

SUMMARY REPORT FROM
NETWORK GOVERNANCE WORKING PARTY MEETING
HELD AT ASHURST MORRIS CRISP, LONDON EC2
ON 13 OCTOBER 1999

1. The meeting had been convened to discuss the revised draft of the Electronic Commerce Directive - COM(1999)427 final. It emerged that a different draft prepared by the Finnish Presidency was also in circulation, but few of those present had seen it prior to the meeting. Key points from the discussion were:
2. The revised proposals still sought to create a single market online. As the working party had indicated in its comments on the original draft, this would inevitably lead to conflicts since commercial law generally varied so much between states. There was no single market off-line.
3. While users agreed with this approach, many suppliers were looking for a single market on US terms - ie everything to be treated as if it were inter-state trade under American law. London was the freight forwarding capital of the world because of its ability to sort out the paperwork. We had to consider what was really in the UK's best interest.
4. Conflicts arose between directives because there were so many ad hoc derogations. The new Commission draft attempted to iron out some of these problems, partly by cross-referencing other directives. But taking the directives together, there was no coherent legal framework.
5. The option not to receive spam had been removed from the Finnish draft, thus weakening consumer protection. The relative merits of opt-in and opt-out were discussed. While some favoured an "opt-in" this would cripple the direct marketing business and also be technically difficult to achieve.
6. The definition of "*Information Society Services*" was more obscure than the original and over precise. It did not make any distinction between the mere use of networked services and providing them for public or commercial use.
7. The newly added definition of "*Consumer*" did not include in small and micro businesses. If the directive was to achieve its objective of stimulating electronic trade, provision needed to be made to give them suitable "consumer" protection and problems of loss through fraud should also be tackled. However, a watch should be kept to see that rules designed to protect the consumer did not interfere with business to business trade (which was projected to account for 80% of electronic transactions by volume in 2003).
8. All versions of the directive showed confusion in relation to the terms "caching" "hosting" and "mirroring" and Articles 12 and 13 needed to be reorganised and rephrased to fit reality.. It was felt that a "mere conduit" was the exception rather than the rule and noted that WORMs were the most efficient media at present for caching but that meant they were not technically temporary. Caching was a process involved in mere conduit but mirroring was not. A short paper would be prepared explaining the definitions of, and differences between, caching and mirroring. The issues were different and posed different problems.
9. Finally, there was concern at the Finnish proposal to delay implementation of the directive for 18 months after it was agreed. The measures were needed as soon as possible.
10. A working party status report is being prepared.