



Global Business Dialogue on Electronic Commerce

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

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## INTRODUCTION

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

In these recommendations, the GBDe

- covers a range of harmful content, which may be identified in the Internet intermediary's terms of use;
- proposes, based on the practices developed by the GBDe's members, a range of processes for dealing with this content; and
- recommends to public authorities that they should ensure that an Internet intermediary, which establishes and implements a process for combating harmful Internet content shall not, for that reason, be subject to liability in respect of such actions.

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

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

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

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

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

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

<sup>2</sup> GBDe Recommendation on Liability (Paris, 1999).

<sup>3</sup> GBDe Recommendations of the IPR Working Group (Miami, 2000).

<sup>4</sup> GBDe Statement of Principles on Cyber Ethics (Tokyo, 2001).

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

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

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

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

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

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

**RECOMMENDATIONS**

**1. Combating harmful Internet content**

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

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

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

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

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

- (a) infringement of intellectual property rights, which is addressed in the GBDe Recommendations of the IPR Working Group (Miami, 2000);
- (b) liability in respect of content (except for the safe harbour for processes to combat harmful Internet content, as specified in section 3.3); and
- (c) applicable law.

**2. Recommendations for Industry**

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

- (a) establishing an acceptable use policy and contractual terms with its customers on harmful and other content;
- (b) working with other intermediaries in formulating a code of conduct on harmful Internet content;
- (c) establishing hotlines, email contact points, or other methods for users to report harmful Internet content;
- (d) facilitating transmission of a complaint to the proper public authorities (for example, by providing an email address to the complaining party);
- (e) recommending to its hosting customers to rate or to label web sites for content suitable for children;
- (f) maintaining a notice and takedown policy comprised of several of the following elements: setting a form of notice with specified information; permitting a person to give notice of harmful Internet content; contacting the content provider; taking down or disabling access to the content;
- (g) making available to users, on a voluntary basis, software or other tools to help in identifying and filtering harmful Internet content;

- (h) working with public authorities for the establishment of a content complaints body capable of handling issues relating to assertedly harmful content and of issuing takedown instructions;
- (i) engaging in education programmes for customers and subscribers;
- (j) depending on the nature of the harmful Internet content, forwarding on to public authorities, to the content provider or to both notice supplied by a complaining person or other information related to such content;
- (k) serving as informal adjudicator between the person claiming prejudice and the content provider so that as between them they can resolve their dispute; and
- (l) making available, acting alone or with others (including public authorities), a web page on the process it has adopted and the steps it proposes for combating harmful content.

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

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

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

### **3. Recommendations for Public Authorities**

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

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

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

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

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

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