

# GLOBAL BUSINESS DIALOGUE ON ELECTRONIC COMMERCE



## CONTENT AND COMMERCIAL COMMUNICATIONS

**S E P T E M B E R 1 3 , 1 9 9 9**

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## **Introduction**

In order for electronic commerce to reach its full potential on a global scale, industry and governments must work towards certain basic, internationally-compatible principles relating to online content. Freedom of expression should be protected in the online environment to the same extent that it is protected in the offline environment. Governments need to balance freedom of expression against competing public policy interests in order to create an environment in which electronic commerce can flourish. By imposing divergent rules and regulations, national governments will create a patchwork of fragmented and incompatible requirements that will make compliance and enforcement impossible and will seriously hinder the development of electronic commerce. The GBDe believes that many of the content-related issues in electronic commerce should be addressed through self-regulation and market-based solutions. This chapter does not address issues relating to liability for illegal content, as these issues have been addressed in the chapter on Liability.

## **Protection of Minors from Harmful Content**

Although the GBDe acknowledges that the protection of minors (and of young children in particular) from harmful content on the Internet is an important public policy interest, we believe that regulation is not the best or most effective means to ensure such protection. This issue can best be dealt with through self-regulatory and voluntary industry-led initiatives, as well as the development of empowerment technologies that give caregivers the ability to choose the sorts of content that children access. There are already a number of market and industry-led initiatives underway, including caregiver choice and other empowerment technologies (i.e., content filtering and monitoring software, control chips and other blocking technologies); content screening services; self-regulatory codes of responsible online behavior; voluntary self-rating programs; and programs designed to promote awareness and educate caregivers about Internet safety. Business is very motivated to continue to develop market-based solutions to protect minors from harmful content on the Internet, not only because of the important public policy interests at stake, but also because such solutions help generate consumer confidence and are ultimately good for business. Governments should, therefore, refrain from regulating this area and encourage business to find effective and internationally applicable solutions to these problems.

## **Commercial Communications**

The GBDe recommends that governments adopt an approach to online commercial communications that combines voluntary self-regulation, “mutual recognition”, and “country of origin” principles. The general application of the principles of mutual recognition and country of origin will ensure that suppliers of electronic goods and services are required to comply with the laws relating to commercial communications of the country where they are established. Applying the law of the country in which the user is located would seriously impede the growth of electronic commerce, denying residents of certain countries the benefits of electronic commerce. Commercial communications will benefit consumers by empowering them to make informed choices about their online purchases. The ICC Guidelines on Advertising and Marketing on the Internet provide a framework for effective self-regulation in this area. In relation to unsolicited online commercial communications, as in the case with unsolicited offline commercial communications, such communications should be allowed unless the end-user has expressed a desire not to receive such communications (i.e., an “opt-out” system).

## **Content Regulations, Including National Cultural Heritage**

### **Trade Barriers and GATS**

National governments have a legitimate role to play in the protection and promotion of national cultural heritage and identity, but these policy interests should not be translated into market access and other trade barriers that will impede the development of electronic commerce.

### **Spectrum Scarcity vs. Spectrum Abundance**

In the analog environment of the past, content competed for scarce distribution and national governments imposed content regulations, including broadcast quotas, to protect their national interests, including their national cultural heritage and identity. Today, digital technologies and applications have changed the landscape, and there is more than ample distribution capacity for all content. Many of the content regulations of the past affecting online and digital content and distribution are difficult to justify in light of these developments.

### **Consumer Empowerment and Interactivity**

Interactivity and the empowerment of the consumer are essential components of electronic commerce because they give the consumer the flexibility to choose for themselves what content to consume (much like a retail consumer visiting an offline bookstore). Neither governments, nor other public or private sector enterprises, should interfere in any way in basic and personal decisions of consumers relating to the consumption of legal content.

### **Attracting Capital Investment and Encouraging Job Growth**

In order for global electronic commerce to achieve its full potential, sustained capital investment in infrastructure and on-going operations will be required. Excessive government regulations affecting online content will disincentivize investors and slow the growth of electronic commerce.

### **Promoting Global Competitiveness**

Electronic commerce is global in scope, and there is a need for pro-competitive business conditions internationally in order for industry participants to remain competitive irrespective of national origin. Companies handicapped by content regulations may have to compete with companies in other parts of the world which do not suffer from similar handicaps, thereby leaving the former at a disadvantage.

## **Recommendations**

### **Recommendations to Governments**

The Internet should be recognized as a communication forum in which freedom of expression is respected to the same extent as in conventional offline communication fora. Governments should refrain from imposing divergent national rules and regulations relating to online content and commercial communications which will create a patchwork of fragmented and incompatible requirements that will be impossible to comply with and enforce.

Governments should encourage business to continue to find effective and internationally-applicable market-based and technological solutions and refrain from imposing regulation to protect minors from harmful content on the Internet.

With respect to online commercial communications, governments should support the general application of the country of origin principle, subject to certain exceptions, so as to ensure that electronic commerce reaches its full development potential on a global scale.

Governments should encourage the development of self-regulatory codes of conduct which promote responsible online advertising and marketing, and refrain from imposing bans and restrictions on online commercial communications.

With respect to unsolicited online commercial communications, governments should encourage the development of self-regulatory solutions, such as a system whereby such communications are allowed unless the user has expressed a desire not to receive such messages (i.e., an opt-out system).

With respect to the upcoming WTO round of trade negotiations, existing GATS liberalization commitments applicable to the electronic delivery of services must be rigorously applied, and where possible, improved, and any new limitations, including culturally-motivated limitations, in the area of electronic trade in services should be resisted. Furthermore, WTO member countries should carefully examine the implications of the classification of electronic commerce for trade purposes before final decisions are reached, and refrain from making premature classification decisions.

### **Recommendations to the Business Community**

Industry should continue to develop, test and make available caregiver choice and other empowerment technologies that can be used at the discretion of caregivers to block access by children to harmful content on the Internet.

Industry should endeavor to participate in the development of voluntary, internationally-compatible guidelines for responsible online behavior and self-rating systems for online content.

Industry should endeavor to participate in initiatives designed to improve the level of awareness and promote the on-going education of parents, caregivers, educators and children of the means available by which the Internet can be made safe for minors.

Industry should adhere to existing self-regulatory codes of conduct which promote responsible online commercial communications, such as the ICC Guidelines.

Industry should endeavor to participate in the development of opt-out systems, whereby users may express a desire not to receive unsolicited electronic direct marketing messages.