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**ALTERNATIVE DISPUTE RESOLUTION
FOR CONSUMER TRANSACTIONS
IN THE
BORDERLESS ONLINE MARKETPLACE**

**BREAK-OUT SESSION 1
MAIN AUDITORIUM**

**MODERATORS:
HUGH STEVENSON
MANEESHA MITHAL**

WEDNESDAY, JUNE 7, 2000

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A T T E N D E E S

Hugh Stevenson

Maneesha Mithal

Sitesh Bhojani

Trudy Bushy

Stan Feursch

James Foskett

Brian Hengesbough

Judy Pike

Brenda Pomerance

Ruth Seswein

Paul Skehan

Mark Wilikens

P R O C E E D I N G S

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MR. STEVENSON: All right, Hugh Stevenson.

MS. BUSHEY: Trudy Bushey.

MS. SESWEIN: Ruth Seswein.

MR. FOSKETT: Jim Foskett.

MR. FURSCH: Stan Fursch.

MS. PIKE: And Judy Pike.

MR. STEVENSON: Okay, why don't we start -- and we have -- does everybody have a copy of the hypothetical? It's pretty straightforward. You've got a U.S. resident buying from Germany, or a German resident buying from the United States and looking at the -- what effects various things would have on consumer confidence.

Why don't we start -- well, we'll start with the first question, I think -- how should the following issues be addressed in developing ADR programs like Disputes Online?

And these are some of the issues that I think we talked about in the first panel this morning and then one yesterday. But we'll start here by just soliciting any further views that people have on this cluster of issues.

And when we talked about it before, we had -- Barbara said, sort of, put the cart before the horse, in

1 some sense; and that one thing that will affect many
2 people would affect the answers to these what kind of
3 vehicle you might be talking about mediation. This is
4 arbitration. What kind of arbitration are you talking
5 about?

6 And with that on -- as an introduction, if
7 someone would like to talk to these particular issues of
8 the A through G that we have listed here? Why don't we
9 start off with independence and cost, which, I think as
10 we talked about them, have some relationship or
11 impartiality and cost, if you will. So, if someone wants
12 to address that.

13 MR. FOSKETT: Yeah, this is an issue that we've
14 been looking at really closely because it has a lot to do
15 with our seal program -- many of the seal programs that
16 are going to be developed.

17 And the big question that comes to mind is the
18 fact between independence and cost. What you're going to
19 have is a situation where if you're not charging anything
20 to the consumer, but you are charging it to the company
21 who has your seal, what is going to happen is you are
22 inevitably going to have some question as to how the
23 merchant and the company providing the seal -- the
24 provider -- is -- whether they are independent or not.

25 On the other side of the coin, it would seem

1 that the -- from the standpoint of cost, if you don't
2 want to overburden the consumer, and so some hybrid it
3 seems to be an order between the two so that both have
4 confidence the system is going to work; and, yet, have
5 the seal part of the programs going to assure that the
6 merchant is going to live up to his part of the bargain.

7 MR. STEVENSON: And to focus in on that issue
8 of the tradeoff -- the issue that you identified -- what
9 are some of the possible models that one can use? I
10 mean, we heard a little bit about this, but what would
11 you -- identifying that as an issue, what would you point
12 to as possible solutions?

13 MR. FOSKETT: Well, the -- I think the hybrid
14 model is what I'm looking at -- is where the -- there
15 would be some type of a split between the merchant and
16 the consumer.

17 Of course, the seal is going to depend on how
18 this merchant has reacted in the past -- whether he has,
19 of course, honored his obligations in other mediations or
20 arbitrations. And that when -- we have always used the
21 model in our conventional ADR, so to speak, as a split of
22 50-50 between the parties.

23 Whether that is going to hold up in this
24 particular situation, we don't know yet. Again, those
25 are some of the things that we have developed our website

1 so that it's open-ended. We can charge either way. We
2 don't have to charge the consumer, or we don't have to
3 charge the merchant.

4 But we're going to be experimenting in the next
5 few months. We're finding out which of these models is
6 going to work best and the most efficiently.

7 And, of course, the most important thing is to
8 make sure that you have a way for the consumer to be
9 confident that he is going to get paid if he comes out on
10 the winning end of the dispute. If he can't do that,
11 then the whole idea of having any kind of marks or
12 things like that doesn't mean anything at all.

13 MR. STEVENSON: Does anybody else want to
14 comment on the impartiality and cost issue we talked
15 about, and how those interact, and what kinds of concerns
16 there are with that?

17 MR. SKEHAN: It came up -- I beg your pardon,
18 Paul Skehan from the Eurochambres. And it came up
19 yesterday -- and that is, when you look at the seven
20 principles which were identified by the European
21 Commission in 1998, one of them is the principle of
22 independence.

23 And what is now being discussed in Europe is
24 whether these principles need to be adapted, or changed,
25 or attitude to bring them online because these are

1 offline credit -- arbitration rules only for binding --
2 for binding decisions only.

3 And so now, parts of the discussion that's
4 going on are these principles all right for both offline
5 and online, or how do you change them?

6 And I agreed fully with the comment yesterday
7 that, in fact, it's not a principle of independence you
8 need, but a principle of impartiality. And that I think
9 is a fundamental thing for the Commission to actually
10 consider.

11 The other principle -- and it's linked, and
12 it's slightly off your point -- and that is the principle
13 of being allowed to have representation. I see big
14 difficulties if you're dealing in cross-border, consumer-
15 to-business disputes to have as a principle that you're
16 allowed to have a representative.

17 And I suspect that once it gets down to items
18 which are believed to certain costs, that that principle
19 is going to cause great difficulties for systems that are
20 set up to try and address very low budget items in a
21 cross-border nature.

22 MR. STEVENSON: I think a number of people were
23 taken with this impartiality versus independence issue --
24 or that the focus is, I mean, impartiality.

25 Is there anyone who disagrees, or has problems

1 with that, or thinks, yes, but we need to qualify that,
2 or was that an issue that seemed to --

3 MR. BHOJANI: Perhaps it's because I don't
4 understand the issue well enough, but my only concern
5 with focus on impartiality is how does that deal with
6 perception?

7 In terms of independence, it's not just actual
8 independence, but perception of independence that becomes
9 crucial, as well. Whereas impartiality seems to focus on
10 the first thing, which is being actually impartial, but
11 is there -- how do you perceive somebody to be impartial?

12 And that's where I think perhaps there might be
13 a slight distinction between the two.

14 MR. FOSKETT: I would agree. I think some of
15 the issues that we raised when we answered our questions
16 was the fact that if you're openly endorsed by a
17 business, or you're referred -- as a consumer, you're
18 referred to even the American Arbitration Association, or
19 ebay, or anyplace else, as a consumer, you tend to
20 perceive that as not being very fair because you're stuck
21 in a process that you don't have any say in who you can
22 pick.

23 And as a consumer, if you're not aware of who
24 the ADR providers are, where they're located, what -- it
25 all goes back to the education concept. If we don't

1 educate the consumer, then they're not going to
2 understand what ADR processes, what providers are out
3 there.

4 And if we're openly endorsing certain companies
5 or referring to certain associations, then the perception
6 -- which I agree is critical -- is there that you're
7 working for that, you know, that company instead of being
8 the impartial mediator that you want.

9 MR. STEVENSON: I take it the point I hear from
10 both of you is that it -- I mean, there is impartiality
11 as a matter of fact, and then there is also that it's
12 important, whatever the reality is, that consumers
13 perceive that it's impartial, or independence is one of
14 the things that helps you make that perception.

15 But that regardless even of what -- the fact is
16 you have the additional problem of just -- of how people
17 see these things.

18 MR. FURSCH: The problem that we see in the
19 real world, though, what's going on is a situation where
20 you have a merchant deciding that he wants to make it
21 easy on himself and select one single company that is
22 going to handle the ADR.

23 The problem that you run into there, right off
24 the bat, is the fact that right away you have a
25 perception problem. And the other situation is that it

1 takes the fairness away from the process because the
2 consumer doesn't have a choice.

3 And the question is, how are we going to set up
4 the situation where the providers are going to have
5 access to the merchants so that the consumer has free
6 choice on who he wants to go with?

7 MS. BUSHEY: I agree wholeheartedly on the
8 issue on the perception, especially since that leads to
9 consumer choice. I've recently transitioned from
10 corporate world and -- after 20 years to nonprofit, and
11 we run hotlines that handle consumers.

12 The issue of cost and choice are ones that are
13 important, I think, very much to the consumer because
14 there is other alternatives besides the ADR. There are
15 nonprofits that don't charge consumers that help resolve
16 complaints at no charge to the consumer and work with
17 business.

18 Their funding comes also from businesses or
19 from, you know, too, but the perception, I think, is a
20 little bit different when dealing with them.

21 And one of the things I've not heard addressed
22 is how the other types of nonprofit hotlines fit into the
23 whole process of dispute resolution because I think they
24 have a role.

25 And they do lead to consumer choice, especially

1 if you're dealing with small ticket items, and the
2 consumer is not willing to pay for an arbitration but may
3 be willing to work with another type of dispute
4 organization that would be able to assist them and be
5 able to mediate a resolution.

6 MR. STEVENSON: Would enabling consumer choice
7 as to who -- one issue is the -- well, if you think --
8 think about who makes the rules, and applies the rules,
9 and enforces the rules -- if in terms of who the
10 arbitrator is would -- does giving the consumer more
11 choice about who the arbitrator is -- or you could phrase
12 it differently, I suppose -- is take away the parties'
13 ability -- unless they agree in advance on who that is --
14 does that promote consumer confidence about the
15 impartiality -- the perceived impartiality of the
16 decision-maker?

17 MR. FURSCH: I think what we run into at that
18 particular point is if you do have -- if the consumer
19 does have a choice and compares the services that are
20 offered by the particular provider, they have a sense of
21 what each of the providers are actually going to do.

22 I think that by presenting a panel of -- like
23 our select panel of mediators and arbitrators, that that
24 gives them the confidence in the fact that there is going
25 to be impartiality at our particular site.

1 The fact is that the services that are offered,
2 how they're offered, how easy it is to access the site,
3 and those kind of things are also very important choices
4 to give to the consumer when they're going to make a
5 decision on which company they want to participate with.

6 MR. SKEHAN: I might not understand it clearly,
7 but for me, it seems the internet is the greatest
8 marketplace. And so, you get into it, and you look for
9 something to buy, you're going to have a choice of X
10 number.

11 And for me, the consumer always has a choice.
12 I can't imagine that the 20 companies selling a
13 particular thing are all going to have the same ADR
14 system or buy it from the same third party subcontracted
15 source.

16 Again today, for me, the consumer still has
17 that choice, still has the choice of depending --
18 deciding whether to buy from this internet seller or that
19 internet seller, understanding that this one provides an
20 ADR system, which is mandatory and nonbinding. This one
21 provides a system, which is not mandatory and nonbinding.

22 And I come back to the point I made earlier --
23 provided the ADR system is clearly explained and that it
24 is lived up to, then I think you have the choice.
25 Consumers have that choice.

1 I think an add-on that might be quite
2 interesting, and not one that has struck me before, but
3 if you have different ADR providers -- third-party
4 advisors, as we would be in the European context -- and
5 so, the consumer gets in -- has a little bit of sight the
6 things he or she might buy from, clicks on the logo.

7 And what comes up then is a script, which says,
8 this company adheres to the EuroChambres -- in our case -
9 - ADR system. Broadly speaking, that system works like
10 this if you have a dispute.

11 Now, it might be very interesting at that point
12 is to have a link which says for a full description of
13 the types of different ADR systems that are out here,
14 click on the FTC site here.

15 So, it's part of the ADR system's page. It's
16 not part of the E-seller's page, but it's actually once
17 you get into it.

18 And then you click on that, and what comes up
19 is a site which is designed by yourselves or the
20 Commission which says, here are the basic types of ADR;
21 here are the things that you, as a consumer, should look
22 out for; here are the, kind of, basic rules that apply.

23 So, the things that might not be so carefully
24 explained in a site, a more complete description of the
25 ADR picture because then you're giving the information

1 that the consumer needs to make a decision as to whether,
2 yes, this ADR system is one that suits me, or not.

3 MR. FURSCH: You know, we have envisioned that
4 something that works very much like that. At that
5 particular point, of course, there would be links to the
6 various providers.

7 Then the consumer can go to any one of them
8 that he chooses, or several of them, to see which ones he
9 wants, and then he can choose that particular one.

10 And since it would be a very transparent
11 system, the E-merchant, of course, would be willing to
12 work with any one of those providers that were on that
13 list. And that way, it gives the consumer absolute
14 choice into which provider they want to use.

15 MS. SESWEIN: I think one important point which
16 was mentioned earlier needs to be stressed -- which is
17 that consumers really are not going to pay attention.

18 I think it's a great idea to have that
19 information available, but they're not really going to
20 pay attention until they have a problem.

21 And then, yes, that's a great place for them to
22 start looking for the information, and there probably
23 ought to be a few other places where they can get it, as
24 well -- nonprofits being a key place.

25 But they're really not going to zero in on what

1 kind of ADR program there is until they need it.

2 MR. STEVENSON: Is that -- is there a different
3 view on that particular subject about what -- whether
4 consumers focus on this issue at the time of sale, as
5 opposed to the time of dispute?

6 MS. PIKE: Just a new twist in terms of
7 education. I think education is also warranted for the
8 SMEs out there because they know nothing about ADR, and
9 they only pay attention when they, themselves, get in
10 trouble.

11 I mean, I'm sure there is a lot of small
12 companies out there right now who are looking at their
13 privacy policies as a result of the FTC report that was
14 released, and I think the same thing will happen with
15 ADR.

16 MS. POMERANCE: Speaking, sort of, as a
17 consumer here, if I was going to go to a website after I
18 had had a problem with them, I was given a choice of ADR
19 systems, despite being far more sophisticated about this
20 than most consumers, I would -- I know that I would have
21 to go through a lot of textual material, which would be
22 time-consuming, and it's complicated stuff, so it's hard
23 to deal with.

24 So, if there was some sort of set of
25 performance guidelines, it would be tremendously helpful

1 for me as a consumer. And a good analogy for this is if
2 now, as in the United States, if I wanted to buy a mutual
3 fund -- which is a financial institution that buys stocks
4 and then offers me shares in itself -- then the SEC
5 mandates that all of the these organizations give rate of
6 return calculated in a particular way and compare their
7 fund to a benchmarking of whatever the industry is.

8 So, if I'm thinking about how to invest some
9 money, it's fairly easy for me to weed out places where I
10 would just be uncomfortable.

11 And metrics could have a similarly helpful
12 effect in the dispute resolution market so that at least
13 I could -- after going through all the text, I could look
14 at some of the performance numbers and say, you know, the
15 statistics here are just not for me, or this forum ends
16 up costing too much for me; and that could be very
17 helpful.

18 MR. FURSCH: A model that we've looked at and
19 are, sort of, tending to think will be something that is
20 addressable in this particular issue is, whereby, a
21 merchant would have on his site a seal or a mark
22 indicating that he adheres to a particular whatever the
23 group is going to be.

24 And what -- basically, it's the fact that that
25 once a consumer decides that he wants to pursue this

1 particular avenue, that that link would take him to
2 another location where the ADR providers would be. And
3 that way, he can then go through them, read their
4 information, feel confident in one or the other.

5 Maybe one of the sites is simpler to use, one
6 of them might be, you know, have more advances that might
7 be not a single type of ADR program. It might have
8 multiple programs; and, therefore, give them the kind of
9 choice that they really need in order to make an informed
10 decision.

11 MR. SKEHAN: I think the difficulty with this
12 -- and we, obviously, have different models in mind
13 because the model we have in mind is not a choice.

14 So, if EuroChambres can develop an ADR system,
15 we will offer that to companies as a subcontracted system
16 for them. But when you click on the logo, the ADR system
17 you'll get will be ours -- not a range of choices.

18 And I see what you're saying. The difficulty I
19 think you'll have is in selling that to the SMEs because
20 then they have no certainty over what system is going to
21 be used. And I think that would be a harder sell,
22 frankly, and not one that we would particularly like to
23 try.

24 I think we -- pardon me? Oh, I beg your
25 pardon, yeah. It is slang in Europe. An SME is small to

1 medium-sized enterprise. I beg your pardon. So, if I
2 use acronyms, or if Mark uses acronyms throughout, please
3 excuse us.

4 And that, I think, is the big difficulty with
5 that model and is the sale to the SME because there is a
6 double sales pitch here. First of all, you've got to
7 sell it to the company that they buy it and pay for it
8 because, otherwise, I can't see the model working.

9 And then, secondly, the consumer has to look at
10 this, have a look down in some simplified way that will
11 say, here are the nine key things that this system will
12 do for you. And for further information, click on each
13 one of these, and we'll give you all the text you want.

14 But it's a double sales pitch. You have to
15 attract the companies, first of all, to buy the logo and
16 adhere to it.

17 And, secondly, you want it to be attractive
18 enough that the consumer, when he or she looks in, says,
19 yes, this system is clear enough for me; and, yes,
20 broadly speaking, I think it's fair. It doesn't quite
21 give me all the rights that I have if I go to court in my
22 own country, but this looks much quicker, cheaper,
23 faster, and I don't have to get into a face-to-face.
24 So, I think there are different models.

25 MS. BUSHEY: Let me get back to my original

1 point because I'm not saying that you can't do that, and
2 a multiple system certainly would be an, you know, ideal
3 if that's achievable.

4 But at the same time, most of the nonprofits
5 don't offer any kind of binding arbitration. They just
6 work as a mediator free and to, you know, to assist the
7 consumer.

8 So, it's another -- but the other -- the thing
9 is, is that it's another choice. I mean, if a company is
10 offering an ADR program, then that's, you know, and
11 that's the seal, and that increases confidence in what
12 they're doing.

13 But the ADR program is -- if you bought a piece
14 of merchandise, it's \$100, and you have to pay \$50 as
15 part of your fee to work through an ADR, if there is some
16 other cost involved in it, then, you know, obviously, the
17 court system is another -- but that's always -- you know,
18 possibly small claims court in the U.S., certainly, but
19 that's still costly.

20 But there are other alternatives, such as even
21 the, you know, state consumer protection organizations,
22 which in some states are very good, in some states are
23 almost nonexistent.

24 But then there are also nonprofits that the FTC
25 has us on their website and other nonprofits on their

1 website that might be another choice for the consumers.
2 And I think that would increase the confidence in the
3 consumer -- yes, it's an ADR seal, I can go to -- you
4 know, I can go through this program.

5 But consumers -- as you mentioned -- don't know
6 they have a problem until they have a problem. I have
7 worked 20 years in the credit reporting industry.
8 Consumers don't know a credit report exists until they're
9 denied credit, and there is a problem.

10 And that's the same type of thing -- consumers
11 go -- and a lot of, you know, consumers, they buy because
12 they want it, they want it now, and that's very typical
13 at least in the U.S. And they don't think about what if
14 I have a problem with dealing with this?

15 And, you know, but if there is -- you know, if
16 there is a seal out there, the trustee seal that's behind
17 the various seals for the privacy have instilled
18 confidence, and then the ADR would continue and then --
19 but to provide some other alternative choices, I think is
20 what I was trying to make a point.

21 MR. STEVENSON: We talked today about the
22 binding arbitration and voluntary binding on the company
23 but not on the consumer, the mandatory but not binding
24 models. And I was interested if people -- well, if you
25 have any particular comments you wanted to make on that

1 issue to, also, whether there were other models that were
2 worth considering.

3 I think that's a, sort of, Magnusen-Moss
4 variation on the mandatory but binding theme. I mean,
5 you can spin them out until they're too long to say in
6 one breath -- but wondered whether there are other
7 particular sorts of variations that people thought were
8 worth considering.

9 MR. FURSCH: Again, in the real world, the
10 practicality seems to come down to if you take a look at
11 the conventional model and then transfer it to using the
12 internet and other media to carry the ADR conference,
13 that particular thing is -- strictly seems to be the
14 option, and should be the option of the consumer to make
15 the decision whether they want to have it voluntary or
16 binding, if that's their decision, and they're informed
17 well enough to make that particular decision.

18 As ADR is a prerequisite to litigation, we
19 always find that it -- in those agreements that have
20 mediation, arbitration agreements in them, it is
21 certainly much easier to get the merchant to come to the
22 table or the other party to come to the table if it has
23 been in their agreement than waiting for them to
24 volunteer.

25 And so, you know, I think that the consumer has

1 the option at all points to make a decision whether it
2 should be voluntary, or they want to have a binding
3 resolution.

4 MR. FOSKETT: Our association, and myself in
5 particular, I've never been a fan of nonbinding
6 arbitration because all I think that is is a delay
7 process, and the consumer is just going to become
8 frustrated.

9 And I think it gives an opt-out to either the
10 business or the consumer if they don't like the
11 resolution. And the whole purpose of going through that
12 process was to try and come up with a resolution in the
13 first place.

14 So, I've never been a fan of that. I would
15 rather see either a binding arbitration or a mediation,
16 but at the consumer's choice. I don't think we should be
17 forcing it on them.

18 MS. BUSHEY: Okay, with that, what about a
19 situation where if the arbitration is voluntary, and both
20 the consumer and the business agrees, and the business
21 agrees to be bound but provides the consumer the option
22 to take it further if it doesn't resolve it?

23 Is that a viable -- and I -- because there is a
24 state law that I actually want to work in -- that we
25 lobbied against as a business against putting arbitration

1 in, simply because we thought it would be -- it would
2 encourage consumers to go to arbitration.

3 That was four years ago, and when I left in
4 January, there had never been a case of arbitration even
5 brought. And I don't think -- I mean, that's, you know,
6 that's part of the other education and notice terms that
7 arbitration doesn't mean anything to a lot of consumers.
8 I don't think they understand what it is, but they did
9 know they had the option.

10 But one of the things that, you know, during
11 the point of discussion on that, is that, you know, if
12 business is willing to go to an arbitration, it's cheaper
13 than litigation. And if they're willing to go, maybe
14 there is another model they're being bound by it, but the
15 consumer still has an option for due process.

16 MR. SKEHAN: Just to say, I think, at the end
17 of the day, this discussion is entirely theoretical and
18 will never have any practical bearing if you let the
19 market decide because then you'll have systems set up
20 which will have mandatory nonbinding. You might have
21 systems, in particular, sectors which will be mandatory
22 binding.

23 And at the end of the day, it still comes down
24 to this double market. First of all, the company is
25 looking at the systems and saying, this is the one that

1 suits my sector and my industry at my stage of
2 development, and my customers would appreciate this ADR
3 system better than any other.

4 And that's what they buy, and then either
5 they're right or they're wrong because their consumers
6 then look at this, or their customers look at this and
7 say, yes, this actually suits our industry very well, I
8 want to buy from this company.

9 So, for me, we can discuss it, and it's
10 interesting to have that discussion, but at the end of
11 the day, I think the market really dictates which systems
12 are set up. And I don't see that there is any need to
13 try and regulate for that, or try and say this is the
14 only way it should be or that's the only way it should
15 be.

16 So, I think you will have this -- the market
17 will decide and really will push out those that aren't
18 viable business models or are not appreciated by the
19 consumer groups.

20 MS. MITHAL: I just wanted to follow up on that
21 for a minute. One of the things that was mentioned on a
22 panel today was the credit card companies' binding
23 arbitration clauses.

24 And somebody made the assertion that the
25 consumer would be hard-pressed to find a credit card

1 agreement that did not contain a binding arbitration
2 clause.

3 And what we're hearing here is that there seems
4 to be a lot of emphasis on consumer choice. And, you
5 know, even you said that it's a theoretical discussion,
6 and in the end, the market will decide.

7 But we've come to a situation here in the
8 credit card industry from what we heard today where
9 consumers really don't have a choice. And I'm just
10 wondering how you would respond to that.

11 MR. SKEHAN: Oh, you're right, and that is a
12 problem. And I can even go further and say that in
13 Europe, we have a bigger problem because we don't have
14 charge-back.

15 So, for all the very fine words from the
16 representative of VISA yesterday who spoke about the real
17 needs to, you know, meet the demands of the consumers and
18 what a super system they have, they haven't introduced it
19 in Europe because the legislation doesn't force them to
20 introduce it in Europe.

21 So, while he went to great pains to say that,
22 yes, they have gone far beyond the regulations that have
23 been laid down, in Europe they don't offer it yet.

24 And that has to be part -- and it is, I know
25 the Commission and some of the consumers groups are

1 beginning to start squeezing the credit card companies,
2 saying, you offer it in America, you're not offering it
3 here, why? Is it that, simply, that you don't respect
4 the consumers in Europe or -- and, really, that's what it
5 comes down to.

6 They will get away with it for as long as they
7 are able to get away with it, and it will come down to
8 consumer group pressure and some sort of governmental
9 pressures that we've got to encourage.

10 MR. SKEHAN: No, it's both credit card --

11 MS. POMERANCE: As a practical matter, the Fair
12 Credit Billing Act requires that the consumer notify the
13 credit card company in writing to initiate the charge-
14 back protections.

15 The credit card companies are voluntarily being
16 nicer to the consumers and will take notification by
17 telephone because that does not initiate their needs
18 under the charge-back system.

19 It's just cheaper for them to process it by
20 telephone, and that is a very important thing that the
21 representative from VISA didn't share with us -- that the
22 reason that they're being so forthcoming and bending over
23 backwards is because on a per-transaction basis, it's
24 just cheaper for them to do that.

25 And, accordingly, where a lesson to be drawn

1 here is that if there is some sort of government
2 regulation that can make it cheaper for businesses to
3 comply and follow good business practices than otherwise,
4 then that's going to stimulate businesses into doing
5 better than the regulation.

6 One of the, I think, reasons that the Magnusen-
7 Moss has been successful is it offers incentives for car
8 dealers to participate. And something similar here that
9 each individual business could immediately get benefit
10 out of it or avoid a harmful thing would be also very
11 useful.

12 And an example of a harmful thing that I didn't
13 want to say in the more public forum is -- and this is
14 using the technological abilities of the internet -- is
15 that if a business makes it onto the government's bad
16 list -- for whatever criterion that is -- then the
17 service provider that hosts the website is required to
18 put up a screen, notifying customers that this business
19 is on the government's bad list.

20 And then life can go on as normal, but you've
21 got a bunch of warning for the consumers. You have that
22 in place, and businesses will bend over backwards to make
23 sure they don't get on the government's bad list.

24 A website provider -- most websites pay a
25 website provider to host their site. And you can -- and

1 website providers usually host multiple sites, and they
2 can tell the first time someone is visiting their
3 website.

4 And then if you browse around within the site,
5 they know that you are a return visitor, usually. They
6 have got lots of tracking programs for this.

7 Now, the first time someone comes to a site, as
8 they detect a new visitor to the site -- whether it be 10
9 visitors a day or 10 million a day, if this business has
10 made it onto the FTC's bad list, and the service provider
11 is required before they serve up the homepage -- or
12 whatever page the visitor has clicked on -- if they have
13 to put up a page saying this is a public notice that this
14 business is on the FTC's bad list and go ahead and enjoy
15 the site, that's going to be a powerful motivator for
16 businesses to make sure that that doesn't happen to them.

17 This is a suggestion that I have for how the
18 government could help stimulate businesses to behave
19 better. Don't hate me for it but --

20 MR. BHOJANI: Sorry, can I just explore that a
21 little bit further? In terms of website providers, it
22 then means that the government -- whichever country we're
23 talking about now -- has to get access to the website
24 provider, and they may be located all over the place, as
25 well.

1 So, how does -- for example, say that the
2 website provider is based in America, and it's an
3 Australian business that's registered with the American
4 website provider -- how does the Australian government or
5 the ACCC, an independent agency, say that this business
6 -- an Australian business -- is on their bad list, that
7 we're going to impose the obligation on you, the American
8 website provider, to impose that requirement on the
9 website?

10 It's an idea that I would like to explore more,
11 but I just wonder what some of the practical details and
12 the difficulties might be in this context, as well.

13 I'm not saying they're insurmountable, but I'm
14 just curious as to what they might be.

15 MS. POMERANCE: The closest parallel that I can
16 give you in my limited experience as a patent lawyer and
17 -- different national patent offices will recognize
18 applications filed in other countries that are
19 signatories to a treaty.

20 So, if you file an application in Australia,
21 you can get U.S. priority because of this treaty. And,
22 similarly, another treaty in this online dispute world
23 could be signed; and, therefore, other countries
24 recognize each other's judgments.

25 And, perhaps, the -- part of this could be the

1 -- if you are a signatory to this and find a website
2 provider, you, as the Australian government, have the
3 right to send a letter directly to the U.S. provider,
4 copying the U.S. appropriate governmental authority. And
5 that needs to be enforced. That's just a suggestion.

6 MR. FURSCH: Just in addressing that, the easy
7 way for the merchant in a case like that would just
8 change ISPs. He would just jump from one to the other,
9 and then that one wouldn't know about it unless the other
10 one told me, and it would be a very -- although it's an
11 interesting and intriguing idea.

12 I don't know how enforceable it might be, but
13 it's certainly -- you know, would certainly -- that sort
14 of thing coming on the screen saying, warning, warning.

15 MS. POMERANCE: You don't really want to
16 enforce it that many times. You just want to have it as
17 a threat hanging over the business so that the consumer
18 can threaten to the business, look, if you don't make me
19 happy and you don't solve my dispute in whatever manner,
20 then I'm going to report you.

21 And then if that will initiate a proceeding,
22 maybe, you know, three strikes and you're out, or
23 something like that.

24 But some sort of procedure like that gives the
25 consumer a threat against a business. And -- as speaking

1 as a consumer who has bought lots of things online and,
2 sort of, addicted to it, if I can threaten a business
3 that, you know, I'm going to report you to the FTC for
4 fraudulent advertising because your goods weren't as
5 sold.

6 I've done that a couple times to businesses.
7 It is amazing how quickly they become very compliant and
8 very interested in helping me.

9 So, this procedure might not actually be
10 invoked all that many times, but the fact that it could
11 be invoked is important.

12 And I have to say, also, as a consumer who has
13 bought a bunch of stuff from other countries, sellers in
14 other countries are -- and this is through ebay with
15 their feedback mechanism -- sellers in other countries
16 are particularly concerned about their reputation online
17 because if they want access to the U.S. market online --
18 which they have no physical connection with -- they don't
19 want bad comments from somebody in the U.S.

20 So, they will work extra hard to make me happy
21 because they want to make sure they get nice publicity
22 from me. And so, this is actually an enforcement type of
23 weapon that I can use, and it's very effective for them.

24 MR. STEVENSON: This ties in, in a sense, with
25 what is really ADR in a broader sense, but it also ties

1 in, I think, to the ADR theme in that one of the things I
2 think people were saying is, what other mechanisms are
3 there to enforce or induce compliance in advance?

4 And just one question is what other kinds of --
5 we talked a little bit today about visibility or
6 reporting of transparency. Are there issues that people
7 have with -- are there other kinds of recourse that
8 people could have if they when -- if they have a problem
9 and, say, they go through an ADR process, and they
10 prevail -- to induce company compliance?

11 MR. SKEHAN: The difficulty is, clearly, that
12 if -- unless you can show it on a website in some form,
13 there isn't a compliance. It's very difficult to make a
14 company suffer if that company's website does not show
15 your particular logo. Okay, the consumer doesn't see
16 your trustmark logo, but maybe that company then goes and
17 gets another trustmark logo.

18 So, you build up your bad points one after the
19 other, and then you drop out of that system, you buy into
20 a new system, and build up your bad points there.

21 And that I think is the -- there is a
22 difficulty there, and that's where the ebay model is very
23 good. It's where the BBB model where they kind of name
24 change -- then -- but I think it is a big issue -- the
25 whole question of kind of sanction for nonconformance is

1 one that, certainly, we haven't solved.

2 MS. BUSHEY: One of the criticisms that some of
3 the self-regulatory programs that have been in place here
4 that IRSGE -- the DMA -- is the fact that there is no
5 report back on it. There is no way with the individual
6 reference service group which existed -- it had to be
7 audited, but you couldn't see an auditor's report.

8 And I think some of that may be with the ADR.
9 I think your point is right on target to be able to get
10 to some type of report back on the number of claims
11 settled, and whose favor they were settled for, what
12 types of, you know, the percentage of claims that the --
13 whatever the award was, was paid back.

14 You know, the time -- or some other type of
15 reporting mechanism. But I think you're -- I think
16 having it on the web but having something that's
17 quantifiable and understandable to the consumer, and I
18 think that's the other part of it.

19 It has got to be understandable and credible to
20 the consumer. And I think BBB and some of the others I
21 think have achieved that.

22 MR. FOSKETT: I just want to -- one comment,
23 especially on the ebay model. If someone posts a
24 negative feedback on somebody on the ebay model, you can
25 never erase that. Whether it's right or wrong, it stays

1 on your record.

2 The only thing you can do is put a rebuttal
3 statement underneath that. So, it's very easy for
4 somebody to -- whether they win a dispute or lose a
5 dispute -- to put that negative feedback out there, and
6 then you're stuck with it.

7 So, whether it's true or it's untrue, as a
8 mechanism for a deterrent, I don't see it as being very
9 effective. It could be very detrimental.

10 MS. POMERANCE: I think ebay's specific
11 mechanism is very flawed in the way it operates. It's a
12 good mechanism. It got them to be the world's second or
13 third most popular website, but it now offers a lot of
14 room for improvement.

15 The other -- and there are a lot of models
16 coming out of people who are collecting comments, and
17 filtering the comments, and applying all sorts of
18 algorithms to the comments to make public records more
19 credible than they are on ebay.

20 And so, we're going to see that happening
21 within the next year or two. These are very well-funded
22 start-ups at this point.

23 The other point that I wanted to make is that
24 it is a small number of businesses that are causing a
25 huge amount of the problem. Most of the experiences that

1 I've had online have been very good, and some have been
2 unbelievably outstanding.

3 And the -- most merchants and people who sell
4 online are really honestly trying to do a good job,
5 trying to take care of their customers, aren't going to
6 argue with the customers, want to make the customers
7 happy.

8 And a big part of the issue is identifying the
9 ones that don't have this kind of attitude, and that's
10 where possibly we can use some of the technology that the
11 internet offers to help identify these possibly
12 questionable businesses.

13 MR. STEVENSON: Thanks. I would like to turn
14 to the guidelines question, and maybe the broadest way of
15 posing it is, are guidelines a good idea; and if so, who
16 should develop -- and this was addressed, I think, in the
17 panel we've just heard.

18 But if there are those who weren't on this
19 panel had additional thoughts on that -- how -- what does
20 it mean to develop guidelines?

21 What -- if you were able to say, I think the
22 next practical step should be -- what is the next
23 practical step, and who should be taking it?

24 MS. POMERANCE: I think the next practical step
25 is for the FTC or appropriate governmental authorities to

1 announce that they want proposals for what policies they
2 should adopt, give industry a deadline for when they want
3 the proposals, explain the process that will be used to
4 review these proposals, and see what comes up.

5 I mean, this has been great at stimulating
6 comment, and let's get some specific, concrete proposals.
7 And then you can, sort of, do a menu approach as to which
8 you want to pursue.

9 MS. PIKE: I think expounding on something that
10 Barbara Wellbery mentioned earlier today is that the
11 administration's goal is to let the private sector lead.

12 So, I do think if this is going to be a self-
13 regulatory initiative and an ADR proposed, it should come
14 from business. And by FTC's prompting, I'm sure that
15 will definitely help, and it will get more companies
16 involved and compliant.

17 I do know that as you mentioned before,
18 businesses want to do a good job. They -- it's in their
19 best interest to do good work so the customer comes back
20 to their site.

21 MR. SKEHAN: Just briefly, I'm not too sure
22 much needs to be done at this stage. I think what has
23 happened today and yesterday is very good. I think the
24 ongoing liaison between FTC, and Department of Commerce,
25 and the European Commission should be continued.

1 But when you look at the number of bodies that
2 are already working on this -- whether it's the TABD,
3 TACD, GBDE, this core group within the European
4 Commission -- I think there is a lot of people working on
5 it. And I come back to the suggestion earlier that there
6 should be some link.

7 A lot of this is happening in Europe. You're
8 developing some thoughts on it, as well. There should be
9 a better link, not just between the FTC, and Department
10 of Commerce, and the European Commission on a bilateral
11 basis, but opened up to the public a little bit more so
12 that the comments that come in, both to your site in
13 advance of this congress or in workshop, and the comments
14 that go into the core group site that has been set up by
15 the Commission.

16 I think in some way that should be structured
17 so that comments can be made under different headings but
18 from both sides of the Atlantic and further afield.

19 And then that -- kind of the American policy-
20 makers take from that what they want and let the European
21 policy-makers take from that what they want.

22 But, ideally, they should be taking from the
23 same pool of comments, so that really neither party is
24 operating just -- that you're not operating just in, kind
25 of, an American context and getting most of your comments

1 from American contributors.

2 And nor are we operating in a context in which
3 most of the comments are coming from European
4 contributors. I think that's really the way forward.

5 -- but widens to include more than just this
6 bilateral content.

7 MR. STEVENSON: I would be interested in people
8 -- interested in people's reaction to both the comments,
9 or what I -- as I'm -- as I filtered -- that it would be
10 helpful to have a process maybe through a website for
11 making the, sort of, input and the dialogue more
12 international.

13 And, second -- at least I took from your
14 comment -- that it should be an open kind of dialogue.
15 Is that fair, Paul? Okay, reactions to --

16 MR. BHOJANI: Well, certainly, I would be very
17 supportive of that approach from an Australian
18 perspective to try and have a link whereby you have a
19 greater international dialogue on these issues so that
20 there is a common database of issues and feedback,
21 comments from which the various government agencies can
22 draw. Yeah, I would just be very supportive of that
23 process.

24 MS. POMERANCE: For those who aren't totally
25 familiar with it, the model by which the standards for

1 the internet get developed -- the RFC's request for
2 comments, which then people go out and build systems that
3 operate this way -- there is a task force of working
4 groups.

5 And the working groups get formed as needed,
6 and they define their own topics. And they have a
7 committee that's formed, and then they publish a draft
8 recommendation.

9 And then people comment on that, and then it
10 makes it way from one level of almost hypothetical into,
11 okay, this is the recommendation of the committee or the
12 working group.

13 And it's called a recommendation because nobody
14 is forced to follow it, and it can be like HTTP was HTTP
15 1.0, and then there is a more complicated version of
16 that.

17 And so, as needed, these things come up and get
18 out. And in order to get on the mailing list for these
19 working groups, it's unbelievably easy. There is a
20 central site that says, here there are all the working
21 groups, and if you want to be on the mailing list for one
22 of them, you just sign up on the internet.

23 And then you get all the internal back-and-
24 forth e-mails, so if you want to jump in, you can jump
25 in.

1 And, possibly, I don't know that a model like
2 that would be immediately useful here, but it's wonderful
3 for international cooperation because everyone gets the
4 e-mails, and they can respond if they want.

5 And, possibly, there is -- usually, in this
6 kind of thing, there is a need for a moderator of the
7 mailing list; and that might be a role that the
8 government organizations could play or in conjunction
9 with industry, working on that.

10 But using the ability of the internet to make
11 the communication much more public, flat, and open is --
12 seems to be a helpful thing here.

13 MS. BUSHEY: The only other comment I would add
14 to that is the fact that there is one -- one of the
15 things we need to make sure -- because I've seen other
16 comments come in through the internet at the FTC, and
17 it's the same people that respond all the time -- and to
18 make sure that there is a broad enough audience.

19 And I'm sure that's probably the same case in
20 various different countries -- to make sure you've got a
21 good segment.

22 And I'm going to use this because as I was
23 listening through yesterday afternoon and today, there is
24 one segment that's not -- that really doesn't appear to
25 me to be addressed, and a Small Business Administration

1 representative brought that up.

2 Small business is also a consumer. And with
3 all the, you know, small, you know, home-based businesses
4 and some of the others, they are some of the
5 entrepreneurs that are out there starting up businesses
6 on the internet.

7 But they also are a consumer, and I think they
8 can present some issues on both sides. They're also the
9 ones that are possibly the most problematic because they
10 don't understand some of the rules and regulations or
11 understand how to deal, you know, with customer service
12 and are just trying to make their way.

13 MR. WILLKENS: I think -- I'm sorry -- oh --
14 Mark Willkens from the Joint Research Center and European
15 Union.

16 The -- one of the ideas behind the launching
17 this online e-conference forum is, indeed, to bring
18 together the various players and stakeholders and
19 experiences in this area.

20 I think when we talk about guidelines, probably
21 there are also different type of guidelines we should be
22 looking at. Guidelines and codes of conduct, best
23 practice, guidelines on ADR systems because probably --
24 well, I'm sure the companies who are left to implement
25 these guidelines will be different -- will be a different

1 type of service companies.

2 And then I think an important issue is to
3 exchange information on real practical applications of
4 systems because I think it was made clear on one panel
5 today or yesterday that before, let's say, overregulating
6 or overspecifying guidelines, I think we should get
7 better empirical evidence on the proper operation of
8 systems which are being built now and which are
9 operational already.

10 And then another issue related to guidelines, I
11 think, is an important one is the one on the technical
12 level. We should better understand, also, the technical
13 criteria, which would then disclose something to the idea
14 of RFCs and the ITF, for instance, is to identify
15 criteria which would allow the companies who built the
16 systems to specify better these systems. For instance,
17 in terms of interpretability, security, confidentiality,
18 and this kind of point.

19 So, I think there are different type of
20 guidelines we should be thinking about and the issue of
21 experience on exchanging experience and the real
22 applications and implementations.

23 MR. STEVENSON: Okay. Are there thoughts on
24 that before I go on or -- let me ask, actually, a
25 question again -- maybe there is another answer.

1 A good, practical next step would be -- are
2 there other particular things that people would say?
3 Paul mentioned some thoughts and Mark. Are there
4 other --

5 MS. PIKE: I just had a flashback to a couple
6 years ago, and I think it was when the Department of
7 Commerce was first developing their framework for e-
8 commerce.

9 They went around the country and had small
10 group meetings, you know. I know there was one in
11 Chicago, and there was one in Indiana in Indianapolis.

12 I mean, maybe you should take this show on the
13 road from the American standpoint and get the people who
14 have their businesses in the garages to come out. And
15 somehow you've got to reach them and educate them and ask
16 them these questions, too, because as you said, the same
17 players always seem to comment.

18 So, maybe you need to broaden the scope and not
19 only have that international framework through an
20 internet website, but the local garage guys, too.

21 MS. POMERANCE: I don't know that you actually
22 have to do more than put up a website and request
23 comments from people. And then get the word out and
24 suggest to people that they advertise so that other
25 people can see the comments that have been left and post

1 their own comments.

2 Small business owners, I'm sure, are perfectly
3 happy to go onto the website, put in some comments of
4 their own, and leave. It will take them five, ten
5 minutes, and they don't have to even go to a meeting in
6 their local city or -- which they might miss. And it's a
7 pretty low cost way of doing this, and you're just asking
8 the people involved what they want.

9 MS. BUSHEY: I very much disagree with -- I
10 like the first suggestion, but I very much disagree with
11 the other simply because if you look at what happened
12 with the privacy seals. A lot of companies -- and I was
13 working with a lot of the privacy advocates who were
14 trying to educate companies. And being at that point in
15 time from the credit reporting, trying to educate credit
16 card grantors that they needed to put privacy, and they
17 didn't want to hear it.

18 There wasn't enough publicity, there wasn't
19 enough feedback, and a lot of small businesses are -- you
20 know, even though they might be able to find that website
21 -- are intimidated by the fact that they're dealing with
22 the government without some other -- you know, you think
23 some other forums -- Small Business Administration,
24 somebody else to help facilitate meetings where they can
25 talk.

1 MR. FOSKETT: I just want to say that I think
2 the idea of the website is great, and I think you can get
3 a ton of information off the internet.

4 I was just curious when I was surfing the
5 internet, I found from Australia, a National Alternative
6 Dispute Resolution Advisory Council discussion paper on
7 the developments of standards of ADR.

8 And I was wondering how the government in
9 Australia generated feedback that constituted the
10 development of the paper. It's 163 pages long, and
11 they're soliciting public comment up until July 31, I
12 believe. So, if you could just -- yeah, that's -- I was
13 just curious.

14 MR. BHOJANI: I assume it will be on the
15 website because if you've got access to it, presumably
16 you got it off the website, as you were just saying.

17 So, certainly, I think the agency, NADRAC,
18 would have been asking for comments on the website but,
19 also, they do have forums from time to time, take the
20 show on the road, so to speak, into the different states
21 to try and develop on a consultative basis those sorts of
22 guidelines. So, it would be a, again, an inclusive sort
23 of process developing that.

24 Can I just make one other comment in terms of
25 practical steps forward? It's the sort of issue we were

1 just talking about a little while ago.

2 From the ACCC's perspective, I'm certainly
3 very, very curious to try and see if there is a link
4 between the type of disputes -- and if we come back to
5 this specific definition of consumer disputes and the
6 types of redress that consumers are going to look for,
7 and the implications of that in developing guidelines for
8 ADR.

9 We've quite properly, I think, taken an
10 approach starting from Square One and saying, well, what
11 is the ideal ADR or dispute resolution system? And
12 comparing it with the court model, but in the court model
13 and in an ideal world, an ADR system would try and cover
14 every contingency.

15 However, I'm wondering if there can't be
16 separate guidelines, and they might not be easier to deal
17 with guidelines on specific consumer-type transactions
18 where if some of the implicit comments that have been
19 made during the workshop are true, that consumers are
20 really only going to be interested in money -- getting
21 their money back -- or are only interested in, say,
22 specific performance. The product wasn't delivered, I
23 want the product delivered, thank you very much.

24 And what are the implications of that for the
25 type of ADR system? Do we need what might otherwise be a

1 Rolls Royce model of ADR systems to deal with those sorts
2 of issues? Are there better ways of dealing with those
3 types of disputes, especially if they are just monetary
4 disputes?

5 MS. POMERANCE: We talked to 200 companies
6 about what kind of problems people complain about, and
7 most everybody said where there is a complaint, it's --
8 they have had at least some complaints about shipping
9 problems.

10 So, whatever we decide about small businesses,
11 we're also missing the shipping companies here. And, of
12 course, it's not clear when the consumer blames the
13 shipping company versus when they take it out of the
14 package, break it, and claim it was a shipping problem.

15 But, I mean, these are fairly mundane kind of
16 type transactions that you can have rules for. And on
17 your previous point about other models, there are
18 voluntary membership groups that websites belong to.

19 Certainly in New York, there is New York New
20 Media Association, which is very big, and I'm sure you
21 can scratch the surface and find plenty of them in the
22 rest of the country.

23 And you could ask them for their positions on
24 dispute resolution, and then they would go to their
25 membership and have a meeting on it or something. And if

1 you got them involved early on, you would get an awful
2 lot of exposure that way.

3 MR. FURSCH: It's very interesting in taking a
4 look and looking at the potential that we're looking at
5 towards guidelines. Those of us who are implementing at
6 this point ADR programs, both online and offline, are, of
7 course, taking the precepts of ADR from the offline world
8 -- the real marketplace -- and adapting those same
9 principles to our websites, providing the type of
10 information that will give the consumer the opportunity
11 to make the type of choices and the informed choices that
12 they have to make if they're going to go to ADR as a
13 mechanism for redress.

14 The biggest problem that we see is the fairness
15 issue -- of how the consumer is going to be able to have
16 a choice in the ADR providers since I believe most of the
17 ADR providers are going to go with those precepts that
18 have been established in the past.

19 It's a matter of delivery, and that's one of
20 the concerns I think our company and other companies
21 might have. And, ultimately, we have to find a way that
22 the consumers can have a choice in which provider they
23 want to use.

24 MR. HENGESBAUGH: I apologize for not being
25 here earlier, I just stepped in. But just the mention of

1 guidelines the past couple comments is -- oh, I'm Brian
2 Hengesbaugh, at the Department of Commerce.

3 I was just wondering -- one of the interesting
4 things I thought came out of this two-day discussion were
5 the three presentations by the online service providers.

6 And thinking about doing guidelines, I'm
7 wondering if at this stage of development of the market
8 if doing guidelines right now really makes sense. I
9 mean, you think about Cybersettle, and you compare what
10 they're doing to what Square Trade is doing. And you
11 think about it, they are very different approaches.

12 Cybersettle doesn't even have an arbiter or a
13 third party involved. It's really just a technology --
14 just sort of to facilitate the two parties to get
15 together.

16 And so, I'm wondering what your thoughts are on
17 whether doing guidelines at this stage can actually be
18 done and, sort of, at a level of detail that's actually
19 meaningful; and, yet, done in such a general way, that
20 you're not really going to stifle the various approaches
21 that the market might come up with.

22 MR. SKEHAN: And I would agree absolutely with
23 this. I really -- I have great difficulty with any sort
24 of -- I'm sorry, back up. The current process that's
25 underway in the European Commission is one that we agree

1 with, which is looking at guidelines.

2 But the explicit conclusion of that process
3 will not be regulation but a set of recommendations which
4 you can take or leave.

5 And I don't think there is any harm in that. I
6 think there is a good idea of sense in actually trying to
7 evolve what guidelines might be, so long as at the end of
8 the day, they are not used to cut off companies from
9 developing what they want, so that it's still a voluntary
10 system that you apply to it.

11 And coming on to the Part B of the question
12 with regard to certification of ADR, we would totally
13 disagree with that at this stage because I think that
14 there is a stage further, which at this stage of
15 development of this particular service, is totally
16 unwarranted.

17 And you're in real danger there of setting up
18 something that will simply cut off the development of
19 interesting systems, which in six months down the road,
20 might be fantastic systems; but which now you might look
21 at and say, no, that doesn't fit our guidelines, we won't
22 certify you.

23 So, I think guidelines is one thing,
24 certification is entirely different.

25 MR. FURSCH: No, we would totally agree with

1 what you have to say. But at this particular point, I
2 don't know if guidelines would do a lot.

3 I think that companies like ourselves who are
4 providers now who are in -- actually in it, up and
5 running, have found that by taking the basic precepts of
6 offline ADR and applying them to the online situation
7 that all we are doing is making an extension of that
8 particular things which have been traditional in the past
9 or still traditional on the Net. It's just the way you
10 deliver it.

11 And we found that instead of going to a
12 particular mechanism like some of the other companies
13 have, that we have a program that goes through all the
14 mechanisms and give each of the -- gives the consumer a
15 choice on which one he wants to go with. And,
16 ultimately, the choice that if one doesn't work for him,
17 he can choose another.

18 So, you know, guidelines at this point -- you
19 know, general guidelines might be something to think
20 about, but I think the precepts of ADR which we have used
21 in the past offline and we're all familiar with -- it's
22 just a matter of translating those into the technology
23 and making sure that the consumer knows all about them.

24 And we've gone to great lengths to put the
25 explanations, Q and A's and everything in there, so we're

1 hoping that the consumer will have a choice, that he has
2 a pretty good idea of what he's getting into.

3 MS. MITHAL: One of the things we've heard over
4 the past two days is that there are some groups that are
5 developing guidelines for online ADR -- the European
6 Commission -- and we heard from AAA that they're also,
7 kind of, looking at guidelines for the online world.

8 And I'm just wondering if anybody has any
9 experience in that process, and what are some of the
10 different issues on the online world? I mean, some of
11 the guidelines we've seen in the offline world are pretty
12 general, like the, you know, independence, and
13 impartiality, low cost.

14 And do these issues translate well to the
15 online world, or are there any special or unique things
16 about the online world where we need to, kind of,
17 reexamine -- or the stakeholders that are looking at
18 these issues need to reexamine those guidelines?

19 MR. SKEHAN: Just one point that I made earlier
20 -- and just to repeat it under this heading -- and that
21 is the question of representation, which is one of the
22 principles in the offline system.

23 But I think when you translate that into a
24 dispute between a Finnish shoemaker and a South American
25 supplier of machinery, the principle of representation in

1 that sense is one that either is going to cost an
2 absolute fortune -- and I think there are elements of
3 that that need to be thought through.

4 And I hope that that's what this core group
5 over the next six months, actually, gets to work through.
6 And then the results of this question of independence,
7 which we have difficulty with.

8 I think there are issues there that need to be
9 thought through as to the question of cost. Obviously,
10 you want something that's reasonably low cost, but I
11 think that has to be thought through, as well.

12 MR. STEVENSON: Paul, you commented on the
13 question of certification. And I -- this came up a
14 little bit earlier, but I would be interested in
15 people's thoughts -- I guess other people's thoughts
16 on the certification issue and, also, on whether there
17 would be a value to looking at auditing, if not
18 certification.

19 Someone asked about the Magnusen-Moss warranty
20 procedure, and whether it -- there was anyone certified
21 under it. And, actually, it does not require the
22 people be certified, but there is a provision for some
23 auditing.

24 Would that be useful, together with the concept
25 of people taking action when -- for deception against

1 seal programs or ADR providers who are not living up to
2 their promises?

3 MR. BHOJANI: I think we would, likewise, be
4 concerned about the certification process at this stage
5 as a means of stifling competition between service
6 providers. And that would be just too early in the stage
7 to try and get into deciding who is and isn't appropriate
8 to provide that sort of service.

9 On the other hand, I think it does call
10 for a type of vigilance by law enforcement agencies
11 to be able to try and take action against people who
12 are setting themselves up as service providers when,
13 in fact, they're nothing more than a sham or a scam
14 artist.

15 So, I think, perhaps, because there isn't a
16 certification process, it puts a bit more of an emphasis
17 on law enforcement agencies in cooperation on that front
18 to try and assist consumers get credible outcomes from
19 service providers.

20 MS. POMERANCE: There are several websites that
21 I've come across that encourage consumers to fill out
22 complaint forms against companies. And they foment
23 discord against companies in their approach. It's very
24 anti-business, and then they claim that they will help
25 represent you against business. And, actually, there

1 isn't a whole lot behind them.

2 Now, they can get a lot of traffic to their
3 websites and make money off of advertising banners this
4 way, but they're basically wasting consumers' time, and
5 they're certainly raising false expectations. And I was
6 wondering what the government view on these sort of
7 individuals or websites is.

8 MS. MITHAL: I'm just a little bit curious
9 about something I've heard over the last two days. We've
10 heard about a lot of new seal programs, and I guess
11 that's a form of, kind of, private certification of
12 programs, if you will.

13 And I'm just curious as to what people's
14 thoughts are on how we can educate consumers about these
15 seal programs, or how are consumers going to know the
16 difference between a Square Trade seal, and a Cybersettle
17 seal, and a BBB seal?

18 MS. PIKE: I don't know if I have an answer,
19 but I -- because I share the same concerns. And I was
20 very interested in the research you mentioned today when
21 you talked to 200 consumers, and a lot of them, really
22 small businesses, didn't really have much faith in the
23 seal programs.

24 And I've heard that, too. I think once there
25 are too many out there, it gets confusing for consumers.

1 They become meaningless. Right now, I don't think
2 consumers know a whole lot of -- about the seals that
3 exist today.

4 What's the difference between a BBB online seal
5 and the Good Housekeeping seal? I mean, are any of the
6 seals paid for, and which ones are not? And, in essence,
7 aren't they all paid for, you know?

8 MR. FOSKETT: In our research in going to
9 different websites, I mean, basically, the seal is a
10 money-maker for a company. It's convincing a company
11 that if you use my seal, it will attract more business to
12 your site because, basically, there will be consumer
13 confidence because you have my seal.

14 But, basically, the consumer doesn't know who
15 you are, so the seal really doesn't do you any good, but
16 it's a money-making, you know, for somebody to sell that
17 seal to somebody else.

18 I know the Better Business seal works in that
19 when you click on to the Better Business seal, it will
20 direct you to the company, and you will get a profile of
21 the company, and you will be able to examine whether
22 there is any complaints or not. So, in that respect, it
23 would work.

24 MR. HENGESBOUGH: Just one interesting point, I
25 think -- this is a very interesting area from what I've

1 seen because there is a very sophisticated level of
2 incentives that are built into this.

3 If a BBB online, essentially, has no value to
4 it from a consumer's perspective, if it's very weak on
5 consumer protection and doesn't really work, I think that
6 message can get out.

7 And I think those people are very concerned
8 about their reputation. And so, I think they're going to
9 be vigilant about preserving the integrity of their
10 reputation, and they will have an incentive to do a good
11 job with what they're doing.

12 And if they don't, from what I understand that
13 there is a number of sites that consumers and others set
14 up -- sort of, anti-company sites where they can, you
15 know, put out a lot of information about companies where
16 they go wrong. And I think that the internet really
17 enables people to have a greater voice than they have had
18 before.

19 I don't think it's necessarily a perfect
20 system, but I think that there are, sort of, incentives
21 built in to make sure that the BBB onlines of the world
22 really work. So --

23 MR. STEVENSON: Our colleagues from the
24 Department of Commerce who got the last word, yet again.
25 Thank you very much. I appreciate every one in the group

1 participating, we're going to start off again in just a
2 few minutes. Thanks.

3 (Whereupon, at 4:50 p.m., the session was
4 concluded.)

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1 **C E R T I F I C A T I O N O F R E P O R T E R**

2 DOCKET/FILE NUMBER: P004309

3 CASE TITLE: ALTERNATIVE DISPUTE RESOLUTION FOR CONSUMER

4 TRANSACTIONS IN THE BORDERLESS ONLINE

5 MARKETPLACE

6 HEARING DATE: JUNE 7, 2000

7

8 I HEREBY CERTIFY that the transcript contained
9 herein is a full and accurate transcript of the notes
10 taken by me at the hearing on the above cause before the
11 FEDERAL TRADE COMMISSION to the best of my knowledge and
12 belief.

13

14

DATED: JUNE 19, 2000

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KAREN GUY

18 **C E R T I F I C A T I O N O F P R O O F R E A D E R**

19

20 I HEREBY CERTIFY that I proofread the transcript for
21 accuracy in spelling, hyphenation, punctuation and
22 format.

23

24

25

SARA J. VANCE