wiley

Administration Calls For No New Tax Or Regulation Of Internet

—

July 2, 1997

On July 1, 1997, the Clinton Administration released its long-anticipated interagency report on Internet policy, calling for governments throughout the world to adopt a "non-regulatory, market-oriented" policy toward the Internet, including no new taxes. The Framework for Global Electronic Commerce is the product of 18 federal agencies, under the direction of senior Presidential advisor Ira Magaziner, and reflects the input of numerous private sector businesses and trade associations.

At the recent Cyberspace Conference co-sponsored by the U.S. Chamber of Commerce and Wiley, Rein & Fielding, Mr. Magaziner characterized the Framework as a commitment by government not to act, deferring instead to industry self-regulation.

Significance For Business

The Administration calls for the private sector to take the lead in setting Internet policies. It offers individual companies and trade associations the opportunity to set standards and to have substantial influence on Federal Internet policy.

The Framework emphasizes the need for private-public cooperation. Companies and associations interested in policy development concerning the issues discussed below should consider how best to accomplish their goals. The Framework also provides a comprehensive blueprint of Internet issues that are important to the Administration, identifying the agencies with primary responsibility for each issue, and the actions planned by the Administration. The Framework thus can be used to help interested parties plan policy and related activities.

Policy Highlights

Tariffs and Taxes: The United States will advocate to the World Trade Organization (WTO) that the Internet be declared a tariff-free environment. The Administration also argues that no new taxes should be imposed on Internet commerce, noting that "[s]tates and local governments should cooperate to develop a uniform, simple approach to the taxation of electronic commerce," and calling for federal action should this not occur.

Content Regulation: Children should be protected from harmful material through industry self-regulation,

competing ratings systems, and technological means of screening content. This is a significant change from the legislative approach defended by the Justice Department in the Communications Decency Act case (see related story).

Encryption: The Framework reiterates the Administration's policy of encouraging key recovery technology for domestic technology and requiring it for exports of high security products.

Privacy: Industry should develop principles requiring data-collectors to inform consumers of the information being collected and how it will be used, and to provide consumers with the ability to limit the use of personal information. The collection of data from and about children is identified as a priority concern. The Framework warns that unless private sector initiatives and technology developments prove successful, pressure will grow for direct federal intervention.

Intellectual Property: The Administration reiterates its support for the recently concluded WIPO Treaties, which ensure that existing international protection of copyright applies to electronic commerce while relegating issues such as online service provider liability and "fair use" to domestic implementing legislation. However, the Framework signals some flexibility on the most contentious issues, noting that the Administration "understands the sensitivities associated with" technological protection measures and calling for "an equitable and balanced solution that is agreeable to interested parties," on the issues of network and service provider liability.

The Administration expresses support for international standards for protecting patents and opposes unilateral compulsory licensing regimes, but takes no position on the contested issue of sui generis protection of databases. The Administration also urges development of a more competitive market-based system for allocating domain names. The Framework also set forth policy recommendations regarding the Internet implications of electronic payment systems, the Uniform Commercial Code, telecommunication infrastructures, and technical standards.

Anticipated Action

The Framework contains a series of specific policy recommendations, which President Clinton has pledged to fulfill, and challenges Congress and the private sector to move forward toward these goals. President Clinton charged Vice President Gore with overseeing the Administration's implementation of the principles outlined in the Framework by January 1, 2000.

Analysis

The Framework's approach contrasts with the traditional heavy regulation of communications media such as telephones, television, and radio, but mirrors the recent trend toward deregulation and market-oriented approaches reflected in the Telecommunications Act of 1996.

Despite its sweeping proposals, it should be remembered that the Framework represents the position of only

one branch of the federal government. Congress may take a different view, and the courts will continue to apply existing law as they find appropriate. Furthermore, state and local governments, as well as foreign entities, may have different visions of proper governance and functioning of the Internet. Indeed, the borderless nature of the Internet may allow dissenting foreign entities to frustrate efforts by the United States to advance its vision of electronic commerce.

Although the Framework seeks to speak definitively on the issue of Administration Internet policy, competing interests may undercut policies espoused in the Framework. For example, law enforcement and national security concerns have led the Administration to oppose the export of high quality encryption technology, despite the industry's claims that such technology is necessary in order to ensure the security and integrity of communications. This newsletter will continue to follow the issues of Internet policy discussed in the Framework.