer to subject matter protected in many countries under a legal regime of so-called "neighboring" or "related" rights.

increasingly being made available in the marketplace. Industry is actively engaged in research and development that will continue to transform the business and technological landscape in the future. These new models and technologies give both consumers and content producers new tools with which to make informed choices about the content they consume and produce, as well as where, how, and on what devices they consume and distribute that content.

The GBDe strongly supports the development of technological measures that enable creators and rightsholders to employ new business models and empower consumers to legally access and use the full range of diverse content available in the digital environment. The GBDe recognizes that technological measures are designed to perform different functions and respond to different approaches to markets and content protection. Some of these may help rightsholders identify their works in a digital environment, others may help protect works and enable them to be more easily distributed to authorized users.

Some approaches may involve "proprietary" systems or architectures, or systems that reflect an approach being pursued by a limited number of parties in voluntary private negotiations. These systems would typically be subject to commercial agreement between private parties. Other technological measures may involve "open" systems and may be subject to broad industry agreement or standardization. All of these types of measures will potentially prove useful in facilitating the legal access and use of content.

It is the desire of all members of the GBDe that the Internet supports a secure environment in which legitimate content distribution via electronic commerce can flourish. Artists, musicians, writers, filmmakers, animators, game and software developers and other rightsholders invest substantial time and resources in the creation of their art and products and in mastering their craft. The creation and production of copyright works also requires a substantial financial investment, which is typically recouped through the licensing of uses of the work or the sale of copies. Any profits can then be re-invested into the creation of new works.

In addition, network operators have a substantial investment in the infrastructure and services that support the Internet, and an interest in ensuring that the integrity of their networks is not compromised. Stakeholders can ensure a stable and secure environment in which online content distribution can flourish by reaching industry-wide consensus on open and globally harmonized technological content protection standards. A standards setting process that reflects the consensus of all relevant stakeholders is an effective means of meeting all of their respective needs.

In order to ensure that access to and use of copyright works is legitimate and fully respects the rights of content providers, it is necessary to be able to identify copyright works and manage the usage and exploitation of such works. The GBDe believes that widely agreed industry-developed standard technological measures and an appropriate legal framework that achieves full implementation of the WIPO Copyright and Performances and Phonograms Treaties of 1996 ("WIPO Treaties") are important elements for the effective protection of intellectual property rights in the digital environment and the development of an orderly and legitimate electronic marketplace.

The various types of technological measures permit content owners to offer consumers works in higher quality formats (such as DVD and enhanced definition TV) and over a wider array of distribution channels and price points. Cross-sectoral multi-industry efforts to develop and deploy standard technological measures will ensure that they fulfill their purposes without imposing unreasonable financial or operational burdens on equipment manufacturers, service providers, or the efficient operation of communications networks.

Technology, even when robust or reliable, will be subject to attack from hackers and pirates. For

this reason, technology alone is not sufficient to protect copyright works from unauthorized reproduction and distribution. Legal safeguards, such as those required by the WIPO Treaties, must, therefore, also be in place to support technological measures and prohibit unlawful circumvention. In recognition of this fact, requirements to prohibit the circumvention of these technologies are a central feature of the WIPO Treaties.

In 1999, the GBDe concluded that Governments should promptly and faithfully ratify the WIPO Treaties and implement appropriate legal frameworks for effective technological protection measures. It was further agreed that such legislation should also prohibit circumvention related activities by regulating both conduct and devices, while providing appropriate exceptions, such as those set forth in the U.S. Digital Millennium Copyright Act of 1998 ("DMCA"), that would maintain the overall balance between rightsholders, service providers and users.[9]

The U.S. implemented the WIPO Treaties in the DMCA, Japan implemented the WIPO Treaties in the 1999 Copyright Law of Japan ("JCL") and other laws, and the E.U. will shortly implement the WIPO Treaties through the various national member state laws adopted pursuant to the EU Copyright Directive ("EUCD"). The DMCA, the Japanese laws and the EUCD offer a useful model for other countries to consider when determining the extent to which legislative changes are needed to implement the anti-circumvention provisions of the WIPO Treaties.

There are multiple business models being pursued to offer digital content, and several private cross-sectoral industry-wide negotiations as well as open standard setting processes underway around the world that relate to technological measures. These include DVB, TV Anytime, CSS (DVDCCA), DTCP (5C), CPRM (4C), HDCP, MPEG, SMPTE, ISAN, cIDF and SDMI, to name but a few. Because technological measures often require a degree of implementation by content owners, service providers and equipment manufacturers to function effectively, cross-sectoral multi-industry recognition and licensing arrangements are often essential to facilitate enforcement. It is not the intention of the GBDe to introduce yet another set of specific technological measures, nor is it the intention of the GBDe to endorse any particular initiative. Rather, the GBDe wishes to establish certain high level general principles that we believe ought to broadly apply to all such initiatives. These general principles are set forth below.

GENERAL PRINCIPLES

A. Scope of Application

While recognizing that no one technological measure can respond to the requirements of all stakeholders, these general principles are intended to promote the development of standard technological measures which can be used to identify, protect and manage all forms of content in various environments and physical locations irrespective of the media on which it is stored (e.g., videocassette, DVD, PVRs, memory cards, etc), the delivery system by which it is transmitted, accessed or made available (e.g., TV, Internet, etc.) or the equipment or device by which it is received, displayed, recorded or transferred (e.g., TV sets, PCs, handheld devices, etc.).

[9] For further details, please refer to the GBDe IPR policy paper of 1999, a summary of which can be accessed on the GBDe website at http://www.gbde.org/ipr

B. Self-Regulation and Standardization

Technological measures may be adopted voluntarily through the use of private commercial agreements, and may also be the subject of industry-led and/or Government-facilitated standardization processes. Standardized technological measures should be developed and mutually agreed upon by a broad multi-industry group of stakeholders in an open, fair and voluntary standards setting process. The GBDe supports Governments facilitating, in a reasonably expeditious manner, the development of open and globally harmonized technological content protection standards.

C. Certain Exceptions

National copyright laws often provide for certain exceptions to the rights of rightsholders. According to the Berne Convention, the TRIPS Agreement and the WIPO Treaties, these exceptions may only be provided for "in certain special cases that do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author" or related rightsholder.

Some have expressed concern that the decisions of rightsholders about whether and how to use technological measures may compromise the ability of consumers and other groups of beneficiaries to benefit from copyright exceptions. Others believe that the use of technological measures will benefit consumers by maximizing choice, facilitating greater availability of content in new formats and distribution channels.

Technological measures can be designed and used to accommodate certain exceptions in a rational and balanced way through the creation of special consumption rules for particular consumers or groups of beneficiaries. Content owners have an interest in making their works available, using various business models, to the widest audience possible. Content that remains locked away does not generate value for its creator or for anyone else in the value chain.

The GBDe believes that technological measures will facilitate rightsholders' ability to identify and manage the dissemination of their works in existing and new distribution channels, and will help prevent unlawful reproduction, distribution, (re)publication and (re)transmission. Such measures will also lead to the growth of business models in which rightsholders can seek different levels of compensation directly from consumers for different uses of their works and opportunities to legally access and use those works can be enhanced. Other stakeholders involved in the distribution of digital content, including service and infrastructure providers, can also benefit from such measures.

Technological measures will enhance the tools available to rightsholders to manage their rights in accordance with public interests and will play a critical role in promoting more convenient and wider distribution and communication of works to consumers, while taking account of the concerns of network operators and other stakeholders.

Any exceptions or limitations to anti-circumvention obligations must be focused narrowly enough to preserve the adequacy and effectiveness of the anti-circumvention prohibitions. Exceptions to anti-circumvention obligations should not be so broad as to undermine the basic prohibition, or to permit the sale or distribution of circumventing devices to the public.

The GBDe notes that outright exceptions to anti-circumvention provisions are not the only way to maintain the policies behind copyright exceptions and limitations. Other techniques are available and have been used in different jurisdictions, including the establishment of a mechanism for ongoing government supervision to ensure that technological measures are not used in such a way that they adversely affect lawful uses of copyright works. In Europe, for instance, the approach has been to give rightholders the opportunity to honor exceptions by providing reasonable abilities for users to benefit from those exceptions. In the event that

they do not do so, national legislators will be able to intervene.

D. Copyright Levies

Copyright levies are imposed by some national Governments in order to attempt to compensate rightsholders for legal private copies of their works made by consumers. The development and deployment of technological measures can increasingly enable rightsholders to establish direct relationships with their customers and directly track and manage the legal use and copying of their copyright works.

The GBDe believes that one of the clear benefits of 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 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.

E. Accommodation and Non-Interference

In 1999, the GBDe Liability Working Group concluded that, "any framework should refrain from imposing on Internet service providers a general requirement to monitor the information they transmit or store, and should refrain from imposing unreasonable burdens on the various stakeholders." [10] This is consistent with the existing legal framework in the U.S. and the E.U.

In 2000, therefore, the GBDe recommended the voluntary adoption of IPR specific notice and takedown procedures for use in relation to allegedly infringing materials that reside on a service provider's system or network.[11]

Relief from a general duty to monitor, however, should not be construed as a limitation on rightsholders' ability to carry out their own monitoring activities or identification of infringing works through means which may include the use of standard technological measures or other measures which can be accommodated by Internet service providers.

Where standard technological measures are developed pursuant to a broad cross-sectoral multi-industry consensus, including content owners and service providers, and do not impose substantial costs on service providers or substantial burdens on their systems and networks, service providers should accommodate and not interfere with such technological measures. This is consistent with the existing legal framework in the U.S. DMCA.

F. Copyright Management Technologies

Some types of copy control technologies, such as watermarks, effectively embed within the content itself copy control and content management information that travels with the content from end-to-end (from initial distribution to end-user consumption). These technologies are designed to assist in ensuring that content is persistently protected at all points along the distribution chain throughout its commercial lifecycle. These types of technologies can be effective in preventing unlawful access and copying if appropriately responded to by playback and recording devices, and if their integrity is not compromised and they are not rendered ineffective before the content reaches the end-user.

[10] For further details on the subject of liability, see the GBDe 1999 Policy Paper of the Liability Working Group, a copy of which is available on the GBDe website at http://www.gbde.org/ipr.

[11] For further details on the subject of notice and takedown, see the GBDe 2000 IPR Specific Model Notice and Takedown Procedures, a copy of which is available on the GBDe website at http://www.gbde.org/ipr

Watermark technologies, supplemented where necessary with other types of copy management encryption technology, can help to ensure that content is persistently protected. These can include, for example, digital rights management systems, which are designed to enable multiple usage models including secure peer-to-peer technology, facilitate payments to rightsholders and provide protection against copyright infringements. These peer-to-peer technologies are discussed in further detail in the Annex attached.

The GBDe believes that cross-sectoral industry-wide discussion, development and negotiation should be encouraged in an effort to reach agreement on standard consensus technologies. The GBDe supports Governments facilitating, in a reasonably expeditious manner, the development of open and globally harmonized technological content protection standards.

G. Interoperability

Standard technological measures adopted and established to identify, protect and manage copyright works should, wherever possible, allow for interoperability with other technological measures and function over a wide range of equipment and distribution channels. Where possible, standard technological measures should be capable of interacting with each other in a manner that preserves the integrity of the copy protection and management information that travels with the content and the integrity and efficiency of network operations.

H. Extensibility and Flexibility

Standard technological measures adopted and established to identify, protect and manage copyright works should be sufficiently extensible (meaning not static and capable of extension) and flexible to ensure that new technological developments can be accommodated and business models can evolve.

I. Availability and Access

Once standard technological measures and specifications are agreed upon, they need to be developed into a solution that can then be implemented and made commercially available. Standard technological measures which are offered by the developers or owners should be widely available on fair, reasonable and non-discriminatory terms for implementation by all relevant stakeholders.

J. Robustness and Recoverability

Technological measures and distribution methods will need to evolve in order to provide effective protection of copyright works on an ongoing basis. Technology, even when robust or reliable, will be subject to attack from hackers and pirates. Technical specifications should, where possible, anticipate this contingency in order to maintain the effectiveness and robustness of the measures used. Technological measures should be designed to be as tamper resistant as possible and, where possible, appropriate procedures should be put into place to recover swiftly and effectively from an unlawful hack.

At the same time, technological measures need to be implemented in ways that do not impose unreasonable costs or burdens on equipment manufacturers and service providers. Standard technological measures should provide effective protection of copyright without unnecessarily affecting the overall quality of the user experience, i.e. by interfering with the image or sound or by otherwise materially degrading the quality of the content and/or service, or the performance of the device.

CONCLUSION

The development and implementation of effective standard technological measures is an ongoing process that will require the cooperation of all relevant stakeholders. New business models and effective technological measures are

useful tools to continue to expand electronic commerce over the Internet. An increased ability to protect intellectual property rights and to manage the distribution of copyright works over the Internet and other global methods of distribution, will spur rightsholders to make more and higher quality copyright works available in digital environments. As a consequence, consumers will enjoy more choice and variety, and will have access to more legitimate works of the highest quality. Effective technological measures and legal safeguards to protect such measures from unlawful circumvention are an important means by which intellectual property can be identified, protected and delivered securely.

ANNEX
Digital Rights Management & Peer-to-Peer Technology
A Proactive Business Approach

This year's GBDe IPR Working Group seeks to establish high level general principles applicable to technological measures used to identify and protect copyright works in the digital environment. In this context, an analysis of the peer-to-peer (P2P) file-transmission phenomenon was considered to be appropriate, focusing on the significance of digital rights management in this environment.

Robust protection of intellectual property in the digital environment is a necessary precondition for the commercial use of P2P technology as an effective means of distributing copyright works. Against this background, the present paper explores both the economic potential of P2P technology for the content industry and the necessity to protect intellectual property rights through digital rights management systems. In this paper, the notion of digital rights management is used in a non-technical manner, covering all systems that enable secure P2P file-transmission, ensure payments to rightsholders and provide protection against copyright infringements.

A. P2P Technology – definition and models

During the last decade, the Internet has developed into the most important global communications network. Although built on a basic set of communications standards (TCP/IP), the architecture of the Internet has never been static. New standards or Internet protocols (e.g. HTTP, FTP, SMTP) have evolved over time that have added new functionalities to the basic set.

P2P-technology adds a further dimension to existing Internet communications standards. P2P file-transmission means that information is exchanged between computers that are communicating with each other and are playing similar roles. They are considered as "peers" as opposed to the server/client relationship of computers used in the environment of Web browsing or email applications. Computers at home and on the desktop are directly connected to each other, forming groups or communities and communicating in order to function as user-created search engines or file systems. P2P therefore has the potential to profoundly change the way in which digital information and goods are exchanged and distributed.

There are two main models to employ P2P technology: a centralised and a decentralised model.

The Centralized Model

Within the centralized model of P2P file-transmission (used by companies such as Napster, Scour and Flycode), a central system of indices and search tools manages the exchange of files between community members. The respective indices are updated every time a user logs on or off to the service. User information is centrally stored on the servers. Following a search request, files are therefore quickly and efficiently located and immediately available for downloading from a peer computer.

The Decentralized Model

The second main model of P2P file-transmission (mainly associated with open source developments such as Gnutella or Freenet) does not employ central indices to keep track of connected users and shared files, but works in essence as a user-based search engine that expands its search exponentially. A query is sent to a networked computer which forwards this query to a specified number of other computers actively running the software.

They will pass on the query to further computers on the network and so forth. If one of the computers in the network has a file which matches the request, it transmits the file information (e.g. name and size) back through all the computers in the pathway towards the sender of the query. The sender will then be able to open a direct connection with a networked computer that carries the file and to download that file directly. No user information is centrally stored.

B. Economic Potential of P2P-technology

From an economic point of view, P2P file-transmission has the potential to revolutionize Internet communication and to become the basis for the next generation of the Internet. Indeed, P2P file-transmission technology improves current Internet applications significantly:

- Any workable P2P infrastructure will result in the formation of *special interest communities*. Such communities increase the stickiness of Internet users to a given service. A music community, for example, attracts and keeps music lovers on a P2P network that specializes in the dissemination and sharing of music files. The same is true for other topic-related communities that intend to exchange information within a network of peers with similar interests.

- *P2P search engines* may solve the problem of finding recent and changing content. Today, the majority of individuals search for content on the Internet by using ordinary search engines. Current search engines, however, are imperfect, as they index only a small fraction of available websites. So-called webcrawlers that automatically index websites, miss about half of the Web's content, and the indices they create are at least 24 hours, sometimes even months old. In contrast to this, P2P search engines find content that is on every computer in a network at the very moment of the search, giving users immediate and accurate results. In addition, P2P search engines are focussed on the specific network of their respective community. Its ability to provide up to date information on shared material could, for example, ease and improve online marketplaces by giving each user the possibility to share his latest product information and prices at any time.

- The *dissemination of information and other material* through P2P networks may also represent an improvement compared to ordinary server/web-based distribution. A connected hard drive is immediately accessible for everybody interested in a specific topic. No upload to a web server or translation into HTML language is required. It is not necessary that a web-based search engine indexes the content in order to be found. Thus, large pools of information and other content will be accessible to researchers, students, or working groups within a company or association.

C. Challenges for Digital Rights Management

The ease to exchange content and information within a P2P network has raised a number of problems. From a business, legal and technical perspective, the most serious issue is the protection of intellectual property.[12]

In the digital era, the uncontrolled or illegal replication of copyright material through P2P file-transmission is a danger that must be taken seriously by all those who want to employ P2P-technology on a commercial basis for content distribution. Whereas the centralized model of P2P technology allows for a certain level of

[12] There are other issues that have to be explored such as bandwidth requirements and the attitude towards privacy in a world where any computer of a P2P network can potentially connect to any others hard drive in the same network. These issues will not be dealt with in this paper, as its scope is restricted to DRM and copyright.

control based on the existence of central indices, the threat to rightsholders and their works is particularly high within a decentralized P2P-model. Decentralized P2P systems lack all forms of central infrastructure and are currently impossible to police.

Any proactive business approach to P2P file-transmission will have to promote ancillary technologies, which guarantee robust copyright protection, e.g. digital rights management systems. Digital rights management in the P2P environment should in particular be designed to:

- Ensure full respect for intellectual property rights;
- Ensure payments for rightsholders; and
- Provide adequate protection against illegal copying and distribution of copyrighted works.

However, having regard to the specifies of the P2P environment, digital rights management systems should also observe a number of principles in order not to nip the economic potential of the P2P technology in the bud:

- *Usability* is of great importance. Digital rights management in the P2P environment, therefore, should preserve the user-friendliness of P2P services. One should not ignore that the enormous appeal of P2P communities is the ease of their use.
- The *community principle* should also be respected on a technological level. The security architecture of rights management in the P2P environment should be tailored to the requirements of a networked online community; the security architecture should not be restricted to a server-end user pathway. Therefore, classical features such as access control, authentication of users and encryption should be designed to function as parts of an integrated system with further features such as digital finger printing and copy control systems. Anchoring intellectual property to a single device would not be compatible with the community principle of P2P file-transmission.
- Digital Rights Management systems dedicated to the P2P environment should be *platform-agnostic*, meaning that interoperability between various end-user operating systems and devices should be ensured. This interoperability should be achieved by means of commercial negotiations with stakeholders and/or an appropriate standards-setting process. While digital rights management in the P2P environment should grant *end-to-end technical protection system*, i.e. the maintenance of control over intellectual property at all times, the system should be appropriate for the respective community and the use of the exchanged digital content. The employed spectrum of digital rights management features should guarantee the necessary flexibility within a given network, while fully respecting and preserving the value of the digital content. The chosen technology protection system should, at the same time, preserve the integrity of the service provider's equipment and network.
- *Legislative protection* that is granted to technical protection measures, should also be applied in the P2P environment to integrated protection systems as such. Moreover, some jurisdictions reinforce the protection of technical protection measures in the case of interactive on-demand services. These provisions, mainly drafted with regard to classical server/end user services, also have to be applied to P2P services. Equally, P2P services offer access on agreed contractual terms to intellectual property irrespective of the time and the place a community member chooses an item.

In summary, business models based on P2P technology require a proactive approach to intellectual property, in partnership with all stakeholders, in order to serve as an effective

means of making more digital content available. In no event should business models be based on the infringement of intellectual property rights. As a matter of principle, this challenge could be met by developing secure membership-based services, organised in a centralised P2P network. They would preserve the spirit of P2P file-transmission while at the same time guaranteeing the protection of valuable digital works and meeting the technical needs of service providers.

Global Business Dialogue on Electronic Commerce

Internet Payments

September 14, 2001

Issue Chair	*Rijkman W. J. Groenink* Chairman of the Managing Board ABN AMRO Bank
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INTRODUCTION

One of the important issues that will stimulate e-commerce is the availability of easy-to-use and safe Internet payment systems. Internet payment systems will boost volume of sales on the Internet. They facilitate B2B transactions and play a role in the increase of consumer confidence in B2C transactions. A central element in all e-commerce transactions is the presence of trust. The parties to a transaction need to trust each other. They need to trust the system and they need to trust that their privacy is ensured, that their payment will be processed faultlessly and, in the event of a dispute, that they have recourse. In the past the GBDe has actively contributed to the discussion of enhancing trust. During the GBDe Miami Conference in 2000 the GBDe presented work on the development of trustmarks and alternative dispute resolution mechanisms (ADRs), as well as work on privacy and cyber security. This year the GBDe wanted to examine another important issue for promoting consumer confidence online. The GBDe believes that secure Internet payments are an essential part of trust and consumer confidence.

In the offline world there are many different payment methods. The user has the choice of cash, cheque, money order, debit or credit cards to pay for products or services. In the offline world-in particular- when we talk about micro-payments (i.e. small change) cash is still the preferred payment method. On the Internet credit cards are currently the dominant payment instrument in English-speaking countries. In other countries invoicing, pay on delivery or direct debit is dominant.

In its work on Internet payments, the GBDe has focused its efforts on identifying1) the current methods of payment on the Internet, 2) describing current and emerging payments technology and 3) attempting to describe the critical elements of any Internet payment method. Based on this analysis, the GBDe also has a number of recommendations for both industry and government on the steps that should be taken to promote and stimulate the (further) development of Internet payments. In this regard the GBDe paper on Internet payments should also be read in conjunction with the GBDe papers on consumer confidence and cyber security.

METHODS OF PAYMENT

The most common e-commerce relationships today are either Business-to-Business (B2B) or Business-to-Consumer (B2C). For e-commerce to succeed, the purchase of goods and services online needs to be easier and faster than today, which means that adequate payment systems need to be developed and used. These payment systems have to ensure that either money is transferred immediately or the customer is identified and the authentication of the payment is guaranteed. In the real world (i.e. off line), cash or pre-paid cards cover the first category and credit cards, debit cards and cheques fall into the second category. In order to adapt these systems to the online environment, a substitute needs to be identified for cash (i.e. an immediate payment that cannot be withdrawn), and the authentication problem for all post-paid systems needs to be solved. Clearly, each system has its specific security issues. Whatever the methods are, it is desirable to complete the whole transaction including payments in a single Website with a high level of security.

I. Business to Consumer Transactions

In analyzing B2C transactions, the GBDe distinguishes among:

1. Systems of prepayment (pay before) such as cash or traveller's cheques or E-Cards and E-Purses;
2. Simultaneous payment (pay now) such as debit card payments with instantaneous settlement; and
3. Systems of deferred payment (pay later or 'post-paid') such as credit card payments, direct debit (the usage of debit cards without a PIN) or simply invoicing.

The major difference among these three types is as follows:

- In pre-paid systems there is no risk for the merchant or for the customer as long as the payment matches with the delivery. Otherwise the user takes the risk that he/she does not get the promised good and the payment cannot be withdrawn. This risk also exists with simultaneous payment types like direct debit. However, the risk is always limited to the amount of (electronic) cash transferred. An advantage of pre-paid systems is that the user may stay anonymous. The usage of pre-paid systems presumes prior money transfer (i.e. buying pre-paid cards or getting cash from an ATM).

- In pay-now systems authentication and settlement have to be made instantaneously, otherwise the bank faces a credit risk. The merchant, however, does not take any risk. The fact that no money has to be transferred prior to the payment is an advantage for the user compared to pre-paid systems. Since access to the user's bank account is essential, we note that the potential risk for the user is higher than for pre-paid systems. Many payment systems, such as debit cards limit the liability to the user but have strict rules regarding the treatment of the card and its PIN code.

- Post-paid systems always come with a credit risk. This risk either remains with the merchant (as in the case of invoicing, direct debits or MOTO-credit cards payment) or the payment service provider accepts the risk (as with credit card payments with a correctly signed receipt) and charges the

merchant for this service. Since the goods are delivered before the actual settlement is done, fraudulent customers pretending to be someone else attempt to abuse payment systems of this type. Therefore, correct identification of the user and authentication of the transaction are crucial.

Based on the foregoing view the GBDe notes that running through an authentication process might be disproportionately expensive when dealing with micro-payments (US$10 and less). Consequently, pre-paid systems seem to be most appropriate for small payments and in all cases where the user pays a high attention to the protection of his privacy. However, for larger amounts customers prefer post-paid systems (in this case the risk of losing a purse with cash or electronic money plays an important role).

Situation in the different world regions

Availability of payment options varies by region and local commercial custom.

Asia-Oceania

In Japan, cash-on-delivery payments and money transfers are popularly used in addition to credit cards for B2C settlement. Unique to Japan, convenience stores, like 7dream.com run by Seven-Eleven Japan, act as a service provider for e-commerce. Consumers order products online, but pay for (usually in cash) and receive merchandise at convenience stores.

Europe-Africa

In Europe, the payment landscape is heterogeneous. In some countries like France and the UK, cheques still play an important role, in others, such as Germany and Spain, for example, electronic money transfer and electronic direct debit are widely used and come along with low transaction costs. Although chip-based payments cards like the German Geldkarte, Belgian Proton and Dutch Chipknip (a pre-paid e-card system) are already widely available, these systems are still only rarely used. The importance of credit cards differs among the countries and tends to be most important for cross-border payments - in the real world as well as in e-commerce.

Americas

In North America, in addition to credit cards, which are widely used for B2C payments, banks have targeted Electronic Bill Presentment and Payment (EBPP) as a fundamental application for the Internet and online banking. The benefit to customers is aggregation of their billing data and payments. However, it still has to be seen how customer adaptation develops.

II. Business to Business Transactions

As for B2B transactions, recent estimates suggest that B2B transactions will be 10 times greater in volume over the Internet than B2C transactions by 2003(Forrester Report, IDC Global Market Forecast and many other reports). Payment options therefore vary given the differences between B2B and B2C transactions. Amounts are generally much larger in B2B than B2C. Fraud concerns therefore are heightened. Consequently several initiatives for secure authentication have been developed for addressing this B2B concern.

The following are recent initiatives designed to address B2B concerns:

1. Identrus LLC was formed by a number of the world's leading financial institutions in April 1999 to create a global trust infrastructure. In addition, Identrus Project Eleanor is now in progress, which covers a global B2B Internet payments solution based on identity verification, by a consortium of Identrus member banks. More information on this initiative can be found on www.identrus.com

2. SWIFT (Society for Worldwide Interbank Financial Telecommunication) is also developing a payment initiation and assurance solution to support bank intermediation in e-commerce. SWIFT is an

industry owned co-operative supplying secure messaging services and interface software to over 7,000 financial institutions in 193 countries. The new e-service SWIFT is developing is called TrustAct & e-paymentsPlus. It provides both identity assurance and payment assurance at every stage along the e-transaction cycle. For further information check www.swift.com

PAYMENTS TECHNOLOGY

The world of payments has always relied heavily on state of the art technology. Only through the use of advanced technology will there be systems that are able to transfer payments at high speed and in a secure environment. The situation is no different for Internet payments. The environment may have changed, the requirements of speed, ease-of-use, and safety have not. Discussed below therefore are the existing and emerging payment technologies, without attempting to favor one over another.

For all post-paid and simultaneous payment systems in B2C and for all B2B payment schemes, it is indispensable to establish the complete confidence regarding each party's identity, to make sure that each transaction is authorized and that both integrity and confidentiality of the payment information is guaranteed.

1. PKI (Public Key Infrastructure)

A PKI is based on public key cryptography. The crucial part of a PKI is the existence of digital certificates issued by a Certificate Authority, which links the public key to the corresponding user. The advantage of a PKI is that it can be used for encryption as well as digital signatures. However, current PKI implementations fall short of multi-party transactions for the following reasons:

- A lack of interoperability in X.509 certificates.
- Businesses or trusted parties must manage hundreds of public certificates on their own.
- Real-time validation of certificates is widely accepted in the application environment, but it is not yet available to the consumer level.
- Further development of legal frameworks is necessary. Worldwide acceptance of digital signatures is desirable in order to reduce the possibility of fraud.

2. SSL (Secure Sockets Layer)

A protocol providing a secure connection over the Internet using public key cryptography. The client must locate the server's public key and then uses this public key to create a session-specific secret key, which it transmits to the server. This secret key is used to secure all messages exchanged between the client and the server for the duration of the transaction (using a fast symmetric encryption scheme). SSL was designed to provide a secure channel between two parties, it does not provide for selective encryption between three parties, as is often required in Internet payments. Obviously, SSL only secures the payment data on its way to the merchant, but the user has no control over what the merchant does with this data. Furthermore, SSL secures only the communication channel. It cannot be used to create signed messages that could be used for non-repudiation purposes. The advantages of SSL are that it is easy to use widely spread and inexpensive. The disadvantages lie in its lack of signed messages and the fact that is has no multi-party security.

3. SET (Secure Electronic Transaction)

This is an open standard developed by Visa International and MasterCard International, among others, to facilitate secure credit and debit cards transaction over the Internet. SET uses digital certificates issued by Certification Authorities and PKI to verify the identity of cardholders, merchants and banks, and to protect payment data from interception. In contrast to the SSL protocol, merchants do not have access to customer's payment card data because card numbers are transmitted in an encrypted form directly to the SET payment gateway. This technique is now already used in so called e-

wallets that are offered by banks in some countries. The clear advantage of SET is that authentication and security are provided; its disadvantage is that its complexity is a barrier to use and it has a relatively high cost.

4. 3D-SET(Three Domain Model)

A simpler version of SET designed to allow issuers a choice of different cardholder security and authentication schemes. It has the advantages of lower cost than SET and interoperability with greater flexibility. Its disadvantage is that it is not accepted worldwide.

5. "Identrus" Model

The technology that is emerging from Identrus is a four-party model, which consists of the concerned parties and their respective related financial institutions. It is being developed especially for the B2B environment. One of the reasons why Identrus is modeled as a four-party model is to minimize the burden of concerned parties. Within the network, the participating financial institutions will act as certificate authorities and issue smart cards holding digital certificates to approved party. This certificate represents a "passport" for engaging in trusted e-commerce. At this moment Identrus and SWIFT are working together. The alliance between Identrus LLC and SWIFT paved the way for an Identrus/SWIFT solution aligning Identrus' trust model with SWIFT's Internet-based messaging service, TrustAct.

6. Mobile Technology

In parallel to the development of payment technologies via the Internet there are also a number of technologies being developed for use with mobile telephones. Issues that arise in the development of a mobile payment system are described below.

The mobile payment environment differs quite significantly from the traditional Internet environment because of the following reasons:

1. a mobile phone can be utilized for payment not only in the remote environment (payment over the digital mobile network) but also in the local environment (proximity payments) and in the personal environment (mobile phone linked to PC via local radio link and used for payment during PC browsing session).

2. There is a need for defining and implementing specific mobile payment protocols that take into account the usage mode of mobile phones as well as usability requirements and technology restrictions. Existing Internet payment methods (SET) or local payment protocols (EMV smart cards) are ill suited for the mobile environment.

3. Mobile payment methods currently in widespread use are operator billing (especially for cumulation of small purchases) and unauthenticated credit card payments (mail order-telephone order rules).

4. Mobile payment will start as a complementary, niche payment area: early implementations will concentrate on fulfilling the usability requirements (phone wallets, one-click payments, smart phone covers: initiation of payment transactions via local radio link). Raising the security levels of payment implementations will become more important as the volume grows. Currently there are already some operating systems that are able to authenticate mobile transactions, but services based on these operating systems still need to be developed.

5. With the advent of 3G(third generation) mobile technologies, which are expected to be launched in Europe and in Japan next year, it may not be too long before the mobile device becomes a banking, trading and payments tool, as well as a communication aid. In the longer run, mobile payment will benefit from the global move towards a mobile public key infrastructure.

Critical Elements for Internet Payments

In the previous payment methods and technologies were described. In this paragraph we analyse the critical elements of a successful Internet payment system. The GBDe understands the hesitation of consumers and clients in sending payments over the Internet. By describing the critical elements for Internet payment systems the GBDe hopes to address some of the concerns and contribute to the development of Internet payment systems that not only address these concerns but further encourage e-commerce.

1. Convenience

In order to promote the usage of Internet payment, it is critical to actively promote the use and convenience of payments systems for consumers. Service providers should always examine whether Internet payments cause any inconvenience for users. On the other hand, consumers should realize that certain procedures and tasks involved are indispensable steps in order to protect personal information, even though providing such information seems time-consuming. Internet payments should be available to everyone, anytime and anywhere. The systems employed should be user friendly and easy to understand. If software has to be installed, it should be easy to obtain and be adapted for all existing operating systems.

2. Cost

The cost of use of a payment system (including the set up cost) must be reasonable and should be related to its intended use. Accordingly cost level may differ according to the amount (i.e. micro payments vs. high value payments) and that required extra security for higher value payments may have consequences for the price of the service. The cost of extra security should be optional and transparent to the consumer and business.

3. Transparency

Transparency in the information received by the consumer during the e-commerce transaction, including payment details, is essential. The GBDe 2000 Trustmarks Working Group developed detailed Guidelines for Merchants during the year 2000 that included specific provisions on payments, among others:

- The terms and conditions applicable to the transaction shall include, in the case of using credit or debit cards, the expected time when the card will be charged;

- Prior to the transaction becoming a binding obligation, merchants should provide consumers with a summary that includes the selected payment method.

In addition, it is also essential that consumers know under which conditions refunds will be made for example, in the case of non-authorised transactions and non-delivery of the product.

4. Privacy

Consumer confidence and protection of personal information are indispensable in order to promote Internet based purchasing for consumers. In this context, it is important to make consumers aware of the existence of online trustmark systems and explain easily their usage. It is also necessary to establish policies for the protection of personal information and disclose these to the public. It is desirable to rely on the widely recognized principles regarding the treatment of personal information collected through the Internet. The GBDe 2001 Personal Data Privacy Protection Guidelines constitute an important contribution to enhancing the protection of personal information worldwide.

Privacy considerations should however not prevent an adequate fight against fraud. Exchange of information between operators in the payments markets and the authorities involved is an essential element in any effective fraud prevention strategy. This exchange of

information may involve in certain circumstances a necessary derogation from some data protection principles.

5. Fraud

The great potential of Internet payment systems and, consequently, of e-commerce can be significantly limited by the possibility of fraud. Methods of fraud may range from interception of data to actual hacking into a system. Therefore combating fraud goes hand in hand with the development of Internet payment systems. The prevention of fraud is a task for both industry and governments. An example of government working with industry on fraud can been found in the European Union, where the European Commission published a communication on the prevention of fraud and counterfeiting of non-cash means of payment in February 2001 (COM (2001) 11 final). In this Communication the European Commission recognises the fundamental importance of measures to combat fraud and counterfeiting in non-cash payments by introducing an action plan. The action plan stimulates the close co-operation between public authorities and private parties. It establishes that, although the most important preventative measures are technical, i.e. the use of chipcards, prevention of fraud is most effective if implemented in partnership with all partners, including holders of payment systems, infrastructure network providers and public authorities. Similarly, in the United States, the Federal Trade Commission has established a program of international co-operation to improve investigation and prosecution of fraud in e-commerce.

6. Security

For all post-paid and simultaneous payment systems in B2C and for all B2B payment schemes, it is indispensable to establish the complete confidence regarding each party's identity, to make sure that each transaction is authorized and that both integrity and confidentiality of the payment information is guaranteed. Governments should complete the legislation to ensure the validity of digital signatures.

The 2000 GBDe Guidelines for Merchants developed by the Trustmarks Working Group recommend that merchants have in place encryption measures that reflect best industry practices for the transfer or receipt of sensitive information, such as personal financial information.

The 2000 GBDe Cyber Security Working Group also made specific security recommendations to all parties in particular in relation to encryption measures and cyber attacks.

7. Liability

All the players involved in e-commerce need to co-operate to establish appropriate rules for allocating responsibility. In addition, it is also indispensable to ensure that users do not suffer losses due to improper use of whatever payment option they choose. However, a distinction should be made between liability in B2B and B2C. In the case of B2B, companies are involved and they should be able to negotiate the distribution of liability themselves. In this respect companies can bear the risks of use of the Internet payment system until the bank has been informed by the customer of loss or theft of the key card or PIN code.

On the other hand in the case of B2C, liability to consumers can be limited, based on system used, as is already now the case, for instance, with credit cards. It is practical for service providers to determine the widely acceptable methods of recovery from damage caused by illegal third-party impersonation.

From the point of view of customer's choice, it is important to maintain the current level of competition between payment methods. It is therefore essential to preserve contractual freedom to negotiate liabilities among the issuing bank, the payment card provider and the merchant. Customers should be informed in a clear and unambiguous way who is responsible for what and under which conditions.

8. Redress

When consumers have problems with their Internet payments, it is essential that appropriate and speedy redress is available. The 2000 GBDe Alternative Dispute Resolution Working Group has developed specific recommendations for dispute resolution including the need for merchants to have specific customer satisfaction systems in place and detailed advice on how ADRs should function.

These Guidelines also recommend that the consumer should address the merchant in the first instance. In the case of payments with credit cards, the merchant may not always be the first instance of redress for the consumer. In line with transparency requirements, consumers should know for each payment method, who they should address in case of problems.

9. Interoperability and Internationality

As reflected in this paper, there are different payment technologies in different regions of the world and that some payment systems are global (in particular those developed by credit card providers). Other payment systems will likely be developed based on regional customs and preferences. This development promotes competition in the market and should not *per se* cause any problem to the consumer. However, to encourage the increase of international Internet payments, those systems need to be able to process payments coming from other systems, even if different. Therefore it is critical to have common and interoperable specifications for the range of Internet payment systems.

RECOMMENDATIONS

The GBDe Working Group on Internet Payments has studied the status and development of both current and emerging Internet payment systems around the world. In this paper we have attempted to describe the main elements of an Internet payment system in a technologically neutral way. The issues that arise are largely of a technical nature when discussing the set up of an Internet payment system and strongly related to consumer confidence when discussing the operation of Internet payment systems.

For consumers a user friendly and secure payment system is one of the pillars of confidence in e-commerce. The GBDe Working Group on Internet Payments believes that its work on Internet payments should be viewed in conjunction with, trustmarks, ADRs, privacy and security, all of which go to promoting consumer confidence in the Internet. Consequently this paper should be read in conjunction with the work of the GBDe on Trustmarks, ADRs, privacy and cyber security.

The GBDe Working Group on Internet Payments believes that, as e-commerce develops, we will see the emergence of radically new business models as the further development of e-commerce and its inherent cross-border character has implications for a wide range of issues including the delivery of government services, taxing, customs clearance, etc. Internet payment systems will facilitate these developments.

In this context the GBDe would like to make the following recommendations:

1) The GBDe encourages payment service providers, e/m-commerce merchants and governments to work to promote the development of Internet payment systems in order that all potential e-commerce customers have –easy- access to at least one payment system that meets their needs, at reasonable cost and convenient. Merchants should inform consumers in a transparent manner of all information related to the payment transaction including available security methods and privacy considerations.

2) The GBDe welcomes co-operation of public authorities and private industry in the combating fraud with Internet payment systems. The GBDe urges all parties concerned to work together to develop action plans for the prevention of fraud.

Governments and law enforcement agencies need to pursue legal punishment for attempts of fraud with Internet payment systems. Industry should do its utmost to protect users from systemic fraud with a reliable, secure Internet payment system. Users, however, have an obligation to be cautious with the cards and codes with which they were provided. Moreover, privacy considerations should not prevent an effective effort to combat against fraud.

3) The GBDe is committed to working co-operatively with governments and industry to bolster the development and legal recognition of digital signatures in all jurisdictions around the world. The development of digital signatures forms an essential part of the development of a legal regime on the Internet and will be instrumental for the emergence of Internet payment systems. Governments and industry alike need to work on the development of security for digital signatures. Furthermore, governments need to adapt the legal systems to accommodate the use of digital signatures.

4) The GBDe urges governments to let parties involved in an Internet payment system chose the conditions, protection and liability of use. Industry must take into consideration measures to protect the consumer. Contract negotiation, in relation to responsibility for fraud or non-delivery, among the different parties involved in a payment transaction is essential to guarantee competition among payment systems. This competition allows the consumer to choose the most appropriate payment method. Although the consumer must be protected against systemic fraud, he must be able to make a rational choice as to the level of protection granted by a payment method. In the case of disputes, consumers should have recourse to easy and speedy resolution. In B2B transactions, liability should always be negotiable between the parties.

5) The GBDe does not want to recommend one payment system over another, nor does the GBDe want to promote or prefer global standards to a variety of payment systems. However, for the long term success of e-commerce, we believe interoperability of payment systems is essential. We call on businesses to address, as a matter of priority, the issues of interoperability as they develop their proprietary systems.

6) Global e-commerce will naturally lead to more and more cross-border payment streams. Governments must ensure that administrative barriers to cross-border transactions are lowered and businesses must ensure that the growth of Internet payments does not facilitate money laundering.

7) All Internet payment service providers should comply with minimum financial regulatory requirements in order to protect consumers. In addition, financial authorities should ensure that new Internet payment providers are supervised in such a way that there will be no risk to the stability of the financial system.

Global Business Dialogue on Electronic Commerce

Taxation

September 14, 2001

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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 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 must be collected by vendors in one country but not collected by vendors in other jurisdictions on the same transactions) 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 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, fair and globally viable. 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.

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.

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 pressure of impending Congressional action has spurred a voluntary state tax reform effort involving over half of the states, which are considering model legislation to simplify and modernize sales and use tax administration.

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. The GBDe supports substantial simplification of state sales tax systems, as well as clear jurisdictional standards. The GBDe also endorses efforts to eliminate taxes on Internet access.

Europe / Africa

According to the current intra-community VAT rules, businesses established within the EU must 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 do not have to charge VAT on downloadable products delivered to end-users established within the EU. This situation concerns 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.

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. EU authorities have recognized that the amount of tax revenue that would be collected from business to consumer sales of digitized goods is currently quite small. However, they have said their primary intent is to address the issue of competitive distortion.

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 proposed 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. More specifically, a single point of registration approach does not fully harmonize the rates that EU and non-EU companies must apply to consumer transactions involving digital products. The GBDe also 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.

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 draft 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

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

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.

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.

The GBDe also 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 that 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 caution 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.

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.

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 TAX PAYER 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 and 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

September 14, 2001

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INTRODUCTION

Three powerful and related trends are fundamentally reshaping the global economy:

1. The exponential growth in Internet connectivity;
2. The convergence of technologies, which allows for interoperability and interactivity across communications platforms and devices; and
3. The increasing use of electronic commerce as a channel for conducting international business.

Today, there are more than 400 million people online. By the year 2005, it is projected that this number will grow to one billion, with three quarters of these Internet users living outside of the U.S. (Computer Industry Almanac) Global electronic commerce, which reached nearly $400 billion in 2000, is expected to expand to $7 trillion by 2004. (Gartner Group) As impressive as these statistics are, we are only in the early stages of the transformation to a networked global economy that holds great potential for expanding international trade.

E-commerce can include all aspects of international trade: sales of goods and services to consumers, governments and businesses, including the operation of integrated international supply chains. E-commerce enables transactions to be conducted easily and efficiently. In some e-commerce transactions, a good or a service may be delivered physically. But when a product can be ordered, delivered and stored in digital form, the entire transaction can be conducted and fulfilled online. Electronic delivery can be more efficient, convenient and

environmentally friendly than physical delivery, and it provides easy access to global markets, especially for small and medium enterprises that might not otherwise be able to reach these markets.

PRINCIPLES FOR TRADE IN E-COMMERCE

To ensure that trade agreements promote the benefits of e-commerce – increased productivity, competition, consumer choice and value – the GBDe urges governments to follow certain basic principles:

1. Governments should recognize that existing World Trade Organization (WTO) agreements - namely the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) - apply to e-commerce.
2. Governments should ensure that electronically delivered products, at a minimum, receive trade treatment no less favorable than like products delivered in physical form.
3. Governments should refrain from creating new or discriminatory trade barriers to e-commerce.
4. When legitimate policy objectives require domestic regulations that affect e-commerce, governments should ensure that such regulations are least trade restrictive, nondiscriminatory, transparent and promote an open market environment.

In addition to adopting these basic principles, the GBDe proposes that governments pursue the following agenda priorities for an e-commerce trade initiative that could form the basis for early commitments by WTO members before a comprehensive round is concluded.

SERVICE LIBERALIZATION

Services negotiations are currently underway as part of the built-in agenda in the WTO. The GBDe urges governments to seize this opportunity to expand the benefits of e-commerce in international trade. The GBDe encourages member states to broaden and deepen their commitments in the GATS to improve market access and national treatment for all services. Since liberalization across a broad range of services is important for enabling trade through e-commerce, the GBDe encourages countries to consider negotiating approaches for trade in services that will facilitate liberalization. For example, a "top-down" or "negative list" approach assumes that services are to be accorded full market access and national treatment commitments unless specific exceptions are taken. During services negotiations, the GBDe also encourages WTO members to refrain from raising new barriers to e-commerce.

There are two key ways in which services liberalization promotes e-commerce:

1. By opening markets for services that can be delivered electronically; and
2. By enabling transactions for both goods and services through the e-commerce "value chain."

Electronic Delivery of Services

First, it is important for WTO members to recognize that all GATS commitments apply to services that are delivered electronically. The Internet is just another means of delivery that in some cases can substitute for delivery of services via telephone, fax, post or in person. Although a service does not change just because it is delivered online, it can be delivered more efficiently and conveniently through the Internet. For example, online banking services are conveniently available 24 hours a day without having to visit a bank office. In addition, with the development of Internet-based computing services, businesses can access remote computer

processing power, data storage capacity, and applications, allowing them to meet their information technology needs more cost-effectively and flexibly than before.

Countries should not discriminate against services that are delivered via the Internet. On the contrary, the GBDe believes that countries should exploit these technological advances for their own economic advantage by further liberalizing services that can be delivered electronically. In addition, trade negotiators should avoid any confusion over which GATS mode of delivery should apply to e-commerce by increasing and making consistent commitments in Mode 1 (cross-border delivery) and Mode 2 (consumption abroad).

E-Commerce Value Chain

Some electronically delivered services can also play an important role in enabling other e-commerce transactions for both goods and services. These services, when combined with certain off-line services, form the e-commerce "value chain," including all forms of commercial communications (advertising, sales promotion, direct marketing etc); business services; computer, data processing and software services; content related services; communication services; financial services; distribution services; and express delivery services.

The e-commerce value chain is critical to initiating and completing an e-commerce transaction for both business-to-business and business-to-consumer e-commerce, whether the final product is delivered electronically or physically. Furthermore, these services enable the creation of integrated international supply chains that facilitate the operation of competitive e-businesses. Creating a truly global environment that facilitates the growth of e-commerce requires the removal of barriers to trade across every aspect of the e-commerce value chain. The GBDe supports an initiative in the current WTO services negotiations to adopt improved market access and national treatment commitments for these services.

WTO WORK PROGRAM ON E-COMMERCE

To facilitate the progressive liberalization of global electronic trade and increase the effectiveness of the WTO Work Program on E-Commerce, the GBDe supports the formation of a cross-cutting, horizontal working group to consider e-commerce issues in each of the WTO's three principal agreements on goods (GATT), services (GATS), and intellectual property (TRIPS).

Not only do all WTO agreements apply to e-commerce, they may all apply simultaneously to the same e-commerce transaction. A horizontal approach will enable the WTO to articulate a coherent vision of e-commerce that avoids fragmentation. The GATT, GATS, and TRIPS Councils are responsible for agreements that serve different trade purposes and priorities, making it uncertain how each would treat e-commerce transactions. To establish a clear, predictable, and effective framework for progressive trade liberalization in e-commerce, the WTO must identify certain basic principles that should apply across all disciplines.

The horizontal working group should be prepared to address a broad range of issues. It should address such e-commerce-related issues as extending the moratorium on customs duties for online sales and how to ensure that domestic regulations are least trade restrictive, nondiscriminatory, transparent and promote an open market environment. WTO intervention would be necessary where and when such domestic regulations pose market access barriers. The working group will provide a good forum to consider new issues that may arise as e-commerce trade grows.

TARIFFS ON INFORMATION TECHNOLOGY PRODUCTS

Tariffs assessed against information technology (IT) products create a barrier to trade, but more importantly, they raise the cost of the technology that is needed to be competitive in the digital

economy. IT tariffs increase the cost of building networks over which e-commerce is conducted and raises the cost of devices needed by consumers and other users to access these networks.

Numerous studies have shown that investment in information technology plays an important role in raising productivity and promoting economic growth. It would therefore be counterproductive for countries to raise the cost of information technology investment through tariffs. Any short-term loss in government revenue by eliminating these fees should be more than offset by the long-term increase in productivity and economic performance as information technology products become more affordable and are more widely deployed.

While many countries have participated in the Information Technology Agreement (ITA) to eliminate tariffs on IT products, many others have not. The GBDe urges all countries to participate in and ratify the ITA and move rapidly to eliminate their IT tariffs. This is especially true for ITA II, which has not yet been adopted. In addition, governments an*d* business should continually update the definition of what constitutes an "IT product" to keep pace with technological developments.

ELECTRONIC DELIVERY OF DIGITIZED PRODUCTS

Another way that the Internet can facilitate trade is by enabling the electronic delivery of digitized products. Electronic distribution is more efficient, convenient and environmentally friendly than physical delivery. For example, because computer software is stored as electronic bits, it is possible to deliver software over the Internet in addition to more traditional forms of delivery via truck, ship, or airplane. From a user's perspective, there is no significant difference whether software is delivered over the Internet or delivered physically on a CD-ROM. The code is exactly the same, providing the same functionality and user interface. The same is true for music, videos, or other content: a consumer can purchase the same product from a retailer for delivery over the Internet or for delivery in physical form. Despite the fact that a digitized product can be a direct substitute for a product delivered via traditional means, some approaches to the classification of digitized content could lead to different, and in some cases impaired, trade treatment for the same content based solely on its method of delivery to the customer.

Currently under the GATT, software, music, news publications, and films or videos delivered as physical goods receive national treatment and are subject to lower tariffs, and thereby enjoy favorable market access. Yet if a like product, when delivered electronically, were to be classified as a service under the GATS, its market access and national treatment commitments would be unclear or non-existent in some cases. In the case of software, in particular, the fact that there are no clearly defined GATS commitments for electronically delivered software creates tremendous uncertainty for software suppliers and favors less-efficient physical delivery over electronic delivery. In all cases, suppliers of digitized content could face the prospect of years of trade negotiations just to obtain the market access and national treatment assurances under the GATS that they already enjoy under the GATT.

Rather than create such barriers to the networked economy, governments should encourage electronic product delivery. The GBDe urges governments to carefully consider the classification issues and undertake obligations requiring them, at a minimum, to treat digitized content traded by means of electronic transmission no less favorably than content imported on a physical medium. Quantitative restrictions or other barriers to the electronic delivery of products and services would have a detrimental effect on the potential growth of electronic commerce.

THE IMPORTANCE OF COMPETITION

A competitive marketplace gives consumers lower prices, greater innovation, and better quality goods and services. Expanded trade can increase competition and enhance these benefits.

Governments should view trade liberalization and the promotion of e-commerce as important policy tools for bringing the benefits of a competitive marketplace to their citizens.

Governments should generally rely upon the competitive marketplace, rather than regulation, to meet public policy goals. To the extent that legitimate policy objectives require domestic regulations that affect e-commerce, governments should ensure that such regulations are transparent, nondiscriminatory, and employ the least-trade-restrictive means available. This approach will minimize any negative impact on the marketplace and the free flow of trade and will contribute to creating a framework to foster investment.

One area in which government regulation is important is enabling the transition to a competitive market for basic telecommunications services. These services provide the network infrastructure that is a fundamental prerequisite for e-commerce. Where basic telecommunications services have historically been provided by monopoly network operators, it is essential that countries fully implement the agreement on basic telecommunications, including the associated Reference Paper, to foster competition. Competition among network providers, using a variety of communication platforms (e.g., wireline, cable, terrestrial wireless, and satellite), is the most effective way to increase access to narrowband networks, speed deployment of broadband networks, make these services affordable and encourage innovation.

Regulation of access to basic telecommunications services should also take into account the need to foster investment in network infrastructure. Access to network infrastructure should be based on commercial negotiations among market players, limiting government regulation to cases where the market is not yet fully competitive.

In contrast to the basic telecommunications market, the market for value-added services has historically been relatively competitive and less regulated. The continued health of this market is dependent upon enhancing a pro-competitive environment that ensures access to basic telecommunications services for Internet service providers (ISPs) and other value-added services providers. It also relies on pro-active and vigilant regulators. To ensure that these providers can operate competitively, countries must comply with the GATS Annex on Telecommunications.

Member countries should ensure such a pro-competitive environment to eliminate unfair business practices and non-tariff barriers, which restrain competition and could thereby restrict the level of trade in digitized products and services among participating countries.

The global nature of e-commerce has also prompted some to raise the issue of how national competition policy authorities should meet this challenge. First, it is important to note that the global nature of the economy is not unique to e-commerce. It is common for companies to have operations around the world, and trade continues to grow as a share of the world's economy, but this was true before the emergence of e-commerce. Recognizing these facts, the GBDe believes that it is appropriate for national competition policy authorities to conduct a dialogue and share best practices on how to deal with the reality of the global economy. There have been some excellent recent examples of cooperation between US and EU competition policy authorities during merger reviews. The GBDe encourages the continuation of these bilaterally focused efforts and supports cooperation and dialogue among competition policy authorities.

PROMOTION OF CULTURAL DIVERSITY

The GBDe recognizes the sensitivity of certain countries regarding the delivery of digitized content of a cultural nature. However, rather than viewing the Internet as a threat to their unique cultural identity, the GBDe believes that countries should view this new medium as an opportunity to promote cultural diversity and encourage individual expression.

The Internet provides a fast, low-cost way to develop and deliver local content. It empowers individuals to become producers and publishers of art, entertainment and news to an extent never before possible. It facilitates the connection and exchange of cultural products among geographically separated cultural communities. Increasing Internet penetration worldwide and the proliferation of low-cost access devices will expand these online virtual communities. The Internet can thus help to strengthen and preserve linguistic and cultural affinities both locally and beyond traditional boundaries. As Internet usage continues to grow rapidly around the world, this diverse, international audience will not be satisfied with a limited selection of standardized and regulated products and content. Successful companies participating in e-commerce trade are, and will continue to be, those that best understand and meet individuals' needs and local preferences. GBDe members will strive to respect and meet the demands of markets around the world.

INTELLECTUAL PROPERTY PROTECTION

Intellectual property rights in goods and services traded on the Internet must be afforded adequate levels of protection and enforcement in accordance with the WTO TRIPS Agreement and the WIPO Treaties. These obligations apply to all intellectual property, whether it is delivered in physical form or made available over a digital network. Without such protection, content creators, service providers, and users will be less likely to realize the tremendous benefits of e-commerce trade. In addition, all WTO member countries should implement and enforce TRIPS fully, faithfully and promptly. WTO members should also be urged to add to their level of protection through commitments consistent with the WIPO copyright treaties and should cooperate to develop and enforce appropriate legal frameworks to prevent unlawful circumvention of technical protection measures. Countries seeking accession to the WTO should be encouraged to bring their enforcement regimes into compliance with TRIPS standards.

CAPACITY BUILDING FOR DEVELOPING COUNTRIES

Developing countries have had few opportunities to participate in the information society, and they have not yet benefited fully from e-commerce. The GBDe believes that WTO members should pursue ways to assist developing countries in establishing an appropriate policy and regulatory environment to enable e-commerce and digital trade. This assistance must consider the diverse conditions and needs of developing countries, in areas such as developing technical expertise and appropriate legal framework, among others. As the G-8 Leaders observed in the declaration at the conclusion of their July 2001 Summit, there is a clear link between increased trade and investment and stronger economic growth. Expanded trade enhances growth and welfare and contributes to poverty reduction. However, the Leaders recognized that if developing countries are to obtain these benefits, they will need help. Accordingly, the Leaders stated that multilateral trade negotiations should seek to address the needs of developing countries and especially least developed countries in terms of improved market access, capacity building and implementation issues. Through its Digital Bridges effort, the GBDe is working with governments to help developing countries realize the benefits of e-commerce and expanded trade.

CONCLUSION

The GBDe believes that a new global initiative on e-commerce and digital trade should be a critical issue of a new round in the WTO. The GBDe, therefore, strongly supports the launch of the new round in Doha, Qatar, at the 4th WTO Ministerial conference in November 2001, and urges that the positive e-commerce agenda set forth above be incorporated into such round. It is also hoped that this approach would be considered and incorporated in any and all other international initiatives in which e-commerce should be included. E-commerce holds the potential to bring the benefits of increased productivity, opportunity and economic growth

to all countries that are prepared to open markets and harness this new means of conducting international trade. The GBDe represents a broad consensus among international businesses about appropriate policies for e-commerce. The GBDe stands ready to work with government and international organizations, especially the WTO, to advance, refine and implement these trade policies around the world.