

Framework for Global Electronic Commerce

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BACKGROUND

The Global Information Infrastructure (GII), still in the early stages of its development, is already transforming our world. Over the next decade, advances on the GII will affect almost every aspect of daily life -- education, health care, work and leisure activities. Disparate populations, once separated by distance and time, will experience these changes as part of a global community.

No single force embodies our electronic transformation more than the evolving medium known as the Internet. Once a tool reserved for scientific and academic exchange, the Internet has emerged as an appliance of every day life, accessible from almost every point on the planet. Students across the world are discovering vast treasure troves of data via the World Wide Web. Doctors are utilizing tele-medicine to administer off-site diagnoses to patients in need. Citizens of many nations are finding additional outlets for personal and political expression. The Internet is being used to reinvent government and reshape our lives and our communities in the process. As the Internet empowers citizens and democratizes societies, it is also changing classic business and economic paradigms. New models of commercial interaction are developing as businesses and consumers participate in the electronic marketplace and reap the resultant benefits. Entrepreneurs are able to start new businesses more easily, with smaller up-front investment requirements, by accessing the Internet's worldwide network of customers.

Internet technology is having a profound effect on the global trade in services. World trade involving computer software, entertainment products (motion pictures, videos, games, sound recordings), information services (databases, online newspapers), technical information, product licenses, financial services, and professional services (businesses and technical consulting, accounting, architectural design, legal advice, travel services, etc.) has grown rapidly in the past decade, now accounting for well over \$40 billion of U.S. exports alone.

An increasing share of these transactions occurs online. The GII has the potential to revolutionize commerce in these and other areas by dramatically lowering transaction costs and facilitating new types of commercial transactions.

The Internet will also revolutionize retail and direct marketing. Consumers will be able to shop in their homes for a wide variety of products from manufacturers and retailers all over the world. They will be able to view these products on their computers or televisions, access information about the products, visualize the way the products may fit together (constructing a room of furniture on their screen, for example), and order and pay for their choice, all from their living rooms.

Commerce on the Internet could total tens of billions of dollars by the turn of the century. For this

potential to be realized fully, governments must adopt a non-regulatory, market-oriented approach to electronic commerce, one that facilitates the emergence of a transparent and predictable legal environment to support global business and commerce. Official decision makers must respect the unique nature of the medium and recognize that widespread competition and increased consumer choice should be the defining features of the new digital marketplace.

Many businesses and consumers are still wary of conducting extensive business over the Internet because of the lack of a predictable legal environment governing transactions. This is particularly true for international commercial activity where concerns about enforcement of contracts, liability, intellectual property protection, privacy, security and other matters have caused businesses and consumers to be cautious.

As use of the Internet expands, many companies and Internet users are concerned that some governments will impose extensive regulations on the Internet and electronic commerce. Potential areas of problematic regulation include taxes and duties, restrictions on the type of information transmitted, control over standards development, licensing requirements and rate regulation of service providers. Indeed, signs of these types of commerce-inhibiting actions already are appearing in many nations. Preempting these harmful actions before they take root is a strong motivation for the strategy outlined in this paper.

Governments can have a profound effect on the growth of commerce on the Internet. By their actions, they can facilitate electronic trade or inhibit it. Knowing when to act and -- at least as important -- when not to act, will be crucial to the development of electronic commerce. This report articulates the Administration's vision for the emergence of the GII as a vibrant global marketplace by suggesting a set of principles, presenting a series of policies, and establishing a road map for international discussions and agreements to facilitate the growth of commerce on the Internet.

PRINCIPLES

1. The private sector should lead.

Though government played a role in financing the initial development of the Internet, its expansion has been driven primarily by the private sector. For electronic commerce to flourish, the private sector must continue to lead. Innovation, expanded services, broader participation, and lower prices will arise in a market-driven arena, not in an environment that operates as a regulated industry.

Accordingly, governments should encourage industry self-regulation wherever appropriate and support the efforts of private sector organizations to develop mechanisms to facilitate the successful operation of the Internet. Even where collective agreements or standards are necessary, private entities should, where possible, take the lead in organizing them. Where government action or intergovernmental agreements are necessary, on taxation for example, private sector participation should be a formal part of the policy making process.

2. Governments should avoid undue restrictions on electronic commerce.

Parties should be able to enter into legitimate agreements to buy and sell products and services

across the Internet with minimal government involvement or intervention. Unnecessary regulation of commercial activities will distort development of the electronic marketplace by decreasing the supply and raising the cost of products and services for consumers the world over.

Business models must evolve rapidly to keep pace with the break-neck speed of change in the technology; government attempts to regulate are likely to be outmoded by the time they are finally enacted, especially to the extent such regulations are technology-specific.

Accordingly, governments should refrain from imposing new and unnecessary regulations, bureaucratic procedures, or taxes and tariffs on commercial activities that take place via the Internet.

3. Where governmental involvement is needed, its aim should be to support and enforce a predictable, minimalist, consistent and simple legal environment for commerce.

In some areas, government agreements may prove necessary to facilitate electronic commerce and protect consumers. In these cases, governments should establish a predictable and simple legal environment based on a decentralized, contractual model of law rather than one based on top-down regulation. This may involve states as well as national governments. Where government intervention is necessary to facilitate electronic commerce, its goal should be to ensure competition, protect intellectual property and privacy, prevent fraud, foster transparency, support commercial transactions, and facilitate dispute resolution.

4. Governments should recognize the unique qualities of the Internet.

The genius and explosive success of the Internet can be attributed in part to its decentralized nature and to its tradition of bottom-up governance. These same characteristics pose significant logistical and technological challenges to existing regulatory models, and governments should tailor their policies accordingly.

Electronic commerce faces significant challenges where it intersects with existing regulatory schemes. We should not assume, for example, that the regulatory frameworks established over the past sixty years for telecommunications, radio and television fit the Internet. Regulation should be imposed only as a necessary means to achieve an important goal on which there is a broad consensus. Existing laws and regulations that may hinder electronic commerce should be reviewed and revised or eliminated to reflect the needs of the new electronic age.

5. Electronic Commerce over the Internet should be facilitated on a global basis.

The Internet is emerging as a global marketplace. The legal framework supporting commercial transactions on the Internet should be governed by consistent principles across state, national, and international borders that lead to predictable results regardless of the jurisdiction in which a particular buyer or seller resides.

ISSUES

This paper covers nine areas where international agreements are needed to preserve the Internet as a non-regulatory medium, one in which competition and consumer choice will shape the marketplace. Although there are significant areas of overlap, these items can be divided into three

main subgroups: financial issues, legal issues, and market access issues.

Financial Issues

customs and taxation
electronic payments

Legal Issues

'Uniform Commercial Code' for electronic commerce
intellectual property protection
privacy
security

Market Access Issues

telecommunications infrastructure and information technology
content
technical standards

I. Financial Issues

1. CUSTOMS AND TAXATION

For over 50 years, nations have negotiated tariff reductions because they have recognized that the economies and citizens of all nations benefit from freer trade. Given this recognition, and because the Internet is truly a global medium, it makes little sense to introduce tariffs on goods and services delivered over the Internet.

Further, the Internet lacks the clear and fixed geographic lines of transit that historically have characterized the physical trade of goods. Thus, while it remains possible to administer tariffs for products ordered over the Internet but ultimately delivered via surface or air transport, the structure of the Internet makes it difficult to do so when the product or service is delivered electronically. Nevertheless, many nations are looking for new sources of revenue, and may seek to levy tariffs on global electronic commerce.

Therefore, the United States will advocate in the World Trade Organization (WTO) and other appropriate international fora that the Internet be declared a tariff-free environment whenever it is used to deliver products or services. This principle should be established quickly before nations impose tariffs and before vested interests form to protect those tariffs.

In addition, the United States believes that no new taxes should be imposed on Internet commerce. The taxation of commerce conducted over the Internet should be consistent with the established principles of international taxation, should avoid inconsistent national tax jurisdictions and double taxation, and should be simple to administer and easy to understand.

Any taxation of Internet sales should follow these principles:

It should neither distort nor hinder commerce. No tax system should discriminate among types of commerce, nor should it create incentives that will change the nature or location of

transactions.

The system should be simple and transparent. It should be capable of capturing the overwhelming majority of appropriate revenues, be easy to implement, and minimize burdensome record keeping and costs for all parties.

The system should be able to accommodate tax systems used by the United States and our international partners today. Wherever feasible, we should look to existing taxation concepts and principles to achieve these goals.

Any such taxation system will have to accomplish these goals in the context of the Internet's special characteristics -- the potential anonymity of buyer and seller, the capacity for multiple small transactions, and the difficulty of associating online activities with physically defined locations.

To achieve global consensus on this approach, the United States, through the Treasury Department, is participating in discussions on the taxation of electronic commerce through the Organization for Economic Cooperation and Development (OECD), the primary forum for cooperation in international taxation.

The Administration is also concerned about possible moves by state and local tax authorities to target electronic commerce and Internet access. The uncertainties associated with such taxes and the inconsistencies among them could stifle the development of Internet commerce.

The Administration believes that the same broad principles applicable to international taxation, such as not hindering the growth of electronic commerce and neutrality between conventional and electronic commerce, should be applied to subfederal taxation. No new taxes should be applied to electronic commerce, and states should coordinate their allocation of income derived from electronic commerce. Of course, implementation of these principles may differ at the subfederal level where indirect taxation plays a larger role.

Before any further action is taken, states and local governments should cooperate to develop a uniform, simple approach to the taxation of electronic commerce, based on existing principles of taxation where feasible.

2. ELECTRONIC PAYMENT SYSTEMS

New technology has made it possible to pay for goods and services over the Internet. Some of the methods would link existing electronic banking and payment systems, including credit and debit card networks, with new retail interfaces via the Internet. &Electronic money, 8 based on stored-value, smart card, or other technologies, is also under development. Substantial private sector investment and competition is spurring an intense period of innovation that should benefit consumers and businesses wishing to engage in global electronic commerce.

At this early stage in the development of electronic payment systems, the commercial and technological environment is changing rapidly. It would be hard to develop policy that is both timely and appropriate. For these reasons, inflexible and highly prescriptive regulations and rules

are inappropriate and potentially harmful. Rather, in the near term, case-by-case monitoring of electronic payment experiments is preferred.

From a longer term perspective, however, the marketplace and industry self-regulation alone may not fully address all issues. For example, government action may be necessary to ensure the safety and soundness of electronic payment systems, to protect consumers, or to respond to important law enforcement objectives.

The United States, through the Department of the Treasury, is working with other governments in international fora to study the global implications of emerging electronic payment systems. A number of organizations are already working on important aspects of electronic banking and payments. Their analyses will contribute to a better understanding of how electronic payment systems will affect global commerce and banking.

The Economic Communique issued at the Lyon Summit by the G-7 Heads of State called for a cooperative study of the implications of new, sophisticated retail electronic payment systems. In response, the G-10 deputies formed a Working Party, with representation from finance ministries and central banks (in consultation with law enforcement authorities). The Working Party is chaired by a representative from the U.S. Treasury Department, and tasked to produce a report that identifies common policy objectives among the G-10 countries and analyzes the national approaches to electronic commerce taken to date.

As electronic payment systems develop, governments should work closely with the private sector to inform policy development, and ensure that governmental activities flexibly accommodate the needs of the emerging marketplace.

II. Legal Issues

3. 'UNIFORM COMMERCIAL CODE' FOR ELECTRONIC COMMERCE

In general, parties should be able to do business with each other on the Internet under whatever terms and conditions they agree upon. Private enterprise and free markets have typically flourished, however, where there are predictable and widely accepted legal environments supporting commercial transactions. To encourage electronic commerce, the U.S. government should support the development of both a domestic and global uniform commercial legal framework that recognizes, facilitates, and enforces electronic transactions worldwide. Fully informed buyers and sellers could voluntarily agree to form a contract subject to this uniform legal framework, just as parties currently choose the body of law that will be used to interpret their contract.

Participants in the marketplace should define and articulate most of the rules that will govern electronic commerce. To enable private entities to perform this task and to fulfill their roles adequately, governments should encourage the development of simple and predictable domestic and international rules and norms that will serve as the legal foundation for commercial activities in cyberspace.