

Commonwealth of Massachusetts, Information Technology Division
Legal Department: www.state.ma.us/itd/legal

ONLINE GOVERNMENT AND ELECTRONIC COMMERCE: The Proper Role of State Government Friday, April 4, 1997

THE STATE GOVERNMENT AS INFORMATION INFRASTRUCTURE MAKER

The Commonwealth of Massachusetts is Lowering Costs and Increasing Service Quality to the Customer Through such efforts as the Online Government Task Force and the Public Access Architecture Group. We are Leveraging our Wide Area Network and the Internet as business tools.

There are over 40 distinct projects planned or underway in the Commonwealth that involve conducting business transactions over the Internet or Intranet as a key program component. From licensing to grant applications, the direction of state governments across the country is toward online communications. For example, today, any citizen can go to the Commonwealth of Massachusetts web site and renew her vehicle registration, pay a citation, even order a vanity license plate - all with a confidential encrypted session to protect the credit card payment information. This trend among state governments has been confirmed by a recent NASIRE survey.

For networks to be made into truly useful business tools, a broader more readily available information infrastructure must be created. State governments, again, serve an important role. For instance, the Commonwealth of Massachusetts Information Technology Division is now in the process of two important information infrastructure projects. One initiative would leverage federal Universal Access money and state money with local contributions to lay a high capacity network architecture to every municipality or school district in Massachusetts. We are currently accepting proposals from vendors who seek to enable this statewide network. The other initiative involves leasing state government real property at relatively high altitudes to wireless communications companies for the placement of communications towers. The resulting wireless communications coverage will also strengthen the information infrastructure of this state and the lease money can be applied to still more information technology projects.

In addition to the physical infrastructure, many sets of transactions have information security needs as well. Authentication, privacy, message integrity, audit trails and other requirements are common - especially for business applications. There are a number of technologies that can accommodate some or all of these requirements, however, several states are exploring public key cryptography as a potential solution. The Commonwealth of Massachusetts has implemented a "first of its kind" pilot project utilizing public key cryptography and digital certificates to enable banks to file documents over our web site with the Division of Banks. As the Commonwealth and other states begin to lay a public key infrastructure, we are exploring another important component to the general information infrastructure which will support secure electronic commerce.

THE STATE GOVERNMENT AS MARKET MAKER

In the case of the high capacity statewide network procurement, the aggregation of demand is having the effect of accelerating service offerings by vendors that would otherwise have been rolled out over a longer period of time. In some cases, services are being offered in response to the initiative that would not have been offered under ordinary, uncoordinated purchase conditions. State governments are large information technology consumers. State governments, in their respective geographic jurisdictions, are influential market players.

As a taxpayer funded enterprise, State Governments have a duty to use market power to leverage the most economical deals available. However, there lies a deeper public good than merely muscling vendors to provide products and services at the least cost feasible. It is widely recognized that the emergence of ubiquitous and secure electronic commerce is in the public interest. It is beyond the power of any given State Government to enable such a system, not least because the medium is multi-jurisdictional by nature. Furthermore, working in isolation, State Governments run the risk developing requirements and practices that conflict with each other and thereby impede the natural evolution of private sector electronic commerce. By contrast, working in concert, State Governments have the combined policy and purchase power to catalyze the emergence of

a robust private sector market for online secure transactional products, services and business systems.

To this end, the Commonwealth of Massachusetts has been an active partner with NASIRE in an exciting project involving several states and private sector partners. The public and private sector participants are working together to identify or develop business and technical electronic commerce practices. The private sector is clearly going to be the source of the most efficient and desirable electronic commerce solutions. However, State Governments can play a useful mediating role in the development of rational and harmonized cross-boarder online commercial systems by coordinating requirements for things like online registrations, filings, applications, payments and other transactions. A guiding philosophy behind Commonwealth of Massachusetts information technology policy is the belief that private citizens and business' should be able to use the same systems for online transactions with the state that they use for private electronic commercial transactions. State governments, working with private sector partners and others, are in the process of reaching agreements and understandings to realize this goal.

THE STATE GOVERNMENT AS LAW MAKER

Important though it may be, perhaps too much emphasis has been paid to the role of Government as law maker. An initial, and probably counterproductive, assumption is often made that the lack of a comprehensive statutory and regulatory framework is holding back electronic commerce. The Administration of Governor William Weld has found consistently over the past six years that restraining the government impulse to regulate private enterprise results in more, not less, economic activity. The Weld Administration has just concluded an unprecedented phaseout of antiquated or overly burdensome regulation throughout every corner of the state bureaucracy. Particularly in an area as dynamic and fast growing as the information technology economy, government at all levels must temper the regulatory urge with a healthy respect for the power of markets to develop the least costly, highest quality most efficient technical, business and contractual solutions. Government remains, of course, a player in the online market by virtue of consumer power and transactional standards setting. The most effective use of government law making power in support of electronic commerce would probably be a nice, big, targeted tax cut. Governor Bill Weld has pledged his best efforts to fight for cyberspace as a tax free zone at the state and federal levels.

Due to the vast array of existing laws and regulations drafted for the industrial age, several so-called "quill pen laws" remain on the books and have the effect of hampering the transition to online transactions. Laws requiring documents to be "written on paper" and "signed in ink" have the effect of creating legal obstacles to online commerce. All levels of government have an obligation to reform such laws under their jurisdiction. At the last meeting of this Committee in New Orleans, you were introduced to the draft Massachusetts Electronic Records and Signature Act of 1997. This statute would ensure the legal sufficiency of electronic signature and records in transactions with the state, private sector transactions and under the rules of evidence in a court of law. The approach is high level, technology-neutral and non-regulatory. The hope is that all jurisdictions will adopt this type of legislation to create a stable, predicable legal infrastructure to support electronic commerce and online government. Earlier this week, the Commonwealth's Information Technology Division was asked to testify before the Rhode Island legislature on a bill substantially similar to the Massachusetts draft. Other jurisdictions are also pursuing this legislative course. I would request the feedback of this esteemed committee on the current draft Massachusetts legislation.

THE STATE GOVERNMENT AS POLICY MAKER

The decisions made within State Governments relating to information technology have profound impact within and beyond their borders. Issues relating to the creation of Information Infrastructures, effects on the market and the promulgation of legally binding requirements are all fundamental to the evolution of electronic commerce and online government. States truly are the laboratories of experimentation. States, by virtue of their size and heritage, are in a good position to move relatively quickly and also to wield significant influence, especially when working together. States are also closer to the citizenry and constituent business communities than national and international bodies that seek to map the future of electronic commerce. As such, states are a remarkably responsive, accountable and dynamic layer of government. These qualities are among the strongest virtues to be sought in the public sector as our nation and the world transitions to the digital age. The Commonwealth of Massachusetts is working hard to meet the challenge of devising responsible, thoughtful and proactive policy.

For more information on the technical, legal, business practice and policy initiatives underway at the Information Technology Division, please visit the web site of our General Counsel's Office, at: <http://www.state.ma.us/itd/legal>.

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