

Third EURIM Workshop on Ecommerce Bill - 28 January 1999

Summary Report

On 28 January 1999 EURIM held a third workshop on the proposed Ecommerce Bill. This workshop focused particularly on the law enforcement aspects of the proposals and was, as with the previous workshops, held under non-disclosure rules. This note summarises the conclusions of the workshop and suggests how the discussion could best be taken forward.

Attendance and Agenda

The workshop was attended by 12 EURIM members representing a wide range of industries and legal interests. It was also attended by representatives from the Home Office, NCIS, HM Customs & Excise and the DTI. The format followed that of the previous workshops with representatives from the DTI and the Home Office outlining the proposed provisions of the Bill relating to law enforcement, and the reasons for them. Each person present then briefly stated their concerns and aspirations in this area, followed by open discussion.

Workshop Discussion

The workshop was notable for the frank manner in which the issues and concerns were expressed on all sides. While there were, inevitably, from the industry representatives expressions of grave concern about the effect of the proposals on UK competitiveness and costs to industry, there was also general recognition that there is a genuine law enforcement issue to be resolved. It became clear that there is a real need for a more structured dialogue between all the parties involved to devise better ways of understanding positions and identifying solutions. There was a strong feeling initially that there was too much talking about the problems in general and in emotive terms, and not enough real discussion of the core issues and potential solutions. During the workshop a better understanding of these core issues was established, and a real desire to find ways of working closer together emerged. In particular, industry representatives confirmed their willingness to work closely with the law enforcement representatives to devise practical long term solutions of mutual benefit.

In focusing on the issues it became clear that there are particular criminal scenarios that are of greatest concern, and that these are related more to the activities of individuals than of corporations, or people working within corporations (where it is considered adequate processes are probably available). It was also recognised that the rapid evolution of technology was making it difficult to establish any clear process for tackling these key criminal scenarios. The explicit requirement for key escrow was unfortunate as it was seen to push for a technically specific, global solution to what was actually a number of specific scenarios with different technical and operational constraints. It also created difficult political and commercial overtones. There was a need to understand better these scenarios, and how technology was causing them to change over time - giving a need to maintain a dialogue as to the best technical approach for law enforcement to take when obtaining information at any given time.

There also appears to be a need to enhance mutual understanding and co-operation at the political level between those whose over-riding concern is the integrity of financial systems (including the increasingly hard but hidden fight against electronic crime) and those whose over-riding concern is to obtain access to information which may help the fight against physical crime. If the former were to feel they had to move their operations off-shore, rather than compromise security, the effects on the UK economy would be far more severe than any mere "delay in the growth of mass-market electronic commerce." It would also further complicate the fight against physical crime.

Finally, there was a concern amongst EURIM members about addressing both law enforcement issues and those relating to encouraging electronic commerce in one Bill. These objectives were seen as addressing very different issues, and may result in an unsatisfactory compromise. This concern was also very strongly expressed at the two earlier workshops with the DTI.

Conclusions and Way Forward

Unlike the previous workshops, no clear overall set of issues emerged. However, a number of key messages did come out, and two actions identified to build on the process started at the workshop.

Key messages included:

- All present strongly supported the intention to extend the current laws on interception, seizure, etc. to include the ability (under the same legal processes) to request the content of information found to be encrypted from those who might reasonably be considered capable of doing so - although there was debate on process issues, including whether the keys should be provided if the plaintext was available and liability implications if something went wrong.
- There was also general understanding that the proposals to force those providing encryption services to escrow keys coupled with the "all or nothing" principle would impact UK competitiveness and would not necessarily deliver the capabilities expected by law enforcement.
- It was generally agreed that the underlying need of law enforcement was to maintain the existing ability for covert access to the content of communicated information under existing legal safeguards. Key escrow was seen as a means to this end, and not an end in itself.
- There was general agreement that information systems were becoming more complex, integrated and global in nature. This presented increasingly difficult technical challenges for law enforcement when seeking to understand the content of information being communicated. A better understanding was needed of where such information might be found to increase the options available to law enforcement on where to go to obtain it
- There was industry concern that the focus was over-much on the need to combat physical crime at the expense of major fraud.
- It was felt by EURIM members that the Bill, in needing to balance the requirements of law enforcement and encouragement of electronic commerce, may actually achieve neither. This would be detrimental to the future well-being of UK Plc. Any means whereby these conflicting objectives could be clearly separated would be welcome.

Two specific actions emerged from the discussion:

1. There is a need to establish in more specific terms the law enforcement requirement against which industry can offer practical solutions. These solutions will have to evolve as the underlying technologies, and thus the law enforcement requirements, evolve. They should also have minimal impact on ecommerce initiatives.
2. A mechanism needs to be set up to support an ongoing dialogue that can make this happen. EURIM undertook to explore possibilities with interested parties. One possibility is something similar to the liaison groups that already exist under IOCA. Whatever mechanism is used, it must involve all relevant players nationally.