

AICGS Seminar Papers

A Publication of the
American Institute for Contemporary German Studies
The Johns Hopkins University

POLICY PAPERS #14

**Who Writes the Rules of E-Commerce?
A Case Study of the
Global Business Dialogue on e-commerce
(GBDe)**

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Robert Bosch Foundation Research Scholars Program
in Comparative Public Policy and Institutions
2001

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AICGS would like to thank the Robert Bosch Foundation for funding this AICGS publication as part of the Robert Bosch Foundation Research Scholars Program in Comparative Public Policy and Institutions.

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- #14 “Who Writes the Rules of E-Commerce? A Case Study of the Global Business Dialogue on e-commerce (GBDe),” Maria Green Cowles (American University).

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**WHO WRITES THE RULES OF E-COMMERCE?
A CASE STUDY OF THE GLOBAL BUSINESS DIALOGUE ON E-COMMERCE
(GBDe)**

Maria Green Cowles
AICGS¹

INTRODUCTION

“The American point of view on e-commerce was ‘This is cool, let’s talk about it.’ The European point of view was ‘Let’s regulate, and then talk about it.’”

-- American business representative

“The American companies were very narrow-minded with an archaic vision. In the beginning, they were completely stuck to the [Anglo-Saxon] self-regulation theme.”

-- European business representative

In recent years, the rise and demise of “dot.com” companies have focused government and industry attention on the growth of electronic commerce. E-commerce—“the conducting of business communication and transactions over networks and through computers”²—is now big business. Observers estimate that the annual volume of e-commerce is between \$100 and \$200 billion, and will continue to grow as the “old economy” increasingly uses the internet to deliver goods and sources to consumers (c.f. Litan and Rivlin 2000). At the same time, e-commerce raises important challenges to “governance” and, in particular, to the ability of governments to shape the new economy. On one hand, many elected officials and civil servants recognize the importance of promoting the growth and development of e-commerce industry. At the same time, these same officials must now grapple with new topics (i.e. e-payments) as well as more traditional issues (taxation and jurisdiction) in previously unthinkable ways.

¹ I would like to thank the Bosch Foundation and the American Institute for Contemporary German Studies for providing funding for this study. The research was carried out April-June 2001 and represents a “first cut” at the efforts of major e-commerce firms to promote self-regulation/co-regulation through the GBDe. I am grateful to the industry and government officials who granted me interviews and provided me with numerous documents. Nikki Nocella also deserves kudos for her helpful research assistance. Willard Berry, David R. Green, Karin Johnston, Ilonka Oszvald, Mark Pollack, Paul Taggart, and participants at the June 21, 2001 European University Institute seminar made particularly helpful comments on earlier drafts, as did a number of industry and government officials. Of course, all errors are mine.

² The definition is from Denis Howe, *The Free On-line Dictionary of Computing*, 1993-2001, accessed 6/22/2001. A more restrictive definition of e-commerce is “the buying and selling of products and services by businesses and consumers over the internet.” See www.investorwords.com/e1.htm.

How does one determine taxation policy when a Japanese consumer purchases music on-line from a French media firm? How does one defend the intellectual property rights of an Indian company when one of its products is copied and then downloaded in Scotland? How does one ensure that the personal information of a Dutch citizen recorded by an American corporation is not later sold to a Canadian bank? How can a Mexican consumer be assured that the credit card information she gave to an on-line German firm will not be stolen by an outside source? These are some of the difficult questions facing governments and e-commerce companies today.

Yet the issues go further. How does one address the content of the internet when one country bans certain “offensive” language and/or material and another country does not?³ How does one preserve the culture(s) and language(s) of one’s people when the American culture and language has to date been the dominant force in electronic communication? How does one address the growing chasm between those people who have access to and can afford to go “on-line” and those who cannot – not only in one’s own country, but around the world?⁴

It is not merely the **how** questions that are pertinent, but the **who**: **Who** should be the rule-makers of e-commerce? (c.f. Johnson and Post 1998). “The rules of electronic commerce” as noted by one observer “will not be made by governments alone” (Harmon 1999). Addressing these issues, it is argued, has become too difficult for governments alone. As Jan Kooiman points out, “societal, technological and scientific developments” –such as those found in e-commerce—pose significant new challenges to governments that, in turn, necessitate new forms of public/private interactions (1993). This paper analyzes one private group’s efforts—the Global Business Dialogue on e-commerce (GBDe)—to develop norms, rules, and principles to shape the global public policy framework for e-commerce.⁵ It is meant to be a historical document highlighting the group’s origins and its initial efforts to shape the rules of e-commerce through self-regulation, co-regulation, and what the GBDe itself refers to as “policy coordination” in the global arena.

The GBDe merits attention for several reasons. First, from an empirical perspective, while there are examples of industry groups self-organizing to shape the governing principles in e-commerce domestically (see Spar 1999), the GBDe is one of the first truly global groups to organize itself around public policy issues. And while other firms have mobilized in recent years to address global issues such as intellectual property rights (see Sell 1999), they did so within an American context. By contrast, the GBDe represents the global cooperation of companies from the Americas, Europe, Africa, Asia, and

³ See, for example, the recent case in which a French judge ruled that Yahoo! must block “the viewing and buying of Nazi memorabilia from its American auction site” or face daily fines. See “Vive la liberté!” (2000).

⁴ For some excellent overviews on the general impact of e-commerce, as well as the policy implications, see Simon (2000), Cairncross (1997).

⁵ Lawrence Lessig (1999) has also pointed out the importance of “architecture” or code-writing in the governance of e-commerce. While important, this is not directly addressed in this paper.

Oceania. As such, the GBDe might serve as “a prototype for addressing globalization” and the ways in which firms and governments interact in the future.⁶

Second, from a theoretical perspective, the GBDe provides interesting insights into the novel literature on “private authority” in international relations (Cutler, Haufler, and Porter 1999). Governments, it is argued, are not the only holders of authority; private firms can also be recognized as “authorities.” As I discuss in this piece, the manner in which “private authority” is viewed and/or granted often varies according to a state’s history, culture, and institutions. Authority need not reside only with governments or only with firms. It can itself be a contested issue—particularly at the international level. Moreover, private authority is not something that is given, but rather is acquired over time. It has yet to be determined whether or not the GBDe will be recognized as a legitimate authority by governments and consumers, and whether or not there will be a high degree of compliance with its rules and decisions.

Third, from a public policy perspective, the GBDe provides important insights into the ability of firms themselves to grapple with e-commerce public policy issues. If private actors—as opposed to governments—are to play an increasingly important role in the governance of the global economy, the GBDe provides an important example of how companies might fare. As suggested in this paper, GBDe firms are in the forefront of e-commerce policy and are, in a sense, acting like governments. At the same time, they are also discovering just how difficult it is to negotiate across countries and industry sectors in an effort to develop global, overarching principles.

This AICGS policy paper examines the GBDe as an emerging private authority in the global e-commerce public policy debate. While the GBDe is a global organization, this paper will focus more specifically on the U.S.-EU dimension in the organization.⁷ The first section provides a theoretical perspective for engaging in this discussion of the private authority of firms. The second and third sections provide a historical overview of the origins and development of the GBDe. The fourth section explores the firms’ difficulties in addressing self-regulation, co-regulation, and policy cooperation in e-commerce. The conclusion reviews the theoretical underpinnings of private firms and authority in light of the GBDe experience and revisits the question of who are the rule-makers of e-commerce.

⁶ Telephone interview with Americas (AM) GBDe representative, May 16, 2001. To respect the confidentiality of the interviewees, I am simply referring to their membership in one of the three GBDe regional groups: Americas (AM), Europe/Africa (EA), and Asia/Oceania (AO).

⁷ As in inter-state relations, it is the US and EU firms—along with their respective governments—who have to date been the most vocal players. As one GBDe participant outside the US and EU noted, “the Europeans are capable of cooking up things. The Americans are capable of cooking up things. For us, it’s important that we’re part of [this GBDe] process to see that the US and European firms are working together, and [that we’re] not getting side-swiped in the process.” Interview with AM GBDe representative, May 16, 2001.

GOVERNANCE, PRIVATE AUTHORITY, AND THE FIRM

Political scientists and public policy scholars have developed the concept of “governance” to explain the type of negotiated interactions that take place between public, private, and voluntary groups in particular policy sectors. There are, in fact, numerous definitions of governance such as “self-organizing, interorganizational networks” (Rhodes 1996, 660), or “patterns that emerge from governing activities of social, political and administrative actors” (Kooiman 1993, 2). These conceptual analyses of governance, articulated by European scholars, agree that governance is larger than government, but that the state can play an important role in “indirectly and imperfectly” **steering** these networks and interactions (Rhodes 1996, 660).

American scholars have looked less at **steering** than at **authority** in governance structures. For example, Joseph S. Nye and John D. Donahue have noted that governance

means the process and institutions, both formal and informal, that guide and restrain the collective activities of a group. Government is the subset that **acts with authority** and creates formal obligations. Governance need not necessarily be conducted exclusively by governments and the international organizations to which they delegate authority. Private firms, associations of firms, nongovernmental organizations (NGOs), and associations of NGOs all engage in it, often in association with governmental bodies, to create governance; sometimes without governmental authority. (Nye and Donahue 2000: 12, **emphasis is mine**)

What is interesting in both Rhodes and Nye and Donahue’s accounts of governance is the role that the government ultimately performs in governance. Government is the one who steers the process, the one who acts with authority. Yet not everyone agrees. Cutler, Haufler, and Porter (1999) have argued that authority does not necessarily have to be associated with governments. Rather, “authority exists when an individual or organization has decision-making power over a particular issue area and is regarded as exercising that power legitimately” (Cutler et al. 5). When firms cooperate on an international basis, the institutions that they create can in and of themselves become authoritative due to the firms’ perceived expertise, historical practice, or an explicit or implicit grant of power by states. These institutions can, at times, take the place of regulatory functions traditionally associated with nation-states or intergovernmental organizations. Yet, despite the growing awareness of firms in international relations, our observations and theories of governance and authority remain—as highlighted in Nye and Donahue’s above—“stubbornly state centric” (Cutler et al. 16).

Cutler et al. suggest there are at least three ways to identify private authority empirically:

First, those subject to the rules and decisions being made by private sector actors must accept them as legitimate, as the representations of experts and those “in authority.” Second, there should exist a high degree of compliance with the rules and decisions. Third, the private sector actors must be empowered either explicitly or **implicitly** by governments and

international organizations with the right to make decisions for others (Cutler et al. 1999, 19).

As discussed below, the Global Business Dialogue on e-commerce (GBDe) might be regarded as an emerging private authority in the global e-commerce policy debate. The GBDe is largely comprised of the leading e-commerce firms in the world.⁸ They are recognized as being at the forefront of new technologies, engaged in the global marketplace, and holding tremendous expertise in e-commerce issues. This expertise, along with the sheer market dominance of these companies, renders them “authoritative.” Moreover, the U.S. government and EU Commission have in various ways recognized the desirability of these companies to devise their own solutions to e-commerce policy issues.

At the same time, the GBDe is also instructive in terms of understanding the limits to this private authority. In the areas of data privacy and consumer confidence, for example, it is clear that until recently consumer groups and, in turn, governments, have not found the GBDe policy proposals to be adequate and, therefore, legitimate. If the GBDe wishes to be authoritative in these areas, it must undertake another course of action to make its proposals acceptable to those who would be subjected to them.

Equally important, it is not yet evident that there is, as Cutler et al. emphasize, “a high degree of compliance” within the GBDe with its own self-regulatory proposals. This may change as the GBDe is a relatively young organization whose ideas must filter through various national and regional practices. Until then, however, the GBDe’s authority remains under scrutiny.

Of course, one can also argue that authority itself is contested. Authority need not be an either/or supposition: either the government has authority, or the private sector has authority. Authority may be shared. Thus, whereas the GBDe firms may develop—and indeed, be given the authority to develop—policy norms, rules, and principles, the authority with which to implement these principles can vary across countries in important ways based on cultural, historical, and institutional factors. For example, the notion of “self-regulation” in the United States is, in many respects, a cultural one that is not universally shared by those European governments who do not readily embrace Anglo-Saxon concepts. Self-regulation can be defined as “voluntary rules, the introduction, scope, provisions, monitoring and enforcement of which remain the right and responsibility of participating companies” (Sheridan 2001, 20). At the same time, it is a historical concept: self-regulation fits well in the United States where business has historically mistrusted the state (Vogel 1978), but not in Europe where “co-regulation” (in its various forms) better reflects the traditional business-government relations in most European countries (c.f. Kooiman 1993). Co-regulation, as defined by Information Society Commissioner Erkki Liikanen, is a “co-operative approach to governance” that takes “self-regulation one step further,” often by placing self-regulation within the legal

⁸ There are, of course, important omissions. Microsoft, the software giant, is not a member, for example. Nor is Sony, the Japanese media company.

context of the Single Market (Liikanen 2000, 5).⁹ Finally, and arguably most importantly, the differences in state institutions (or European Union institutions, as the case may be) also impact the means by which authority is carried out. In the area of data protection and consumer confidence, for example, it is easier to promote self-regulation in the United States where there are private entities such as the Better Business Bureau (BBB) as well as an independent regulatory agency, the Federal Trade Commission (FTC), that serve as “back-up” enforcement mechanisms to address consumer concerns. By contrast, there is no equivalent of a BBB or an FTC at the European Union level. Thus, self-regulation at the EU level must be backed up with legislative language if there is to be any reference at all to enforcement mechanisms. The GBDe thus faces an interesting proposition: can it create shared norms, rules, and principles when the manner in which they are carried out differs from country to country, from the U.S. to the EU? This proposition is all the more interesting given that the European Commission itself is in the midst of a debate among member states and private actors over developing alternative regulatory mechanisms (ARMs)—self-regulation, co-regulation, soft law, etc.—that would replace traditional regulation at the European level.

The contested nature of authority in global governance has not been adequately explored or addressed in the literature. As such, our theories may in and of themselves be guilty of a certain Anglo-Saxon, if not American, bias. The GBDe story suggests that recognizing the ways in which culture, history, and institutions influence the manner in which authority is wielded and shared may be an important means for furthering our understanding of private authority and global governance.

Having highlighted the theoretical context in which one might examine the GBDe, we now turn to the creation of the organization itself and its efforts to help set the rules of e-commerce on a global basis.

THE ORIGINS OF THE GBDE—“BORN GLOBAL”?

In 1997, the United States, the European Union, and Japan all issued important policy papers that dealt in varying degrees with the promotion and governance of the internet and e-commerce.¹⁰ In April, the European Commission issued “A European Initiative in Electronic Commerce” (European Commission 1997).¹¹ Noting that the internet was “born global,” the Commission document was relatively broad in that it addressed the

⁹ Erkki Liikanen, “Co-Regulation: A Modern Approach to Regulation,” Speech given at the meeting of Association of the European Mechanical, Electrical, Electronic and Metalworking Industries (Orgalime) Council, Brussels, May 4, 2000.

¹⁰ The Japanese document was a draft policy paper issued by the Ministry of International Trade and Industry, “Towards the Age of the Digital Economy—For Rapid Growth in the Japanese Economy in the Twenty-First Century.” For an excellent overview of the U.S., EU, and Japanese documents from an American perspective, see Maxwell (1998). Maxwell was Deputy Chief of the Office of Plans and Policy in the U.S. Federal Communications Commission (FCC), and later went on to serve as the special advisor to the secretary of commerce for the digital economy in the Clinton Administration. He became known as the Clinton Administration’s new “internet guru” after Ira Magaziner left the White House.

¹¹ Unfortunately, the EU archives no longer carry the original website: www.ispo.cec.be/Ecommerce.

liberalization of the telecommunications market (slated for 1998), research and development programs, international industrial cooperation, regulatory frameworks, consumer protection, and public section promotion of electronic commerce. The Commission also set for itself the ambitious goal of implementing an appropriate regulatory framework built on existing Single Market legislation by the year 2000. Citing the development of divergent legislative approaches in the member states, the Commission called for the creation of “a coherent regulatory framework for electronic commerce ... at European level.” This would include the directive on data protection¹² (that would go into effect in late 1998), the legal protection of databases, and on contracts negotiated at a distance. The Commission also spelled out four principles to guide this electronic framework: 1) No regulation for regulation’s sake; 2) Any regulation must be based on all Single Market freedoms; 3) Any regulation must take account of business reality; and 4) Any regulation must meet general interest objectives effectively and efficiently (such as privacy or consumer protection).

The following month, the White House issued its own document, “Framework for Global Electronic Commerce” (White House 1997). The document was unofficially known as the “Magaziner Paper” after Ira Magaziner, the president’s White House point-person on e-commerce who spearheaded the initiative. The U.S. document focuses on nine core issues: 1) customs and taxation; 2) electronic payment systems; 3) ‘Uniform Commercial Code’ for electronic commerce; 4) intellectual property protection; 5) privacy; 6) security; 7) telecommunications infrastructure and information technology; 8) content; and 9) technical standards. The overarching principle of the U.S. document was that “the private sector should lead.”

Private sector leadership accounts for the explosive growth of the Internet today, and the success of electronic commerce will depend on continued private sector leadership. Accordingly, the Administration also will encourage the creation of private fora to take the lead in areas requiring self-regulation such as privacy, content ratings, and consumer protection and in areas such as standards development, commercial code, and fostering interoperability (White House 1997).

While a European Commission official estimated that the U.S. and EU papers overlapped by roughly 80 percent, U.S. officials saw distinct differences between the documents of the transatlantic partners.¹³ While both documents promoted a minimalist regulatory approach, the American paper advocated self-regulation whereas the European paper was open to regulatory action, if necessary, “at every step of the business activity....” (Maxwell 1998, 112). In addition, the European paper—like the Japanese—“expressed a sense of urgency” given the early formation and overall U.S. lead in e-commerce and the necessity for the Europeans to catch up (112). Thus, as one American

¹² Directive 95/46/EC of the European Parliament and the Council, October 24, 1995, *Official Journal of the European Community*, L281 (November 23, 1995).

¹³ For the Commission assessment, see Patrick Vittet-Philippe, “A note for the File, U.S. Policies in Electronic Commerce: A Comparative Analysis of the ‘Magaziner Paper,’ 3 July 1997, as cited in Maxwell 1998.

commentator noted, perhaps “the internet may not have been ‘born global’ in the words of the European ‘Initiative’” (122). Rather, it had the potential to become so over the years.

Attempts at global policy coordination were in a nascent stage. By 1998, the first major e-commerce conference had taken place in the Organization for Economic Cooperation and Development (OECD) in Ottawa, Canada; the World Intellectual Property Organization (WIPO) issued two agreements (not yet ratified by all countries) protecting software copyrights and databases and applying intellectual property protection to digital music and sounds; and the World Trade Organization (WTO) agreed to a one-year moratorium on internet tariffs (Vesely 1998). The U.S. government, led by Magaziner, was also engaged in a number of bilateral policy dialogues on e-commerce with countries around the world that often resulted in joint statements. As a Clinton administration official noted, “There was a belief that you could move others along by engaging them in these bilateral joint statements.... They were ways to identify policy problems with certain countries, to find ways to move the ball along, and to preempt actions that might be more negative.”¹⁴ The American e-commerce diplomacy was not lost on the Europeans. As one Commission official noted, “We saw Magaziner going around signing these bilateral statements, including one with the EU. [It was] the U.S. love affair with self-regulation.... The problem with the American approach was that it was too dogmatic.”¹⁵ The Commission, in fact, believed that many countries around the world—especially the developing countries—were more comfortable with the Commission’s proposed regulatory framework on e-commerce.

The year 1997 also marked the year when U.S. and EU industry sat down to discuss e-commerce issues in the Transatlantic Business Dialogue (TABD), a business-to-business forum created in 1995-96 to address non-tariff as well as “beyond-the-border” barriers to trade (Cowles 2001a, 2001b, 2001c). In 1997, the TABD included a special issue group on e-commerce led by the Les Alberthal, the CEO of EDS and Thomas Middelhoff, the Chairman and CEO of Bertelsmann, representing the U.S. and EU respectively. The TABD e-commerce group focused on five key issues: 1) personal data and privacy; 2) digital signatures; 3) encryption; 4) tax, tariff and customs; and 5) intellectual property protection (TABD 1997). Bill Poulos of EDS and Elmar Brok of Bertelsmann—two strong-willed individuals who would later figure prominently in the GBDe’s development—were the e-commerce issue group managers.¹⁶ The TABD’s mantra—from both the U.S. and EU industry perspective—was that any e-commerce initiative should be “industry-led, market-driven.” At the November TABD conference held in Rome—a year-end conference designed to bring industry and government together—the e-commerce session was “standing room only”. All the “heavy hitters” were there, including Ira Magaziner, U.S. Secretary of Commerce Bill Daley, and EU Industry Commission Martin Bangemann.¹⁷ The e-commerce discussions “highlighted

¹⁴ Interview with former U.S. government official, May 21, 2001.

¹⁵ Interview with EU Commission official, May 10, 2001.

¹⁶ Poulos also served as the U.S. working chair of the U.S.-Japan Business Council (US-JBC) that first met in July 1998 to discuss e-commerce issues.

¹⁷ Interview with GBDe AM representative, April 10, 2001.

the extraordinary consensus among industry.”¹⁸ There were also some contentious moments, not so much over the differences in U.S. and EU policy approaches to e-commerce, but dealing with U.S. industry’s dispute with the U.S. government over encryption policy, which the federal government viewed as a national security concern. Both U.S. and EU industry had argued that users should be free to choose the encryption technology of their choice. The European Commission also supported this view, although member states such as France and the United Kingdom were in favor of the U.S. government position. According to one industry observer’s account, the Rome meeting “began the degradation of U.S. policy on encryption”. To many of the participants, the TABD conference also became the first legitimate meeting of industry and government.¹⁹

The Bangemann Charter

One of the most salient events of 1997 that dealt explicitly with governance was the speech given by EU Commissioner Martin Bangemann on September 8th at the Telecom Inter@ctive ’97 conference in Geneva.²⁰ In his speech, Bangemann called upon “governments, regulators, and industry to work together to establish a new global framework for communications for the next millenium” (as quoted in Hayward 1997). The Commissioner argued

We need to simplify the current [international regulatory] framework and perhaps bring together legislation on the provision of infrastructure, services, content, and access to content via television, computer, or telephone networks.... It will not be possible to achieve a satisfactory international framework only on the basis of strengthened industrial cooperation and existing international organizations... The current situation may lead to the adoption of isolated global rules with different countries signing up for different rules agreed under the auspices of different international organizations (as quoted in Hayward 1997, 1-2).

His answer was to create some sort of international charter. According to Bangemann, industry should take the lead in drawing up a charter that would be based primarily on self-regulation and mutual recognition of national licenses (Reuter Information Service 1997). Later, at a news conference, Bangemann noted that “some kind of body, perhaps a loose one, would be needed in the long term to help implement the agreed principles, and resolve disputes, such as in the area of telecommunications licenses and frequencies (Reuters 1997).

The “Bangemann charter” received considerable attention in government and industry circles, in newspapers and high technology sources, as well as on computer chatlines

¹⁸ U.S. business representative, email correspondence with the author, June 5, 2001.

¹⁹ Interview with GBDe AM representative, April 10, 2001.

²⁰ Unfortunately, the speech is no longer posted at www.ispo.cec.be/infosoc/promo/speech/geneva.html.

around the world.²¹ The notion that greater international cooperation might be necessary to create global principles was attractive. However, U.S. government and industry were at best suspicious of, and at worst utterly against, the idea of the charter (c.f. Vesely 1998). Bangemann's call, after all, "was not for a global dialogue but for a global charter. A charter says what you can do and cannot do."²² U.S. Secretary of Commerce William Daley opposed the charter noting that it introduced "top-down mandates for more government solutions—rather than letting industry and the market lead" (as quoted in Simon 2000, 335). Given the U.S. government's general view that the Commission was all-too-ready to regulate e-commerce, a Commission-proposed global regulatory body was out of the question. Industry's reaction was similar. As one industry representative explained, it was as if industry thought "Oh my gosh, we're going to have the WTO of the internet.... People started talking **about** the charter, as opposed to **why** the charter."²³ As another industry person noted, "The charter was not acceptable from an American perspective. We could anticipate that the EU regulators would jump on top of issues."²⁴ U.S. business representatives also were not convinced that Bangemann's ideas were truly reflective of EU industry concerns. From the American point of view, EU industry did not have "the same ability to access, discuss and contribute to legislation" as American companies did in the United States. Indeed, from their perspective, the EU legislators simply dictated their rules to EU industry.²⁵

Finally, there was the American view that Bangemann had simply been "grandstanding" or "grabbing for the global ring" in the new e-commerce debate.²⁶ Bangemann proposed the charter because "he wanted to set the rules."²⁷

Across the ocean, the European Commission was baffled and frustrated by the American reaction. Bangemann, after all, was the Industry Commissioner, one of the more liberal members of the Commission. At the time of the charter idea, for example, he was overseeing the deregulation of the telecommunications industry in Europe. It was

²¹ Interestingly, one can still find countless on-line group discussions that occurred in 1997 concerning the Bangemann charter. These discussions reflect the strong "hands-off" "anti-regulation" approach of the group members. As one of the tamer commentators from the World Wide Web consortium stated, "I'm not sure why we need //any// regulations dealing with technical standards and encryption. Bureaucrats can't write protocols; engineers can and do. And encryption is like any other free speech matter: government can govern best by governing least." See www.fitug.de/debate/9709/msg00010.html.

²² Interview with former U.S. government official, May 21, 2001.

²³ Interview with U.S. business representative, May 23, 2001.

²⁴ Interview with GBDe AM representative, April 12, 2001.

²⁵ Email correspondence with the author, June 5, 2001.

²⁶ Interview with AM GBDe representative, April 10, 2001. Another industry concern—though not widely expressed in the interviews conducted, was that US industry was not convinced that the Commission was capable of speaking on behalf of the European Union. As one business leader noted, "we did not want to see our government in a bilateral discussion when there would have been a 1-to-15 ratio. Member states maintain their autonomy. I wasn't convinced that some common Community law would emerge. I thought there were too many differences among the member states." Ibid.

²⁷ Interview with former U.S. government official, May 21, 2001.

“not in his philosophy” to focus on government regulation.²⁸ Moreover, the Europeans believed that the charter addressed principles supported by the Americans, but with a global approach. From the EU point of view, there was “a lot of intentional misinformation” on the part of the Americans—because the charter idea could have come from the Americans, but didn’t. In the words of a Commission official, “At the end of the day we had this impression that it was this ‘not invented here’ syndrome.”²⁹

Many EU industry leaders shared similar reactions, believing that the Americans simply did not like the European Union taking the initiative in e-commerce issues.³⁰ From their viewpoint, Americans did not understand the role of the Commission and the Single Market process in Europe. Faced with fifteen competing regulatory systems at the national level, EU industry often welcomed a single regulatory framework at the European level. In order to deregulate and challenge member state laws, the Commission had to reregulate at the European level. “The Commission made policy to liberalize, to breakdown national frontiers, not the other way around.”³¹ The charter, with its emphasis on industry-led development, was a means to promote liberalization further. In short, whereas American industry viewed Bangemann as the “great regulator,” the Europeans saw him as the “great liberalizer.”³²

At the same time, European industry saw the charter as an opportunity to avoid further European legislation. The firms were already enmeshed in the ongoing data protection legislation pending at the European level, while trying to fend off national and regional legislation on the same subject. A global charter, they reasoned, would bring about global understandings on e-commerce.³³

Of course, there were those in industry on both sides of the Atlantic who did not get caught up in the accusations. For some, Bangemann’s charter idea was merely a “tactical approach”—a means of starting a discussion on the need for a global approach to any e-commerce policy framework.³⁴ Whatever the U.S. government’s unofficial view of the charter was, in October 1997 Ira Magaziner gave a conciliatory response to the Bangemann proposal. He cautiously supported the global charter idea as long as it did not entail the creation of a formal regulatory body: “We think there need to be international understandings on a variety of issues—some of which may need to be formal agreements, some informal understandings, and some common approaches.... If

²⁸ Interview with EU Commission official, May 10, 2001.

²⁹ Interview with EU Commission official, May 10, 2001.

³⁰ Interview with GBDe EA official, May 24, 2001.

³¹ Interview with GBDe EA official, May 24, 2001.

³² At least one GBDe from outside Europe and the U.S. noted his government and industry did not share the same qualms as the Americans did regarding the Bangemann charter. “We had a sense that the Europeans were right, that there was a need to look at these issues globally. The fact that the European Commission was promoting it didn’t bother us. We’re more comfortable dealing with government than the Americans are.” Interview with GBDe AM official, May 16, 2001.

³³ Interview with GBDe EA official, May 24, 2001.

³⁴ Interview with GBDe EA official, May 9, 2001; interview with U.S. business representative, May 23, 2001.

that is what is meant by a charter, then I think we would be very interested” (Reuters 1997).

Back in Brussels, Bangemann had also met with Thomas Middelhoff, CEO of Bertelsmann, whose company was very active in the TABD e-commerce issue group. Middelhoff, in turn, raised the issue in discussions with his American counterparts in the TABD, including Steve Case of AOL and Jerry Levin of Time Warner, both of whom had developed personal friendships with the German CEO.³⁵ Middelhoff’s support of the Bangemann charter was natural. As fellow Germans, Middelhoff and Bangemann knew each other well. The Bertelsmann CEO was a member of the Bangemann II Committee on the information society. Elmar Brok, who served both as Bertelsmann’s top lobbyist in Brussels and as a German member of the European Parliament, also had a close relationship with Bangemann.³⁶ Yet, as a Commission insider noted, it was not merely the personal ties that prompted Middelhoff’s involvement; Middelhoff “got it.” He recognized the need for global coordination on e-commerce issues. It became a “personal crusade” for the ambitious, relatively young CEO.³⁷

In November 1997, Bangemann again raised the charter idea during the e-commerce session at the TABD conference in Rome in the e-commerce session. Several months later, in February 1998—around the time when the European Commission formally endorsed the charter proposal—the Internet Charter received a surprise endorsement by none other than Bill Gates, chairman of Microsoft. Vint Cerf, vice president of MCI (now Worldcom) and so-called “Father of the Net,”³⁸ also indicated “tacit approval” for the European proposals (Jones 1998).

Bangemann, with the assistance of Bertelsmann, began to make overtures to the Japanese, who expressed a willingness to sign up to the charter idea, and to the reluctant Americans. Bertelsmann contacted EDS to inform them that the Commissioner would be coming over to the States and would like to meet with Washington e-commerce business representatives. Two days later, Bangemann sat down with the representatives over lunch at the Franklin Club in Washington, D.C. The Bangemann meeting made an impression on several of the business people in attendance. The Commissioner’s approach “was not ‘I have a plan’ but ‘I have an idea and I’m wondering how you guys think it would work.’” When the US industry representatives recited their “industry-led, market-driven” mantra, Bangemann said “absolutely, that’s what I meant.” U.S. industry sensed that instead of having “a WTO for the Internet,” Bangemann was now interested in a global business discussion on e-commerce.³⁹ He was, in fact, pointing out that there

³⁵ In 1994, Middelhoff bought a 5 percent interest in America Online and became a 50-50 joint venture partner in AOL Europe. Ironically, AOL later severed its links to Bertelsmann to address European competition policy concerns when the American firm merged with Time Warner.

³⁶ The close ties between Brok and Bangemann were viewed with skepticism by some in U.S. industry. It has been suggested, for example, that Brok began to increasingly represent Bangemann, not Bertelsmann, in his meetings with U.S. industry officials. Interview with GBDe AM representative, April 10, 2001.

³⁷ Interview with Commission official, May 10, 2001.

³⁸ Cerf was co-developer of the TCP/IP protocol that forms the basis of the internet.

³⁹ Interview with U.S. business representative, May 23, 2001.

was no real private sector leadership on e-commerce issues. And companies got the message. In the words of one industry representative, “Bangemann passed us the ball.”⁴⁰

Bangemann, Middelhoff, and Brok also championed the business-led charter idea in a meeting with Commerce Secretary Daley in Washington, D.C., on June 22, 1998. Less than a week later, on June 29, 1998, the European Commissioner hosted a “global business roundtable” in Brussels. Over 100 industry officials attended, including approximately ten CEO-level officials from the EU, U.S., and Japan.⁴¹ Middelhoff gave the opening remarks and was followed by industry discussions on taxation, tariffs, IPR, encryption, authentication, data protection, and liability. Later, the roundtable turned to the discussion of a global dialogue. While the roundtable was underway, Bill Poulos, Bill Burrington from AOL, Elmar Brok, and a handful of Commission officials were hammering out the final language on a statement that would appear following the roundtable. The result was a two-page document announcing that industry had taken the initiative to create a Global Business Dialogue to be formally launched in the first half of 1999.⁴² In a sense, what would become the Global Business Dialogue on e-commerce (GBDe) was born—Bangemann formally passed the initiative to business at the Brussels roundtable.⁴³

Upon returning from Brussels, the American industry officials faced a daunting task. In the Brussels document, they had committed themselves to a major conference—to be CEO-led (or, in the case of many European companies, Board member-led)—within the first six months of 1999. The first reaction of US industry was “This is never going to happen.”⁴⁴ There was no structure to this proposed dialogue, no focus. Over the summer months, a series of discussions took place among the “sherpas”⁴⁵—the key company people who conduct the background work for their CEOs or Board Members—and other business representatives both across the Atlantic, with Japan (notably with Fujitsu), and in the respective countries. Bill Poulos and Elmar Brok began drawing up the GBDe structure and format, first over dinner in Strasbourg, and later in the EDS offices in Washington, D.C. The first sherpa-level meeting between interested U.S. and EU firms

⁴⁰ Interview with GBDe AM representative, April 10, 2001.

⁴¹ Business Round Table on Global Communications, Brussels, 29 June 1998, List of attendees. The CEOs and Board Members from large companies included Bertelsmann, Brokat, Ericsson, Eutelsat, MCI, NEC, Nokia, Société Générale de Belgique, and Toshiba.

⁴² The statement is found at www.gbde.org/ie/archive/origins.html. An earlier version of this GBDe page included a Japanese statement on “The Need for Strengthened International Coordination” and a broader industry statement on “Globalisation and the Information Society.” The Japanese paper noted the “respect” for “the efforts of the European Commission, especially the personal contribution of Commissioner Bangemann ... to have introduced the idea of the International Charter.” Accessed 9/08/2000.

⁴³ Early organizers learned that another group already existed called the Global Business Dialogue. Hence, it was necessary to add the “e-commerce” so that the group formally became the GBDe.

⁴⁴ Interview with U.S. business representative, May 23, 2001.

⁴⁵ The term “sherpas” refers to the Tibetan people who carry the heavy packs and assist mountain climbers in scaling the Himalayas. The phrase is quite common in business and government circles. It is often noted, for example, that European Trade Commission Pascal Lamy and USTR Bob Zoellick developed their friendship in their earlier careers as sherpas for their respective presidents at G-7 meetings.

was held in Brussels on July 12, 1998. Over time it was agreed that the GBDe would build on the structure set out by the Transatlantic Business Dialogue (TABD) by identifying regions and developing issue groups. Figuring out the regions was not an easy decision. Several industry representatives wanted to include the developing world as part of the GBDe. However, industry did not feel right separating out the developing world as a distinct area from the other GBDe regions. Therefore, by dividing up the world along the Americas, Europe/Africa, and Asia/Oceania, each region would encompass parts of the developing world. There would thus be—at least theoretically—regional outreach to the developing world. Furthermore, it was decided that one company would take the leadership for each issue—for example, Fujitsu from the Asia/Oceania region, might lead the Data Privacy issue group. However, two other companies representing the other regions (Americas, Europe/Africa) would also serve as issue managers—that is, coordinating the views of their regions on the Data Privacy issue. In the end, the companies settled on nine issue groups with each region chairing three of the issue groups.

Like the TABD, the GBDe was to be CEO-only,⁴⁶ with no business associations in the group.⁴⁷ Moreover, the GBDe's agenda would be driven, in part, by a yearly conference in which the CEOs or Board members would meet and present their positions to government officials. Unlike the TABD, however, the GBDe organizers did not want any government participation in various meetings throughout the year. The GBDe was to be industry-led. Moreover, the GBDe organizers determined that the GBDe membership would be relatively small, with five companies from each region serving on the Business Steering Committee (BSC). The companies would represent all types of industry (i.e. telecommunication service providers, equipment manufacturers, media/content producers, and high-end services) as well as geography (i.e. Americans, Canadians, and Latin/South Americans in the Americas region). When the Americas region found it difficult to limit the BSC to five companies, it was determined that seven firms from each region would serve on the BSC.⁴⁸ In another departure from the TABD, the companies decided to have formal membership fees—\$30,000 per year for the large companies, \$5,000 for the smaller firms.⁴⁹ Finally, it was agreed that Middelhoff would serve as the first chair of the GBDe, with the understanding that the Americas region and

⁴⁶ The CEO-only distinction is in practice somewhat blurred due to corporate cultural differences. CEOs are to American companies what Chairmen of the Board are to many European firms.

⁴⁷ During the GBDe's first year, two US industry associations served as issue managers. Their primary role, however, was simply to disseminate the GBDe issue papers to their members and elicit responses. By the following year (2000), industry associations were no longer part of the GBDe.

⁴⁸ While one U.S. government official suggested in an interview that the GBDe sought to exclude certain companies, GBDe firms argue this was not the case. There was no pre-selection process. Those who wanted to become involved had to participate in the various meetings and conference calls held during this time period.

⁴⁹ The TABD does not have a membership fee. Instead, one or two large firms or banks “sponsor” the November CEO conference on their own. Yearly funding of the U.S. and EU secretariats is provided by the companies of the TABD co-chairs.

Asia/Oceania region would be chairs in the subsequent years.⁵⁰ Middelhoff and Brok also went to Japan in early autumn to confer with the Japanese government and companies regarding the GBDe proposals.

As the outline of the GBDe took shape, the core U.S. group involved in the early discussions began to host a series of meetings in Washington, D.C., to inform others in the e-commerce industry of the GBDe's development. The U.S. team drew from the TABD e-commerce distribution list, and later held meetings at the National Association of Manufacturers (NAM) and at the U.S. Chamber of Commerce. Organizers saw this effort as a means to share and debate ideas on the GBDe with the rest of the e-commerce industry so there would be a mandate for what became the Business Steering Committee (BSC).

On September 16, 1998, the first formal planning session of the BSC companies was held at sherpa level.⁵¹ Several of the BSC companies met again at the TABD conference in November in Charlotte, North Carolina, with EDS and Bertelsmann co-chairing the e-commerce section once again. A second meeting was held in Brussels on December 7, 1998. Interestingly, EDS—originally one of the leading U.S. firms behind the GBDe—dropped out, primarily due to internal issues within the company. (EDS would join the BSC six months later, however, when the new CEO was on-board.) Still, a month before the first CEO meeting, there was still considerable concern among some companies as to whether the GBDe would get off the ground. It also was not clear whether or not the U.S. government was supportive of the idea. Indeed, the U.S. government was “extremely suspicious” of the GBDe, wondering if the European Commission was “using the private sector as a front for its own agenda... as a puppet for the European Commission.”⁵²

LAUNCHING THE GBDE

The GBDe was formally launched on January 14, 1999, with a meeting at the Bertelsmann headquarters in New York City. The decision to inaugurate the GBDe in New York was a strategic one—the Europeans wanted to assure the Americans that they were not going to run the show, and that Brussels eurocrats would not intervene in the process.⁵³ As noted in Figure 1 below, the GBDe's first meeting included an impressive group of companies. Yet, despite the extensive preparation for the New York event, the

⁵⁰ Interview with GBDe AM and EA industry representatives: April 10, 2001; April 12, 2001; May 23, 2001; and May 24, 2001.

⁵¹ There was a serious miscommunication prior to this first meeting as U.S. industry thought that the Europeans had invited Vice President Al Gore to appear at the meeting!

⁵² Interview with former U.S. government official, May 24, 2001.

⁵³ Interview with GBDe EA representatives, May 9, 2001; May 24, 2001. One EA representative suggested there were three factors that finally brought the Americans on board: 1) Because the Japanese had signed on to the dialogue, the American firms saw that the GBDe was going to go ahead with or without the U.S.; 2) the personal relationship between Middelhoff, Steve Case, and Jerry Levin; and 3) the fact that Commerce Secretary Daley and others had given the green light. Interview with GBDe EA representative, May 24, 2001.

initial CEO session was not an easy one in that not every company was convinced the group would get off the ground.⁵⁴ As opinions jelled, the CEOs agreed that the GBDe would not be a staff-run organization. Rather, the organizational and operational onus would be placed on the companies who would need to collaborate one-to-one.⁵⁵

Whatever disagreements emerged during the meeting, the CEOs put on a united front to the outside world. They issued a statement noting that “Governments around the world should recognize the dangers that regulation of the Internet would pose to their economies and societies” (GBDe 1999). As then-Time Warner CEO Gerald Levin stated in a press session following the meeting, “We have a role to play in the shaping of public policy, and we are truly capable of rising above ... narrow geographic issues” (Authers 1999).⁵⁶

Figure 1: Initial GBDe Business Steering Committee, January 14, 1999		
AMERICAS	EUROPE/AFRICA	ASIA/OCEANIA
Spokesperson: Gerald M. Levin, Time Warner (USA)	Overall Chair: Thomas Middelhoff, Bertelsmann (Germany)	Spokesperson: Michio Naruto, Fujitsu (Japan)
Steve Case, AOL (USA)	Rijkman W. J. Groenink, ABN AMRO Bank (Netherlands)	Tadashi Kurachi, Bank of Tokyo/Mitsubishi (Japan)
Jean Monty, BCE Inc. (Canada)	G�rard Moine, France Telecom (France)	Lee Yong-Kyung, Korea Telecom (Korea)
Gustavo Cisneros, Cisneros Group (Venezuela)	John Sacher, Marks & Spencer (United Kingdom)	[To be named], Malaysia Telecom (Malaysia)
Lewis E. Platt, Hewlett Packard (USA)	Cobus Stofberg, MIH (South Africa)	Seiichi Shimada, Mitsui & Co. (Japan)
Louis V. Gerstner, IBM (USA)	Jorma Ollila, Nokia (Finland)	Eiichi Yoshikawa, NEC (Japan)
Bert Roberts, MCI Worldcom (USA)	Francisco Pinto Balsemao, SIC (Portugal)	Shigehiko Suzuki, NTT (Japan)
James Barksdale, Netscape (USA)	Jean-Marie Messier, Vivendi (France)	Tadashi Okamura, Toshiba (Japan)

⁵⁴ Interview with GBDe EA representative, May 9, 2001.

⁵⁵ Interview with GBDe AM representative, April 12, 2001.

⁵⁶ Interestingly, the initial GBDe BSC meeting also launched serious discussions among CEOs for strictly business reasons. A number of people point out, for example, that the AOL-Time Warner merger can be traced directly back to the GBDe. Another key merger was between Vivendi and Seagrams. More recently, Hewlett Packard and Accenture have teamed up to focus on Business-to-Business (B2B) work—in direct competition with another GBDe player, IBM.

Outside the business community, not everyone was pleased with the GBDe’s launch. James Love, director of the Consumer Project on Technology, had a different view of the CEOs’ meeting. According to Love,

One of the great crises in our move toward electronic commerce is the parallel movement toward governance without government. Because as awkward and imperfect as governments are, there’s still this idea that they’re responsible to the people in a way that companies are not (Authers 1999).

With the process launched, the GBDe day-to-day work began with the sherpas. The aim was to examine key issues facing e-commerce and to develop agreed-upon global business principles. These would form the basis for a public policy framework based on market-driven policies. As the group expanded beyond the initial twenty-four companies, the group focused on nine key areas (see Figure 2). As one participant noted, the GBDe was extremely topical as 1999 was the year when industry leaders and others were really coming to grips with e-commerce issues. In many respects, the GBDe itself was like a start-up company—full of unknowns.⁵⁷ At least one company decided to give the GBDe a year and hold off on judgement before determining whether or not it would continue in the process.⁵⁸

<i>Issue</i>	<i>Company-in-charge</i>
Consumer Confidence	DaimlerChrysler
Content/Commercial Communication	Walt Disney
Liability	Telefónica
Authentication and Security	NEC
Jurisdiction	EDS
Tax and Tariffs	Deutsche Bank
Information Infrastructure	Nortel Networks
Protection of Personal Data	Toshiba
Intellectual Property Rights	Fujitsu

The sherpas worked together regionally as well as in global meetings. In the Americas region, for example, conference calls were held every Monday morning to discuss GBDe draft papers and to try to derive some sort of consensus. In the Europe/Africa region, Stephen Johnston—the European director of the TABD office—took on the additional responsibility of coordinating the European GBDe group. Conference calls were held once a month, with additional calls on an as-needed basis for

⁵⁷ Interview with GBDe AM representative, April 12, 2001.

⁵⁸ Interview with GBDe AM representative, May 22, 2001.

sherpas whose CEO or board member was in the Executive Committee (created later), was head of an issue area, or when certain issues required further discussion. The GBDe position papers were later disseminated widely throughout the various regions.⁵⁹

The global sherpas' group slowly came together, with meetings held in the three regions throughout the year. (See a list of sherpa meetings in Figure 3 below) There were several factors that rendered the process more difficult. First, the issues themselves were incredibly challenging as company public affairs officials, lawyers, and technical advisors sought to work through taxation, liability, and jurisdiction issues. One had to have an open mind to think through these issues and to see them from various geographical and industry perspectives. Second, these same companies were competing "very harshly" with one another in the marketplace—yet were expected to cooperate in the GBDe setting. While seeking to develop self-regulatory mechanisms in privacy policy, for example, they were also competing for market share in third generation wireless technology. Third, the global nature of the discussions themselves was daunting as sherpas needed to come to appreciate various negotiating cultures of GBDe members. Indeed, a couple of sherpas stepped down or were pushed out due to their inability to work with the others.⁶⁰ One experience that facilitated the GBDe process for several firms was their previous participation in the TABD e-commerce working group:

The leaders had learned the simple art of negotiation and diplomacy with different people, different countries, different legal systems, different cultures. They had learned the mechanisms of what worked—for example, focusing on what we could agree on, not on what we couldn't agree on.⁶¹

AOL, Bertelsmann, DaimlerChrysler, EDS, Siemens, and Telefónica had all been involved in the TABD. These were the companies "who know how to work these global processes."⁶² The American and European sherpas had experience working together in the TABD and were comfortable with each others' styles. Yet the same was not true for the Japanese who were confronted with very different styles of negotiation in the GBDe.⁶³ The American style of throwing ideas out on the table for discussion, for example, did not necessarily work as well with Japanese participants whose cultural

⁵⁹ One official recalls sending out the draft version of his issue paper to over 800 companies throughout the region for comment. While receiving some 50-75 responses from these companies, of which a smaller percentage was insightful, the official marveled at what he would learn from smaller companies in more remote parts of the world. "It's curious because you'd think that you have more expertise ... [being from a large firm]. The secret to [the GBDe's success] is the global approach." Interview with GBDe EA official, May 9, 2001.

⁶⁰ Interview with GBDe EA representative, May 9, 2001.

⁶¹ Interview with GBDe AM representative, April 10, 2001.

⁶² Interview with GBDe EA representative, September 18, 2000.

⁶³ Interview with GBDe EA representative, September 18, 2000.

tradition often involved working behind-the-scenes for consensus opinions and who, therefore, appeared rather passive in meetings.⁶⁴

For some, the turning point came in August 1999 at the sherpa meeting sponsored by Time Warner that met at the Warner Brothers movie studio in Burbank, California.⁶⁵ Perhaps due to greater familiarity with one another, perhaps due to the unconventional setting, the sherpas were able to step back and overcome some of the earlier difficulties. A certain *corp d'esprit* developed.

April 19-20, 1999 in Tokyo	February 14-15, 2000 in Cape Town
June 28-29, 1999 in Paris	July 12, 2000 in Cheju, Korea
August 2-3, 1999 in Los Angeles	September 7-8, 2000 in Paris
September 12, 1999 in Paris	December 3, 2000 in Taipei
November 29, 1999 in Seattle	February 28, 2001 in Mexico City

Interestingly, at the end of the day, regional differences proved not to be the key source of friction within the GBDe. True, there were significant disagreements over the American and European views on self-regulation and co-regulation—a point discussed below. However, the real problems rose due to the different kinds of e-commerce industry represented in the GBDe. In the liability issue group, for example, strong differences existed between Internet service providers (ISPs) and content companies. If an ISP transmitted a product from a content company (for example, a film or music) that somehow proved injurious or illegal, who was liable? With ISPs, media/content producers, equipment manufacturers, high-end service providers, and others all approaching the issues from different vantage points, developing agreed-upon global principles proved daunting. In the end, the consensus—which is the coordination principle by which GBDe operates—was “driven hard by the content companies in Europe and the U.S. and by Fujitsu in Japan” (Riley 1999).

The Paris Meeting

The sherpa group’s work culminated on September 13, 1999, with the first GBDe conference featuring the CEOs and board members. From the sherpas’ perspective, it was somewhat of a miracle that they had sorted through and developed policy papers on all nine issues over the previous eight months.⁶⁶ A motivating factor was the fear that

⁶⁴ Unfortunately, despite considerable effort, no interviews could be arranged with any of the Asian participants for this paper. The larger research project will undoubtedly benefit from such interviews in the future. For a good secondary source discussion of developments in Japan in the high-tech sector, see Cohen (1998).

⁶⁵ Interview with GBDe AM representative, April 12, 2001.

⁶⁶ Interviews with GBDe EA representatives, April 12, 2001, and May 2, 2001.

governments would become more involved in regulating the industry, and thus hold back the development of global Internet-based e-commerce. According to one observer, “That fear was the true catalyst for the GBDe and why it achieved consensus so quickly” (Riley).

The Paris conference was held at the Louvre Carroussel. An expanded Business Steering Committee (BSC) invited key government and industry players to the meeting. The new BSC included CEOs/Board members of ten Americas firms (with the addition of EDS, Walt Disney, and Nortel Networks);⁶⁷ of eight Asia/Oceania companies; and of eleven Europe/Asia firms (with the addition of DaimlerChrysler, Deutsche Bank and Telefónica). U.S. government officials included Commerce Secretary William Daley and David Beier, point-person on e-commerce from the Office of Vice President Al Gore, as well as numerous officials from the Department of Commerce, the State Department, and the Federal Trade Commission. On the European side, the Commission was represented at the Directorates General level and below as the Commission itself had recently resigned en masse during the leadership crisis of the Jacques Santer presidency. Numerous European member state officials were also in attendance. The Japanese government also brought a high-level delegation to the meeting. Finally, in addition to the companies represented in the BSC, industry from around the world participated in the meeting—from Argentina, Australia, Brazil, Egypt, Estonia, Indonesia, Israel, New Zealand, and Thailand. All told, the Paris GBDe meeting brought together more than 470 business and government representatives.

The turnout itself gave the GBDe “a lot of legitimacy” in the eyes of some government officials.⁶⁸ The fact that global industry leaders were able to develop positions in the nine different issue areas was significant to many. The GBDe agreements “surprised sceptical governments which did not believe the IT communications and media industry could get its act together and agree [on] a workable self-regulated environment for e-commerce” (Riley). As one U.S. government official noted, “It was the first time that industry was taking a position on a global basis. It was the whole soup-to-nuts approach to e-commerce.... Getting people on the same page and making recommendations.... That was ground-breaking and should not be lost.”⁶⁹

That is not to say that governments agreed with every position of industry. Clear areas of difficulty were evident over data protection policy (notably with the Commission’s 1995 directive), export controls (as in the TABD asking the US government to relax encryption export controls), and jurisdiction (where companies preferred that governments accept the “point of origin” and not the “point of sale” in determining jurisdiction over policy) (Riley 1999). The U.S. government, for one, flatly rejected the latter GBDe proposal and pushed industry to go back and “rethink” the jurisdiction issue.⁷⁰

⁶⁷ Netscape stepped down from the GBDe.

⁶⁸ Interview with former U.S. government official, May 24, 2001.

⁶⁹ Interview with former U.S. government official, May 24, 2001. Yet it was also ironic how the business leaders had succeeded in putting on a very governmental-style meeting in Paris. As another government official noted, “The Paris meeting was as scripted as any intergovernmental meeting that you could attend.” Interview with former U.S. government official, May 21, 2001.

⁷⁰ Interview with former U.S. government official, May 24, 2001.

Paris made perhaps the biggest impression on the GBDe companies themselves. Many sherpas were surprised at their companies' willingness to come together to speak out on a global e-commerce framework. If firms had been unsure of their role in the GBDe in earlier months, there was a "suspension of disbelief" after the Paris conference. There was a realization that "If not us, who; if not now, when."⁷¹ The GBDe companies had a global role to fulfill. But, as one delegate to the Paris conference noted, "the time for general principles is over. It is now time for the boring, difficult sweat, getting down to the detail of adaptation and self-regulation" (Riley 1999). Self-regulation – the efforts by companies to develop their own codes of conduct—would be critical in areas such as consumer confidence, data protection, and intellectual property rights. Yet, as one U.S. government official wondered, "Can they lead?"⁷² Could the CEOs lead the rest of the industry to a common understanding of self-regulation and the responsibilities that this entailed? The answer was not certain.

Onward to Miami

"What came out of Paris," according to one sherpa, "was a lot of recognition that the internet was global, that industry must sit at the table, and that governments need to take industry involvement seriously."⁷³ Moreover, it was clear that the time had come to move beyond general principles to the development of more comprehensive policy approaches.

Following the Paris conference, the Americas region took over from GBDe leadership from the Europe/Africa region (i.e. Bertelsmann). Steve Case of AOL and Gerald Levin of Time Warner assumed the role of GBDe co-chairs. The new leadership encouraged a number of changes in the organization. The first was to expand the GBDe's roster of companies to include many of those who attended the Paris meeting and to encourage greater participation by small and medium-sized firms. By April 2000, the GBDe featured more than sixty companies in its ranks. With the BSC thus expanded, it was necessary to create an Executive Committee comprised of the co-chairs from each region to oversee and coordinate the general operations of the group. Thus AOL and Time Warner were joined by Fujitsu and Korea Telecom Freetel from the Asia/Oceania region, and Vivendi and MIH from the Europe/Africa region. At the request of the sherpa group, a mid-year BSC was also set up so that the CEOs could review the action plans delineated by the working groups and provide strategic guidance. In February 2000, approximately forty CEOs met in New York City, along with a small group of government officials. In addition to reviewing the GBDe agenda, the meeting became an off-the-record session to allow industry and government to get to know one another better.

The GBDe also determined that it would seek to cooperate with other international organizations that were grappling with some of the same issues, rather than attempt to

⁷¹ Interview with GBDe AM representative, May 22, 2001.

⁷² Interview with former U.S. government official, May 24, 2001.

⁷³ Interview with GBDe AM representative, April 23, 2001.

“reinvent the wheel” (GBDe 2000). Members of the GBDe met with representatives of the International Chamber of Commerce (ICC) to ensure that there would be some form of alignment on key policy issues. Moreover, the GBDe went on record saying that it would reach out to consumer groups and other advocates to inform them of the GBDe’s policy approaches.

<i>Issue</i>	<i>Company-in-charge</i>
Advocacy	Telefónica
Alternative Dispute Resolution (ADR)	DaimlerChrysler
Consumer Confidence	DaimlerChrysler
Cyber Security and Cyber Crime	Fujitsu
Digital Bridges Task Force	MIH
IPR	Walt Disney
Privacy	Toshiba
Tax	IBM
Trade	IBM
Trustmark	Fujitsu

Finally, the GBDe developed a new list of issue areas for industry to undertake. While originally identifying seven key issues groups, the GBDe expanded the list to include a total of ten issues groups in 2000 (see figure 4 above). One of the new groups was an Advocacy group designed to “monitor and report on the efforts of the public and private sectors to implement the recommendations made at the Paris conference” (GBDe 2000). The business community also called on the respective governments to issue a response to the Paris recommendations within six months. This was a carry-over action from the TABD process that the European Commission continues to produce, and the U.S. government does not. Advocacy efforts on the European side meant a quasi-institutionalized process, with the creation of an expert level meeting of business and government officials. The first GBDe/EU expert level meeting was held June 27, 2000, in Brussels and featured fifteen representatives from nine member states, three leading European Parliament members, twenty-five Commission officials from seven different Directorates General, and fifty industry representatives.⁷⁴ Of course, European companies also promote GBDe principles and “informally explore whether certain ideas can progress” from the European Commission, European Parliament, and member states’ perspective.⁷⁵ Advocacy by American industry, however, never materialized into a formal process, but was ad-hoc and focused around the GBDe conference and certain

⁷⁴ “Report on the GBDe/EU expert level meeting, Brussels, June 27th 2000”. The report indicates that the Commission and European Parliament “expect concrete results from the GBDe.” The European Parliament members also admonished Commission members from the Health and Consumer Protection Directorate-General not to set up any legal framework to regulate codes of conduct.

⁷⁵ Interview with GBDe EA representative, May 9, 2001.

issues. Company representatives did conduct a couple of GBDe briefings to target audiences—the Commerce Department, David Beier of the Vice President’s office—but nothing more. In the end, the advocacy exercise was left to the “regional sensibilities” and the advocacy group itself was dropped in 2001.⁷⁶

The GBDe undertook a number of novel initiatives during the year 2000. At the July 21-23, 2000 G-8 Meeting in Okinawa, Japan, a communiqué from the Digital Opportunities Task Force identified the GBDe by name as part of the “dot force” to examine ways of bridging the digital divide between the wealthier countries and the Global South. The GBDe also signed cooperation agreements with APEC, ASEAN and the OECD. At the May BSC meeting, another such agreement was signed with the Global Cities Dialogue to promote the use of e-commerce, for example, in e-government.

Amidst all this activity, one of the primary emphases of the 2000 GBDe leadership team remained the implementation, where appropriate, of the self-regulatory mechanisms discussed in Paris (GBDe 2000). Most of the issue group recommendations, however, were not ready for this stage. This was clearly the case with the Consumer Confidence group where the proposed industry self-regulation did not go far enough in addressing worrisome consumer trends.⁷⁷ For example, by 2000, American industry received the first inkling that consumers were increasingly wary of buying goods and services “on-line.” Research surveys—some funded by industry itself—showed that many customers did not have confidence in web-site companies and had growing fears that ranged from submitting credit card numbers over the web to questionable return-of-merchandise policies.⁷⁸ One study estimated that over 12 million people had stopped shopping online due to privacy concerns. Another estimated that this lack of confidence in e-commerce cost industry over \$12.4 billion in sales (Despeignes 2001). Of course, more than any government regulator, the lack of consumer confidence in e-commerce could significantly hinder the growth of the industry. Linked to these concerns, consumers also questioned how complaints would be handled in the borderless realm of the Internet. If redress to the courts was necessary, where would the consumer turn—to the courts of one’s own country, to the courts of the firm’s country? What if one could not determine the geographical location of the firm?

In 1999, the GBDe addressed these issues under the single rubric of Consumer Confidence, with DaimlerChrysler serving as the issue manager. A year later, however, the industry leaders decided to break the issue up into three distinct components: consumer confidence/alternative dispute resolution (ADR), trustmarks, and privacy. A trustmark is a label or seal that indicates that the e-commerce merchant is committed to complying with agreed-upon best business practices, codes of conduct, etc., in addressing privacy issues. The trustmark will usually include a “redress mechanism” that allows for the consumer to remedy an unsatisfactory situation. When there is a disagreement between a consumer and a merchant, there must be some sort of dispute resolution

⁷⁶ Interview with GBDe AM representative, April 12, 2001.

⁷⁷ A more detailed account of the GBDe’s approach to Consumer Confidence (including privacy and data protection issues) is addressed in a separate paper. See Maria Green Cowles, Robert Schuman Centre working paper, European University Institute (Florence, Italy), forthcoming.

⁷⁸ Surveys included those by the Pew Internet and American Life Project and Forrester Research. See Despeignes, 2001.

mechanism. However, instead of going to any single court system (i.e. the court of the consumer or the court of the merchant), industry has encouraged the use of ADR (alternative dispute resolution) mechanisms, found on-line.

Underlying trustmarks and ADR issues, however, was the issue of privacy and data protection—the rules governing the collection and handling of personal data. Negotiations over self-regulatory privacy principles in the GBDe proceeded slowly as companies clashed not only between industry sectors but between regional interests as well. Some companies with commercial interests in web information recoiled from any constraints. Americans and Europeans disagreed over the desirability of any privacy policy as well as over “self-regulatory approaches” versus “co-regulatory policies”—an issue discussed below. Regional differences also existed with the Asians. For example, the German standard of privacy (c.f. Westin 1996) was very different from the Japanese standard, which was relatively underdeveloped by comparison. At the same time, the GBDe did not undertake any meaningful consultation with other stakeholders in the privacy debate. Thus, in the early months of the GBDe, privacy became an issue where there was a “void,” in the words of one sherpa. “We [had] not been able to crack the issue.”⁷⁹

The privacy issue came to a head at the Miami conference in September 2000. This event featured 72 companies as well as leading government figures from around the world. The event, with approximately 330 individuals in attendance, was smaller than the Paris meeting.⁸⁰ At the same time, it was clear that the GBDe had moved ahead qualitatively with its work. The GBDe presentations on Trustmarks and ADR were well received by the government officials.⁸¹ Moving beyond the general principles articulated at Paris, the GBDe had successfully created credible documents in these two areas. However, the same could not be said of the privacy statement. Unlike other issues, the privacy statement became a Lowest Common Denominator document. As one GBDe member noted, “No one liked it. The Europeans disdained it.” Indeed, at a key Miami luncheon, U.S. Commerce Secretary Norm Mineta gave industry a lecture on the shortcomings of the privacy paper. “We [industry] felt there was egg on our face.”⁸²

⁷⁹ Interview with GBDe AM representative, April 12, 2001.

⁸⁰ While some participants noted that Miami could not compete with the Louvre in Paris, there were other perks like the special performance by Julio Iglesias.

⁸¹ The detailed policy papers are available on-line at www.gbde.org/ie/2000/trustmark.html, www.gbde.org/ie/2000/adr.html, and www.gbde.org/ie/2000/privacy.html.

⁸² Interview with GBDe AM representative, May 22, 2001. The view is one generally shared within the GBDe. As another sherpa noted, “We got slammed for it [i.e. not delivering a strong policy statement on privacy].” Interview with GBDe EA representative, June 6, 2001.

THE SELF-REGULATION VS. CO-REGULATION DEBATE

In many respects, the failed Miami privacy document could be attributed to industry's preoccupation with commercial interests as well as industry's shortsightedness in not including other stakeholders in the discussion of privacy and data protection. Yet it is also the result of the underlying debate between "self-regulation", as promoted by the Americans, and "co-regulation" advocated by many Europeans. Here, culture, history and institutions all have shaped this debate.

For most American firms in the GBDe's initial years, there was no backing down from the idea that government should **not** be involved in regulating the industry. After all, self-regulation—the voluntary rules in which the scope, provisions, monitoring, and enforcement remain the prerogative of participating companies (Sheridan 2001, 20)—was called for in the 1997 White House paper on e-commerce to promote growth in the industry. Pure self-regulation was also part of U.S. industry's posturing for future domestic e-commerce debates; American firms needed to stake out a strong stance to preserve as much self-regulation as possible in the face of growing calls for U.S. government involvement.⁸³ Moreover, there were cultural, historical and institutional factors underlying the U.S. industry position. To begin, self-regulation is part of the "underlying ethos that all American companies bring to the table—not just in e-commerce."⁸⁴ Industry should be able to act separately from the government. The American e-commerce community has developed its own strain of this American ethos. For example, although the creation of the internet goes back to a U.S. Department of Defense project, many of the internet companies—the "start-ups" and "dot.coms"—were formed by entrepreneurs who saw no need for government intervention. These were often the "pure internet players," the "pure libertarians from the West Coast."⁸⁵ Second, there is precedence for this American industry position. Historically, the American business-government relationship has been at "arms-length," with business holding a general mistrust of the state (Vogel 1978). Thus, codes of conduct and self-regulatory mechanisms have been part and parcel of the public policy toolbox in the United States. Third, there are institutional factors that facilitated the U.S. emphasis on self-regulation. The existence of the Better Business Bureau (BBB), for example, has allowed consumers to obtain redress from this private entity and not the government per se. An independent regulatory agency, the Federal Trade Commission, can take action under Section 5 of the Federal Trade Commission Act to prosecute those companies conducting unfair trade practices.

⁸³ Interview with GBDe AM representative, April 10, 2001.

⁸⁴ Interview with GBDe AM representative, April 12, 2001. Interestingly, with or without a formal advocacy process, GBDe representatives tend to speak to GBDe issues in a similar manner during the interviews. Put another way, whether from Europe or the U.S., the GBDe members tend to "speak with one voice" when discussing core GBDe principles.

⁸⁵ Interview with former U.S. government official, May 21, 2001. Often, it wasn't until these companies needed electronic contracts and digital signatures that they realized that government might need to be a player.

Several European firms, meanwhile, promoted the concept of “co-regulation” in the GBDe.⁸⁶ The term itself carries different meanings in the various member states of the EU. In general, however, co-regulation indicates there is a role for government to set the parameters of self-regulation, and/or to serve as an “honest broker” among the stakeholders in the policy debate. For a number of European firms, “co-regulation” tends to resonate more broadly for cultural, historical, and institutional reasons. Culturally, some EU industry representatives, notably the French, prefer the term to self-regulation, which is construed as too Anglo-Saxon in orientation. From a French perspective, self-regulation places too little emphasis on the role of the sovereign state in international affairs. Co-regulation also has its historical significance as a form of “negotiated governance” in the member states (c.f. Kooiman 1993). Historically, for example, many consumer protection measures in countries like France and the United Kingdom were negotiated agreements between stakeholders with or without the formal legislative sanction of the state (Trumbull 2000).

The focus on co-regulation also has an important institutional basis for EU industry for two reasons. First, EU industry operates in a multi-level system of governance where any number of players influence the policymaking process at the European, national, and subnational level (Marks, Hooghe, and Blank 1996). One EU participant explained his support of co-regulation by noting that EU industry was “still hesitant that a self-regulatory approach could work in Europe.” This was not due to any industry misgivings about self-regulation per se. Rather, the companies were concerned about the “reaction from the member states.”⁸⁷ While the Commission (and more specifically, the Information Society Directorate-General) could propose a single regulatory framework for e-commerce, the member states would ultimately be voting on the initiative. Thus, EU industry representatives needed to be attuned to member states’ views on acceptable language in the proposed EU directive—as well as be attuned to the domestic debates and proposed national legislation on similar issues. At the same time, European companies and their CEOs might develop closer ties with Commission officials from Directorates-General (DGs) that are supportive of industry to signal the need to promote a single European framework to the member states (c.f. Cowles 1995).

A second reason why institutions matter in the self-regulation vs. co-regulation debate is precisely because there is not a tradition of the BBB at the EU level, nor is there the equivalent of the FTC in the European Commission, although DG Health and Consumer Protection quietly raises the issue. The EU does not have the traditional back-up enforcement systems attached to self-regulation in the United States. Therefore, the Commission has sought to back up voluntary codes and self-regulation measures with legislation in the e-commerce directive. Many members of the European Parliament prefer this legislative action because it gives them a role in the regulatory process which otherwise would not exist under self-regulation. A special business-Parliament working group (including many GBDe members) has been set up to explore the impact of self-regulation, co-regulation, and soft-law on EU policymaking in the e-commerce sector (European Internet Forum 2001).

⁸⁶ Not all European companies support the co-regulation approach. Dutch firms, for example, have historically undertaken self-regulation in the Netherlands.

⁸⁷ Interview with GBDe EA representative, May 9, 2001.

Given these different cultural, historical, and institutional factors, it is not surprising that the Americans and Europeans disagreed over the extent to which the GBDe should promote self-regulation alone in various policy areas. To many in European industry, the American obsession with self-regulation was just that, an obsession. Yet, to many in American industry, European ideas of co-regulation raised immediate concerns over a Commission pre-disposed to regulation and industry actors unwilling to intercede in the process.⁸⁸ U.S companies are also more wary of legislation given the litigious nature of American society. European companies, for example, do not face the same prospect of class action lawsuits filed against them (c.f. Shaffer 2000).

By 2001, American and European companies agreed to a truce in the self-regulation vs. co-regulation debate. When neither the Americans nor the Europeans could accept the other's terms, it was decided to use a different expression, "policy coordination." Jean-Marie Messier, CEO of Vivendi, formally introduced the norm of "policy coordination" to the Miami conference participations in September 2000. According to Messier, policy coordination is the effort "to increase the contacts between the public and private sectors, to forge a converging vision of the future, to coordinate legislation, international treaties and codes of conduct and to ensure global consistency."⁸⁹

In a sense, the definition of policy coordination is loose enough to please everyone. American firms can argue that they are, in any case, in regular contact with the U.S. administration over e-commerce issues and self-regulation. The Europeans, on the other hand, can point to the fact that they are responding more formally to the concerns of member states. "Policy coordination" also links well with the definition of co-regulation articulated by Erkki Liikanen, the Commissioner responsible for the Enterprise and the Information Society DGs. Defining co-regulation as the "co-operative approach to governance", Liikanen identifies a number of criteria associated with the term:

- The adoption of a legal framework for self-regulation (for example, compliance by a company with a co-regulatory instrument may result in a presumption that it is acting legally);
- Sanctions for non-compliance;
- Stakeholder or administration participation in designing, auditing, monitoring, and enforcing instruments (Sheridan 2001, 5).

While there is no clear definition of co-regulation in the Commission, the term is bandied about extensively in the on-going discussion of alternative regulatory mechanisms (ARMs) in the European Commission. It is noteworthy that the Data Protection Directive and the draft Electronic Commerce Directive have been singled out for creating "a bridge between 'pure' voluntary mechanism and 'pure' Community legislation" (EU

⁸⁸ This idea was repeated in countless interviews with American industry and government officials. American sherpas also tended to view the non-combative relationship between industry and the Commission as a further sign of this complicity. Yet, part of this relationship might be explained by the non-aggressive style indicative of EU policymaking. Indeed, "aggressive American-style lobbying" is often frowned upon in Brussels (c.f. Cowles 1996).

⁸⁹ See "Draft for Jean Messier's Speech at the Annual GBDe Miami Conference, Miami, September 26, 2000.

Committee, n.d.). In other words, the Commission sees this type of “enforced self-regulation” or, possibly, “co-regulation” as an appropriate alternative regulatory model to be considered.

Interestingly, American government and industry officials, as well as other stakeholders, are also re-evaluating self-regulation in the U.S. privacy debate. In May 2000, the Federal Trade Commission issued a report suggesting that industry self-regulation was not adequate, and that legislative action was necessary. Countless states began proposing their own data privacy legislation around the country. Last year alone, the U.S. Congress introduced over 100 bills dealing with data privacy/consumer confidence issues. In the view of some government officials, future Congressional action is necessary to provide “privacy with teeth”—that is, legislative action to back up industry codes of conduct.⁹⁰

In the end, whether it is called self-regulation, co-regulation, or policy-coordination, GBDe members agree that policy must be industry led. Thus, in 2001, the GBDe established a new Consumer Confidence group along with eight other issue groups (see figure 5 below). Led by Hewlett-Packard (HP), the group combines trustmarks, ADR, and privacy elements under the single rubric of Consumer Confidence. The lessons of Miami, the results of consumer surveys, the changes in domestic debates, the continuing extra-jurisdictional impact of the EU’s 1995 Data Privacy Directive⁹¹, as well as policy learning within the GBDe itself, have prompted the group to further refine its Consumer Confidence/Data Privacy efforts. HP and other companies have begun discussions with Consumers International, as well as a number of American, European, and Japanese consumer and privacy advocacy groups. They have sought to create a viable policy that will meet key concerns of industry, as well as those of other stakeholders. The fact that some global firms, notably DaimlerChrysler, are now contemplating adoption of a single corporate privacy policy that would be operational anywhere in the world is also driving this process. The GBDe’s goal is to define industry-led data privacy protection that is “practicable” and “that works in the real world.”⁹²

Figure 5: 2001 Issue Groups	
<i>Issue</i>	<i>Company-in-charge</i>
Consumer Confidence	Hewlett Packard
Convergence	Telefónica
Cyber Security	EDS
Digital Bridges	Equitable Card
E-government	Hitachi
Internet Payments	ABN AMRO
IPR	Disney
Trade	Sharp
Taxation	Siemens

⁹⁰ Interview with former U.S. government official, May 24, 2001.

⁹¹ See Shaffer 1998, Swire and Littan 1998.

⁹² Interview with GBDe AM representative, May 22, 2001.

FOCUSING ON THE FUTURE

How do you facilitate a global process that seeks to find a set, or sets, of rules that can operate around the world—“without assuming that the implementation of those rules or principles be the same in every place?” (Maxwell 2000). How do you design a global public policy framework? Who should make the rules and establish the principles of e-commerce?

While there is no one business group, no single government, no separate non-governmental organization that can claim to make all the rules of the internet and e-commerce, the GBDe has emerged as an important private sector-led initiative to help define this public policy framework. This paper provides a broad overview of the events and forces that brought about the GBDe’s creation, as well as the GBDe’s efforts to establish its own credibility and authority in the public policy debate.

As highlighted in this paper, there were a number of factors that led to the GBDe’s launch in January 1999. One factor, of course, was the desire for these companies to “grow their industry”—to promote a public policy framework that would encourage the free flow of e-commerce throughout the world. A second and related factor was to discourage governments from regulating, or over-regulating, the e-commerce industry. In certain respects, “the GBDe was born out of the fear of governments coming together to prematurely regulate the internet and the commerce that rides upon it.”⁹³ Yet, as the firms were to discover, they may have overreacted.⁹⁴ In time, there developed a larger overarching rationale—namely, to provide a collective good in the form of overarching norms, principles, and rules for the global governance of e-commerce from the standpoint of these key companies.

Examining the GBDe from this broader historical perspective also enhances our understanding of the role of firms as private authorities in international relations (c.f. Cutler et al. 1998). Yet, one need not define “authority” as an “either government or industry” supposition. Authority can be contested or shared. What the self-regulation vs. co-regulation debate within the GBDe illuminated is that there is really a “spectrum of self-regulation” that often differs from country-to-country or region-to-region based on cultural, historical, and institutional factors.⁹⁵ This spectrum can include pure self-regulation, enforced self-regulation, co-regulation, and the like. Thus, the extent to which firms hold “authority”, or share “authority”, with government actors varies as well. What is clear to most GBDe members, however, is that industry must lead the discussion on the rules of e-commerce.

Today, the GBDe faces a number of challenges as an emerging private authority in the global e-commerce debate. The first is simply a matter of time and money. As several EU and U.S. government officials point out, the GBDe companies are doing some

⁹³ Interview with GBDe AM representative, April 10, 2001.

⁹⁴ Interview with GBDe AM representative, April 10, 2001.

⁹⁵ Interview with GBDe AM representative, May 16, 2001.

of the work of government.⁹⁶ At the same time, the firms are discovering how difficult it is for companies to “do governance.” GBDe sherpas—particularly those on the American side who are less used to working with and coordinating the opinions of numerous nationalities (unlike their EU counterparts)—readily complain about the exhausting work. Whether or not the companies can and will continue the sustained efforts to coordinate policy within the GBDe is still unknown. Current discussions within GBDe sherpa circles include limiting the number of sherpa meetings a year, which would lessen the sherpas’ workload. This proposal, however, risks diluting the global dialogue of the GBDe.

Other problems facing the organization are the proliferation and overlapping jurisdiction of e-commerce issues. As new developments emerge in the industry, they inevitably impact the public policy debate as well. Sherpas have expressed concern about “e-everything”⁹⁷ and the daunting task of tracking every issue in domestic, regional, and international fora. Efforts are underway to limit the number of issue groups tackled by the GBDe each year. At the same time, new issue group ideas are being floated to address such subjects as cyber ethics and cultural diversity. The tendency in some quarters will be to brush aside these subjects as too diverse for global public policy consideration and unsellable to company boards. However, as John Zysman and Steven Weber (2000) point out, subjects like these concern “fundamental values and basic choices about markets, community, and democracy.”

The ability to recruit active CEOs to the GBDe is also increasingly problematic given the dot.com crash and the falling fortunes in general of e-commerce firms. CEOs and board chairmen who focus on the bottom line may find it increasingly more difficult to justify spending time at GBDe meetings in various places around the globe.

Perhaps the most important challenge facing the GBDe as an emerging private authority is its ability to “raise the profile of”, as well as respect, its own guidelines.⁹⁸ As Cutler et al. noted, private authority is recognized empirically when the rules created by the private authority are viewed as legitimate by those subject to them, when there is a high degree of compliance, and when the firms themselves are empowered explicitly or implicitly by governments. In the area of Data Protection and Consumer Confidence, for example, the GBDe has made important advances in 2001 toward securing the support of consumer and advocacy groups for its trademarks, ADR, and privacy policies. Governments have expressed their growing awareness and approval of these GBDe principles. Yet the GBDe firms themselves have yet to demonstrate good corporate behavior and to implement the self-regulatory mechanisms they are advocating to the rest of the world. For example, as of June 2001, only seven of sixty-two GBDe firms had trustmarks on their web-sites, only twenty-three had privacy statements—few of which meet the 1980 OECD guidelines for data protection.⁹⁹ The relative failure to develop a

⁹⁶ Interview with Commission official, June 13, 2001. Interview with former U.S. government official, May 24, 2001.

⁹⁷ This point was raised by Stéphane Ducable of Alcatel, “Shaping Public Policy and Industry-led Solutions: the experience of the GBDe,” INET 2001 presentation, Stockholm.

⁹⁸ Interview with Commission official, June 13, 2001.

⁹⁹ I thank Nikki Nocella for her work in analyzing the corporate behavior of GBDe companies.

robust implementation record for these self-regulatory mechanisms is both a reflection of the group's relatively young age as well as the difficulty the GBDe has in encouraging members from across the world to embrace the overall GBDe principles.

Many GBDe sherpas view the forthcoming Tokyo conference on September 13-14, 2001, as a key turning point. In many respects, the Tokyo conference represents the first full cycle as the GBDe chair returns to the Europe/Africa region in 2002. To date, the GBDe has made considerable advances in creating global benchmarks to guide governments around the world. Whether or not the firms can agree to major principles and to implement their touted self-regulatory policies will greatly influence the future ability of the GBDE to shape and influence the rules of e-commerce.

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