

MINUTES OF MEETING OF THE EURIM SECURE E-COMMERCE SUB-GROUP
held at The Guildhall, London EC1 on Thursday 10th December 1998

1. *Introductions*

Lord Renwick opened the meeting, which had been convened to consult members on the issues relating to the UK government's proposed legislation on secure electronic commerce. Two workshops had been held under Chatham House rules, both of which had been attended by officials from the DTI. The purpose of the present meeting was to listen to wider views so that a EURIM briefing statement could be prepared and appropriate publicity planned to enable public discussion of the issues raised.

Roger Marshall welcomed everyone to the Guildhall. The Corporation of London had, he said, a duty to promote and maintain the City's role as the leading financial centre in the world. There were many strands to maintaining that pre-eminence and electronic commerce would be a critical future activity. The City was keen to play its part in promoting the future.

2 *Presentation by Stephen Pride, DTI, Manager of the Secure E-Commerce Bill*

The Bill, which did not yet have an official name, would be framed to help electronic commerce and electronic government and to assist in fighting serious crime. They were conscious that they were operating in a global environment in marketing and policy making terms and it was necessary to get the UK Act right.

The framework of the legislation was to: establish a system of voluntary licensing of providers of authentication and confidentiality services; to give legal recognition to electronic signatures; to remove obstacles to electronic writing and to modernise law enforcement in these areas. The Government believed that licensing would give an indication of quality in the service providers concerned. The proposed legislation stemmed from the principles set out in the April 1998 statement. The Government was committed to a consultation process on the detail which it was now time to flesh out.

He indicated that the law enforcement side had caused a lot of discussion and stressed that law enforcement powers were not being extended, but were limited to the power to understand information obtained under existing powers.. The power applied equally to both licensed and unlicensed holders of keys and a warrant would normally be required to obtain them. The issue was being addressed here to ensure that lawfully obtained information was decryptable and could be rendered intelligible.

The measures on electronic writing and delivery would remove obstacles in existing laws so that electronic information can be substituted for paper. This would enable achievement of the Prime Minister's target of 25% of Government services being available electronically. Early examples of processes enabled would be the electronic filing of returns to Companies House and the Inland Revenue and applications for various permits and licences.

In response to a question, SP said that it had not yet been decided whether only those electronic signatures issued by a licensed provider would be acceptable when dealing

with government electronically, but that that it would seem sensible to have such a requirement for quality reasons. The issue of whether that might be a mandatory condition contrary to EU directives would have to be addressed.

They were open to the possibility of including other measures in the Bill, but to be included they would have to be in an area where fresh UK legislation was needed, which would not require any prior international negotiations and, because of time-scales, be capable of detailed proposals being drawn up within a few months.

The Bill had been announced in the Queen's Speech and it was likely to use the new procedure whereby its progress could start in one session of Parliament and finish in the next. It was likely to be introduced around Easter 1999 and to be completed in 2000. Other steps would be needed to put the licensing regime in place, but they could not be finalised until after Royal Assent. Implementation would start in mid-2000.

The consultation paper was now expected to be issued early in January..

3. *Comments by Chris Sundt, Chairman of the EURIM Secure E-Commerce sub-group*

It was important, he said, that this was not treated as an adversarial matter. There was already a very good consultation process and exchange of information in place between the DTI and a number of organisations, including EURIM, although it remained to be seen how much notice had been taken on the views expressed.

A summary of the findings of the two workshops had been circulated prior to the meeting. The DTI had attended and contributed to both. The Home Office had also been invited but had not yet participated, which was a pity as their involvement was very important. Both workshops had come up with broadly the same range of issues and there was not much divergence on the detail within them. He would pick up on one or two of them.

All the documentation talked about increasing trust. But, he asked, whose trust were you trying to increase? Who were the target audience? Electronic-commerce business models were quite complex and different sorts of public key handling processes were involved. The model in the legislation was not in tune with the way the market was changing. New ways of doing business were coming along so quickly that the Bill would soon be out of date.

Concern had been expressed that the law enforcement issue had been combined with the promotion of business e-commerce. Because of dynamics within government, there was a risk that the law enforcement aspects would prevail over the business ones. There were also some major issues on the law enforcement side on personal privacy. There would be a strong public lobby against that, which could cause the whole Bill to be delayed or lost, which would lose us the business benefits it offered with subsequent damage to electronic commerce.

It was considered that the Bill could do more to strengthen the position of the UK as a place to do business, such as including UNCITRAL model law clauses. That had not been picked up on at present.

The proposals did not address issues of consumer protection at all. There were interesting and very important issues there.

A Government licensing scheme was proposed. This would be voluntary but voluntary was open to various interpretations. It was felt that such a scheme would have a high cost for industry and could make UK plc un-competitive versus those countries with less stringent regimes (e.g. Canada or Ireland). It was also thought that the scheme could be a disincentive for investment and for the development of new services.

The “all or nothing” principle for licensing was causing a lot of concern. This would apparently operate at group level which would create many problems with take-overs and overseas subsidiaries. There were many questions to be addressed on this point.

As presented, the recognition of electronic signatures was aimed at the use of digital signatures underpinned by certified public key. That was one technology only. Those using other technologies might not be legally recognised. What we were really talking about was the law of evidence and we must make sure that all existing laws took precedence, with this new legislation merely as a backstop. There were many ways of establishing trust within existing legal framework and these must not be undermined.

Access to keys would also be controversial outside business. It should be reasonable for someone to offer the plain text rather than the key. A number of practical access considerations were raised in the workshops. Some provisions, especially the requirement for licensed encryption service providers to escrow keys, did not recognise the way technology worked in real life. Once a key was obtained, all information protected by it was compromised by definition, so the owner must be told when it was compromised and be able to replace it. Issues arose over the cost of doing that and who paid for it.

It was important for the consultation process to continue beyond the Bill itself. Much of the detail would be in secondary legislation. How industry was involved in deriving and agreeing that information was very important. The dialogue should be formalised, not ad hoc.

Finally he warned of the danger of putting too much legislation in place too soon. If it was wrong, it would deter investment and had the potential of losing us business that was already here, especially in the financial services area, as the UK would no longer be a profitable base. This could undermine existing business, not merely stifle growth.

5. Discussion and Comments

- There was a danger that the UK might be embarking on a track that was not compatible with other states, within the EU and globally.

- Had concerns about OFTEL as the regulator been taken on board and had they thought of any alternative solutions?
- For many e-commerce providers there would be advantages in getting a licence for signature keys but they might prefer to remain unlicensed for encryption to ensure privacy. The “all or nothing” principle precluded this approach and would have a deterrent effect on business from overseas. But if all or nothing were taken away, what would be the point of a licensing regime at all? Forthcoming Directive proposals would cover the needs through codes of practice and technical standards. By the time the Bill was implemented, its measures would be unnecessary.
- There was a danger of the licensing scheme becoming a great white elephant. No one in industry seemed to be asking for it. Those currently introducing services did not consider changes in legislation were needed and organisations with existing trust services might be forced not to be licensed so that they could continue to provide those services.
- Government should trust business and the City institutions to manage risk, as they had done for centuries, and let them continue to offer services to the world. Government must learn to trust organisations outside government.
- There was a balance of risks between threats to individual liberty and personal freedom and the Government’s desire to control electronic commerce to suppress what was regarded as crime. Those risks should be properly evaluated and modes of controlling them assessed. It might then be found that they would cost too much in personal liberty.
- It was easy for electronic commerce services to be positioned offshore. There were opportunities to be grasped if UK services were branded as part of a digital city providing infrastructure, framework and tax incentives to attract electronic commerce business to the UK.
- The legislation on electronic signatures should be broadened so as not to favour a single technology lest people be driven away from electronic commerce. If the presumption was that the person using the key was the stated person that was a severe limitation which failed to concentrate on who actually signed it. A signature was also a record that that person understood what they were doing and could be traced back to that person, not merely to that key. [The distinction was made between electronic signatures and digital signatures, which had different attributes.]
- Question on whether legislation to recognise electronic signatures could be retroactive to cover electronic commerce while the legislation was going through.
- In relating signature to individual, there was an underlying assumption that multiple persona would no longer be permitted. There was at present no unique connection between your signature and your person. Restrictions in relation to dealings with government were understandable, but there should not be any constraint in business provided multiple identities were not used for deception.

- There had been no mention of the recognition of trusted third parties licensed outside the UK and operating inwards.
- When keys were compromised, some long-standing arrangements would be compromised which needed continuing protection. Procedures for re-signing needed to be covered by the legislation. Because keys were used to protect things of great value, the keys themselves were of great value and the damage caused if they were compromised would be well in excess of the media on which they were held.
- Part of risk assessment was to measure costs. These measures would add significantly to them. In banking, an authentication key was only used in conjunction with a confidentiality key. If that were compromised there would be a major problem. The requirement for contract was also important in banking.
- There was danger attached to considering what to do in a perfect world then applying it to an imperfect world. There was a temptation to regard this Bill as a way to put a handle onto the consequences of imperfection. Although the proposals contained many individual ideas that were good in themselves, the totally could easily fall to the ground. Escrow was not a practical proposition.

6. Summing Up

6.1 Chris Sundt

The discussion had brought forward some interesting points of detail but no totally new issues. Of particular interest, was the degree to which the DTI had a responsibility to create UK plc branding. Some other countries, such as Singapore were doing this. But, could a Bill do this?

He warned of the need to be very careful in the Bill about definitions. They must all be very carefully worked out or industry could be hamstrung or the measures rendered useless.

The international issues could not be ignored. These were of two sorts: activity by other nations to create an electronic commerce environment and the production of European Directives which would be processed in a parallel timescale with the Bill. The DTI had a difficult balancing act to achieve.

6.2 Philip Virgo

A US report on electronic commerce published by Al Gore's office at the end of November had proposed an Act on the theft of electronic identities. This was a topic we had not identified earlier and which needed to be put into the pot.

There were large important schemes being developed by the Banks and the Post Office to ensure their routines were secure under a number of jurisdictions and these should not be disadvantaged.

6.3 Stephen Pride

He emphasised that his role was to describe and explain what Government was trying to do and to listen to what people said and then advise Ministers on the right way forward.

The effort to put the UK ahead in electronic commerce was the underlying purpose of the Bill, which was intended to build confidence and trust. Issues of privacy and law enforcement were complex but this was part of the framework within which business had to operate. It needed low levels of crime and effective law enforcement. They were in everyone's legitimate interest.

A number of statutory instruments would be required and they had to persuade Parliament that this was an area where flexibility was important. It had to be possible to keep it up to date and make sure it worked. Parliament would need a clear idea of how the licensing regime would work and the criteria which would be used to judge licence holders, but the scope to change them over time must be retained.

The all or nothing principle, he said, did not remove the fact that the overall scheme was voluntary.

Although much of the debate had been on the public-private key approach, he recognised there were other routes and that the Bill must address the need to be technology neutral.

The Government had to balance the debate between moving too soon or too slowly.

This Bill was just one of several steps being taken to improve the electronic commerce environment. A White Paper on competitiveness would be published soon and that would include some electronic commerce clauses. His department would consider what lessons could be learnt from the US, Singapore, etc in handling these difficult issues.

The consultation process on this issue had been long, continuous and very open, starting before the last election, which was the normal procedure in preparing this type of legislation. The issuing of documents had been less frequent but ample time would be given to respond to the Consultation Document when it did come out.

7. Next actions for the sub-group

Chris Sundt outlined the group's forward activities. Over the next few months a Briefing Paper would be prepared and a formal response made to the expected Consultation Document - probably now in that sequence.

During the passage of the Bill, workshops would be held and papers relating to specific issues put to Parliamentarians.

Once the Bill was law, the more arduous job would start of ensuring that the secondary legislation was right. He thought the licensing regime was unlikely to be in place in less than 6-9 months after Assent.

The group would also respond to the draft Directive when it arrived and pick up on some of the radical suggestions made in a recent White Paper on cryptographic export control, an issue which the Bill did not cover.

Meanwhile, the Network Governance working party would be examining the proposed directive from DGXV on the legal aspects of electronic commerce and the main Electronic Commerce working party would consider barriers to small firms in electronic commerce and the impact of telecoms costs thereon.
