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April 19, 2000

Secretary, Federal Trade Commission  
Room H-159  
600 Pennsylvania Avenue, NW  
Washington D.C. 20580

Re: **Alternative Dispute Resolution For Consumer Transactions In The Borderless Online Marketplace**

Dear Secretary of the Federal Trade Commission:

SquareTrade respectfully submits the following comments for consideration at the June 2000 public workshop examining the use of alternative dispute resolution for online consumer transactions.

#### Background

SquareTrade was founded in 1999, and provides unique methods for fostering effective communication and expediting problem solving between online buyers and sellers. These methods include a guided, web-based process for problem solving, and an assisted problem solving service supported by professional mediators.

- SquareTrade's web-based system for resolving online problems: live with eBay

SquareTrade provides a web-based system for consumers and businesses to resolve disputes that arise in the course of e-commerce transactions. In February 2000 SquareTrade deployed its first marketplace solution within eBay, enabling both domestic and international buyers and sellers to efficiently communicate and resolve problems.

- Advisory Board provides thought leadership and protects consumer interests

SquareTrade draws on a wide breadth of expertise across dispute resolution theory and practice, cyberlaw and consumer protection communities through its Advisory Board and consulting relationships. SquareTrade's team of advisors includes Ethan Katsh and Janet Rifkin, co-directors of the Center for Dispute Resolution at UMass, Amherst; Roger Fisher,

author of the bestseller *Getting to Yes* and founder, the Harvard Negotiation Project; David Johnson, senior partner at Wilmer Cutler Pickering, ex-Chairman of the Electronic Frontier Foundation and major voice in cyberlaw issues; Jonathan Zittrain, director of the Berkman Center for Internet and Society at Harvard Law School; and Ken McEldowney, Executive Director, Consumer Action.

- Company financially backed for long term growth

SquareTrade is rapidly expanding its services to meet the ranging needs across online marketplaces. SquareTrade is venture backed by multiple leading technology investors including Chase Capital Partners, Weston Presidio Capital, Draper Richards, Argus Capital, European-based GIP Partners and Staenberg Private Capital.

### Critical Elements to a Successful ODR Solution: Lessons Learned to Date from eBay

- Significant technology experience

SquareTrade's system now handles all eBay disputes for items over \$100 in value. To support eBay's e-commerce defining marketplace of over 10 million users, SquareTrade's infrastructure solution has been designed to meet industrial strength performance criteria of security, online access and customer service. Since deployment, SquareTrade has already learned significant technological lessons about how to further design a system that maximizes the following parameters:

- Guided self-resolution: Buyers and Sellers are capable of resolving most problems themselves if given effective communication tools that help them disaggregate emotions from the underlying problem. An automated, intelligent technological system can provide such a communication forum.
- Mediator-assisted resolution: Where parties are unable to resolve problems themselves, a trained, qualified, and credible mediator can effectively help most people come to a voluntary, agreed upon solution.
- Cost-effective case management: A sophisticated case management technology enables mediators to handle lower to mediumvalue consumer disputes in an efficient cost effective manner.

- Access to quality network of mediators

SquareTrade's neutral mediators all have meaningful mediation training and proven experience mediating in the offline world. As communication in an online forum is distinct from the offline world, not all offline mediators are skilled to handle an online system and an online mediation. Therefore, SquareTrade thoroughly screens, trains and evaluates its mediators on an ongoing basis to ensure that they have and maintain the necessary skills for

online mediation. This includes background checks, online system training, education on the types of disputes they will be handling, and live simulations.

In the process of building its current network of over 150 mediators, SquareTrade has learned the following key principles about providing online dispute resolution services:

- There is not a direct correlation between offline mediation skills and effective online mediation ability. Therefore, SquareTrade's online training program teaches mediators how to translate their skills to the new online forum. In addition, it is imperative to implement a system for screening mediators who will not be able to work effectively online.
- To be an effective provider of online dispute resolution requires substantial investment in systems and infrastructure for supporting mediators' technological and mediation process questions. SquareTrade has invested in an in-house staff of mediators who work full-time to provide training and support to the larger network, as well as constant review and feedback.
- An online dispute resolution system enables greater quality control opportunity than exists in the offline world, but implementation of an effective, thorough quality control system also requires substantial investment.

### Beyond the eBay Marketplace

- Scalability for rapid e-commerce growth

A successful online dispute resolution provider must be poised to meet a varied range of types of marketplaces, both those existing today and newly emerging, must be capable of expanding rapidly with the growth of e-commerce and must be responsive to the needs of online participants. SquareTrade's technology and systems are prepared for such deployment and rapid growth. SquareTrade's experience in eBay has taught the company how to engineer its system and technology to meet the challenges of becoming a truly scalable technology.

- Benefits of large volume case experience

SquareTrade's privacy policy notifies users that information about their dispute will be retained in an aggregated form. This aggregate data is very informative as it enables SquareTrade to understand the framework of consumer problems and, importantly, the framework and elements necessary for successful problem resolution. This enables SquareTrade to inform users about the frequency and common outcomes of a given situation and enable users to make reasoned, educated decisions about how to handle and resolve problems given past precedence.

## The Role of the FTC

SquareTrade's success at handling e-commerce disputes depends upon a number of key factors which we recommend that the FTC foster in order to encourage effective mechanisms for handling consumer disputes in online marketplaces:

- Support of private investment

Significant investment is crucial to building the infrastructure necessary to provide a robust and scalable online technology, sufficient numbers of trained, screened and monitored mediators and arbitrators, meaningful customer and mediator support mechanisms, and rapidly deployable, tailored dispute resolution processes.

- Fostering credibility of online dispute resolution companies

SquareTrade's ability to effectively enable consumers to resolve problems in the online arena depends in part upon the consumers' belief in the credibility of the company as a service provider. SquareTrade's partnership with eBay has enabled eBay users to feel confident in SquareTrade's services. As online dispute resolution expands, government support of online dispute resolution providers such as SquareTrade will enhance their ability to help consumers and businesses alike.

- Establishment of quality control standards

As the field of ODR grows, it is important that consumers are not offered substandard ODR services. Not only would such services jeopardize consumers who actually use such systems, but it would jeopardize all other providers' ability to provide service due to the spillover effect poor service will have on the credibility of all ODR systems. Accordingly, it might be beneficial for the FTC to provide meaningful minimum standards, such as:

- Requirement that a provider implement a training, screening and monitoring system for neutrals
- Requirement that a provider implement a system for user and mediator support while using the ODR process

- Establishment of disclosure requirements

As an alternative forum for resolving rights that users might have to a legal process, all ODR providers should be subject to mandatory disclosure requirements, to include:

- The criteria for necessary to become a neutral with the provider
- Privacy policies and use of all data collected

- All fees charged to the user and all fees paid to the neutral and any payment parameters that are tied to the case itself (e.g., whether the neutral only gets paid if case settles.)
- All process procedures, guidelines and rules
- Any limitations on legal rights or remedies arising from use of the process
- If a neutral is involved, the applicable ethical requirements for neutrals
- Implementation of process requirements

The FTC may consider implementing process requirements. The first priority would be to set forth guidelines for any mandatory or binding ODR process. In so far as voluntary ODR processes, disclosure obligations should enable users to make their own judgments about what processes they choose to use.

### Conclusion

SquareTrade has garnered significant experience in providing an ODR system that is actively assisting e-commerce buyers and sellers reach resolution today. SquareTrade has built the significant infrastructure necessary to provide a large-scale ODR service, including technology, processes, trained mediators, customer service capabilities and education/communications programs. We look forward to sharing this learning with you in greater detail at the workshop.

Very truly yours,

Steve Abernethy  
President & CEO

Cara Cherry  
Director SquareTrade Mediator Network