

EU-Japan Business Dialogue Round Table
Tokyo Meeting 17-18 July, 2000
Working Party "Electronic Commerce"
Joint Position Paper

EU and Japan wish to promote co-operation for the development of a harmonised business environment in order to foster the development of global electronic commerce. Considerable progress has been achieved in the past period, but some issues still remain. It is the ambition of the Working Group to propose joint recommendations in focused areas with measurable results that would contribute to the emergence of global solutions.

Area 1. Access to Infrastructure

The successful development of electronic commerce and other IP-related services depends in part on competitive access to telecommunications infrastructure at cost-oriented rates.

Issue

It is widely observed that the growth of the Internet and IP services in parts of Europe and Japan is unnecessarily hampered either by high costs or lack of unmetered access. Access by competitive and alternative service providers to incumbents' local networks is one way to bring about service innovation, as long as it is at reasonable cost. This can take the form of unbundled access to the local loop, or time based interconnect charges at cost-oriented rates. Such rates can be referenced to international benchmarks.

Regulators in Europe are taking a close look at how to grant low cost access for ISPs to local networks, in order to facilitate the networked economy and bring other benefits. In the UK for example, OFTEL, the regulator has recently required wholesale unmetered rates be provided for rival operators to offer the Internet access and their own products to customers over incumbent networks. Many observers believe such measures will make the UK a more attractive place for e-businesses.

In addition, the European Union recommendation on the unbundling of the local loop requires access to:

- raw copper local loops,
- non-voice frequencies of a local loop,
- space within an MDF site,
- and "bit-stream" access where a dominant operator provides this for its own use.

Furthermore, due to the fast technological changes and the development of new wireless communication technologies (WAPS and UMTS), the access to the net has become a key question either for the ISPs and for the content providers. To keep an extended choice for consumers, content providers must be granted open access to the net at low costs.

Recommendation

The growth of electronic commerce in all jurisdictions depends on inexpensive Internet access for businesses, and residential customers. This can be facilitated by governments' mandating the availability of dominant networks to rival service operators at cost-oriented prices. We encourage both the European and Japanese governments to examine their local access policies covering both unbundling of the local loop and time based interconnection charges to ensure speedy development of the Information Society.

Area 2. Support to the GBDe activity

The GBDe is performing a wide range of valuable policy developments in the area of e-commerce, which many of the EU-Japan Business Dialogue Round Table member companies are already supporting. Rather than duplicate elements of this work within the Round Table framework it would seem appropriate for members to support the GBDe activity and ensure that it fully reflects bilateral EU-Japan issues.

Issues

Notice and Take Down Procedures

The GBDe spent considerable time last year reviewing the issues surrounding liability of online intermediaries and has produced a paper on the basic principles. In the year 2000, it was decided that a new IPR Group would be set up to develop model notice and take down procedures designed to facilitate the fast and efficient removal of allegedly unlawful material from the networks of on-line service providers.

Work within the GBDe continues in order to refine the details of a Notice and Take Down regime for copyright violations, and a Task Force is being created to examine the issue across the full range of illegal content as envisaged by the EU E-Commerce Directive. It is important that codes of practice in this area are reasonably uniform around the world.

GBDe Trustmark

Following a commitment at its Paris conference, the GBDe is exploring the possibility of developing a GBDe "trustmark", or endorsing one or more existing marks, that would be awarded to commercial e-commerce sites around the world which meet the codes of conduct and standards set or endorsed by the GBDe and its member companies. The European WG participants understand that there are already a large number of trustmarks under development. Thus the approach of endorsing existing marks by developing a framework of necessary characteristics, approved by the GBDe, could be pursued.

Advocacy Group

The GBDe Advocacy Group has been formed to monitor and report on the efforts of the public and private sectors to implement the recommendations made at the Paris conference in 1999. The EUJBDRT could assist this activity which potentially covers several EUJBDRT working groups.

IPR Protection

IPR protection of contents distributed on digital networks is strongly supported by GBDe. Promotion of lawful use of contents by consumers is recognised as a priority. Electronic commerce will not flourish without resolving the legal enforcement issue. Practical technologies should be proposed under private sector initiatives to solve those issues and should receive broad recognition and support at international level.

Recommendations

- That EUJBDRT members support the GBDe work on notice and take-down procedures.
- That the GBDe be encouraged to develop a system for endorsing trustmark schemes.
- That EUJBDRT members support the work of the Advocacy Group and ensure that GBDe positions are reflected in their submissions to governments and supra-national institutions. A formal link, in the form of a common working group member, could be created between the EUJBDRT and the Advocacy Group, or through their Secretariats.
- That EUJBDRT members support the GBDe IPR Protection action and would like to promote the implementation of the unique ID code (INDECS in Europe, cIDF in Japan) to be associated with any digital content distributed on digital networks, as a first concrete measure to secure IPR.

Area 3. Policy Cooperation

European and Japanese governments are accelerating the completion of their regulatory framework for electronic commerce. In Europe, the “eEurope Initiative”, recently launched by President Prodi and approved by Member States during the Lisbon Summit, calls for an acceleration of the adoption and the implementation of “a reliable Internal Market legal framework which provides legal security, removes barriers to cross border services, encourages on-line innovation and consumer trust”. The business community is in favour of such a rapid deployment, but reminds governments that such frameworks should take into account the implications of globalisation, should be kept at a minimum, should involve the private sector and should be led in a spirit of cooperation and harmonisation among all countries.

“Policy Cooperation”, as promoted by the GBDe, is the final outcome of an active and delicate dialogue between these two approaches:

“The notion of ‘policy cooperation’ is founded on the GBDe’s belief that the enactment of constraining regulation puts the dynamic growth of e-commerce at risk. E-commerce requires a relationship of mutual trust between businesses and consumers based on clear and harmonious principles that are globally accepted. To reach such a result, governments should consult and coordinate their efforts with industry experts, consumer groups, and all e-commerce stakeholders.”

Issue

The domain of application of policy co-operation is broad and it is not the intent of the Working Group to cover it in an extensive way. Rather the Working Group is proposing to focus its activity on the area of electronic signature, where governments in both the EU and Japan are active to put legislation in place. It is of utmost importance for the business community that the terms of such legislation do not hamper international exchanges through diverging regulations and that they contribute effectively to the development of global trust.

Recommendation

We encourage European and Japanese governments to encourage the definition of a commonly shared industry framework for the implementation of internationally recognised electronic signatures and seals. Furthermore such the establishment of such a framework will be a first step towards the harmonisation of global authentication services with multiple domains of application. The European and Japanese Business Community and Governments can contribute a great deal through such an initiative to the establishment of a global approach to authentication.

Area 4. Business Model Patent

Recently in the U.S. some of the business methods of electronic commerce on the Internet have been patented and related cases of Business Model Patent infringement are beginning to appear in law reports. With regard to business methods, we can expect that similar cases will also happen in both Europe and Japan.

Issue

In such a situation, the EU-Japan Business Dialogue Round Table understands that on the one hand, the Business Model Patent provides an incentive for technical development, and furthers global development of electronic commerce when granting a patent on business method on the Internet. Each country, on the other hand, has its own patent law and patent examination. It is probable that some Government would grant a patent on different grounds from another country and that such activity would lead to many disputes on patent infringement. This kind of situation would impede the development of electronic commerce for businesses and consumers.

We can say that these two issues are important as a standard for patent examination;

- whether “pure doing business” without technical value should be patented;
- whether ordinary business method carried out on the Internet should be patented.

Governments and Business should consider what kind of measures should be taken in such cross-border conflicts.

The Japanese Patent Office and the EU Patent Office share the perspective of the business community regarding business patent examination. The following items were affirmed in June of this year at the 18th meeting of specialists from the Japanese, EU, and US Patent Offices:

- 1) In order for a business plan that is made possible due to computerization to be eligible for a patent, it must have a “technical element.”
- 2) Business plans that simply automate extent ways of doing business through extent technological means will not be eligible for a patent.

The three offices also pointed out that a major challenge for them in assessing the novelty and level of innovation of business models rested in their lack of documents on previous business models.

Recommendations

- Governments should try to have an accurate examination, especially on novelty and non-obviousness of the subject matter. Governments should promote international co-ordination and maintain a database of examples of Business Methods patented previously.
- Business should co-operate with Governments by providing information on patented examples in business activities.
- Governments and Business should consult with each other on any resolution, which would protect a right holder, without impeding the development of electronic commerce.