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ALTERNATIVE DISPUTE RESOLUTION  
FOR CONSUMER TRANSACTIONS  
IN THE  
BORDERLESS ONLINE MARKETPLACE

BREAK-OUT SESSION 2  
ROOM 1412

MODERATORS: BARBARA WELLBERY  
KATE RODRIGUEZ

WEDNESDAY, JUNE 7, 2000

For The Record, Inc.  
Waldorf, Maryland  
(301)870-8025

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A T T E N D E E S

Barbara Wellerby

Kate Rodriguez

Lorraine Brennan

Anne Carblanc

Dave Cole

Nora Femenia

Tim Fenoulhet

Jane Gunn

Cara Cherry Lisco

Eric Menge

Agne Pantelour

Brian Rauer

Lisa Rosenthal

## P R O C E E D I N G S

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2  
3 MS. RODRIGUEZ: Does everyone have a copy of  
4 the hypothetical that was in your packet? I have  
5 extras here if you want to see it. As you can see, we  
6 have a couple different scenarios here and involving  
7 different amounts of money and, you know, different --  
8 consumers are based in different countries, et cetera,  
9 but they are all involving -- they are both involving  
10 cross-border situations.

11 So, the first question we wanted to consider  
12 was how do you address the following issues in  
13 developing ADR programs like the one that's illustrated  
14 here, disputes online, and what should Disputes Online  
15 and organizations like it that are developing this ADR  
16 for these kinds of consumer-based transactions, what  
17 should they be considering in terms of independence and  
18 costs and these issues that are listed below. And,  
19 then, do your views change depending on the type of  
20 transaction, the dollar amounts or where the consumer's  
21 based or the business is based, et cetera?

22 Does anyone have any reactions to some of these  
23 kinds of issues listed in ATG or how ADRs might address  
24 these kinds of things?

25 MS. CHERRY LISCO: Well, I'll just introduce

1 myself. My name is Cara Cherry. I'm the director of  
2 the mediation services at SquareTrade. I was the --  
3 one of the -- I inducted the first employee at the  
4 company and was responsible for working with the  
5 founders to build our online litigation service.

6 So, I thought very extensively about all of  
7 these questions to the extent I can tell you what we're  
8 doing and where we've come out on them.

9 Just to give you a general sense of it, I don't  
10 see a huge difference in a \$95 item to a \$10,000 item  
11 in terms of the structure of the process and how you  
12 handle independence or notice or timeliness or, you  
13 know, anything other than I would say the cost.

14 And to the extent SquareTrade, as a private  
15 entity, is trying to present a viable and effective  
16 solution and keep the cost down, we think the seal  
17 program is the essential component in the business  
18 model to make that possible.

19 So, the seal, in addition to serving as an  
20 important feature and a crucial feature in the trust  
21 building and really being an emblem of what the value  
22 is to the marketplace in providing a top-notch ADR  
23 service, it really also serves financially in the  
24 revenue-generating model to support a low-cost system  
25 for the people who do end up in disputes.

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1           MS. RODRIGUEZ:  Anyone else have any thoughts  
2 about that?

3           MR. RAUER:  I actually have a comment, if I  
4 may.  I'm Brian Rauer, I'm with the Better Business  
5 Bureau of Metropolitan New York.  I think there's a  
6 danger in potential devaluation of the seal program in  
7 general with the potential for proliferation of a large  
8 number of seal programs.  And seal programs in general  
9 are only as good as, you know, the requirements and  
10 certification that stands behind them.  And if people  
11 see, you know, 15 different seal programs, they can  
12 possibly choose to trust none of them.  You can go 0  
13 for 15 as opposed to having two or three that everyone  
14 trusts so there's almost universal, you know,  
15 recognition of.

16           And there can be -- I know there can be  
17 circular reasoning, because you're wondering how can  
18 you build that trust, and there are already  
19 organizations -- and not just ours -- I mean, that  
20 would already have trust, but if you don't have certain  
21 sets of guidelines, universal frameworks that are  
22 accepted by the general public or the general online  
23 user, you really run into danger.

24           Where, again, it was suggested, I believe, by  
25 one of the panelists that -- I mean, if consumers

1 consistently, you know, start relying on seals and get,  
2 you know, proverbially burned by those seals, then they  
3 are going to stop trusting seals period. And when  
4 they are devalued, it is going to devalue other seals,  
5 and it will carry over until people stop trusting seals  
6 in general, and they won't mean anything, and that's a  
7 problem for everyone who uses them.

8 MS. CHERRY LISCO: I think that's absolutely  
9 right, and I think it's crucial if you enter the seal  
10 business at all, you have to take it very, very  
11 seriously. Each and every word that you put on your  
12 website about what that seal stands for you have to  
13 stand by and investigate and monitor and put real  
14 systems behind. It's something that you don't enter  
15 into lightly, because if you build a business around  
16 it, you have to live and die by that seal.

17 And, so, actually, I don't think there's a big  
18 fear in there being a proliferation of seals. I'm  
19 actually pretty skeptical that that would happen,  
20 knowing from our point of view what it takes from a  
21 financial investment to build the technology to do  
22 this, to build a seal program, to build the operations  
23 that you need, to do an effective "teeth" seal program,  
24 what it takes to raise the money to do that and to do  
25 that effectively, and the fact that as people really

1 evaluate what businesses to build and to do, they're  
2 not going to do things where there's already going to  
3 be a number of players out there. It's foolhardy.

4 So, my sense of it is that, you know, there is  
5 the BBB Online, SquareTrade has launched a, you know,  
6 huge seal program, and I don't know how many more there  
7 will be before it's a saturated -- I think we will get  
8 to a saturation point pretty soon.

9 I think the key is building in the  
10 international piece of the seal program so that it  
11 meaningfully -- so the seals are meaningful in an  
12 international arena.

13 MS. BRENNAN: I think the market is going to  
14 determine, at the end of the day, who the trustworthy  
15 seal programs are. That's -- if I buy something with  
16 the Good Housekeeping Seal of Approval, I have some  
17 assurance that there is a brand name standing behind  
18 that. If there's some fly-by-night seal company, they  
19 are not really going to get the trust that the  
20 consumers -- that -- they are not going to distrust you  
21 just because they're a fly-by-night entity.

22 So, I think there's going to be a whole bunch  
23 of comers into this market. There's more every single  
24 day, and I've seen hundreds of them, but at the end of  
25 the day, there are going to be three, four or five that

1 will really stand out, just like travel websites.  
2 There were thousands of them, and right now if you look  
3 at who uses travel -- is there's three sites really  
4 that the consuming public uses, and I think that's  
5 going to be the same with the seal programs.

6 MS. WELLBERY: Can I ask a question? Would  
7 your views be different that there's no distinctions  
8 made between the \$95 transaction and the \$10,000  
9 transaction if the ADR is binding as opposed to  
10 nonbinding?

11 MS. CHERRY LISCO: I think generally, no.  
12 I mean, I think you're talking about thresholds  
13 that are still threshold dollar amounts that make  
14 litigation not a viable alternative. You're still  
15 talking about a system that has a built-in incentive  
16 for people to participate and maximize largely because  
17 they don't have a viable alternative, even at the  
18 \$10,000 market.

19 MS. WELLBERY: I guess I'm questioning whether  
20 that should be the only criterion that you're using. I  
21 mean, yes, they have no alternative even with a \$10,000  
22 claim, arguably, but I mean I -- maybe this is  
23 indicative of my world, but I can shrug off the loss of  
24 \$100 much more easily than I can shrug off the loss of  
25 \$10,000.

1           So, me sitting here, from my perspective as Joe  
2 Consumer, it seems to me that there should -- there  
3 needs to be greater protections in a \$10,000 dispute  
4 than in a \$100 dispute, despite what the alternatives  
5 are.

6           MS. CHERRY LISCO: I see what you're saying. I  
7 mean, I think as a process provider, I don't change the  
8 process in this -- I wouldn't change the mediation  
9 process for it, and I think, you know, how people  
10 regard \$95 really differs depending upon who.

11           And, so, it gets difficult to use cost as the  
12 parameters, because \$95 to me actually would be pretty  
13 upsetting, but to a small business, it would be less,  
14 maybe a medium upset, and then to a larger business,  
15 you know, they absorb that without thinking.

16           So, that it really ends up -- those numbers  
17 don't really have any meaning in and of themselves.  
18 So, you're talking about a scale, and I think it's hard  
19 to design it based on the threshold amounts because of  
20 that difference. You know, then you have the economic  
21 disparity issues, so --

22           MR. RAUER: I think the final question then is  
23 where do you draw the line? Do you draw the line  
24 between \$4 and \$5,000 or \$5 and \$8,000, and then some  
25 people may actually be tempted to file for a lesser

1 amount if they think that -- a better side of  
2 guidelines if it's a very small difference.

3 So, then you kind of create some problems  
4 sometimes. I'm not saying it necessarily would, but it  
5 may be viable, and then you have to give a lot of  
6 thought to where do you start grading it out, up to  
7 whatever level.

8 MS. CHERRY LISCO: I think we might end up with  
9 some systems that break out, because there is -- break  
10 out along some dollar value, largely because there is  
11 no other hard and fast rules we can write to do system  
12 design. It's very difficult to do it on the softer  
13 issues -- business size or industry type or -- we  
14 collect data along all those different variables, but  
15 they're not as bright lined as the dollar amounts are  
16 going to be.

17 So, it may be that even though all of us, you  
18 know, think intellectually that it doesn't -- it's not  
19 really meaningful, it may end up being useful.

20 MS. KESSEDJIAN: I was surprised by the fact  
21 that you asked the question whether there should be or  
22 not some certification of ADR providers, but you don't  
23 ask that question for the seals, and I -- for me -- and  
24 I'm probably biased by my European French background,  
25 and I should start with that, but it is a question that

1 I have in my mind whether or not -- I mean, I hear the  
2 argument the market is going to clear those out, and  
3 that's actually what, you know, ISO, has been, in fact,  
4 doing for the -- all those years in the business-to-  
5 business world, that they have come up as the, you  
6 know, certification -- like Veritas has been doing it  
7 for the goods and services and so on and so forth.

8 I'm not so sure that in this world we actually  
9 can wait for that moment to happen, because there is an  
10 -- internet does multiplication factors. So, in real  
11 life, actually the market is, you know, a little bit --  
12 it's easier to find the good ones, because there are  
13 less there. The internet multiplies by thousands the  
14 numbers of people who can actually, you know,  
15 participate into the market, and I'm questioning  
16 whether this multiplication factor is not inducing a  
17 little bit more, again, base rules, guidelines,  
18 principles, that we should -- could be -- that the  
19 market could build on.

20 It's a question. I don't know -- I don't have  
21 the answer to it.

22 MS. WELLBERY: No, I know -- I mean, I have --  
23 just having finished these negotiations with the  
24 Europeans on privacy, that was a major sticking point  
25 that we have these self-regulatory bodies, and nobody

1 that were being -- that were being -- that nobody was  
2 watching over, and the only thing we could say back  
3 was, well, we haven't had a problem thus far, so we  
4 don't see a reason to regulate them at this point. But  
5 I think that was very, very hard for the Europeans to  
6 get over.

7 MS. KESSEDJIAN: There's a sense of what should  
8 come first, whether the government should prevent  
9 problems from happening or whether we should wait for  
10 problems, for the market to bring up problems, and then  
11 the government should fix it, and I think that's  
12 different methodology.

13 MS. WELLBERY: And you asked was there clear  
14 bias in favor of waiting until there's a problem, and  
15 --

16 MS. KESSEDJIAN: In Europe it's probably  
17 different.

18 MS. WELLBERY: -- and our model for  
19 self-regulatory bodies is the Better Business Bureau  
20 and a few others like them that really are outstanding,  
21 and we haven't seen any reason thus far to start  
22 enacting rules.

23 MS. KESSEDJIAN: Yeah, but my argument would be  
24 on this that the reason why the BBB has been able to  
25 develop and actually become the major actor in the

1 field in the West is because you have had common  
2 understanding and some legislation. I mean, you have  
3 Fair Trade Act and that type of thing.

4 MS. WELLBERY: Yes, but actually, I mean, one  
5 of the questions that came up during these negotiations  
6 was whether the Federal Trade Commission's unfair and  
7 deceptive practice authority covered not-for-profits  
8 like most of these organizations are, and for a long  
9 time it was not clear that the FTC did cover those  
10 organizations, and their coverage is still fairly  
11 limited. And so that's -- and nonetheless, you know --

12 MS. BRENNAN: But you already had huge  
13 recognition in this country with the Better Business  
14 Bureau, everyone had heard of it, but the problem is  
15 when you go over to Europe, I don't know what the  
16 recognition of the Better Business Bureau is in Europe.  
17 I know in Asia it's probably nonexistent, so what do we  
18 do --

19 MR. RAUER: Actually, it's a lot less.

20 MS. BRENNAN: Well, yeah. So, yes, this  
21 program can work well in the United States, but what do  
22 we do about the rest of the world and how do I buy  
23 something in France and how do I trust a seal that a  
24 French website owner has put on? How do I know?

25 MS. KESSEDJIAN: That's the very reason why I'm

1 asking the question of the certification, because I'm  
2 also, from the point of view of international standards  
3 that would acceptable cross-border and trans-  
4 nationally, I mean, we -- the internet is inherently  
5 trans-national, and we have to stop thinking, you know,  
6 in our own cultural world.

7           So, we have to question -- I mean, it may have  
8 worked for the West, you know, because of your history,  
9 because of the way, you know, the economies is  
10 organized. Again, it may have been working the way we  
11 have been doing in Europe because of our history and so  
12 on, but now that we have to bring Africa and Latin  
13 America and Japan and all these countries together,  
14 don't we need something as a ground rule?

15           And the guy on my left-hand side at the panel  
16 said that, and I think a number of other people joined  
17 in the forum and said that, and if so, then we should  
18 start perhaps, you know, trying to work on those, with  
19 all the stakeholders together.

20           MR. MENGE: I have a follow up on that one.  
21 The question I have, can you actually make these  
22 requirements? You can probably set up a certification  
23 system where you can certify a seal, but does the  
24 United States Government or any country have the  
25 ability to essentially demand that every seal on the

1 net meet these certain requirements.

2 We're starting to dabble with the content  
3 regulations, which is going to have, in the United  
4 States, First Amendment implications and in other  
5 countries it will have huge jurisdictional problems  
6 when you start telling these companies in other  
7 countries what they can and cannot say.

8 MS. WELLBERY: Well -- but arguably you could  
9 sort of have the governments recognize these programs  
10 and then consumers could choose to abide by whatever  
11 recognition the governments have given.

12 I guess the problem I have is that I don't know  
13 what rules we would set, you know, as the governments  
14 at this point. It doesn't seem clear to me what the  
15 rules should be for certifying.

16 MS. KESSEDJIAN: I think the rules should be  
17 the ones that the stakeholders are saying it's fair  
18 among themselves: Consumers, operators, service  
19 providers and so on. These people should be around the  
20 room with kind of the governments and the international  
21 organizations looking at them and trying to see how  
22 they are, you know -- for example, a warranty, a  
23 charge-back system or a -- you know, a providers' type  
24 of warranty, that's the kind of thing, on the  
25 businesses and the consumer can say whether it's

1 important for them to have it in the seal, that the  
2 company offer that as a consumer service.

3 It's not the government that can say that, only  
4 the people -- the stakeholders in the business can say  
5 that.

6 MS. PANTELOURI: I would second that. I think  
7 it's -- it's extremely important not to think that we  
8 have to re-invent the wheel when we're talking about  
9 this subject, what the basic principles or the minimum  
10 requirements, whatever you want to -- or minimum  
11 baseline standards -- or whatever you'd like to call  
12 these criteria or principles, are not something that we  
13 have to sit around the table here and re-invent. They  
14 exist out there in good business practice.

15 What you have to do is to get together so the  
16 people who came about identifying this best practice,  
17 partly because they're involves themselves in that  
18 activity, they're business people, partly because  
19 they've consumers who have lived as a result of this  
20 good practice from the other side and identify what are  
21 the common features of the best -- the most effective,  
22 the most widely respected codes of conduct or trust  
23 marks and related trust-mark schemes, and that will  
24 give you your baseline.

25 MS. CARBLANC: And that would be an

1 international endorsement or an endorsement by  
2 governments as an international level which could serve  
3 as a reference.

4 I have another question, but it's not on the  
5 same subject. You asked the question of whether we  
6 should consider that this list of elements, procedural  
7 elements -- I mean, should be looked at in a different  
8 way according to your two cases. But my first question  
9 -- unless there's something which wouldn't be  
10 hypothetical, let me -- that the dispute resolution  
11 provider, Disputes on Line, would exist and be -- I  
12 don't know which -- but the first question would be for  
13 me, when you have these two cases, would you think that  
14 negotiation, conciliation or arbitration is the best  
15 suited, and you didn't ask the question?

16 MS. RODRIGUEZ: Well, maybe we should have, but  
17 I think it's interesting to think about what may be the  
18 best situation. I mean, I think we've heard -- we've  
19 certainly not heard one view or one single view about  
20 whether mediation is best or arbitration is best. I  
21 know you used a mediation model, but others use  
22 different things, and maybe it depends on the kind of  
23 transaction.

24 MS. CHERRY LISCO: We started with mediation,  
25 but we're not done.

1 MS. RODRIGUEZ: Right, and what's your thoughts  
2 on that, perhaps?

3 MS. CHERRY LISCO: I can give you sort of an  
4 off-the-record/on-the-record opinion. My personal  
5 opinion is that our next step is to build an  
6 arbitration process and to really be doing a med/arb  
7 with a different neutral. The big complication offline  
8 with med/arb has been using the same neutral, because  
9 the disclosure that happens in a settlement-related  
10 conversation you don't want to have affecting the  
11 arbitration process, and they affect each other.

12 But in the internet concept, you can have a  
13 record and redact the confidential portions of the  
14 record and pass the record along in licky split time  
15 without really losing any efficiency and have a  
16 different neutral.

17 So, my strongest feeling is that a med/arb  
18 combo will be the most effective, because -- with a  
19 time limit on the mediation. So, you keep your cost of  
20 mediation capped, because your cost is the time of the  
21 mediator, ultimately, and you create a very strong  
22 incentive for businesses and consumers to settle,  
23 knowing there's a deadline and knowing that next step  
24 is a judgment. And then you have the same issues about  
25 the enforcement of a judgment.

1           But I would put as much incentive as possible  
2 on making the mediation process effective, because you  
3 don't have the enforcement problems, and you just have  
4 happier people really coming out of that process.

5           MS. WELLBERY: I guess one question I have is  
6 would you sacrifice some of that if you're putting that  
7 kind of pressure on the mediation process?

8           MS. CHERRY LISCO: I don't know. I think that  
9 it has to be designed carefully. I don't think any  
10 time cap will work. You have to do the right time cap  
11 for the right dispute, the right marketplace, that  
12 ethos on ebay is very different than the ethos on Envia  
13 that we are launching now, and you have to be smart  
14 about how you design your system and train your  
15 neutrals. You can't just slab anything up there.

16           One of the things that's powerful about the  
17 internet and our -- for example, our complaint form,  
18 although everybody jokes about these boxes, it allows  
19 us to aggregate data and understand, well, everybody  
20 that checked box number one, how long are those  
21 disputes taking over time?

22           So -- and how long is dispute number two  
23 taking? And which mediator works better with which  
24 dispute type?

25           So, you can get much more intelligent about the

1 process, it's not just that it's a mediation process.  
2 It's that you have transformative mediators or you have  
3 evaluatory mediators or you have someone who's  
4 culturally focused, or -- and we can channel -- based  
5 on getting large volumes of data from an ebay- type  
6 marketplace to really understand better what's the most  
7 effective and where people feel the most satisfied,  
8 because the other issue here is that people will come  
9 through a process, consumers, they may not settle, but  
10 they are satisfied that they had the hearing.

11 And, so, this -- the danger in some of the  
12 conversation about people wanting to report statistics  
13 is their sense of evaluating an ADR program on so many  
14 statistics is very difficult, because we have very  
15 satisfied, happy people who are still going to shop on  
16 ebay, even though they didn't settle. So, I think it's  
17 -- that gets complicated.

18 MR. COLE: What -- let me ask the question,  
19 because the question of time comes up, not time of the  
20 arbitrators but time between the time that I raise an  
21 issue or I've got a dispute. BBB, for example, on the  
22 auto line has a target of 40 days. If they don't, then  
23 they have to report that.

24 Now, I mean, in some ways it does -- it puts  
25 pressure on, but it's a -- it's not a drop-dead

1 pressure. It simply means you haven't made your target  
2 date, but you can still go beyond that, and I just  
3 wondered if you had your dates -- what your dates were.  
4 And then seeing a difference between \$300 and \$10,000,  
5 do you think there should be a time difference in terms  
6 of how soon you should be able to settle this?

7 MS. CHERRY LISCO: Um-hum, right now, we're  
8 settling cases within about -- the average I'd say is  
9 about two-and-a-half weeks, the outside is about four  
10 weeks. But the key here is that this is an  
11 asynchronous time process.

12 So, time is sort of a funny thing. A mediator  
13 will log on, read, you know, five minutes on one case,  
14 write a message, five minutes on another case, leave a  
15 message, and it's the case management capability that  
16 really maximizes the mediator's time, because we have  
17 mediators who handle 60 cases at the same time. And  
18 then -- but those cases will take -- some will settle  
19 within the first couple of days, some will take two  
20 weeks, two-and-a-half, three, four weeks.

21 There is a natural closure to people's behavior  
22 in a voluntary mediation process. They just won't keep  
23 going beyond their instinctive window of feeling like  
24 this is going to solve -- resolve. They give up or  
25 they go start trying something else. They file a fraud

1 complaint. They start doing the next level of redress.

2 And I think a fair generalization would be to  
3 say for the ebay-type disputes, that window, is not  
4 beyond that four-week mark. People just are done at  
5 that point with a voluntary process. But it's -- it  
6 really varies by people, too.

7 MS. RODRIGUEZ: Let me ask the question, going  
8 back to the discussion about baseline standards or  
9 guidelines, whatever you want to call them, does anyone  
10 have any other thoughts on that and who might  
11 promulgate those and what would the best way forward be  
12 in terms of making sure they're internationally  
13 consistent?

14 Do we have a view that stakeholders should come  
15 together sort of with the governments, international  
16 organizations, sort of there looking over the  
17 shoulders, but are there any other thoughts on that?

18 MR. RAUER: I thought that -- I think this was  
19 espoused in a prior panel, but I had some of these same  
20 concerns in that you could be dealing with the lowest  
21 common denominator. Whenever you're looking for  
22 universal agreement, I mean, it's virtually impossible  
23 to have universal agreement.

24 And it's also -- I mean, it's a tremendous  
25 concept, but who comprises that panel that makes this

1 determination, because there will be any number of  
2 organizations of people who will say I have to have a  
3 say, too, why aren't I the best to make this  
4 determination? And therein lies the problem, in that  
5 you have maybe almost consensus or maybe you have 50  
6 percent consensus and then someone else joins the fray,  
7 and then what happens then?

8           You know, then they won't join up and then  
9 suddenly it's skewed again. Then there will be one  
10 group that wants to follow this method, one that wants  
11 to follow this methodology, and you're back to where  
12 you started.

13           And if there is universal agreement, you may  
14 have to go so low, so low down where you really do have  
15 this kind of base-base level, and then you've watered  
16 it down so much that it may not serve the initial  
17 purpose that you wanted to have in the first place.

18           MS. RODRIGUEZ: How do you avoid that?

19           MR. RAUER: I know, it seems like kind of a  
20 negative attitude towards it. I'm not saying that  
21 necessarily would happen, but I think it's a potential  
22 danger.

23           MS. RODRIGUEZ: Can you avoid that? You don't  
24 have to answer that.

25           MR. RAUER: I would be pretty good if I could.

1 But, I mean, I guess, one of the -- there could be  
2 certain ways that you could, I guess, lessen the chance  
3 of it happening is if you kind of -- there are certain,  
4 I guess, there are certain universal tenets where if  
5 you go -- there could be an understanding where if you  
6 do drop below that, you are pretty much -- it's not  
7 going to be successful, and you can't drop below a  
8 certain level, and if you do, you kind of recognize it,  
9 and you have to step back from it and kind of start  
10 over again until you have kind of consensus building  
11 going on there.

12 So, I guess you could set a certain level where  
13 you knew you wouldn't drop, you know, below that. But  
14 then again, it's still kind of circular reasoning, and  
15 then who sets those, meaning who sets those minimum  
16 standards in the first place.

17 So, I don't have an easy answer to that.

18 MR. FENOULHET: I think it also depends what  
19 sort of level you set these standards at, and I think  
20 that -- I sense there's a slight misconception in, you  
21 know, what may be our sort of approach, the approach  
22 that we would support in this area. And what we see  
23 is that, in fact, we want to encourage self-regulating  
24 initiatives, such as trust mark schemes, codes of  
25 conduct and ADR. And as I said before, we insist on

1 making sure that they're together as an overall  
2 package.

3           And clearly the issue is to look at what  
4 governments would find as acceptable forms of  
5 self-regulation, the ones that are effective and that  
6 can be recognized as effective internationally. And  
7 really the sort of criteria that we are looking at are  
8 very baseline criteria, things like -- that deal with  
9 how the process of a code of conduct is developed,  
10 ensuring that all the interests of the parties are  
11 represented in developing such a code of conduct, that  
12 it's not to the exclusion of certain interests and  
13 favorable to others. And also ensuring that these  
14 self-regulating systems also include effective  
15 enforcement mechanisms.

16           Now, you don't have to go into the detail of  
17 the specifics of the code of conduct. You don't want a  
18 code of codes, if you like, nor do we want to perhaps  
19 prescribe what sort of enforcement mechanisms need to  
20 be in place. But we need to establish, and I think  
21 that there is a general consensus out there already, as  
22 was just said, there's not really -- we don't see this  
23 as a major issue, because there is a great deal of  
24 consensus among the different stakeholders.

25           And, again, we see, as I say, it's a matter of

1     how these codes are developed, ensuring that they have  
2     effective enforcement, to what extent law enforcement  
3     authorities or -- there's a legal basis that is able to  
4     link into any enforcement mechanism is a matter for  
5     discussion, and we heard that this afternoon, that this  
6     whole question of misleading practices and deceptive  
7     practices, if an organization states that they will  
8     abide by a code or they will lift a trust mark, if  
9     that's not the case, then obviously some kind of  
10    monitoring needs to take place.

11            Again, it doesn't -- it won't necessarily be  
12    effective for governments to be specifically involved  
13    in monitoring. I think what we see is very much a  
14    decentralized approach in the European Union, member  
15    states have different approaches to this issue, and I  
16    think for us we would leave that very much to them,  
17    whether it's combined accreditation authority with the  
18    private sector or in consumer groups or whether there  
19    is some government involvement or an ombudsman scheme  
20    or whatever it may be.

21            But then we see that there is perhaps some need  
22    for oversight of some sort, but in -- only in certain  
23    cases, of course, where a particular scheme is not  
24    delivering on those principles.

25            MS. CARBLANC: I would just like to make a

1 point with what you said, because at the global level,  
2 it can be only at the level of policy, and it is a sort  
3 of two-step process. And then for implementing the  
4 details or implementing policy principles, it's up to  
5 each country. But at least you have a common  
6 remembrance reference, which is sufficiently simple to  
7 serve as a global reference, and this is probably where  
8 it is important in the context of global networks and  
9 electronic commerce to try to have all stakeholders,  
10 including governments, gathering in those areas, in  
11 this fora, and try to find some common reference.

12 MS. CHERRY LISCO: My sense of the guidelines  
13 that we've seen coming out of Europe, it's very easy  
14 for a company like SquareTrade to meet those standards,  
15 because they really are about quality, and it's  
16 something you do naturally as a company trying to meet  
17 those standards.

18 I think it's helpful to have definitions and to  
19 try to work together internationally to create common  
20 definitions, because we are starting in a place where  
21 historically the legal systems have evolved with  
22 different definitions of consumer.

23 I think those are very interesting points, and  
24 my initial instinct as an American is just to say do  
25 not regulate, let's not try to get together and define,

1     it's too hard, lowest common denominator, but I'm  
2     excited about the challenge of it, and I think it's  
3     worthwhile to endeavor to try, because even in the  
4     process of doing so, we will at least clarify where we  
5     can't or where the definitions do not meet so that we  
6     at least have a clear understanding of what the -- what  
7     we're talking about.

8             I think it's definitely a worthwhile process,  
9     you know, whether we end up with one standard, one  
10    policy that we can all agree on, I don't know. I'm an  
11    optimist, and I think we would, and I think it would be  
12    something we'd be proud of, but certainly trying to get  
13    there would be very interesting and very helpful for  
14    everybody that's in this field so that we can all  
15    understand the lay of the land in this arena.

16            MR. MENGE: First of all, at the Small Business  
17    Administration where I'm from, we have done a lot of  
18    economic studies on the impact of regulations upon  
19    small businesses, and any sort of regulation creates  
20    inefficiencies in the marketplace, and the companies  
21    and entities that are most affected by those are the  
22    smaller ones, because they have the least manpower,  
23    least resources and least ability to overcome those  
24    inefficiencies.

25            So, if you are going to add in any sort of

1 regulation or policies that is across the -- that is a  
2 global policy, you will be adding in inefficiencies  
3 into the marketplace at some level, whether they are  
4 large, whether they are small, that will depend upon  
5 the scope of the regulation.

6 Any government or any summit or any  
7 conglomeration that puts together these things, needs  
8 to weigh the benefits and whether those overcome the  
9 detriments that they would give to the marketplace.

10 Also, it is likely that if you start developing  
11 definitions, you're starting to shape the chaos that is  
12 internet, and when you do that, you start giving it  
13 structure, and structure sometimes provides a lot of  
14 stability, but it also precludes a lot of change, and  
15 the internet right now is, you know, in a huge, vast,  
16 flux of change. And we have no idea where it's going,  
17 and I don't think anyone in this country really has any  
18 idea or any other country has any idea where it's  
19 going. But if we start precluding how it can change,  
20 we have no idea how that will affect its growth and how  
21 it will eventually end up.

22 MS. CARBLANC: Just a word to say to that. You  
23 can look at this in a different way in saying that  
24 trying to find, at a global level, a policy, standards,  
25 will reduce uncertainty with more businesses, but I

1 think that the risk for small businesses on line is to  
2 be subject to a lot of different laws, a lot of  
3 different jurisdictions, because they have no need to  
4 know -- to figure out what it is, what is applicable in  
5 France, in Germany and so on.

6 I think that it is in the interest of smaller  
7 business and medium businesses to have that type of  
8 global level reference.

9 MR. MENGE: If it's -- if you're doing that,  
10 you're adding in ADR, you're adding in another level of  
11 dispute resolution, which is adding it on top of what  
12 the jurisdiction that small businesses will have to  
13 suffer. You're going to get a lot of suits in court,  
14 whether you add in a dispute resolution or not, because  
15 you're going to have a lot of people that say, hey, I  
16 didn't agree to that, I'm suing you in court. And  
17 then you're going to be packing your bags and going on  
18 a trip around the world.

19 MS. WELLBERY: I have agreed with everything  
20 you've said up to now, because I think -- what I was  
21 sitting here thinking was is this really a solution in  
22 search of a problem. I mean, how -- I don't think -- I  
23 don't think it's likely that there's going to be a lot  
24 of lawsuits for small dollar values across borders,  
25 it's just not likely.

1           So, I think for small and medium-sized  
2 businesses that there really isn't that much  
3 uncertainty for them, and I guess, you know, in  
4 business I think another major cultural difference that  
5 I come upon whenever I engage in these discussions is  
6 we don't consider uncertainty bad. We think that that  
7 contributes to creativity, whereas I think uncertainty  
8 is something that -- and we think it fosters innovation  
9 in the small and medium-sized company market, and I  
10 don't think you agree with that.

11           I mean, what's fostering all this creativity  
12 now I think in the internet is nobody knows where  
13 anything is going, and what they -- and what the  
14 predominant business model that's going to emerge is  
15 going to be or whether there will be a number of  
16 business models. And, so, that's what's got everybody  
17 running mad at this point. And once that's resolved,  
18 then people will stop running as much and stop being as  
19 creative.

20           MS. KESSEDJIAN: Barbara, the experience I've  
21 got, surfing the internet to actually see how  
22 businesses do deal with trans-national -- potential  
23 trans-national customers, I'm based in Europe, and I've  
24 been repeatedly going into sites of Canadian, American  
25 companies and so on and so forth.

1           As soon as I put an address in Europe, you  
2 know, as a potential, you know, contractor, the answer  
3 that I get is, sorry, we don't serve -- we don't  
4 deliver in those countries, because there is -- and I  
5 come back to Ann's point. There is a -- there is --  
6 it's not so much uncertainty, but there is a fear that  
7 because they don't understand the rules that may apply  
8 to delivery to customers based in Europe, they are  
9 simply not going to take the risk.

10           Now, if we are talking about the incentives we  
11 should give to businesses to actually go and transact  
12 internationally, we have to deal with that type of  
13 fear, and this has to do with conflict of laws, and so  
14 I come back to Ann's point and your answer.

15           I think if we have -- the thing that I have in  
16 mind is the following: If we get a company who has a  
17 website and has a seal, a trust seal, it will actually  
18 allow that company to not apply whatever law may be  
19 applicable in absence of the trust seal.

20           Now, when I say that, in consumer areas, the  
21 consumers are not quite happy with, you know, this type  
22 of idea, but I think if the trust seal business is  
23 going to work for trans-national deals, it has to be an  
24 either/or.

25           If you have a trust seal, then you forget about

1 applicable law. This is the -- the basic rules are in  
2 the trust seal. You are giving the warranties, you are  
3 giving the basic needs of the consumer, you are  
4 protecting the consumer in a way that is satisfactory  
5 and that, you know, most businesses can deal, perhaps  
6 within ADI, I don't know at this stage, and this will  
7 have to be thought through, and whether or not we  
8 should propose that within the trust seal. But  
9 that's the type of idea that I, you know, I'm trying to  
10 think about and, you know, bring to the people to think  
11 about.

12 Again, there is a reluctance -- I mean, I  
13 mentioned this very idea in Geneva in our round table  
14 on e-commerce and private international law, and the  
15 people from the BUC, which is the European Consumer  
16 Association, which are also representing Consumer  
17 International in Europe, came to me and said, Well, we  
18 are not so sure we like that.

19 But once we started dealing with these ideas --  
20 and again, it all in my view will depend on what we put  
21 within the trust seal and within the basic principles  
22 -- if it is enough to protect the consumers over the  
23 internet -- and, again, the consumer over the internet  
24 is not the consumer at the boutique. It's a different  
25 one. We have also to think about that.

1 MS. RODRIGUEZ: You had a response?

2 MR. FENOULHET: Yeah, I think it's also a  
3 question of responsibility here, because we all want  
4 the internet to function, and, of course, the different  
5 stakeholders involved have different incentives to do  
6 that. And, in particular, if you look at businesses  
7 themselves, it really is in their interest, those who  
8 are going to invest substantial sums of money and time  
9 and effort in developing these systems and in  
10 developing the effective systems, and certainly the  
11 reputable companies that are in the majority who are  
12 going to abide by codes of conduct and implement trust  
13 mark schemes do not want this whole -- this whole  
14 structure of confidence that they're creating to be  
15 undermined by those few who are going to develop  
16 fraudulent systems or ineffective or poor policy  
17 ones.

18 And that is the reasoning behind our view that,  
19 indeed, we do need to introduce a degree of certainty,  
20 not only for consumers but also for businesses, and it  
21 is they who are telling us that they need this, and  
22 it's not a question of preventing competition between  
23 these different systems.

24 On the contrary, what we want to do is perhaps  
25 develop a baseline above and beyond which competition

1 can take place and that there will be choice among the  
2 different schemes.

3           And the other point, of course, is that as we  
4 -- we may say this was the flavor of the day this  
5 morning when Commissioner Thompson said that there  
6 would not be one size fits all, and the thing is that  
7 with such baseline principles, of course, one is not  
8 going to prevent different schemes developing to  
9 respond to different requirements in different sectors.  
10 It's simply to ensure that those who are in that  
11 marketplace will be -- in a way have some sort of  
12 reward for the efforts they are going to be putting  
13 into it.

14           MS. RODRIGUEZ: So, you think you can establish  
15 baselines that are meaningful but yet allow for a  
16 plethora of other models for different kinds of  
17 transactions -- cross-border, et cetera?

18           MS. WELLBERY: I guess I've been sitting here  
19 thinking about this, and I really do think that I --  
20 going back to the point that Lorraine made, I think you  
21 wind up with the lowest common denominator rather than  
22 high a standard.

23           And what I was thinking about was the  
24 development of the catalog or distant sales in the  
25 U.S., which I guess is more than catalog, but when

1 catalogs first started here, I don't remember how  
2 many years ago it was, there were not what we call 800  
3 numbers. You had to pay to call to a catalog to order  
4 and you had to pay to have the things shipped back if  
5 you didn't like it.

6 (Brief interruption -- group comments/  
7 laughter.)

8 MS. WELLBERY: Catalog sales -- and it was hard  
9 to get your money back if you ordered something and you  
10 didn't like it or it didn't fit or it wasn't what you  
11 thought you were going to get when you sent it -- when  
12 it arrived. And over a not very long -- over a  
13 relatively short period of time, all catalog companies,  
14 certainly that I deal with at this point, set up 800  
15 numbers, so you'd never have to pay to call them. They  
16 are now all open -- they all can be called 24 hours a  
17 day, seven days a week, which wasn't the case when they  
18 started out, and all the major catalog companies take  
19 -- do this money-back guarantee promise where you can  
20 return anything, any time, regardless of, you know, how  
21 long you've had it, and there are jokes about it now in  
22 the U.S.

23 And, so, the market has come up with this  
24 wonderful way of overcoming the concerns that people  
25 had about doing distant buying. And I just think the

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1 same kind of thing could very well evolve on the  
2 internet. And if we had set out to come up with rules,  
3 we would not have come up with those rules, I don't  
4 think, because those aren't the rules that operate in  
5 the regular market, in the offline or person-to-person  
6 marketplace.

7 MS. BRENNAN: But, Barbara, I have no problem  
8 going onto the website and buying something from Neiman  
9 Marcus or a company I recognize. I'm very reluctant to  
10 go to a website in Peru and order some sweaters,  
11 because I have no confidence --

12 MS. WELLBERY: But -- okay -- think back to  
13 catalog sales. I mean, I used to be reluctant to buy  
14 through catalogs, and so the first few things I bought,  
15 at least, were relatively small purchases, and then you  
16 develop confidence in the vendors, and --

17 MS. BRENNAN: There is no language difficulty  
18 there, there isn't a cultural difference. It seems to  
19 me it becomes different when you take it out to another  
20 country. You lose the security. I know that I can  
21 complain against a business in the United States. I  
22 can go to the Attorney General. I can go to the Better  
23 Business Bureau. What do I do if I don't get my  
24 Peruvian sweaters?

25 It's a different -- I feel sort of lost. I

1 mean, this is an actual -- my life experience. I don't  
2 order internationally yet, because -- unless I'm using  
3 a credit card, I don't have confidence.

4 MS. WELLBERY: See, I have, I mean, I've  
5 ordered china from the U.K. years ago and did it by  
6 telephone --

7 MS. BRENNAN: On the internet?

8 MS. WELLBERY: By telephone, but what's the  
9 difference?

10 MS. GUNN: You can actually talk to a person on  
11 the other end. You are not doing that on an internet  
12 transaction. You have no --

13 MS. CHERRY LISCO: I think there are two  
14 different actual levels of standards that we're talking  
15 about, and my sense of Catherine is that she's actually  
16 talking about a standard of law that -- not so much  
17 defining the baseline business practice, like everybody  
18 here must have a 1-800 number and be there 24/7, but  
19 that there's a rule of law that's defined by the  
20 international community at some level that really is  
21 about disclosure and having a system of disclosing what  
22 the Peruvian law -- what would happen and what would  
23 happen if you needed to return the sweater, and just  
24 having easy access to that information might change  
25 your mind on how comfortable you are.

1 MS. WELLBERY: Is that all you're talking  
2 about, is just --

3 MS. KESSEDJIAN: Not exactly. There is a  
4 little bit of that, but there is also what Barbara  
5 describes as the best business practices that could be  
6 globalized. And my question to you, Barbara, is how do  
7 you explain that those U.S. corporations that are  
8 giving that kind of service to their customers hesitate  
9 to actually deal with me because I am located outside,  
10 although our own catalog companies in Europe do exactly  
11 the same?

12 MS. WELLBERY: Do you know if that's the reason  
13 why they don't --

14 MS. KESSEDJIAN: No, I don't know. It's a  
15 question I'm asking.

16 MS. WELLBERY: No, no, but do you know if the  
17 reason that they're refusing to deal with you has to do  
18 with the --

19 MS. KESSEDJIAN: With my address. Immediately  
20 when I --

21 MS. WELLBERY: Maybe it could be -- they could  
22 say, you know, they guarantee delivery within ten days  
23 and they can't guarantee delivery to you, for instance,  
24 in ten days.

25 MS. KESSEDJIAN: No, UPS, Federal Express, 24

1 hours, and I'm ready to pay. I have been an attorney  
2 for Alcatel in France, disclosing conflict of interest,  
3 and Alcatel has started an internet telephone for those  
4 digits, you know, if I lose my little thing in my ear,  
5 I can have, through Federal Express, from Alcatel, from  
6 France, exactly the thing that I need for my telephone,  
7 all over the world, wherever I am, just because I can  
8 choose -- of course, I'm paying for the service, but I  
9 can choose the way and the means of delivery when I'm  
10 punching into the computer to buy the product.

11 So, I don't understand why those companies who  
12 have developed this very sophisticated customer service  
13 are reluctant to sell outside their own jurisdiction,  
14 and that may be because they ignore or they don't know,  
15 you know, how they are going to --

16 MS. ROSENTHAL: No, it's a Customs situation  
17 sometimes, because they don't know how the rules apply  
18 to the amount of things that you are buying and the  
19 kind of things that you are buying.

20 MS. KESSEDJIAN: So, it pertains to the Customs  
21 decision-making, what you say. When you send something  
22 from here, you have to sign a personal paper that says  
23 what is inside, how much it costs and what is the kind  
24 of article that you're sending, and there are some  
25 things that are no-no, but they can verify that by

1 opening each parcel that is sent from U.S. to Belgium.

2 MS. ROSENTHAL: The companies that participated  
3 in the FTC's workshop last year did say that in  
4 addition to the customs issue the uncertainty about the  
5 applicable law and choice of forum is one of the  
6 driving factors that's leading them to not do business  
7 with consumers all over the world.

8 I think there might be many other issues, but I  
9 think that's something that they have acknowledged as  
10 one of the issues that's motivating limitation on  
11 availability.

12 MS. KESSEDJIAN: And this is why my idea of  
13 having a trust that will replace the law, that says if  
14 you obey by those rules, which are the baselines, then  
15 they are -- but that should be done through an  
16 international, you know, like the --

17 MS. ROSENTHAL: I think -- I just want to say  
18 that something that's important there, you know, over  
19 time that might be something that we could do once we  
20 see that these types of codes work in practice and have  
21 the effect of protecting consumers, and I think one of  
22 the laudable things about the e-commerce group's  
23 proposal in their jurisdiction statement, they hope  
24 that that will someday happen, but they acknowledge  
25 that especially governments need the comfort that over

1 time these principles are put in practice and do have  
2 the effect of protecting consumers.

3 MS. WELLBERY: So, I think that's a laudable  
4 goal and one that somehow we should be working toward,  
5 but I think we also need to be realistic that it's  
6 going to take us a long time to get there. And in the  
7 meanwhile, we need to have these private sector codes,  
8 because I think also these private sector codes will  
9 result in trial and error, and we'll see -- it will  
10 help us ultimately to come to the great consensus.

11 MS. KESSEDJIAN: You know, the Africans say,  
12 you know, you have to look at the stars, but don't  
13 forget there is a gutter there. So, we have to do both  
14 things at the same time.

15 MS. WELLBERY: I think that's a Greek saying.

16 MS. KESSEDJIAN: Who knows?

17 (Group laughter.)

18 MR. COLE: Well, I want to put something in  
19 perspective here, since I work with a lot of small  
20 companies or have up until a few months ago, but the  
21 thing is, I mean, the thrust of what we're trying to do  
22 here is to stimulate demand from customers, and if we  
23 do that, I think the businesses will respond, because I  
24 have done some of the same research that you did, and,  
25 you know, Land's End and some other pro-consumer

1 sellers here in the U.S. just automatically don't sell  
2 overseas. I've watched that, too.

3 But I think if the demand goes up, then U.S. as  
4 well as other companies will respond to that, and it  
5 kind of gets us back to having our customers, you know,  
6 feel -- in the U.S. and elsewhere, feel more secure for  
7 using the internet even for sales here in the United  
8 States. I think that sales in the United States or in  
9 Europe -- in other words, if your sales go up, then  
10 more in the form of international sales.

11 I mean, it still goes back to the issue, like a  
12 lot of people are still concerned about giving their  
13 credit card over the telephone. I think we kind of  
14 have to get back to these basics that if we make our  
15 consumer more secure just to use the internet for  
16 sales, there are other -- other parts will follow. And  
17 like what you're saying in terms of expansion of  
18 catalog sales, as people become more used to it, they  
19 will -- it will create its own demand.

20 MR. MENGE: Just -- I actually wanted to  
21 respond to that, but I have a little ganch that I  
22 wanted to go down. We did some research on exporting  
23 by small businesses, and a lot of that is over  
24 electronic commerce. We found out that you actually  
25 have to have a certain level of sophistication to even

1 know that there are export controls.

2 Some of the economic research and surveys that  
3 we did, the three primary responses from most of the  
4 micro-businesses, one to five employees, in the United  
5 States, when discussing about, you know, there are  
6 regulations involving exporting to other countries was,  
7 Huh? What's that? And is that bad?

8 MS. BRENNAN: Does it bite?

9 (Group laughter.)

10 MR. MENGE: Most of these people essentially  
11 get an order, and they say, Whoa, I got a sale, walk  
12 down to the Post Office, slap the box on the desk, say  
13 I want to send this, and they say you have to fill out  
14 this form, and they do so. And it happens to be the  
15 customs form, but they really have no idea exactly what  
16 it is, because they don't have any practice at doing  
17 it.

18 I completely agree with what you said earlier  
19 and also Ann's point about ADR, that it is a benefit to  
20 small businesses. I'm just kind of leaning towards  
21 voluntary, because I think they'll do it voluntarily.  
22 When you're a small business, you don't have a brand,  
23 no one knows who you are, and you don't have to be  
24 located in Peru to essentially have people suspicious  
25 of you.

1 (Group laughter.)

2 MR. MENGE: You can be in Omaha, you can be in  
3 Minneapolis, you can be in -- so, essentially there are  
4 -- they're trying to build trust, and one of the ways  
5 that they can build trust is through the plethora of  
6 little trust seals on their site, but also they want to  
7 make the customer feel that they can be trusted and to  
8 order from them, and I'm kind of nervous or -- I'm not  
9 entirely sure I agree with the comment that it's going  
10 to be a race to the bottom to see who's going to do  
11 what's best for the seller and not the consumer.

12 That might not be the case with the small  
13 businesses, because they don't really have a whole lot  
14 to offer that the big company can't. So, they're going  
15 to offer what they can, and what that might be is,  
16 well, we'll waive some of our rights, we'll go to you,  
17 we will provide a lot more of the benefits to you,  
18 trying to make a -- trying to find their niche, trying  
19 to get into the market.

20 I think the voluntary ADR and SquareTrade's  
21 business plan and all of their competitors -- if you  
22 don't have any competitors, you are going to have a  
23 heck of a lot of them soon.

24 MS. CHERRY LISCO: After today.

25 MS. WELLBERY: If you wouldn't draw the line at

1 \$10,000, is there a dollar point -- I mean, you said  
2 dollar points were not very helpful, but --

3 MS. CHERRY LISCO: Which are -- you mean to  
4 provide a mandatory --

5 MS. WELLBERY: Well, to just sort of feel the  
6 processes that you would be recommending or you would  
7 be developing are different.

8 MS. CHERRY LISCO: I think you always want to  
9 offer a voluntary -- a settlement process, a mediation  
10 or conciliation type process as the first step, because  
11 I think to the extent people have resolution in that  
12 arena, they're just going to be -- they're going to  
13 keep on buying. They're happy people. If that's your  
14 goal, to foster commerce, that's the people you want,  
15 and so you want to build in incentives in that area.

16 I think it's foolhardy to also avoid not  
17 building a binding alternative. How you exactly design  
18 it, I don't see any reason as a company -- once you've  
19 built the system, once you've trained the arbitrators,  
20 set a body of law, have rules of procedure and have  
21 done all the work that is required to do that right,  
22 why not make it available to anybody? They just have  
23 the issue of cost, and you make it available, and  
24 people choose it when it's cost-effective.

25 MS. KESSEDJIAN: Could I say something about

1 the cost? There are two things that I'd like to say:

2 First of all, the cost for the consumer. Most  
3 of the systems that I know, of course, in the banking  
4 and insurance industry in the UK and Ireland are free  
5 for the consumer. They are paid through, you know, a  
6 scheme that is controlled by the government or  
7 independent bodies.

8 Now, one thing that I've been hearing as a  
9 potential problem with a system that is completely free  
10 for the consumer is that it does not prevent abuses,  
11 and therefore, you will have all kinds of people who  
12 actually don't have a legitimate claim but will go  
13 there just because it's free.

14 Now, let's think the reverse, and let's think  
15 about a system that says it's free -- the insurance is  
16 free; however, if you are found at the end of the  
17 process that it was illegitimate, you have to post some  
18 kind of a bond or something that you can put your  
19 credit card number or something. So that if you are  
20 found being an abusive litigant, you know, abusive of  
21 the litigant that is free for you, then you get a fine  
22 or something. I mean, I don't know, it's, again, one  
23 idea that we could discuss.

24 The second aspect for the cost is the cost for  
25 the small businesses, come back to this. Now, my

1 question there is as follows: Internet has the beauty  
2 of lowering entrances into the market to almost  
3 nothing. Again, I take -- I take again this example of  
4 this individual multi-national, an individual, you and  
5 me, in our bathroom, we can, with a computer link to  
6 the internet, start selling products all over the  
7 world. We are multi-national, one person, okay?

8 Now, this is very low cost, and because it is  
9 very low cost and because it is -- it is a corporation  
10 or -- sorry, a business that would never have been able  
11 to actually go into business before, there is an  
12 additional small cost that can be then built into the  
13 business plan for ADR, trust seals, insurance things,  
14 which is not going to higher the cost of the product or  
15 the service so much that it will not -- it would be a  
16 barrier to entrance into the market, because again, the  
17 costs -- the initial cost is so low.

18 And we have to -- I think we have to build a  
19 system that will make these available to small  
20 businesses, very small businesses. But I think the  
21 internet allows that.

22 MS. BRENNAN: I'm curious why you think there's  
23 going to be abuse of the system. I just --

24 MS. KESSEDJIAN: I don't know, I've been told  
25 that.

1 MS. BRENNAN: I just don't see that happening.  
2 I mean, you know, if it's a consumer transaction, you  
3 either want your money back, you want the replacement  
4 of a good or you want -- you don't want -- it's not  
5 like a personal injury claim where you can, you know,  
6 retire if you get a good settlement. It has to be --

7 MS. CARBLANC: But private sector people said  
8 that they fear that's what I heard on one of the panels  
9 --

10 MS. RODRIGUEZ: There is some fear, yes.

11 MS. CARBLANC: -- people from the American  
12 private sector said if they are going to be paid by  
13 business and consumers --

14 MS. KESSEDJIAN: It's not something I actually  
15 think --

16 (Multiple speakers talking at once.)

17 MS. BRENNAN: Okay -- okay -- I was curious  
18 where that came from.

19 MS. CHERRY LISCO: Before we turned on the  
20 switch, we were all worried. We had no idea of volume.  
21 We didn't really know what would happen, and the  
22 service is free to ebay users. So, there is no barrier  
23 to filing a complaint with SquareTrade right now, and  
24 so we all panicked, especially on my end, where we have  
25 to provide a mediator for each of these, right?

1           But, you know, people for the most part only  
2 take the time and sit there and complain when they have  
3 something they're upset about, and it really hasn't  
4 been a problem that --

5           MS. KESSEDJIAN: I think we have to build a  
6 system with that kind of concern in mind, we can't  
7 completely forget about it.

8           MS. CHERRY LISCO: It's not a panic. I mean,  
9 what happens is there's a few small number of people  
10 who are essentially people with some kind of disability  
11 or disorder that makes them emotionally need to be  
12 there in this system getting heard over and over and  
13 over again. There are just a few number of people, and  
14 they're straining every customer service system that  
15 any business had, they strain every court system.

16           MS. WELLBERY: That's why, you know, a lot of  
17 health insurance, at least in the U.S., you pay sort of  
18 a co-payment of \$10, \$12, which is in a way nominal,  
19 but you are not going to keep doing it every day unless  
20 you have a real reason to go to the doctor, and it  
21 seems to me you can easily deal --

22           MS. CHERRY LISCO: With a small filing fee.  
23 Yeah, then we're starting a small filing fee, but --  
24 and it's for this -- this only reason, it just weeds  
25 out this extreme behavior. But for anybody who is at

1 all upset, it's such a small fee that they would  
2 continue to proceed.

3 MR. RAUER: Not related to cost but really  
4 touching upon an earlier point, a lot of this is also  
5 -- you can avoid a lot of these problems by really  
6 having kind of a graded procedure and not having  
7 unnecessary escalation. And in a lot of cases, we  
8 actually have a very popular program wherein businesses  
9 -- a number of companies, I should stress, precommit to  
10 ADR with the Better Business Bureau where in the  
11 initial step we use a negotiation.

12 They come to us with a complaint, and if  
13 they're participating in this particular program, we  
14 would send them back to a designated complaint handler  
15 at the company for negotiation between that complaint  
16 handler and the consumer, really without the  
17 third-party neutral being involved.

18 Then if that's unsuccessful, they are  
19 instructed to recontact us if they so choose, and then  
20 we start the mediation procedure. If that's not  
21 successful, then they would have the option.

22 So, with the consumer's option to opt in -- the  
23 business is bound by it -- the consumer is given the  
24 option to go to arbitration. And they are told that if  
25 it goes to arbitration, it's a binding decision on both

1 parties. But you don't unnecessarily escalate it when  
2 you really don't have to, and a lot of these cases can  
3 be resolved at the negotiation or conciliation or  
4 facilitation level.

5 And then if it gets to mediation, the vast  
6 majority of cases will be resolved right at mediation  
7 and not go to arbitration.

8 So, not even just commenting to us, but if you  
9 have any organization that may have an escalating cost,  
10 if it goes to arbitration or mediation or something  
11 below that, then you could really remove a lot of that  
12 -- a lot of the concern there, if you can resolve those  
13 and have those steps before even getting to arbitrate  
14 in the first place, and that can lead to an overall  
15 lessening of costs.

16 MS. BRENNAN: I think that's an American model,  
17 and I'd be curious to hear what our European colleagues  
18 have to say about that, because I don't think mediation  
19 is nearly as commonplace in Europe as it is in the  
20 United States, and I don't think -- maybe I'm wrong,  
21 but I don't think there's the confidence in mediation  
22 that we have in the United States. I think there's a  
23 very different perception, and I would just be curious  
24 to see what you think.

25 MS. CARBLANC: I could answer for France,

1 because --

2 MS. BRENNAN: Just France or --

3 MS. CHERRY LISCO: All French-speaking nations  
4 or just France?

5 (Group laughter.)

6 MS. CARBLANC: I am -- I'm sorry about that,  
7 but I thought maybe you would have more information  
8 about other countries. But in France in particular, it  
9 is a tendency, a very clear tendency to try to  
10 encourage all situations which would be mediated in  
11 many, many fields, because the courts are in such a  
12 difficult situation to deal with increasing amounts of  
13 cases that, in fact, even the judges or the prosecutors  
14 are pushed. Even for criminal defenses, you have the  
15 plea bargaining, we don't have this. But there's a  
16 clear trend of trying to provide all these cases to go  
17 to the court.

18 MS. BRENNAN: These are all domestic issues  
19 though, right?

20 MS. CARBLANC: Yes, on domestic issues, and it  
21 is mainly offline in a variety of areas. But I think  
22 it is like the Minute Mitel (phonetic), it could be  
23 transposed probably online without too many  
24 difficulties in terms of cultural, just because people  
25 can understand that it's good to mediate, to find a

1 solution, rather than go to court.

2 MS. BRENNAN: But as an American you might be  
3 willing to mediate within a system that you know and  
4 trust. As a French person, would you want to be pulled  
5 into a system where you're mediating with a foreign  
6 party and you don't know what to expect?

7 MS. CARBLANC: But this is why I go back to the  
8 -- I think that all stakeholders, as soon as they want  
9 really to make commerce at the global level, which  
10 doesn't seem to be the case. If you have American  
11 companies having a website open to the world, to the  
12 entire world, and not delivering to a European citizen,  
13 it's a part of the market which they won't have.

14 So, if they really want to sell -- well, right,  
15 same thing for the European companies in response to  
16 selling not only to the U.S., but everywhere, it's --  
17 it will obligatorily go through an international  
18 process, a more global process, so that you will have a  
19 sort of system with different steps, different levels.

20 Stakeholders need to knit consumers and  
21 businesses and governments, try to find references,  
22 common references, which would be simple. And then at  
23 the national level, it should be reinforced,  
24 implemented, and then you will have confidence.

25 In Europe, I don't know, but in France, people

1 trust the government, as we know, mainly.

2 (Group laughter.)

3 MS. CARBLANC: This is very different for you,  
4 but as soon as -- there would be that construction, I  
5 don't think that French citizens would fear buying  
6 something abroad. Maybe the language would still be a  
7 problem, but with young generations in the future, it  
8 won't be. No, I'm kidding, but I think this  
9 construction will help really to have a foster  
10 global-electronic commerce.

11 MS. BRENNAN: Well, it hasn't translated into  
12 the commercial dispute -- internationally. There are  
13 very few international mediations with the big  
14 providers, and that's why I'm curious. I know that it  
15 works domestically, I'm just curious why people think  
16 it's going to work --

17 MS. CARBLANC: There is a lot of test,  
18 additional testing of --

19 MS. CHERRY LISCO: And that's even in the cases  
20 we've had, mediation --

21 MS. BRENNAN: Yeah, but you're talking about  
22 ebay and you're also talking about a very  
23 particularized market.

24 MS. CHERRY LISCO: But that's true on the  
25 internet. Don't forget, your internet population is a

1 self-selecting population.

2 MS. BRENNAN: But with ebay you have a feedback  
3 mechanism for favorable and unfavorable. There is a  
4 real motivation by the sellers and the buyers to  
5 cooperate --

6 MS. CHERRY LISCO: But you have it in your seal  
7 program.

8 MS. BRENNAN: Yes, but that's assuming you have  
9 a seal program.

10 MS. RODRIGUEZ: Could I just -- I just wanted  
11 to touch on one last thing before we break up, because  
12 we only have another minute or two, and that's the  
13 charge-backs issue, because it's part of the  
14 hypothetical, and I don't know if that's the most  
15 appropriate topic here with this group, but how do  
16 people feel about charge-backs and are they a dispute-  
17 resolution mechanism? Is it fair to look at them that  
18 way internationally or even domestically?

19 MS. KESSEDJIAN: It's good prevention,  
20 avoidance. I think it would be wonderful.

21 MS. WELLBERY: It often resolves the disputes.  
22 There can be a dispute and it can resolve it as well.

23 MS. FEMENIA: If you look only at the value of  
24 the dispute, yes, the charge-back is going to solve it,  
25 because it restores the money where it came from. But

1 internationally, it is not restored, so I don't think  
2 that people, depending on where they are, are they  
3 going to be so happy only receiving the money back.

4 MS. RODRIGUEZ: Right.

5 MS. CHERRY LISCO: I mean, I would say about 80  
6 percent of our disputes it wouldn't work.

7 MS. CARBLANC: Well, it is useful, of course,  
8 in specific cases, and probably complimentary between  
9 the various --

10 MS. FEMENIA: Yes, the security, the warranty,  
11 whatever happens, the money will be back if the  
12 transaction fails.

13 MS. KESSEDJIAN: Why do you make a difference  
14 between credit and debit card?

15 MS. WELLBERY: It's historical, because the  
16 legislation was written in terms of credit cards,  
17 because there weren't debit cards at the time. There  
18 is no legitimate rational reason for it.

19 MS. PANTELOURI: No, just on the question of  
20 charge-backs, charge-back works in two ways. One is  
21 that they give confidence to consumers if they are  
22 ready to risk perhaps a higher value purchase than they  
23 might otherwise do. It's also an incentive to  
24 encourage -- for business to encourage good business  
25 practice, because they know it's likely to lead to a

1 money-back solution more easily, but it's -- it's  
2 something that we are particularly keen to encourage in  
3 Europe.

4           At the moment, the situation with charge-backs  
5 is extremely pastry (phonetic). The charge-back  
6 system is very similar to those in the U.S. and exist  
7 in the UK and, I think, also in Ireland but nowhere  
8 else in Europe. And there's a very -- one of the  
9 reasons is that in the mainland Europe, there are more  
10 debit cards than -- and charge cards rather than credit  
11 cards, as such, and the argument is that it doesn't pay  
12 to do so.

13           But, I mean, your experience shows that that  
14 isn't the case and that, in fact, charge-backs have  
15 become selling points, and the better the quality of  
16 the charge-back system, the -- you know, the more you  
17 --

18           MS. WELLBERY: But I just wanted to amend a  
19 little bit what I said to Catherine, that the  
20 legislation was written in terms of charge cards and  
21 not in terms of debit cards, but the charge card/debit  
22 card folks who tend to be the same do not want to  
23 extend it to debit cards, so it must be an expensive --

24           MS. PANTELOURI: But they do use it in  
25 practice. It may not be in legislation, but they do

1 use it in practice in using it as a selling point.

2 MR. RAUER: I think it's a component but not  
3 the answer unto itself.

4 MS. CARBLANC: And it shouldn't be.

5 MS. WELLBERRY: Okay, thanks to everybody.

6 (Whereupon, the breakout session concluded.)

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